

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

**TUESDAY 7 MAY 2024  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON  
& HYBRID MEETING FACILITY**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Councillor L Allan  
Councillor C Cassini  
Councillor D Collins  
Councillor J Findlay  
Councillor A Forrest  
Councillor N Gilbert  
Councillor C McGinn  
Councillor S McIntosh  
Councillor K McLeod  
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 S Robertson, Planner  
Mr J Allan, Planner  
Mr C Grilli, Service Manager – Governance  
Mr J Canty, Transportation Planning Officer  
Mr A Hussain, Transportation Planning Officer  
Ms M Haddow, Transportation Planning Officer  
Ms P Gray, Communications Adviser

**Clerk:**

Ms B Crichton

**Visitors Present/Addressing the Committee:**

Item 3: Mrs A McIntosh, Dr S Bruce  
Item 4: Mr G Lawson  
Item 5: Mr T Hield

**Apologies:**

Councillor J McMillan

**Declarations of Interest:**

None

**1. MINUTES FOR APPROVAL**  
**a. Planning Committee, 5 March 2024**

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

**b. Special Meeting of the Planning Committee, 26 March 2024**

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

**2. MINUTES FOR NOTING**  
**a. Local Review Body (Planning), 18 January 2024**

The Committee agreed to note the minutes.

**b. Local Review Body (Planning), 25 January 2025**

The Committee agreed to note the minutes.

**3. PLANNING APPLICATION NO. 24/00114/P: INSTALLATION OF CCTV CAMERAS AND LIGHTING (RETROSPECTIVE), EAST GATE, HUMMEL ROAD, GULLANE**

A report had been submitted in relation to Planning Application No. 24/00114/P. Scott Robertson, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent retrospectively.

Arlene McIntosh spoke to the application. She explained that the Ring CCTV cameras had only been installed to protect the security of her property following a break in at nearby property a few months previously, and felt that the presence of the cameras were also of benefit to the wider community. She reported that legal and planning advice had stated that the objections related to legal and data protection issues. She said the application did not present a privacy issue from a planning perspective, and said legal and planning advice had been consistent that the objections related to legal and data protection issues. She explained that more could be heard in person than was picked up by the cameras, and said there was no impact on existing privacy because the system's curtain feature blocked any view or sound beyond their boundary. She reiterated that there was no privacy issue, so this should not be a reason to refuse the application. She advised that the camera light was only activated in the dark by people moving, and would stay on only momentarily. She noted that others in the area had received planning permission to install CCTV systems; a neighbour had a similar external camera which could point directly at Mrs McIntosh's garden, and Mrs McIntosh felt that it would be wrong to fail to apply a consistent policy across applications.

Mrs McIntosh responded to questions from Members. She felt that her cameras would provide a security benefit to her neighbour. She explained that the cameras only recorded if movement was captured, and could not record to the same extent as could be heard through a window. She stated that she was interested only in protecting her property and had no interest in her neighbour's property.

Dr Bruce spoke against the application. She recounted an incident from November 2023 when she had walked into her private rear garden and had heard a loud alarm which had repeated the words "you are being recorded". She reported that it had sounded each time she went outside, as it was installed on a wall immediately outside of her door. The light came on each

time she let her dog into the garden. She had also realised another illegal CCTV camera had been installed directly outside her bathroom when she had gone to use the shower. She talked about the significant emotional stress this had caused, and said she had not made use of this bathroom since the time it had become illuminated with light from the camera. She said she was not against the applicant protecting the security of their property, but felt there should be no audio component to record conversations, and could not understand why the cameras had been installed in such a way as could film over the boundary of her property. She felt that such cameras were more suitable for industrial estates or Airbnb lets. She said that the moveable and easily hacked cameras were denying her peaceful enjoyment and privacy of her home, and asked that the cameras stationed outside her bathroom and her rear door be removed.

Dr Bruce answered questions from Members. She was not reassured by the curtain feature, which could be switched on and off at will. She would prefer for there to be a fixed camera, as the current cameras could be moved at any time, and could not understand how a moveable camera could be allowed to remain in situ outside her bathroom. She felt there was no security benefit to her own home. She said that there had been no contact made by the applicant with an intermediary. She confirmed she had not made use of this bathroom since November 2023.

Responding to a question from Councillor Findlay, Mrs McIntosh agreed that the default feature had resulted in Dr Bruce hearing “you are being recorded”, but since this time, the curtain feature had been applied. She advised that police had suggested mediation, and she stated that the McIntosh’s lawyers had contacted Dr Bruce’s lawyers to attempt mediation and had received no response.

Councillor Findlay explained he had called in the application because of the issues of neighbour privacy, but now felt more reassured on the matter following the site visit’s demonstration of the modern applications of the CCTV system. He had concerns about the camera stationed outside Dr Bruce’s bathroom, and asked whether it would be possible to grant planning consent on all cameras with the exception of this one. Keith Dingwall, Service Manager – Planning, responded that it would be possible for Members to approve the majority of cameras but to refuse one by condition, but cautioned that there must be a sound planning reason for doing so. Because the capture of sound and images was covered by data protection legislation, he advised that this would not be considered a sound reason, however, a sound reason could be if Members felt that the actual physical presence of the camera was harmful to the privacy and amenity of the neighbour. Responding to a further question, he advised that he felt the whole proposal was acceptable, and it would be for Councillor Findlay to propose a condition he felt was competent having taken on officer advice. Councillor Findlay confirmed that he would wish to make such a proposal.

Councillor McIntosh suggested that the light on the camera triggered by movement may be detrimental to the amenity of the neighbour.

Councillor McLeod had been reassured by the demonstration, but still suggested that the camera in question could be moved into the corner so it was directed away from the windows.

Councillor McGinn also wanted the camera outside Dr Bruce’s bathroom to be moved. He had been struck by Dr Bruce’s comments about privacy. He also commented on the lack of mediation, with both parties reporting that the other party had failed to respond through lawyers. He supported installation of CCTV in general, but not when this would infringe on the privacy and amenity of a neighbour. He would support the officers’ recommendation but would also support Councillor Findlay’s suggestion that consent be withheld for the camera outside the bathroom.

Councillor Forrest felt that a fixed camera would be more appropriate outside the bathroom. He said that security and peace of mind were needed when the system controller could switch off the curtain feature at will. These points were later echoed by Councillor Cassini.

Councillor Collins commented on the benefits such a CCTV system provided to properties nearby her farm. She found the demonstration of the curtain feature useful, but was still concerned about the camera near the neighbouring bathroom; she thought this camera should be re-angled or moved. She thought that any such CCTV system would be of benefit to both properties.

Councillor Allan was extremely unhappy about an arrangement which meant that Dr Bruce could not move around her own home without alerting an external camera, and also noted that such systems could be hacked.

Councillor McIntosh echoed her fellow Councillors' comments, and added that, in addition to hacking, data mining from technology also presented a privacy concern. Despite appearing to work well, she felt the curtain feature still presented a trust issue. She felt that these considerations were relevant under the planning definition of privacy, as the cameras allowed for far more than could be observed from a window. She would support a condition regarding the camera in question.

Having ascertained the arrangement of the cameras at the site visit, the Convener only felt that the camera positioned by the rear door was problematic. He felt a condition should require for this to be replaced with a static camera which could not cover the neighbour's bathroom window. He also pointed out that East Gate may have other owners in the future.

Councillor Findlay said his initial idea had been to have no camera in this position, but thought that a camera in the corner which did not point to the bathroom window would be acceptable. He also thought the light of the camera must be taken into account.

Mr Dingwall said that Members' concern was clearly over privacy and amenity and not over image capture, which they acknowledged was a data protection issue. He suggested that Members could choose to refuse permission for this camera, but the Convener thought that a camera ought to cover the doorway. Mr Dingwall advised that the applicants would be able to resubmit another application for a camera covering this doorway. He suggested wording for a condition which refused permission for the camera in question. He also suggested that Members may choose to authorise enforcement action on this matter after four months. Councillors Findlay and McLeod formally proposed and seconded this condition, respectively.

The Convener then moved to a roll call vote on the officer recommendation to grant consent retrospectively, subject to the condition proposed by Councillor Findlay, and Members unanimously supported the officer recommendation.

The Planning Committee further agreed that enforcement action to secure the removal of the CCTV camera should be taken, with a compliance period of four months.

## **Decision**

The Planning Committee agreed to grant permission retrospectively, subject to the following condition:

- 1 Planning permission is not hereby granted for the CCTV camera installed above the rear access door on the south elevation of the house.

### **Reason**

The CCTV camera has a harmful impact on the privacy and amenity of the neighbouring residential property.

#### **4. PLANNING APPLICATION NO. 23/01253/AMM: APPROVAL OF MATTERS SPECIFIED IN CONDITIONS 1(A) TO 1(L), 11 AND 17 OF PLANNING PERMISSION IN PRINCIPLE 18/00937/PPM FOR THE ERECTION OF 92 HOUSES AND ASSOCIATED WORK, LAND AT WINDYGOUL SOUTH**

A report had been submitted in relation to Planning Application No. 23/01253/AMM. Mr Dingwall presented the report, highlighting the salient points. The report recommendation was to grant consent.

Mr Dingwall answered questions from Members. He advised that all houses within this application would be privately owned, but confirmed that affordable houses were located elsewhere on the site. He advised that a non-material amendment could be made following submission of the application, such as changes to landscaping or drainage schemes. He advised that roads permits for utility companies to open up roads were not covered under the planning system, but utility and broadband companies had certain permitted development rights. He would ask the case officer, Linda Ritchie, to feedback to Councillor McIntosh on the requirements under National Planning Framework 4 (NPF4) for a biodiversity net gain on the site. He advised that a condition requiring the developer to submit a plan to detail how emissions would be minimised was now imposed on all developments of this nature; details of building insulation was an example of the kind of information provided in this report.

Continuing to answer Member questions, Mr Dingwall advised that opening of formal play areas was one of the key conditions in the phasing of the overall development. He pointed out that developers had to consider safety aspects of the wider site, but planners were keen for open space and play areas to be brought forward; he would remind officers of the importance of this timeline. He advised that the Local Development Plan (LDP) 2018 required a 25% proliferation of affordable housing, which equated to 141 units of the wider site; 72 of those units had already been approved. These units would be subject to detailed negotiation with housing colleagues. Mr Dingwall agreed that agreement on an acceptable travel plan was of great importance so that new residents could establish behaviours around the use of active travel and public transport. He advised that a roads services officer dealt with bus service provision and would also ensure the road infrastructure was adequate to allow buses to access the site. He advised that officers sought to negotiate a good mix and range of properties in terms of the number of bedrooms, flatted units, terrace units, etc. When taken as part of the wider site, with other parcels of land consented to bring forward a wider mix of smaller units of varying sizes, officers believed there was a good mix of properties.

Graham Lawson, representative of Avant, responded to some of the points raised by Members. He advised that the homes would be heated by gas; the wider masterplan offered houses with conventional gas boilers which were also fitted with solar panels. Avant would work with a sustainability consultant. He advised that a travel plan was in development as part of the masterplan. He advised that all relevant ducting for future utility work would be laid to avoid unnecessary digging up of completed roads. He advised that, following completion, the development would be taken onto a 12-month maintenance period before the Council adopted the roads. Thereafter, utility companies had statutory powers to notify the Council that they would carry out any relevant maintenance work, or to apply for the necessary permits. He would also forward information relating to landscaping to achieve a biodiversity net gain to Ms Ritchie.

Responding to further questions from Members, Mr Lawson advised that the service capacity of the existing electric network constrained which heating solution could be used; the cable sizing and substations had been designed and constructed on a conventional basis, and the gas network had been designed and sized for use of gas boilers. Thus, there was not capacity in the network for homes to be heated by air source heat pumps. He advised that homes with

conventional boilers consumed around 1.3kW per plot, but this was closer to 5kW per plot when an air source heat pump was in use. He offered to share literature with statistics which broke down conventional gas vs. air source heat pump solutions.

Councillor McLeod would support the application, and commented on the quality of the overall development, including the affordable housing, and the importance of bringing the housing forward as soon as possible.

Councillor McGinn responded to earlier comments from Councillor Cassini about the importance of bringing forward housing for people with disabilities, and advised of 20-30 adapted units coming forward in Tranent, which would meet accessibility needs. He sought to avoid argument over public transport links in the future, and was keen to be sighted on a draft travel plan. He wished for feedback on his points raised on progress with air source heat pumps and for the travel plan to be provided to Local Members. He welcomed the affordable housing coming forward elsewhere on the site and would support the officer recommendation to grant consent.

Councillor McIntosh was disappointed to be approving gas boiler use when these would have to be taken out in 20 years' time. She expressed that 'conventional' meant business as usual and burning the planet, and noted that the electricity system that had been designed did not have capacity for individual heat pumps. She acknowledged that these decisions had been made in line with policy and building standards, but felt frustrated about having to sign off on projects which did not provide appropriate heating solutions. She said this underlined the need for heat network solutions to work through that individual electricity supplies may not be adequate to provide individual heat pumps for every property. Regarding electric vehicle (EV) charging ports being installed, she noted that this was a drain on the electricity grid, and asserted that individuals all having their own electric car was not the answer to the climate crisis. She encouraged the use of car clubs, which could be situated centrally within large estates. She would support the application.

Councillor Findlay commented that when the next LDP was in development, there should be an emphasis on ensuring that there was greater electricity capacity so that new houses being built could be fitted with heat pumps rather to move away from the current emphasis on gas.

The Convener then moved to a roll call on the officer recommendation to grant consent, and Members unanimously supported the officer recommendation.

## **Decision**

The Planning Committee granted approval of matters consent, subject to the following conditions:

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

Reason:

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

- 2 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.

- 3 Prior to the commencement of development, to ensure that the site is clear of contamination, a Geo-Environmental Assessment shall be carried out and the following information shall be submitted to and approved by the Planning Authority:

- o Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.
- o Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation.
- o Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning Authority. At this stage, further investigations may have to be carried out to determine if any additional remedial measures are required.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of any of the residential units.

- 4 Prior to the occupation of any of the residential units hereby approved a Residents Travel Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking shall be submitted to and approved by the Planning Authority. The Residents Travel 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.

Reason:

In the interests of ensuring sustainable travel patterns in respect of the development.

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

The Construction Method Statement shall include details of:

- \* Mitigation measures to control noise, dust, construction traffic (including routes to/from site and delivery times).
- \* Hours of construction work
- \* Routes for construction traffic
- \* Wheel washing facilities or alternative facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

The Construction Method Statement shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site.

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

Reason:

To minimise the impact of construction traffic in the interests of road and pedestrian safety in the locality.

- 6 Private driveways for the houses hereby approved shall have minimum dimensions of 6 metres by 3.3 metres. Double driveways shall have minimum dimensions of 6 metres width by 6 metres length or 3.3 metres width by 11 m length.

Reason

In the interests of road and pedestrian safety.

- 7 Prior to the occupation of any of the houses hereby approved, a timetable for the provision of all boundary treatments, including the erection of the 1.8 metre high boundary enclosures for the rear gardens of the houses hereby approved, shall be submitted to and approved in advance by the Planning Authority and development shall thereafter be carried out in full accordance with the timetable so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the satisfactory provision of the boundary enclosures in the interest of safeguarding the privacy and amenity of future residents of the development and residential properties nearby.

- 8 All the open space recreation areas detailed on the docketed drawings, including all of the benches proposed to be installed in them, shall be available for use prior to the occupation of the last house on the site. The open space recreation areas and benches, when provided, shall be used and retained for such purposes at all times thereafter unless agreed in writing by the Planning Authority.

Reason:

To ensure the satisfactory laying out of all areas of open space in the interest of the amenity of the future occupants of the dwellings hereby approved.

- 9 Prior to the occupation of the last house hereby approved, the proposed access roads, parking spaces and footpaths shall have been constructed on site in accordance with the docketed drawings.

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

Reason:

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

- 10 All planting, seeding or turfing comprised in the details of landscaping on docketed drawing nos. 53.88.01c; 53.88.02c; 53.88.03c and 53.88.04c shall be carried out in accordance with a timetable that shall be submitted to and approved by the Planning Authority prior to the commencement of development.

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

The design of all landscaping must be carried out in conjunction with the design and positioning of all services, and sufficient space must be made available to accommodate the full establishment of all landscaping work without impacting on any services.

All the new planting shall be maintained in accordance with the maintenance and management programme as detailed in the docketed landscape drawings.

Reason:

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



*Sederunt: Councillor McIntosh left the meeting.*

**5. PLANNING APPLICATION NO. 23/00484/P: ERECTION OF ONE HOUSE AND ASSOCIATED WORKS, GARDEN GROUND TO REAR OF 1A WEST BAY ROAD, NORTH BERWICK**

A report had been submitted in relation to Planning Application No. 23/00484/P. James Allan, Planner, presented the report, highlighting the salient points. The report recommendation was to refuse consent.

Responding to questions from Members, Mr Allan advised there was no set policy which stated the acceptable garden area, so officers made a judgement based on the size of the house and plot. He further advised that the amenity space would comprise of a balcony on the first floor, a terrace area to the rear of the house, and a small section of garden, and only strips of planting of space would be available.

Keith Macdonald, agent, spoke to the application. He thought that the reasons for refusal in the officer's report were subjective judgements, and addressed each in turn. Responding to the reason for refusal that the proposals would be harmful to this part of the conservation area, he highlighted the mix of styles, heights, and ages of the existing properties on the street. He said the property size would have little visual impact; the height of the proposed property had been kept to a minimum and was similar to the old stone boundary wall at the rear of the site. He felt the description of the proposed property as a flat-roofed, boxed form of modern non-traditional materials was not a criticism, and said this description could also be applied to the flats at West Bay Court and other buildings in the conservation area. Despite the concern that there would be an overbearing impact, he advised that the proposals passed the daylight and sunlight tests, and highlighted that the conservatory in the neighbouring property failed the sunlight test due to the stone walls which existed when the conservatory was planned and built. He described the proposals as being subservient to the neighbouring property. He noted that the small two-bedroom house would take up only 40% of the area within the red line boundary; he described the property as not being a family-sized home and pointed out that flats of a similar size were often designed with no outdoor space. He described what he considered to be the adequate amenity space for the size of the property. He advised that the proposals were for a highly insulated property heated by an air source heat pump, with photovoltaic (PV) panels and an EV charger. He advised that the PV panels currently proposed at a 30-degree angle could be changed to being flat if this would result in a more favourable assessment.

Responding to questions from Members, Mr Macdonald said that, although not large, the terrace in the sun was a perfectly useable area, and the plot was large enough to contain a small two-bed dwelling. He advised that the property walls would be kept 1m away from all boundaries, and this would be enough to maintain the wall around the property.

Tim Hield spoke against the application. He occupied the adjacent property, and fully supported the report's recommendations. Regarding the harmful effect on the conservation area, he agreed that there were a mix of ages and architectural styles amongst the buildings on the street, but pointed out that these were confined to just one side of the street. On the side of the road of the proposals, the five properties were all comfortably situated within large plots, were all appropriate to their plots and to each other, and all bore the same relationship to the road and to their elevation above it. He argued that the proposed house met none of these shared qualities, would not be sympathetic to the setting, and would be harmful to the conservation area. He felt that the proposed house would have an overly dominant and overbearing nature when sat right next to their boundary wall and would tower over their home and garden. He pointed out that the proposed house would remove the majority of sun from

their conservatory and rear garden. He also highlighted the tight constraints of the site and that the property would take up the majority of the available space. He highlighted that sole access to the site was up a narrow path, which he asserted would be inadequate for the passage of heavy machinery required in housebuilding. He further pointed out that any of the three grounds for refusal would be enough to refuse the application.

Councillor Findlay said he had felt conflicted on this application, but had considered the reasons for refusal again following the site visit. Regarding reasons for refusal one and three, he commented that there was a mix of properties on that side of the road, that he saw nothing wrong with the modern design, and he pointed out that anyone would be aware of the constrained space when purchasing the property. However, he agreed with the objector in terms of the proximity of the proposed property to the neighbouring house, and felt it was too close, too high, and would have too much of an impact. He would support the officer's recommendation for refusal. These comments were later echoed by Councillor Allan, who agreed that the proposals would have a profound effect on the neighbouring property.

Councillor McLeod recognised the variety of houses in the area and felt that the large void in that area looked out of place. He felt this huge empty space could be utilised to build a home, and would vote against the officer recommendation.

Councillor Forrest agreed with the officer recommendation following the site visit. He felt that it was too tight to build the proposed property in the space available.

Councillor Gilbert had no concerns about the appearance of the proposed property, however, he felt it would be in a dominant position, somewhat overbearing, and would have virtually no garden ground. He would support the officer recommendation. Councillor Cassini echoed these comments, and supported the second and third reasons for refusal.

The Convener felt that a structure could sit within the location, but he agreed with the second reason for refusal in that the height of the property's overbearing effect on the neighbouring house was unacceptable.

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

Support: 9 (Councillors Hampshire, Allan, Cassini, Collins, Findlay, Forrest, Gilbert, McGinn, and Yorkston)  
Against: 1 (Councillor McLeod)  
Abstain: 0

## **Decision**

The Planning Committee refused consent for the following reasons:

- 1 The proposed house would in terms of its design and external finishes be of a contemporary form and finish that would be very different in character and appearance to the form and appearance of the other houses and buildings of West Bay Road. Its flat roofed boxed form and appearance and its use of modern non-traditional materials would be at odds with the built form of this part of West Bay Road. Consequently, the proposed house would not be of a design or appearance that would be sympathetic to its setting or well-integrated into its surroundings. Therefore, the proposed house would have an adverse effect on and would neither preserve nor enhance but would be harmful to the character and appearance of this part of the North Berwick Conservation Area contrary to NPF4 Policies 7, 14 and 16 and Policies CH2, DP2 and DP7 of the adopted East Lothian Local Development Plan 2018.
- 2 Due to the difference in ground levels with, and of its proximity to the neighbouring house to the north of 3 West Bay Road, the proposed house would have an overly dominant and

overbearing impact on that neighbouring house and in particular on the conservatory attached to the side and rear elevations of that neighbouring house. This would harm the residential amenity of the occupants of that neighbouring house contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018.

- 3 The proposed house would be erected on a tightly constrained site and would occupy most of the plot. Consequently there would be little land on which to form any useable garden ground for the occupants of the proposed house. Therefore there would be no area of garden ground of sufficient size or positioning to afford the occupants of the house any private amenity space as useable garden ground. Consequently as the application site cannot accommodate the entire development of a suitably proportioned house with private garden space the proposal is contrary to Policy DP7 of the adopted East Lothian Local Development Plan 2018.

Signed

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Councillor Norman Hampshire  
Convener of the Planning Committee

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

**THURSDAY 29 FEBRUARY 2024  
VIA THE DIGITAL MEETINGS SYSTEM**

**2a**

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**Committee Members Present:**

Councillor L Allan (lost connection during Item 2 and was unable to re-join)  
Councillor D Collins  
Councillor A Forrest (Chair)  
Councillor N Gilbert

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Mr M Mackowiak, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

None

**Declarations of Interest**

None

## **Introductory Statement by the Legal Adviser**

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

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

### **1. PLANNING APPLICATION NO. 23/00471/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 2A FORTH STREET LANE, NORTH BERWICK EH39 4JB**

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 summarised the details of the application which was the subject of the review and provided details of the property, the short term let business and its location within North Berwick town centre and within the North Berwick Conservation Area. He confirmed that no alterations had been undertaken to the flat, either internally or externally, to facilitate the proposed change of use. The case officer had noted a number of points made by the applicant support of her original application and these were also summarised.

The Planning Adviser reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The relevant policies were: Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4; and Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the LDP. Also, Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Planning Adviser then turned to the case officer's assessment of the application. Four objections had been received in relation to the application and these had been summarised in the case officer's report. The case officer had also noted that some of the objections, such as those relating to alleged non-compliance with building standards regulations, were not material considerations in the determination of the planning application.

The case officer had correctly stated that in the determination of this application it was necessary to assess the impact of the change of use of the application property to a unit of holiday let accommodation upon the amenity of the existing neighbouring residential properties. He had also summarised all comments received from internal and external consultees including the Council's Senior Environmental Health Officer, the Antisocial Behaviour Team, Roads Services, Housing Strategy and Development Service, the Economic Development Service Manager, and Police Scotland.

The case officer had conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let resulted in a regular turnover of users/occupants of the property. This use changed the nature of comings and goings not only

to the application property itself but also within the communal entrance and hallway of the residential building. The officer concluded that these changes were harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer concluded that given the specific circumstances and location of the application property within the residential building named, which contains another permanent/long term residences which shares a communal entrance, internal stair and hallway, the proposed change of use was incompatible with and harmful to the amenity of the occupiers of the properties within the said residential building. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The officer had also assessed the impact of the change of use on the loss of residential accommodation where such loss was not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service had objected to the application as the change of use of this property from a long-term residential dwelling to a short term let was considered a significant loss as the property was in North Berwick with a concentrated number of short-term lets. Furthermore, the short term let was not considered long term established and the annual occupancy rate was low. The Council's Economic Development Service Manager had argued that there were demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian and that existing provision of this type of accommodation should be retained, protected and supported where there was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. The case officer concluded that the local economic benefits associated with the use of the property as a short-term holiday let did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact.

The Planning Adviser also summarised the submission provided by the applicant in support of the review. It made a number of points, including that the flat below was not a permanent/long term residence but a second property/holiday home; the owner's permanent address was elsewhere in Scotland; and the owner sometimes spent several weeks at a time away from the property during which time it was either unoccupied or used by their family and friends. As this downstairs flat was regularly used by family and friends of the owner when the owner was not resident, the owner was not in control of security to communal areas such as the gate being left open. Only these two properties shared the common entrance and the use of each was not dissimilar. For these reasons, the applicant had argued that it was not justified to refuse consent in this instance and to determine that the use of the property as a short-term let was incompatible with and harmful to the amenity of the occupants of the other flatted property, and as such contrary to part e) of policy 30 of National Planning Framework and Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The applicant also challenged the Council's Housing Strategy and Development Service statement about the property and its use as a short-term holiday let and contested the statement that the annual occupancy rate was low.

The Planning Adviser provided details of one further representation which was made following notification of the review. This reiterated earlier objections and addressed some of the points made by the applicant in their review statement.

He concluded his presentation to the Members by reminding them that they had the option of seeking further information, if necessary.

The Planning Adviser responded to questions from Councillor Collins on flooring within the flat, and the Legal Adviser confirmed that liability for the shared costs of any repairs would be set out in the title deeds of the property.

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.

It was noted that Councillor Allan had experienced connection issues which had prevented her hearing the Planning Adviser's statement in full. On the advice of the Legal Adviser, she agreed not to participate in the decision-making on this item.

Councillor Collins acknowledged that this was a difficult case as there was a second home underneath the property whose owners were not present as often permanent residents. She also noted the contribution that short term lets made to the local economy and that this had been running successfully since 2019, with the only objections coming from the owners of the flat below. On balance, she was minded to uphold the appeal.

Councillor Gilbert said that this property, being in a communal stairway, would bring forward a level of disturbance greater than that of permanent residents. He was minded to uphold the decision of the planning case officer.

The Chair said that the key issue for him was amenity of residents and the potential for anti-social behaviour. For these reasons he would be upholding the decision of the case officer.

The Clerk confirmed that the LRB members had agreed, by a majority, to uphold the original decision of the planning case officer to refuse planning permission for the reason set out in the original decision notice.

## **Decision**

The ELLRB agreed, by a majority, to uphold the decision of the planning officer to refuse planning permission for the reason set out in the original decision notice.

## **2. PLANNING APPLICATION NO. 23/00714/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 1B SHORTHOPPE STREET, MUSSELBURGH EH21 7DB**

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 summarised the details of the application which was the subject of the review and provided details of the property, the short term let business and its location within Musselburgh town centre. He noted that the building was also listed as being of special architectural or historic interest (Category C). He confirmed that no alterations had been undertaken to the flat, either internally or externally, to facilitate the proposed change of use. The case officer had noted a number of points made by the applicant support of their original application and these were also summarised.

The Planning Adviser reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The relevant policies were Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4. Policies RCA1 (Residential Character and



Amenity), CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH5 (Battlefields), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the LDP. Also, Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

The Planning Adviser then turned to the case officer's assessment of the application. No public letters of objection had been received. The case officer had correctly stated that in the determination of this application it was necessary to assess the impact of the change of use of the application property to a unit of holiday let accommodation upon the amenity of the existing neighbouring residential properties. He had also summarised all comments received from internal and external consultees including the Council's Senior Environmental Health Officer, the Antisocial Behaviour Team, Roads Services, Housing Strategy and Development Service, the Economic Development Service Manager, and Police Scotland.

The case officer had conducted a planning assessment of the proposal and concluded that the use of the application property as a holiday let resulted in a regular turnover of users/occupants of the property. This use changed the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. The officer concluded that these changes were harmful to the amenity of the occupants of the residential properties within the residential flatted building. The officer concluded that given the specific circumstances and location of the application property within the residential building named, which contains another permanent/long term residences which shares a communal entrance, internal stair and hallway, the proposed change of use was incompatible with and harmful to the amenity of the occupiers of the properties within the said residential building. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4 and with Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The officer had also assessed the impact of the change of use on the loss of residential accommodation where such loss was not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service had objected to the application as the change of use of this property from a long-term residential dwelling to a short term let was considered a significant loss as the property was in Musselburgh where a substantial need for long term 1 bed properties existed and the short term let was not considered to be long term established. The application was refused as the proposal was contrary to part e policy 30 of NPF4 and policy RCA1 of the adopted East Lothian LDP.

The Planning Adviser also summarised the submission provided by the applicant in support of their review. It made a number of points, including that the check-in & check out times were within working hours and luggage was generally limited to one bag per person; the residents of the closet neighbouring flat said that they had never heard any commotion or noise with people coming and going; the guests were out most of the time with the same amount of activity a long term resident would make, if not less; before the applicant took ownership the stair and garden were highly unsecure but now a coded gate had been installed to improve security. The applicant disagreed with suggestion that their guests posed any risk, and with the statement included in the officer report which suggested that the actual and perceived level of security changed due to visiting guests who had unfettered access to otherwise secure, shared areas.

The Planning Adviser concluded his presentation to the Members by reminding them that they had the option of seeking further information, if necessary.

In response to questions from Members, the Planning Adviser and Legal Adviser indicated that the Council's Licensing Team were currently working through a number of short term let

licence applications. Applicants were also being referred to the planning service and, to date, 2 applications for planning permission for change of use had been granted.

It was noted that Councillor Allan had again lost connection and now was unable to re-join the meeting.

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

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

Councillor Collins noted that there had been no public objections to the proposed change of use and that the property was directly above a shop. She did not consider that it would pose a problem for other residents of the stair and felt that there would be no loss of amenity. She also pointed to the coded entry system which offered enhanced security. For these reasons, she was minded to support the application.

Councillor Gilbert disagreed with his colleague. He felt that there would be an impact on amenity due to access to the communal areas shared with permanent residents. He also argued that renting out the property on a long-term basis could bring benefits to the local economy. He would be supporting the decision of the planning case officer.

The Chair also considered that this came down to the issue of amenity. He said it would not always be possible to guarantee the timing of arrivals and departures of guests and he felt that the potential impact on amenity was unacceptable. Accordingly, he was minded to support the decision of the planning case officer.

The Clerk confirmed that the LRB members had agreed, by a majority, to uphold the original decision of the planning case officer to refuse planning permission for the reason set out in the original decision notice.

## **Decision**

The ELLRB agreed, by a majority, to uphold the decision of the planning officer to refuse planning permission for the reason set out in the original decision notice.

### **3. PLANNING APPLICATION NO. 23/00864/P: CHANGE OF USE OF PUBLIC OPEN SPACE TO DOMESTIC GARDEN GROUND (RETROSPECTIVE), 17 AND 29 PITHEAD HEIGHTS, DOLPHINGSTONE, PRESTONPANS EH32 9FW**

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 summarised the details of the application which was the subject of the review. It related to 2 small areas of formerly landscaped open space adjacent to the rear gardens of the properties of 17 and 29 Pithead Heights in Prestonpans. They were located within a predominately residential area and the 2 areas of landscaped open space were between the fences enclosing the rear gardens of the houses and the adjacent access road for the development. The two areas were formerly part of the landscaping of part of a wider landscape and drainage area of the whole development site.

The Planning Adviser reminded Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance

with the development plan unless material considerations indicated otherwise. The development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The relevant policies were Policy 14 (Design, Quality and Place) of NPF4. Policies OS2 (Change of use to Garden Ground) and DP2 (Design) of the ELLDP.

The Planning Adviser then turned to the case officer's assessment of the application. A single objection had been received, the main grounds of which had been summarised and addressed by the case officer in his report. The case officer had considered Policy OS2 of the LDP. This policy stated that the change of use of open space to garden ground would be supported if it would not result in unacceptable loss of visual or recreational amenity or harm the integrity of a landscaping scheme or set a precedent that if followed would do so. The change of use of the areas of landscaped open space had been to facilitate the formation of hard surfaced bin stores on those areas of land. Whilst the existing timber fence and gate between the areas of landscaped open space and the rear garden of the applicant's house had been retained, those areas were used to store the bins as alternatives to the bins being stored within the rear gardens of the applicants' properties. The landscaped areas of open space were part of the wider landscaping across the development and formed part of the drainage of the wider development site. The change of use of the small areas of open space and the formation of hard surfaced bin stores on them, individually and cumulatively undermined the integrity of the scheme of landscaping implemented within the development and harmed the character and the visual amenity of the larger residential development. The case officer concluded that by being located outwith the gardens of the properties the formation of the bin storage areas and the erection of bin stores on them was inappropriate to their setting. They were therefore harmful to the character and visual amenity of this part of the residential area and would, if approved, set a harmful precedent that would result in visual harm that would further harm the integrity of the landscaped open space. The change of use of the landscaped areas of open space and the retention of the bin stores on them by being harmful to the character and visual amenity of this part of the residential area were contrary to Policy 14 of the NPF4 and Policies OS2 and DP2 of the LDP.

It was noted that there were other areas of landscaped open space that had undergone an unauthorised change of use to facilitate the storage of bins. No planning application for these other areas at Pithead Heights had been received and therefore these remained unauthorised and did not form a precedent or material consideration relevant to the determination of this planning application. The officer report stated that the proposals did not accord with the development plan and there are no material considerations that outweighed their discordance with the development plan. The application was refused as the change of use of the area, bin store and slab base were contrary to Policy 14 of NPF4 and Policies OS2 and DP2 of the adopted East Lothian Local Development Plan 2018.

The Planning Adviser also summarised the submission provided by the applicant and a statement from Goodson Associates in support of the review. The applicant's submission stated that they had asked Barratt Homes for their permission to erect the bin store and that there had been no suggestion that permission would be required from East Lothian Council. The bin store had drainage and planting (green roof) to keep within the surrounding landscape, and almost all neighbours had their bins on slabs on this part of the landscape. Goodson Associates supporting statement included the following points:

- The bin storage areas were formed by the developer and housebuilder Barratt Homes prior to occupation. Applicants were not made aware that planning permission had not been obtained by the developer.
- Planning Advice Note 65 defined open space as "vegetated land or structure" and "other paved or hard landscaped areas with a civic function". The agent argued that the placement of paving spaces and a small timber bin store within the landscape strip

did not constitute a material change of use, in that the finished appearance still falls within the description of open space given in PAN65.

- The landscape strip was used extensively for the storage and placement of bins.
- The minor nature of the paving slabs and timber store was insignificant within the context of the completed housing development.
- Bins for the joint applicants did not obstruct footpaths, as was happening elsewhere.
- The bin structure consisted of a small timber housing sympathetically planted across the top face to create a pleasing finish.

The Planning Adviser also summarised one further representation submitted by a local resident. The representation included several observations around the removal of plants and asked if the applicant had presented any evidence to support the alleged statement from Barratts. This alleged statement appeared to contradict advice the local resident had received from Barratts regarding the removal of plants within their front garden and within their boundary line. They also stated that to increase garden size by adopting additional land for free did not seem fair.

The Planning Adviser concluded his presentation to the Members by reminding them that they had the option of seeking further information, if necessary.

In response to questions from Members, the Planning Adviser confirmed that as part of the original planning application for the housing development submitted by Barratt Homes approval had been given for a landscaping scheme. The land referred to in application 23/00864/P was part of that scheme and there was no record of Barratt Homes seeking subsequent permission to make any change to the landscaping scheme. He also advised that there was no requirement to notify the Factor of the application for a change of use.

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

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

Councillor Gilbert noted that having visited the site it was obvious that this area was supposed to be open space and that plants had been removed to provide bin storage. He said that if all residents were to adopt this approach there would be no standard design, as each property could do things differently, and he would be concerned that an unhelpful precedent would be set. He was minded to support the decision of the planning case officer.

Councillor Collins said it had been helpful to be on the site visits on the day for collecting recycling. She noted that while bins were everywhere, the boxes created by the applicant were quite neat and using the same type of wood as the fencing in that area. She noted that a total of fifteen residents appeared to have laid stone slabs for their bins and she felt this was a good idea. She said, in her opinion, if this was not done the bins could cause an obstruction. She was minded to uphold the appeal on the basis that there could be a standard design adopted across the area.

The Chair commented that there was a plan set out by the developers and approved by planning officers which had set out standards of what was expected within developments. While this arrangement was nicely set out, he was concerned about what other residents may do in other areas of open space. He considered that there was sufficient room in the estate for bins without these additional structures and he did not wish to set a precedent for the use of open space. Accordingly, he was minded to support the planning case officer's decision to refuse planning permission.

The Legal Adviser/Clerk confirmed that the LRB members had decided by a majority to uphold the decision of the planning case officer for the reason set out in the original decision notice.

## **Decision**

The ELLRB agreed, by majority, to uphold the decision of the planning case officer to refuse planning permission for the reasons set out in the original decision notice.

### **4. PLANNING APPLICATION NO. 23/01173/P: ALTERATIONS TO FLAT, 6A THE VENNEL, DUNBAR EH42 1HF**

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 summarised the details of the application which was the subject of the review. The application was granted planning permission with conditions including Condition 2 which stated that: "Planning permission is refused for the double cabrio roof lights proposed to be installed on the south elevation roof slope of the flatted building." The reason for this condition was: "By virtue of their modern form, appearance and opening mechanism, and of their size, scale and positioning the proposed double cabrio roof lights would not be appropriate for this prominent location within the historic core of Dunbar Conservation Area. They would be harmful to the character and appearance of the flatted property, the streetscape of The Vennel and harmful to the character and appearance of this part of the Dunbar Conservation Area contrary to Policy 7 of NPF4 and Policies CH2 and DP5 of the adopted East Lothian Local Development Plan 2018." The review was seeking removal of Condition 2.

The property was a first-floor flat set within a two-storey flatted building located on the north side of The Vennel, Dunbar. It was located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. It was also located within the Dunbar Conservation Area. The property was bounded to the north by an access road, to the east and west by neighbouring residential properties and to the south by the public road of The Vennel.

The Planning Adviser then turned to the case officer's assessment of the application. Section 25 of the Town and Country Planning (Scotland) Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan was National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (LDP). The relevant policies were Policy 7 (Historic Assets and Places) of NPF4. Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the LDP. Also, Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. The case officer also noted that material to the determination of the application was supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council in 2018. This provides policy guidance on replacement windows in buildings which are in a conservation area. The policy guidance set out in the SPG states that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This would normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions to this would be: i. Multiple glazing where there is no visible difference between that proposed and the original style of window; ii. If the building itself does not contribute positively to the character of the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and iii. If the windows cannot be seen from

a public place. The main reasons for refusal of the double cabrio roof lights were as previously stated.

The case officer's report also confirmed that no public letters of objection had been received in relation to the application.

The Planning Adviser also summarised the submission provided by the applicant's agent in support of the review. It provided additional information clarifying that the proposed Velux Cabrio had an extending balcony and had an upper window which opened in exactly the same way as the conservation windows. The agent also noted that the installation of the proposed windows would not be detrimental to the appearance of the area as the historic character of the locality had changed significantly due to demolition and new build in the recent years. Within the locality there were examples of non-conservation roof lights installed and non-traditional forms of construction including nearby blocks of residential buildings and a nearby new modernistic building. These and other buildings had all but obliterated any previously true portrayal of what the form and function of the original buildings were. The agent also referred to a different approved planning application for alterations to a building located within the Dunbar Conservation Area. The agent included the relevant excerpt from Planner's Report of 12 April 2022 referred to in the approved application for 22/00175/P - 11 Bayswell Park, Dunbar which deemed the roof window as not being detrimental to Dunbar Conservation Area, contrary to Policy 7 of NPF4 and Policies CH2 and DP5 of the LDP. The agent suggested that the approved proposal in Bayswell Park had an identical relationship with adjacent buildings and roof windows and, the approved window was identical to the one refused this application. However, the Planning Adviser informed Members that planning permission was refused, in this case, for the double cabrio roof lights and not a single cabrio rooflight (Velux SK19).

The Planning Adviser concluded his presentation to the Members by reminding them that they had the option of seeking further information, if necessary.

In response to questions from Members, the Planning Adviser and Legal Adviser gave advice on the options open to them. Both indicated that the granting of planning permission for an alternative proposal would be most appropriately sought via a fresh planning application.

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

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

Councillor Gilbert said that the site visit had been useful and that it was obvious that there would be a large glass panel in the centre of the roof. He felt that the proposal was too large and incongruous in that setting. He added that the applicant should consider discussing an alternative single rooflight/window proposals with planning officers. Accordingly, he was minded to dismiss the appeal.

Councillor Collins said she had seen similar windows in nearby properties when traveling to the site and she considered that what was proposed was twice of what was already in place in surrounding properties. She felt that there was merit in the applicant discussing a single rooflight/window solution with the planning authority.

The Chair commented that where it was positioned it would clearly be a large window, in contrast to what was already present in the surrounding area. As such, he was minded to dismiss the appeal and support the original decision of the planning case officer.

The Legal Adviser/Clerk confirmed that the LRB members had decided unanimously to uphold the decision of the planning case officer and to retain Condition 2 of planning permission for the reasons set out in the original decision notice.

**Decision**

The ELLRB agreed, unanimously, to uphold the decision of the planning case officer and to retain Condition 2 of planning permission for the reasons set out in the original decision notice.

Signed .....

Councillor Andrew Forrest  
Chair of Local Review Body (Planning)







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

**THURSDAY 21 MARCH 2024  
VIA THE DIGITAL MEETINGS SYSTEM**

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**2b**

**Committee Members Present:**

Councillor J Findlay (Chair)  
Councillor A Forrest  
Councillor S McIntosh

**Advisers to the Local Review Body:**

Ms F Haque, Legal Adviser to the LRB  
Mr P Zochowski, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

Councillor L Allan

**Declarations of Interest**

None

## **Introductory Statement by the Legal Adviser**

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

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

### **1. PLANNING APPLICATION NO. 23/00832/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET AND FLAT (RETROSPECTIVE), 8D KIRK PORTS, NORTH BERWICK EH39 4HL**

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 provided details of the application, property and location and confirmed that the appeal was against refusal of planning permission for change of use to short term holiday let. The reason for refusal was that use as a holiday let was incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 8 Kirk Ports, North Berwick and as such was contrary to part E of Policy 30 of National Planning Framework 4 and Policy RCA 1 of the adopted East Lothian LDP 2018. He also drew attention to the information submitted by the applicant in relation to their original application, as summarised in the case officer's report. The report had also noted that five letters of support were received for the application and no letters of objection.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were: Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4; and Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of adopted LDP.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. He noted that the adopted LDP did not have a specific policy on the change of use of flats to holiday flats though 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. NPF Policy 30 of NPF4 covered Tourism and stated that:

*Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- (i) An unacceptable impact on local amenity or the character of a neighbourhood or area;*  
*or*
- (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

To determine the application, it was necessary to first assess the impact of the change of use of the application property to a unit of holiday let accommodation on the amenity of the existing neighbouring residential properties. The case officer had considered the comments provided

by the Council's Senior Environmental Health Officer that whilst the normal use of a property would not result in loss of amenity to neighbours, the use of properties for short term holiday let could result in future guests misusing and abusing the property in a manner that is antisocial and could result in a significant impact upon amenity of neighbours. However, the Council's Environmental Health Service could not assume that antisocial behaviour issues would arise and thus could not impose any enforceable conditions to protect the amenity of neighbours.

The Council's Antisocial Behaviour Team had no records of any incidents relating to antisocial behaviour matters at the address and raised no objection to the application. Police Scotland advised that there had been no police incidents at the address and similarly raised no objection to the application.

The case officer had concluded that the use of the application property as a holiday let enabled it to be let out for short stays resulting in a turnover of people over short time periods. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. There was also an additional level of activity not only at the application property but also within the communal entrance and hallway as a result of people regularly accessing both the building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas would change the actual and perceived level of security for permanent residents. This level of activity was evidently different to that expected with the permanent/long term use of the flat as a private residence.

Given the specific circumstances and location of the application property within the residential building which contained a number of permanent/long term residences which shared a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's ground floor flat as a two bedroom unit of short term self-catering holiday let accommodation was therefore incompatible with and harmful to the amenity of the occupiers of the properties within the residential building named. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4.

The case officer had also quoted Policy RCA1 of the adopted LDP and determined that the proposal was contrary to that policy too. However, the Planning Adviser was of the view that policy RCA1 did not apply to this location as it lay within the designated North Berwick town centre where a range of uses existed, rather than in a predominantly residential area of town where policy RCA1 applied. It was noted that although the property lay within the North Berwick conservation area, the Planning Adviser considered that no changes were proposed that would impact on the conservation area therefore Policy 7 Historic Assets and Places did not require to be considered in detail.

The Council's Road Services had raised no objection to this retrospective planning application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted LDP.

The next assessment was the impact of the change of use on the loss of residential accommodation, where such loss was not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service objected to this retrospective application. The use of the property as a short term let was considered a significant loss as the property was in North Berwick and was considered an adaptable property; the short term let was not considered long term established; and the occupancy rates were less than 6 months per year.

The Council's Economic Development Service Manager advised that there were demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and

supported where there was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. Referring to the circumstances of this case, the Council's Economic Development Service Manger had supported this planning application. In his view, the change of use of the flat to short term holiday let accommodation supported the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.

However, the case officer had concluded that the local economic benefits associated with the use of the applicant's ground floor flat operating as short-term self-catering holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact.

The Planning Adviser then summarised the applicant's appeal submission which included the following points:

- Using an existing property such as this in a town centre generated significant economic benefit.
- The let was established and well-run with no anti-social behaviour and the neighbouring residents say it had no impact on residential amenity.
- The property was in a sustainable location close to local attractions and businesses that supported visitors and that should be encouraged in this type of location.
- The risk that long-term tenants could pose as part of a short, assured tenancy was being ignored and assumptions should not be made about the behaviour of short-term guests.
- Permanent residents' lives could involve comings and goings at different hours with associated disturbance.
- Deliveries to any property could cause noise and activity and it was not clear that there was increased activity due to a holiday let.
- Long term occupancy could be even more likely to create problems.
- The acknowledged lack of bedspace and loss of short term let property would harm local business that depend on tourism.
- The former Blenheim hotel was converted to residential use which lost tourist bedspace. Contradictory to allow its conversion and refuse an existing well run popular short term let to continue to operate.
- A similar application at West Bay Court was granted planning permission by the Local Review Body whereas Kirk Ports was a more central location.
- Local businesses support short term let businesses and are financially dependent on 12 months of tourism spend; fears for their future if reduced tourism activity and spend in the area.

The Planning Adviser concluded his presentation by providing advice to Members on the application of Policy 30E. He indicated that should they decide to allow the appeal the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider applying to any grant of permission. Similar controls had been introduced by the DPEA in other cases in Scotland.

Should Members decide to refuse the application he advised that it should be for the same reasons given in the original refusal dated 29 September 2023 amended to remove the words '*and Policy RCA1 of the adopted East Lothian Local Development Plan 2018*' thus the refusal would be against Policy 30 of NPF4 only.

In response to questions from Members, the Planning Adviser acknowledged that monitoring of maximum guest numbers would be difficult and that while Planning Enforcement would investigate, it may not be possible for them to do so immediately. He confirmed that an application for a short-term let licence had been made but that a decision was still pending.

Replying to further questions from the Chair, the Legal Adviser confirmed that even if planning permission was granted, the applicant must apply for a short term let licence. She agreed to check the position relating to enforcement of any breach of the conditions of the licence and how this might relate to any conditions of planning permission and enforcement action.

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.

The Chair noted that the North Berwick Coastal Ward contained 58% of the total number of short-term lets in East Lothian. While North Berwick had many short-term lets, he thought that the number had reduced in the last year, since the introduction of licensing. He noted that there was support for this application from local business owners and one local resident. He was not convinced that there was a negative impact on amenity, and therefore he would be supporting the appeal.

Councillor McIntosh said she agreed with the case officer's assessment of the impact on residential amenity. She noted that the door of other ground floor flat was directly opposite this property and that this would be disruptive for the residents. While she acknowledged her colleague's point, she pointed out that properties could change hands and new residents may not hold the same views. In addition, she was not convinced that a level of local economic benefit had been demonstrated which might outweigh the impact on housing. She would be supporting the decision of the case officer, and his assessment on loss of amenity.

Councillor Forrest confirmed that he would also be supporting the officer decision. He was concerned that any future owners of the business may not run things as professionally and it was difficult to predict future impact on residents. He was also concerned about the risk of anti-social behaviour. For the present, he felt that it would be almost impossible to avoid a level of noise disturbance from guests' comings and goings. He concluded that the key issue for him was one of amenity and, for that reason, he would be supporting the officer's decision.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission. They also agreed to the amendment of the reason for refusal to remove the words '*and Policy RCA1 of the adopted East Lothian Local Development Plan 2018*'.

## **Decision**

The ELLRB agreed, by majority, to refuse planning permission for the reason set out in the original decision notice, as amended.

## **2. PLANNING APPLICATION NO. 23/00825/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET AND FLAT (RETROSPECTIVE), 9D STANLEY ROAD, GULLANE EH31 2AD**

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 provided details of the application, property and location and confirmed that the appeal was against refusal of planning permission for change of use to short term holiday let. The holiday let use of the flatted property was incompatible with and harmful to the amenity of the occupants of other flatted properties used as residential dwellings within the residential building of 9 Stanley Road, Gullane and as such is contrary to part E of Policy 30 of National Planning Framework 4 and Policy RCA 1 of the adopted East Lothian LDP 2018. He also drew attention to the information submitted by the applicant in relation to their original application, as summarised in the case officer's report. The report had also noted that one letter of support was received for the application and no letters of objection. Gullane Community Council also submitted comments.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were: Policies 7 (Historic assets and places) and 30 (Tourism) of NPF4; and Policies RCA1 (Residential Character and Amenity), CH2 (Development Affecting Conservation Areas), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of adopted LDP.

However, in the Planning Adviser's view policy RCA1 did not apply to this location as it lay within the designated Gullane Local Centre where a range of uses existed rather than in a predominantly residential area of the village where policy RCA1 did apply. Policy TC2 Town and Local Centres applied instead and did not contain reference to short term lets.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. He noted that the adopted LDP did not have a specific policy on the change of use of flats to holiday flats though 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. NPF Policy 30 of NPF 4 covered Tourism and stated that:

*Development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in:*

- (i) An unacceptable impact on local amenity or the character of a neighbourhood or area;*
- or*
- (ii) The loss of residential accommodation where such loss is not outweighed by demonstrable local economic benefits.*

To determine the application it was necessary to first assess whether the fact that the property was located within Gullane Conservation Area had any effect in terms of NPF Policy 7 Historic Assets and Places and taking into account Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which required that a planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building is located. As no alterations to the property were proposed it could be considered that there was no harm to the historic area.

LDP 1 policy TC2 allowed a range of uses in a town or local centre but gave no specific guidance to short term lets. Turning to NPF4 Policy 30 Tourism part E it was necessary to first assess the impact of the change of use of the application property to a unit of holiday let accommodation on the amenity of the existing neighbouring residential properties.

The case officer had considered the comments provided by the Council's Senior Environmental Health Officer that whilst the normal use of a property would not result in loss

of amenity to neighbours, the use of properties for short term holiday let could result in future guests misusing and abusing the property in a manner that is antisocial and could result in a significant impact upon amenity of neighbours. However, the Council's Environmental Health Service could not assume that antisocial behaviour issues would arise and thus could not impose any enforceable conditions to protect the amenity of neighbours.

The Council's Antisocial Behaviour Team had no records of any incidents relating to antisocial behaviour matters at the address and raised no objection to the application. Police Scotland advised that there had been no police incidents at the address since 2020 and similarly raised no objection to the application.

The Council's Road Services raised no objection to this retrospective application and noted that the property was situated within a block of flats where residents/visitors are required to park on the street, which is considered appropriate for this property. They also state that any increased parking demand was likely to even out throughout the year resulting in no noticeable difference in overall car parking demand. Accordingly, the proposals did not conflict with Policy 13 of NPF4 or with Policies T1 and T2 of the adopted LDP.

The case officer had concluded that the use of the application property as a holiday let enabled it to be let out for short stays resulting in a turnover of people over short time periods. Such a regular turnover of users/occupants would change the nature of comings and goings not only to the application property itself but also within the communal entrance and hallway of the residential building. There was also an additional level of activity not only at the application property but also within the communal entrance and hallway as a result of people regularly accessing both the building and the application property itself to service/clean it and remove waste and recycling material after each guests stay. Moreover, allowing frequently changing guests unfettered access to otherwise secure shared areas would change the actual and perceived level of security for permanent residents. This level of activity was evidently different to that expected with the permanent/long term use of the flat as a private residence.

Given the specific circumstances and location of the application property within the residential building which contained several permanent/long term residences which shared a communal entrance, internal stair and hallway, the retrospective change of use of the applicant's ground floor flat as short-term self-catering holiday let accommodation was therefore incompatible with and harmful to the amenity of the occupiers of the properties within the residential building named. By having an unacceptable impact on local amenity, the proposal was contrary to part e) of Policy 30 of NPF4.

The Planning Adviser noted that although the property lay within the conservation area where the planning authority must pay special attention to the desirability of preserving or enhancing the character or appearance of the area in which the building was located, in his opinion, no changes were proposed that would impact on the conservation area therefore Policy 7 Historic Assets and Places did not require to be considered in detail.

The Council's Road Services had raised no objection to this retrospective planning application. Accordingly, the proposal did not conflict with Policies T1 and T2 of the adopted LDP.

The next assessment was the impact of the change of use on the loss of residential accommodation, where such loss was not outweighed by demonstrable local economic benefits as is stated in part e) of Policy 30 of NPF4. The Council's Housing Strategy & Development Service objected to the application as the change in use of this property from a long term residential dwelling to a short term let was considered a significant loss because (i) the property was in the North Berwick Coastal Ward; (ii) the property was a one bed which was in high demand; (iii) the applicant had stated that the flat would be rented out on a long term basis, in the event that planning permission for a short term let was refused, which would

be a significant contribution to the housing system. The Planning Adviser noted that the applicant subsequently stated in his appeal statement that the property would not be a long term let and would not be occupied.

The Council's Economic Development Service Manager had advised that there were demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian and that existing provision of this type of accommodation must be retained, protected and supported where there was no demonstrable impact on local amenity, the character of the area or loss of residential accommodation. Referring to the circumstances of this case, the Council's Economic Development Service Manager had supported this planning application. In his view, the change of use of the flat to short term holiday let accommodation supported the strategic goals and objectives of the Economic Development Strategy 2012-2022 and the intent and outcomes of part e) of Policy 30 of NPF4.

However, the case officer had concluded that the local economic benefits associated with the use of the applicant's ground floor flat operating as short-term self-catering holiday let accommodation did not outweigh the unacceptable impact on local amenity. Therefore, the change of use was not in accordance with the Development Plan and there were no material planning considerations that outweighed that fact.

The Planning Adviser then summarised the applicant's appeal submission which included the following points:

- no alterations were to be made to the property and as a result no change to the character or appearance of the area.
- residents support the application and the short term let was not harmful to the amenity of the occupants of other flats in the block.
- the property had one bedroom therefore was an affordable holiday let of benefit to visitors with lower incomes.
- the loss to residential accommodation was not a major impact.
- all visitors spend money in the local area benefiting the local economy.
- there could be a greater chance of disturbance if there was an anti-social tenant there much longer.
- no issues or objections from ASB team, police or road services
- guests that use the accommodation arrived in the afternoon and there was little noise generated from the flat
- guests did not use the garden.
- no impact to security of the stair or communal areas
- no harm to amenity of occupiers or harmful impact on the local amenity
- Gullane did not attract rowdy adults rather it attracts mature persons for walking holidays or those who wish to use the beach. Gullane was not overwhelmed by tourists.

Two subsequent letters from the applicant and a response from the case officer were also summarised.

The Planning Adviser concluded his presentation by reminding Members that, on the general point of this being a well-run short term let, it should be noted that this may not always be the case in future. Once granted, the flat could be managed in any way that was compatible with the terms of their licence and any conditions on planning consent. He indicated that should they decide to allow the appeal the case officer had suggested conditions limiting the number of guests and record keeping which they may wish to consider applying to any grant of permission. Similar controls had been introduced by the DPEA in other cases in Scotland.

Should Members decide to refuse the application he advised that it should be for the same reasons given in the original refusal dated 29 September 2023 amended to remove the words



*'and Policy RCA1 of the adopted East Lothian Local Development Plan 2018'* thus the refusal would be against Policy 30 of NPF4 only.

The Legal Adviser confirmed that, in relation to the point raised in the previous application, a short-term let licence could also include conditions relating to maximum occupancy and any breach would be enforced by the police. A similar condition could be added to any grant of planning permission with any breaches being dealt with by the Planning Enforcement team. Action could be taken by one or both authorities.

In response to questions from Members, the Planning Adviser confirmed that the applicant had stated that guests were not permitted to use the garden area. However, unless the garden door had a lock, this would be difficult to enforce. He also confirmed that, to his understanding, the top two flats within the block were both 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.

The Chair commented that, unlike North Berwick, Gullane did not have an over-supply of short-term lets. He also felt that there was sufficient affordable accommodation as a result of new house building in recent years. In comparison to the local hotels, all of which were 4 star or above, short term lets could offer a more affordable type of holiday accommodation. He also noted the one of the neighbours within the stair resident was supportive of the application and that the other flat on the second floor was also a short-term let. For these reasons, he would be upholding the appeal.

Councillor McIntosh said that she would again be supporting the case officer as she agreed that amenity was compromised by this short-term let. Contrary to her colleague, she felt that the loss of housing was significant as there was a general lack of one-bedroom flats within the county. She remained unconvinced that economic benefits outweighed any loss of housing and pointed to research which suggested that permanent residents spent more residents staying in short-term-let accommodation. She would be upholding the officer's decision.

Councillor Forrest said that economic benefits varied between areas. He agreed that there was a shortage of one-bedroom properties and that developers were not building many new properties of this size, which would mean that this would be a loss of accommodation. He also noted the position of the flat on the second floor and felt that this would have an impact on amenity. He would be supporting the decision of the planning case officer.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission. They also agreed to the amendment of the reason for refusal to remove the words *'and Policy RCA1 of the adopted East Lothian Local Development Plan 2018'*.

## **Decision**

The ELLRB agreed, by majority, to refuse planning permission for the reason set out in the original decision notice, as amended.

### **3. PLANNING APPLICATION NO. 23/01010/P: REPLACEMENT WINDOWS AND DOOR, 11 FORTH STREET, NORTH BERWICK EH39 4HX**

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 provided details of the application confirming that the property was located within the North Berwick Conservation Area. Planning permission had been sought for the replacement of 4 windows and a door within the north elevation. The existing windows were of timber frame construction and their frames were painted white in colour, the existing door was also of timber construction, painted white. It was proposed to replace the 4 windows with uPVC framed windows that would have white coloured frames. The glazing pattern of the proposed replacement windows would replicate the glazing pattern of the existing windows. It was proposed to replace the existing timber door with a white painted, uPVC door with associated uPVC framed fan light.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were Policies 7 (Historic Assets and Places), 14 (Liveable Place), and 16 (Quality Homes), of NPF4 and Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted LDP.

Material to the determination of the application was Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and National Planning Framework 4 (NPF 4). Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 required that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. Development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area.

Also, material to the determination of the application was supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council in October 2018. The SPG expanded on policies set out in the LDP and provided policy guidance on replacement windows in buildings in a conservation area. The policy guidance set out in the SPG stated that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This would normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions would be: multiple glazing where there was no visible difference between that proposed and the original style of window; if the building itself did not contribute positively to the character or the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and if the window could not be seen from a public place.

Two written letters of representation had been received in relation to the application, both of which give their support to the proposals.

The Planning Adviser summarised the case officer's assessment of the proposals against planning policy. Policy CH2 of the adopted LDP stated that all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. The north elevation of the property was readily visible in public views from Forth Street. The uPVC windows as proposed would be constructed of a new non-traditional material but would otherwise replicate the glazing pattern of the existing windows. The proposed door

would be different in terms of materials and proportions, as well as being higher which would result in a reduced height for the fanlight above. The glass in the fanlight would be obscured but with a visibly different profile to the existing. Doormongery would be gold coloured whereas when built the properties had dark coloured handles and letterboxes which is a more traditional appearance.

The case officer had been of the view that this would not preserve the positive contribution the timber framed windows and door made to the character and appearance of the house and to the character and appearance of this part of the North Berwick Conservation Area and therefore would be harmful to the character and appearance of the house, the terrace of houses of which it was a part and to the wider character and appearance of this part of the North Berwick Conservation Area. The case officer had gone on to state that if approved, the proposed replacement windows would set an undesirable precedent for the installation of similarly designed uPVC framed windows within the public elevations of other buildings and properties within the locality. Over time such change would be collectively out of keeping with, and detrimental to, the character and appearance of this part of the North Berwick Conservation Area.

The Planning Adviser agreed with the case officer's views.

He then turned to any material considerations that should be considered in determining the application afresh, the applicant had noted the presence of other uPVC windows in Forth Street. The case officer stated that these must be unauthorised and would be a matter for Planning Enforcement to investigate, thus he did not consider this to be a valid material consideration.

The Planning Adviser summarised the applicant's appeal statement which included the following comments:

- The existing windows were dated and draughty. Replacements would improve the energy efficiency of the property through improved u values and a higher quality fitting.
- The windows would therefore help towards meeting net zero.
- The proposed uPVC windows could be utilised for a greener future and would help the house to be well insulated in future.
- The proposed windows would be finished to a 'woodgrain' effect to blend in with existing windows.

The Planning Adviser concluded his statement by informing Members that, should they decide to allow the appeal, the case officer had suggested a condition that should be applied. However, should Members decide to refuse the application, he advised that it could be refused for the same reasons given in the original refusal dated 26 October 2023.

In response to questions from Members, the Planning Adviser said that it was not specified in the officer report whether the replacement windows were single or double glazed, but he felt that, on balance, the new windows were likely to be double-glazed. He advised that the applicant had not addressed the reason why they had not opted for replacement timber frames. He was aware of issues relating to water shrinkage and cost, but no specific reasons were stated in this case. He confirmed that partial approval was an option if Members were minded to approve only one element of the application.

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

Councillor Forrest said it was always difficult when trying to visualise the impact on the conservation area. However, in this case, it was easier as there were already subtle changes

within the locality. He agreed with the planning case officer and would be supporting the original decision.

Councillor McIntosh said this was a case that, for her, had required careful thought. While she would always support progress towards net zero targets and the circular economy, she was concerned that there seemed to be an assumption that uPVC was better for environment when this was not necessarily the case. Her research had also suggested that that uPVC windows would not necessarily be warmer or more draught proof. For these reasons, she would be supporting the decision of the case officer.

The Chair noted that there were already replacement windows and doors in nearby properties. He also felt that the buildings, of which the application property formed a part, did not sit well within the conservation area. He was of the view that the replacement windows proposed were double glazed and would therefore assist energy efficiency. While he was more supportive of the proposal for replacement windows rather than the door, he felt that people should be allowed to take steps to improve warmth within their homes and he would be voting to uphold the appeal.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission.

### **Decision**

The ELLRB agreed, by majority, to refuse planning permission for the reasons set out in the original decision notice.

## **4. PLANNING APPLICATION NO. 23/01012/P: REPLACEMENT WINDOWS AND DOOR, 15 FORTH STREET, NORTH BERWICK EH39 4HX**

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 provided details of the application confirming that the property was located within the North Berwick Conservation Area. Planning permission had been sought for the replacement of 4 windows and a door within the north elevation. The existing windows were of timber frame construction and their frames were painted white in colour, the existing door was also of timber construction, painted white. It was proposed to replace the 4 windows with uPVC framed windows that would have white coloured frames. The glazing pattern of the proposed replacement windows would replicate the glazing pattern of the existing windows. It was proposed to replace the existing timber door with a white painted, uPVC door with associated uPVC framed fan light.

The Planning Adviser reminded Members that section 25 of the Town and Country Planning Scotland Act 1997 required that the application be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan consisted of both National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan (LDP) 2018. The case officer had indicated that the relevant policies were Policies 7 (Historic Assets and Places), 14 (Liveable Places), and 16 (Quality Homes), of NPF4 and Policies CH2 (Development Affecting Conservation Areas) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted LDP.

Material to the determination of the application was Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and National Planning Framework 4 (NPF 4). Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act

1997 required that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area. Development within conservation areas and proposals out with which will impact on its appearance, character or setting, should preserve or enhance the character and appearance of the conservation area.

Also, material to the determination of the application was supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council in October 2018. The SPG expanded on policies set out in the LDP and provided policy guidance on replacement windows in buildings in a conservation area. The policy guidance set out in the SPG stated that the replacement of a window in a building in a conservation area must preserve or enhance the area's special architectural or historic character. This would normally mean that the proportions of the window opening, the opening method, colour, construction material of frames and glazing pattern should be retained. The only exceptions would be: multiple glazing where there was no visible difference between that proposed and the original style of window; if the building itself did not contribute positively to the character or the Conservation Area and where a change in window design would have no impact on the character of the Conservation Area; and if the window could not be seen from a public place.

Two written letters of representation had been received in relation to the application, both of which give their support to the proposals.

The Planning Adviser summarised the case officer's assessment of the proposals against planning policy. Policy CH2 of the adopted LDP stated that all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. The north elevation of the property was readily visible in public views from Forth Street. The uPVC windows as proposed would be constructed of a new non-traditional material but would otherwise replicate the glazing pattern of the existing windows. The proposed door would be different in terms of materials and proportions, as well as being higher which would result in a reduced height for the fanlight above. The glass in the fanlight would be obscured but with a visibly different profile to the existing. Doormongery would be gold coloured whereas when built the properties had dark coloured handles and letterboxes which is a more traditional appearance.

He then turned to any material considerations that should be considered in determining the application afresh, the applicant had noted the presence of other uPVC windows in Forth Street. The case officer stated that these must be unauthorised and would be a matter for Planning Enforcement to investigate, thus he did not consider this to be a valid material consideration.

The case officer noted that the changes proposed to the windows and doors would, by their non-traditional construction material be a harmful change that would not preserve the character and appearance of the house and the conservation area. As such they would be contrary to Policy 7 Historic Assets and Places), 14 (Liveable Places) and 16 Quality Homes of NPF4 and policies CH2 (Development Affecting Conservation Areas) and policy DP5 Extensions and Alterations to existing buildings and to the Council's Supplementary Planning Guidance on Cultural Heritage and the Built Environment. The case officer also stated that if approved, the proposed replacement windows would set an undesirable precedent for the installation of similarly designed uPVC framed windows within the public elevations of other buildings and properties within the locality. Over time such change would be collectively out of keeping with, and detrimental to, the character and appearance of this part of the North Berwick Conservation Area.

The Planning Adviser agreed with the case officer's assessment of the application.

The Planning Adviser then summarised the applicant's appeal statement which included the following comments:

- There were a number of other properties in North Berwick conservation area that have had replacement windows and doors in uPVC (a number of these were listed in the submission.)
- There was little visible difference between woodgrain effect uPVC and natural wood.
- Only the general appearance not necessarily materials should be the measure for replacement windows and doors.
- The property is severely affected by winter winds and rain due to its close location to the sea.
- uPVC windows require less maintenance.
- Forth Street was a through route rather than a tourist stop
- The Council's Climate Change Strategy wanted East Lothian's homes and buildings to be net zero and energy efficient and the Council's Local Housing Strategy wanted to improve energy efficiency of domestic buildings with the challenge of adaptation for older buildings highlighted.

The Planning Adviser concluded his statement by informing Members that, should they decide to allow the appeal, the case officer had suggested a condition that should be applied. However, should Members decide to refuse the application, he advised that it could be refused for the same reasons given in the original refusal dated 26 October 2023.

There were no questions for the Planning Adviser.

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

Councillor McIntosh stated that the core issues were the same as the previous appeal and her views on this application were also the same. She added that in terms of the visual differences between the existing and proposed replacements was more apparent in the door, but both could be viewed from street level. She reiterated her view that she didn't think the case had been made that uPVC was the only option to improve energy efficiency and she felt that the reasons for maintaining the character of the conservation area were powerful. She would be supporting the decision of the planning case officer.

Councillor Forrest said he aligned with the comments made by Councillor McIntosh and would be supporting the decision of the planning case officer.

The Chair indicated that his position was also the same as in the previous appeal and, in addition, he noted that there was support from neighbours for the proposed changes. He would therefore be supporting the appeal.

The LRB members confirmed their decision via roll call vote. They agreed by a majority to uphold the decision of the planning case officer to refuse planning permission.

## **Decision**

The ELLRB agreed, by majority, to refuse planning permission for the reasons set out in the original decision notice.

Signed .....

Councillor Jeremy Findlay  
Chair of Local Review Body (Planning)





**REPORT TO:** Planning Committee  
**MEETING DATE:** 4 June 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **23/00753/PM**

Proposal Relocation of East Links Family Park to East Fortune Farm and associated works

Location **East Fortune Farm  
East Fortune  
Athelstaneford  
East Lothian**

Applicant East Fortune Holdings Ltd

Per Apt Planning & Development

**RECOMMENDATION** Application Refused

## **REPORT OF HANDLING**

### **STATUTORY PRE-APPLICATION PROCESS**

As the area of the application site is greater than 2 hectares, what is 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 type proposal 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: 23/00002/PAN) and thus of community consultation prior to this application for planning permission 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 the consultation comprised of two public consultation events held at East Fortune Farm on 24th March and 12th May 2023 which were also preceded by

attending the Haddington and District Community Council meeting on the 14th March 2023 as well as attending a community meeting at Athelstaneford on the 20th April 2023. The first public consultation event was attended by approximately 125 people and 49 completed feedback forms were received while the second public consultation event was attended by approximately 77 people and 45 completed feedback forms were received.

## **SITE DESCRIPTION**

This application relates to a 4.1 hectare area of land located within the East Lothian countryside currently in use as part of East Fortune Farm, to the north east of Athelstaneford. The land of the application site is currently largely in agricultural use comprising of agricultural land, and agricultural buildings associated with the farm together with an area of land currently in use as an authorised caravan site. The site is located within the open countryside as designated by Policy DC1 of the East Lothian Local Development Plan 2018 (ELLDP). The land of the application site is categorised as grade 2 prime quality agricultural land.

East Fortune Farm is located to the immediate south of the main East Coast Railway Line. To the west of East Fortune Farm lies agricultural land, Merryhatton Garden Centre and the residential properties of Merryhatton Holdings, to the immediate south of East Fortune Farm are located a number of residential properties including East Fortune House and the residential properties of New Row and the B1377 public road on the opposite side of which lies the former East Fortune Hospital site and the residential properties of Orbits Cottages and New Houses. To the east of East Fortune Farm runs the main East Coast Railway Line, the B1377 public road with agricultural land and the residential properties of East Fortune Small Holdings beyond.

There are a number of listed buildings in close proximity to East Fortune Farm. They are the terrace of cottages of Nos. 1-6 New Row and East Fortune House and its walls, gatepiers and dovecot of that house which are located to the south west of the farm buildings of East Fortune Farm, and a number of buildings of the former East Fortune Hospital which are located to the south of the B1343 public road. All those buildings are listed as being of special architectural or historic interest (Category B).

East Fortune locally designated garden and designed landscape runs along the southern edge of the field comprising the southwest corner of East Fortune Farm and extends over the grounds of East Fortune House.

## **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 28 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.

## **RELEVANT SITE HISTORY**

Planning permission (Ref: 09/00710/P) was granted in November 2009 for the change of use of a 0.125 hectares area of agricultural land within East Fortune Farm to a 15 pitch touring caravan site and the erection of fencing and gates.

Planning permission (Ref: 17/00872/P) was granted in November 2017 for the extension to an agricultural building within East Fortune Farm.

Planning permission (Ref: 23/00072/P) was granted in May 2023 for the erection of two agricultural buildings within East Fortune Farm.

Planning permission (Ref: 23/00468/P) was granted, part retrospectively, in January 2024 for alterations to the layout of parts of the touring caravan site, relocation of four pitches, the additional siting of 6 pitches and erection of a laundry building.

A certificate of lawfulness was issued in part, following an appeal, for caravan storage on five areas of land at East Fortune. However, it was concluded through that certificate of lawfulness that the use of part of two of the areas (the western parts of areas 4 and 5) had not commenced more than 10 years before the date of the application for the certificate of lawfulness. Therefore, the caravan storage use on those western parts of areas 4 and 5 are unauthorised and a breach of planning control.

In addition to the above caravan related planning permission and certificate of lawfulness matters a caravan club caravan pitch site also currently operates from an area of land immediately to the west of the existing agricultural buildings on East Fortune Farm and to the north of the B1377 public road through permitted development rights.

A certificate of lawfulness (Ref: 23/00869/CLU) for three agricultural buildings and associated access ramp on land at East Fortune Farm was granted in October 2023. However, the use of one of these buildings as a farm shop (Class 1A) was deemed to be unauthorised and in breach of planning control and the applicant was advised that retrospective planning permission was required for the use of this building as a shop.

Retrospective planning permission (Ref: 23/01343/P) was subsequently granted in January 2024 for the change of use of an agricultural building to a shop (Class 1A).

## **DESCRIPTION OF PROPOSAL**

Through this current application planning permission is now sought for the "relocation of East Links Family Park to East Fortune Farm and associated works."

For the avoidance of doubt, what is proposed through this application is the development of a new family park on an area of largely agricultural land at East Fortune Farm.

The application site comprises a 4.1 hectare area of land within the existing East Fortune Farm. It is proposed that the existing authorised touring caravan site which currently occupies a central location within East Fortune Farm be relocated to the south western corner of the existing farm on an area of agricultural land. It is proposed that the area of land currently in use as the caravan park and an existing agricultural building which both occupy a central location within East Fortune Farm be the subject of a change of use to the proposed family park to accommodate children's play facilities and a central entrance/admissions building with café and farm shop. A car park is proposed to be located to the immediate east of the proposed central entrance/admissions building to the immediate north of, and accessed directly from, the B1377 public road. It is proposed that a new circular light railway track together with public footpaths would be formed on the existing agricultural land within East Fortune Farm to allow visitors to the family park

viewing of the farmland. Both the light railway track and the footpaths would be enclosed with post and wire mesh fencing some 1 metres in height.

A planning statement has been submitted by the applicant East Fortune Holdings LTD (EFHL) in support of the application for the proposed partial change of use of farmland and some farm buildings to enable the relocation of East Links Family Park (ELFP) from their current site in Dunbar to the application site at East Fortune Farm. The planning statement states that:

"East Links Family Park was established at the Hedderwick Farm site on the outskirts of Dunbar over 20 years ago. It has established itself as a major East Lothian attraction attracting over 100,000 visitors per annum. The park combines the opportunity to view, interact and learn about a range of farm animals alongside a range of play and activity related attractions combining to create a successful local business now looking to secure its long term future in the County. The current lease at Hedderwick Farm expires in 2026. This has given ELFP the opportunity to consider what happens next both in terms of property and business security as well as the opportunity to enhance the current park to make it even better. As with any good business, East Links has evolved over the past 20 years and will continue to do so at East Fortune. East Fortune Farm has been in the Brand family since the 1930s. The farm started to diversify 20 years ago with the opening of the first caravan site. In 2010 high health and rare breed livestock was reintroduced to the farm whilst the existing farm shop opened in 2018 selling East Fortune Farm produced meats and other produce alongside complementary locally sourced products. The farm has shown a consistent appetite for enhancement and diversification and this proposal continues this evolution. Both East Fortune Farm and ELFP are family businesses. These proposals will enable both to consolidate and improve into the future and ensuring both family businesses can look forward to an exciting and secure future East Fortune Farm will continue as an active working farm. ELFP is being granted access to that portion of the farm area that will enable public access and the creation of a family farm park. East Links is not 'taking over' the entirety of the farm which will remain in the control of East Fortune Farm and will continue to be used for the keeping and rearing of livestock in producing product for the farm shop and wider sales. As the location/site plan illustrates the intention is that the relocated ELFP will utilise the existing farm fields and buildings to create a family park where members of the public/school groups etc will be able to experience and view a range of animals from the proposed light railway and footpath network whilst other activities (play area, crazy golf etc) will be centred around the existing farm buildings close to the B1377 and to include car parking, entrance/admissions area, farm shop, cafe and toilets. The proposals also involve the relocation of the two existing caravan sites to a new purpose built site on the western edge of the site. In summary:

The site will continue as a working farm;  
Safe public access to enable viewing of animals in order to deepen understanding and awareness of rural life; food production and indigenous wildlife;  
Retention of the East Links light railway to maximise access for all sectors of the community;  
Pathways throughout the site to promote physical and mental well-being through exercise;  
A children's play area containing crazy golf, trampolines, pedal go-karts and other leisure equipment;  
A re-purposed central building to accommodate a farm shop, café, toilet and admissions facilities;  
A relocated secluded and much improved caravan site."

In addition to the Planning Statement, a Transport Assessment Report and a Biodiversity Enhancement Plan were originally submitted with the application. During the determination process of the application a Noise Assessment and Ecological Assessment have also

been submitted. Additionally an addendum to the Transport Assessment was submitted subsequent to the registration of the application.

## REPRESENTATIONS

A total of 552 representations have been received to the application within the advert periods. Of these representations 461 object to the application including a petition with some 313 signatures, 88 representations support the application and 3 representations make comment but neither object nor support the application. A further 6 representations were received out of time.

The main grounds of objection are summarised as:

- i. Loss of agricultural land contrary to NPF Policy 5b and Policy NH7 of the adopted ELLDP;
- ii. The traffic survey undertaken greatly underestimates the true nature of the baseline traffic in this area. It was undertaken during an off-peak time and is misleading.
- iii. Increase in vehicle movement, with a risk to road safety for pedestrian, cyclists and vehicles, contrary to ELLDP Policies T1 and T2; Moreover, the potential adverse impact this development could have on the mental health and wellbeing on residents in the area is significant;
- iv. The site is not accessible by public transport. Would be completely car dependent contrary to sustainable travel;
- v. The narrow roads around East Fortune are not suitable for the level of traffic day-to-day week to week there is next to nothing in the way of links to public transport and no pavements or footpaths linking the site to the wider area;
- vi. The access being proposed in the Site Plan within the redline is not the access that is assessed in the Transport Assessment. The access proposed in the redline does not have the visibility splay of 215m as claimed and it is not possible to relocate this entrance to a safe position within the current red line boundary. Furthermore, the intensification of use of the new caravan park entrance has not been considered;
- vii. Noise pollution from the traffic, the patrons and the park attractions is likely to have a large impact on the wellbeing of the local residents in the area contrary to Policy NH13 of the ELLDP;
- viii. The large vehicular influx will have a significant impact on reducing air quality in the locality of the development contrary to Policy NH12 of the ELLDP;
- ix. Misleading, it is not a relocation but actually an additional new family park some 6 miles from the existing one, or which there is no need;
- x. No operational requirement for a family park with go karts, mini golf, trampolines in a countryside location. Site is not designated for tourism in the ELLDP, as such contrary to NPF Policy 30 and ELLDP Policy DC1;
- xi. Designs not in-keeping with the surrounding countryside especially the go-karting, mini golf etc; The views of the site especially from the north will be ruined by more buildings and large car parks etc to add to the already unsightly caravans on the farm;
- xii. Planning process documents on the portal were not visible before the application deadline which limited people's ability to view and comment;
- xiii. Public consultation boards which were not held on a neutral site were misleading as they did not show key details, such as the impact of the scheme visually in addition to the stored caravans on site;
- xiv. Loss of jobs to Dunbar and income from visitors to Dunbar;
- xv. Objector feels there is not enough room for two similar attractions within miles of each other and neither will thrive;
- xvi. Not a relocation, rather it is a new site that requires a change of use of prime agricultural land;
- xvii. No reason to think that East Links will close as a result of the tenant (applicant)

leaving, the landowner at East Links allegedly provided all of the land and nearly all of the initial capital investment including the groundworks and train line. The land owner fully intends for another tenant to continue with the established and successful attraction;

xviii. This is not a form of diversification of a rural business but this is essentially a theme park and cafe that will also have some animals. Appears more a change of use not a farm diversification;

xix. Water impact by destroying farmland and introducing large areas of hard, impenetrable surfaces runoff will greatly increase and threaten the stability of the naturally occurring drainage i.e. Peffer Burn;

xx. Concerned that no detailed plan is apparent as to how the sewage and dirty water produced by this visitor attraction are to be dealt with, and again fear for the stability and cleanliness of the burn;

xxi. Would be detrimental to wildlife and habitat, including protected species on the site;

xxii. The original and current site at Dunbar is an excellent location for the family park as it has the capacity to grow if required and it does not have neighbouring properties, it is on the bus route and brings revenue to Dunbar. East Fortune is the opposite and not ideal for a family park for many reasons;

xxiii. To allow a family park at East Fortune is not adhering to East Lothian Council's Climate Change Strategy and policy as all these attributes will change if permission is granted;

xxiv. In the proposal, the applicant has outlaid a car park size to accommodate 200 cars. This is significantly smaller than the established site at East Links. The current main site in East Links has a capacity of around 200 but also has access to a substantial overflow, with a total capacity of approximately 400; double that planned proposal;

xxv. It is alleged that the applicant is fully of the opinion that this additional park will go head as under his East Links Family Park Facebook page his comments are quote 'We ARE MOVING! BUT NOT FOR A WHILE YET!'. The objector therefore questions whether this is an application which has already been decided regardless of the many concerns raised by many people;

xxvi. This kind of development should not be allowed in a residential area;

xxvii. 'Family parks' do not necessitate a location in the countryside. In the proposed location, the 'Family Park' is within three miles of at least five established working farms, who allow farm visits by children and families to widen their understanding of and association with, 'real farming' with 'real food production'. Any suggestion of a Family Park being a unique educational asset for children is spurious;

xxviii. Overlooking and reduction in privacy to neighbouring residential properties;

xxix. Alleged the applicants have already stated their desire to expand if this is granted permission. Objector alleges they even stated at a meeting the desire to possibly open for events like weddings in the evenings after the park shuts, causing further alarm to residents;

xxx. Objector was allegedly told by the applicants that an overflow car park would be provided to the area (shaped like a triangle) to the east of the road running from the proposed entrance to the large sheds near the railway line. This is inconsistent with the proposed site plan, which describes it as 'land retained for agricultural use';

xxxi. Accuracy of the Noise Assessment report with it being carried out in January; and

xxxii. Accuracy of the Ecological Assessment Report.

With regards to the matters raised regarding the Proposal of Application Notice (PoAN) process, a complaint was made to the Ombudsman regarding the Proposal of Application Notice and Public Event. The complaint alleged that the Council was overseeing a flawed planning pre-application process, because the Council failed to inform the public of relevant information by publishing documents online; failed to insist on an appropriate location for consultation events and does not accept that statements in the PoAN were misleading. The Ombudsman investigated the complaint and the complaint was not upheld.

Matters raised regarding the need for the proposed development are not a material consideration in the determination of this application.

All relevant documents have been made available for the public to view and where necessary neighbours were re-notified - first on the 20th of October 2023 and then again on the 31st of January 2024 - and the application re-advertised in the local press first on the 27th of October 2023 and then again on 2nd of February 2024.

If planning permission were to be granted for the farm park use then planning permission would be required for the running of other events such as weddings when the family park is closed. Planning permission would also be required for any further expansion of the family park onto land shown on the application drawings to be retained as agricultural land. Any planning application submitted for such proposals would be determined on its merits in accordance with the development plan unless material planning considerations indicate otherwise.

This application is not within a residential area but is within the countryside.

The main grounds of support are summarised as:

- i. Provides work experience for people;
- ii. Having the facility kept in East Lothian is important for the county;
- iii. Would give job security for the current 10 employees with immediate jobs made available for locals and continued employment opportunities for years to come;
- iv. East Links Family Park is an important attraction for East Lothian families, it provides a safe outdoor place where children can see animals, climb, jump and play in a natural setting, it would be a real loss to the area if was unable to continue to operate;
- v. The park encourages children to spend time outdoors which is good for their development and good for their whole family's well-being;
- vi. If there is no proof of a family park on the East Links site, then surely we cannot risk losing this much loved family tourist attraction and the jobs it provides;
- vii. Think the merger between East Fortune and East Links is a great idea;
- viii. Any business trying to better themselves and create a better outdoor space for families can only be for the good;
- ix. Farms nowadays must turn to developing additional income in order to carry on traditional practices to safeguard the success of farming for future generations. The proposed new venture would be a lifeline, not only to the businesses involved, but also to the wider community;
- x. The Brand Family are trying very hard to utilise their land - which in the current economic climate isn't viable solely as agricultural land. They have made a great space (already) from what they have - farm shop, caravan storage and more. East Links? Well they HAVE put a boost into East Lothian - employment, family entertainment (which is widely used by people near and far and is a great tourist attraction), training - the list goes on;
- xi. Like concept of educating the next generation about where food comes from and hopefully reduce food waste and obesity in future generations;
- xii. East Links is an intergenerational place to visit;
- xiii. The team at Brand Farm are very hard working and provide some local employment this would increase with the new development, This development would enhance the local economy and tourist industry;
- xiv. The dedication of the owners to inclusivity is notably displayed by their commitment to offering discounts for disabled children and the establishment of a fully equipped changing place with hoists. These initiatives show their commitment to ensuring the park is not only accessible but also warmly welcoming to every member of our community.

Additionally, the considerate provision of free mobility scooter usage for visitors with mobility challenges further emphasizes their commitment to inclusivity and community support;

xv. Rural employment for the young and older generations, education in countryside, livestock, history of farming, tourism growth, the Farm is a member of Scottish Agritourism;

xvi. Staying in business - Being in business is about being profitable. The existing level of income is not sustainable for any farmer never mind future generations. East Fortune Farm is only two fields and further diversification is vital for the family to stay in business;

xvii. Would be able to share the 'farm to plate' experience and goodness in food with customers within the farm park café and farm shop which will only add to the growth of the farm and secure its future in farming;

xviii. The Bell family have created an excellent brand and to see them develop a new site at east fortune along side the Brand family should be welcomed. A family park will provide local jobs, educational possibilities and excellent days out in the countryside for so many people;

xix. The underlying premise of this development is education, helping people to understand where food comes from; This family park's aim is to preserve, support and promote sustainability in agriculture, reduce food miles as well looking to educate on how food is actually produced in the context of a fun, accessible and safe environment;

xx. One of the most appealing aspects of the venture is the manner in which it aims to enhance the environmental profile of what is already a beautiful part of our country. Another appeal is its varied emphasis on issues such as the sustainability, the concept of 'field to fork' and protection of the environment in positive ways that promote both natural wildlife and farm animals;

xxi. East Lothian is a farming community and what better way to educate and celebrate the industry than this new joint venture. The new facility will combine both a fun family visitors park and superb educational facility, perfectly placed within a working farm;

xxii. Original park opened without a bus stop and the new park might drive demand to increase public transport area;

xxiii. Although a fairly small business East Links Farm is run in a way that makes each visit magical, additionally the events and experiences it plans are unique to them and perfectly pitched for all. It would be a huge shame to lose this; and

xxiv. Choosing to close this business by preventing it's relocation would be a devastating blow to a huge number of children who have already had to face the most difficult circumstances over the last three years;

## **COMMUNITY COUNCIL COMMENTS**

Haddington and District Community Council state that as the Community Council covers East Fortune, it must take into consideration the overwhelming views of residents who will be directly affected by this development. Therefore, Haddington and District Community Council have discussed in detail the impact on the local communities of this planning application and have concluded that they object to this planning application. Their main grounds of objection can be summarised:

Transport Links to the East Fortune Farm - at present there is only one bus that goes near East Fortune, the 121 from Haddington to North Berwick. The nearest stop is about a 13 minute walk from the proposed entrance to the family park along a B class road with no pavement. In the submitted transport assessment there is talk of a possible improvement of the bus services and new bus services and dedicated buses running from nearby train stations but none of this is definite and is very vague and based on the hope that bus companies will choose to do this once the park is up and running. Appendix B of the submitted Transport Assessment accepts that the site at East Fortune cannot be accessed by foot stating 'There will not be the provision of walking facilities to access the Family Park due to its rural location'. Clearly the expectation is that people will be driving to East



Fortune Farm and parking. Clearly this will not help with the Council's drive towards a Carbon Neutral East Lothian.

Haddington and District Community Council note that Policy 13 in NPF4 concerns sustainable transport, part of which says: 'Development proposals for significant travel generating uses will not be supported in locations which would increase reliance on the private car, taking into account the specific characteristics of the area.'

Haddington and District Community Council also note that Policy T1 in the ELLDP Development Location and Accessibility, which states: 'New developments shall be located on sites that are capable of being conveniently and safely accessed on foot and by cycle, by public transport as well as by private vehicle, including adequate car parking provision in accordance with the Council's standards'.

Given that most visitors to a family park at East Fortune will be arriving by private car then careful consideration should be given to the local road network and its ability to support the increase traffic that will arise if the East Fortune Family Park goes ahead. The roads immediately around East Fortune Farm are rural B Class roads and given that the Transport Assessment looked at the traffic flow to the current East Links Family Park in March and accepts that it will be higher at peak times, particularly during the summer school holidays, it is questionable if the current B Class roads can easily facilitate easily the increased traffic going to and from East Fortune Farm.

Of major concern to residents in Athelstaneford is the fact that it is anticipated that 76% of car journeys to East Fortune Farm will be along the B1347 from the A199. This means that most of the increased traffic will be heading north and south on the B1347 across the main junction into and out of Athelstaneford. There is no doubt that this will have a major detrimental impact on people leaving the village. Given the rural nature of the B1347 and B1377, the narrowness of the roads, the blind bends and often farm vehicles on the road moving from one field to another it is hard to see how the increased traffic could be safely accommodated.

On the transport links alone Haddington and District Community Council believe that the planning application should be refused.

There are other areas of the planned development that require scrutiny. One is the developers claim that the family park would not result in any significant loss of prime arable land, given the overall scale of the family park this seems to be a bold claim. There is also a concern that there will be development creep once the family park opens and new attractions are considered for the site. It is also not clear to the community council that this development should be allowed under NPF4, as there seems to be no justification for this development to be permitted if any prime arable land at all is to be lost.

Nearby residents have highlighted concerns over the proximity of some of the planned development to their houses, particularly the railway which seems to run very closely to their properties.

The impact of what is a large development or what is a quiet rural location should not be under estimated. The development would be visible and would change the current rural views and rural ambience of East Fortune. In contrast the existing location is separated from any nearby housing as it is located near the coast and next to the John Muir Country Park.

Dunpender Community Council also object to the application. Their main grounds of objection can be summarised:

Transportation - Dunpender Community Council do not feel this application meets the tests to comply with NPF4 Policy 13 or ELLDP Policy T1 due to the increase in vehicle movements; it would be dangerous for cyclists and pedestrians, and there are no serious public transport options;

Agricultural Land - Dunpender Community Council consider that the proposal does not meet any of the exceptions required for development on prime agricultural land and therefore is in breach of NPF Policy 5b and ELLDP Policy NH7 and also suggest that it is in breach of ELLDP Policies DP1 and DP2;

Landscaping - Dunpender Community Council state they would look for a far more detailed biodiversity plan with a commitment to a substantial tree and hedge planting scheme for a family park of this size and scale;

Dunpender Community Council understands that the current landowner of the existing Park at Dunbar is fully intending to continue with the existing Park.

Dunpender Community Council would also like for the Council to consider the value of our tourism and why people come to the county. They seek from the Council a sympathetic combination of visitor attractions that retains our rural and agricultural landscape, which is much valued by both visitors and the local population. Dunpender Community Council do not feel that two parks within six miles of each other makes sense in planning terms.

West Barns Community Council have concerns about this application and states the title of the application seems to be misleading. It is the tenant, Grant Bell, who runs the Family Park that is moving his business interests to East Fortune rather than the structures from Hedderwick. The landowner, Alec Dale has told the community that he owns the land along with its fixed assets and that an East Links Family Park will continue at Hedderwick beyond the end of the lease of the current tenant.

East Links Family Park is an important employer in the West Barns and wider Dunbar area. It is a substantial tourist attraction for the area and the Community Council would wish a facility to continue at Hedderwick.

Consideration should be taken into account of competition between the two venues and any impact on the local tourism economy.

Finally, the Community Council note that the current site has excellent public transport access. This is in contrast to the proposed new site. Although the junction on the main road can be busy there are no major road safety issues. It is safe to access the Hedderwick site on foot or bike from the main road.

## **DETERMINING ISSUES**

Due to the proposals being in close proximity to listed buildings, this report will first consider the proposals in terms of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

1. Would the proposed development adversely affect a listed buildings or its setting;
2. If so, is there a strong presumption against the granting of planning permission which may be overridden in favour of development only if that development is desirable on the grounds of some other public interest
3. If the above presumption does not arise does the proposed development accord with the development plan

4. If so, are there any material considerations which would nevertheless justify a refusal;
5. If not are there any material considerations that would nevertheless justify a grant

### **IMPACT ON SETTING OF LISTED BUILDINGS**

Section 59 (1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 states:

"In considering whether to grant planning permission for development which affects a listed building or its setting, a planning authority or the Secretary of State, as the case may be, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

As stated previously, the terrace of cottages of Nos. 1-6 New Row, East Fortune House and some of the former East Fortune Hospital Buildings are all listed as being of special architectural or historic interest (Category B). They are all located outwith the application site and therefore the primary consideration in the assessment of these proposals is the impact on the setting of those listed buildings.

Whilst the light railway track would be laid in the paddock to the north of the terrace of listed cottages and East Fortune House, it would be some 50m and 150m respectively away from the rear elevations of those neighbouring listed buildings. Therefore, due to the positioning of the light railway track to the rear of those listed buildings and of its form and height it would not harm the setting of those listed buildings, which would remain the focus of their setting. The other components of the proposed relocated East Links Family Park would be to the east and northeast of the neighbouring houses of The Farmhouse and Nos. 7 and 8 New Row.

Therefore those elements of the proposed Family Park would be sufficiently far removed from nos. 1-6 New Row and East Fortune House to ensure they would not harm the setting of those listed buildings.

With regards the listed buildings of the former East Fortune Hospital those buildings are located on the opposite side of the road to East Fortune Farm and behind a mature hedgerow and mature trees. Therefore, they are not prominent in views from the public road and do not have a visual relationship with East Fortune Farm. Consequently, the proposals would not harm the setting of the listed buildings within the grounds of the former East Fortune Hospital.

### **CONCLUSION IN RELATION TO THE LISTED BUILDINGS**

Therefore, in conclusion on the matter of the setting of the listed buildings the proposals would not adversely affect the setting and therefore would preserve the setting of the nearby listed buildings in accordance with the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and relevant Historic Environment Scotland guidance.

### **DOES THE PROPOSAL COMPLY WITH 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 approved National Planning Framework 4 ("NPF4"), which was adopted by The Scottish Government on the 13th February 2023, and the adopted

East Lothian Local Development Plan 2018 ("ELLDP").

The relevant policies contained within NPF4 consist of Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaption), 3 (Biodiversity), 4 (Natural Places), 5 (Soils), 7 (Historic Assets and Places) 13 (Sustainable Transport), 14 (Design, quality and place), 29 (Rural Development) and 30 (Tourism). Policies DP1 (Landscape Character), DP2 (Design), DP5 (Extensions and Alteration to existing Buildings), DC1 (Rural Diversification), CH1 (Listed Buildings), NH7 (Protecting Soils), NH8 (Trees and Development), NH13 (Noise), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the ELLDP are relevant to the determination of the application.

## **MATERIAL CONSIDERATIONS**

In the assessment of material considerations this report will consider:

- equalities and human rights;
- any public representations and
- any other identified material consideration.

## **PLANNING ASSESSMENT**

The proposed scheme of development is for the relocation of 'East Links Family Park' from its existing site at Hedderwick, West Barns, Dunbar to the application site at East Fortune Farm. The applicant's agent explains that this is due to the current lease for the existing site at Hedderwick, West Barns expiring in 2026. For clarification and the avoidance of doubt the current authorised Farm Park site and land at Hedderwick, West Barns will remain in authorised planning use as a Family Park when the existing lease expires in 2026 and as such the site at Hedderwick, West Barns could continue to operate as a Farm Park but not under the business name of 'East Links Family Park'. Indeed, in a representation, the owner of the land on which the existing Family Park is located has confirmed that it is his intention that a Family Park will continue to operate from his site.

The supporting information with this application states that what is proposed through this application is a new site for the business of "East Links Family Park" through a part change of use of the existing agricultural farm of East Fortune Farm. However, as previously stated, the existing Family Park site at Hedderwick, West Barns will retain its planning use and as such the proposed Family Park sought through this application would be an additional Family Park site and not a replacement.

What is proposed on the application site is the development of a new Family Park on 4.1 hectares of largely agricultural land at East Fortune.

Additionally, it should be noted that the applicant for this current planning application is not the owner of the existing business 'East Links Family Park', namely Mr Grant Bell. The applicant for this planning application is East Fortune Holdings Ltd being the Brand family who own and operate East Fortune Farm.

Given this, during the determination process of the application clarification was sought from the agent as to the involvement of Mr Grant Bell, the current owner of 'East Links Family Park', with the application, given that it is stated that it is to be a relocation of his existing business, but he is not the applicant. The agent has stated in writing that:

"following the expiry of his interest as tenant in the lease of the land on which he operated East Links Family Park, Mr Bell has been looking to transfer the "East Links" model to

another part of East Lothian. East Fortune Farm has been identified as the most suitable location for that re-location. As the Council will appreciate, the prospective transfer is subject to a confidential commercial contract between Mr Bell and the Brand family. That contract, as the Council would expect, is subject to planning permission being obtained on terms that are acceptable to both parties. If planning permission is granted, the intention is that, with Mr Bell having then acquired an interest in the land at East Fortune Farm, the two businesses i.e. the agricultural business and the family theme park business, will be managed and operated separately. To that extent the Brands will not have the same level of control over activities across the entire extent of East Fortune Farm, as they currently enjoy as its sole owners."

Clarification has also been sought from the agent as to the proposed nature of the proposed family park compared to the existing 'East Links Family Park', which houses a large number of non-agricultural animals for non-agricultural purposes. The agent has stated in writing that:

- \* "the relocation is of the brand name, not the land and will not be an exact replica of what is at East Links Family Park at Hedderwick";
- \* "The proposals for East Fortune Farm represent an evolution not a replication of East Links."
- \* "it will be centred on public access to view a working farm with the emphasis on education alongside entertainment and enjoyment - the field-to-fork experience."
- \* "East Fortune Farm continues to farm as before, East Links Family Park will show visitors the working farm; totally different from the Hedderwick Hill model. This is complimented by the central area of the proposed Family Farm Park which will have some more general play areas such as trampolines, go-karts and crazy golf alongside the main reception building and cafe.
- \* "The existing animals at East Links Family Park are the property of Clyde Link Holdings Ltd and will be moving through the trade or to Clyde Valley Family Park."
- \* "The Brand's have their own livestock at East Fortune Farm as previously explained. It is not relevant to compare the Hedderwick Hill mix of animals to what is proposed at East Fortune Farm."

The agent has further stated that:

- \* "the land within the red line boundary (application site) will be as a sui generis "farm themed" family park. This will constitute a new planning unit with the area of land outwith the application site will continue as a stand alone (albeit reduced) planning unit, which will continue to be used for agricultural purposes."

The supporting information submitted with the application states that the proposed scheme of development would be a further farm diversification of the existing East Fortune Farm with the existing East Fortune Farm continuing to operate as a 'working farm'.

The application site does not include all of the land of East Fortune Farm. The proposed site layout plan indicates the relocation of the existing authorised touring caravan site which currently occupies a central location within the East Fortune Farm to a new position within the south west corner of the farm immediately to the north of the B1377 public road and to the immediate east of the residential properties of Merryhatton Holdings. It is proposed that the existing agricultural building within the central part of the East Fortune Farm would change its use from agricultural to be used as an entrance and admissions building with café, shop and toilets with new viewing terrace and provide access to the proposed family park with new children play facilities in the form of a pedal go-karts track, trampolines, jelly bellies/jumping pillows and an 18 hole mini golf course located on the existing caravan site to the north of the building. The application site also includes a

circular area of land within the existing East Fortune Farm fields as well as linear strips which are indicated as being the areas of a light railway line and public footpaths respectively, both of which would be enclosed by post and wire fences and which are indicated as to allow visitors to the proposed family park viewing of the farm land and activities. The proposed site layout plan indicates that the existing agricultural land both outwith and within the circular light railway line would not form part of the family park but would remain in agricultural use as 'paddocks' as part of the working farm of East Fortune Farm.

Given that it is proposed that this application is for a farm diversification with East Fortune farm to continue as a working farm and that all the fields of East Fortune Farm are shown on the proposed site layout plan as to be retained in agricultural use as 'paddocks', clarification has been sought from the applicant's agent as to the type of animals currently at East Fortune Farm. Confirmation has been provided in writing by the agent that:

"Farm animals already at East Fortune Farm including sheep, pigs and poultry which will continue to be bred, reared or purchased as per the Brand Family business".

Additional information has also been provided in writing by the owner of East Fortune Farm which states that:

"being in business is about being profitable. It is stated that the level of income received for the wheat yield from the East Fortune Farm 2023 crop for 14.5 hectares is not sustainable for any farmer never mind future generations. The farm owner states that "East Fortune Farm is only two fields and further diversification is vital for the family to stay in business".

The proposed site layout plan indicates that the area of ground that would be enclosed by the proposed family park circular light railway track and footpaths (and enclosure fences) would be retained in agricultural use as paddocks. While the Farm owner has stated in writing that East Fortune farm is only two fields and 14.5 hectares have been used for crops, given that the proposed light railway track, footpaths and enclosure fences would run through these fields this would appear to make it difficult for this 14.5 hectare area of grade 2 prime agricultural land to be able to be retained for the growing, sowing, cultivating and harvesting of crops. Indeed, the proposed site layout plan shows all the fields within East Fortune Farm proposed as 'paddocks'. Clarification of this has been requested from the agent and he has responded advising that:

"the land on the west side of the site will remain in farm use. Whether this is for crop rotation or to accommodate livestock will depend on the farming strategy as with any farm. Similarly, enclosures are regularly erected/removed/relocated on farms without any planning control. Part of the filed-to-fork experience/education will involve an understanding of cropping alongside meaty production". In this regard the agent is correct there is no planning control over whether agricultural land is used for crop rotation or for agricultural livestock grazing.

As such the current application must be determined on its own merits. As the fields at East Fortune Farm are not located within this current application site and are stated by the applicant/agent as being retained in agricultural use they would not form part of the proposed Family Park. Given this these areas of land could only be used for agricultural purposes. However in order to secure this, and should planning permission be granted, then it would be prudent of the Council to secure the retention of these areas outwith the application site for agricultural purposes by way of the conclusion of a section 75 legal agreement with the applicant. The applicant's agent has confirmed in writing that they are prepared to sign such an agreement although one of the suggested terms is unacceptable

to them. This term relates to the time period the landowner is allowed to remedy any breach of the Section 75. The details of this term would be the subject of future negotiation were planning permission to be granted. Were Planning Committee minded to grant planning permission for the Family Park development, and were there a failure to conclude the necessary Section 75 Agreement within six months, then it would be recommended that planning permission would then be refused for the reason that the proposal could result in an unacceptable loss of prime agricultural land contrary to Policy 5 of NPF4 and NH7 of ELLDP.

It is difficult to see how the layout and design of the proposal could be amended to reduce the amount of prime agricultural land being developed for the family park and relocated caravan park. The prior conclusion of that legal agreement would ensure that the amount of prime agricultural land being developed was restricted to that applied for and was relatively small scale. In this regard part of the land proposed to be used for the family park is currently not in agricultural use. As a form of farm diversification, the proposal is directly linked to East Fortune Farm. Moreover, were planning permission to be granted, then a condition could be imposed requiring details of how the soil from the remaining agricultural land of the Farm would be protected during the construction and thereafter operation of the family park and caravan park. Subject to the above control, the proposal is not inconsistent with Policy 5 of NPF4.

The proposal amounts to a further diversification of part of East Fortune Farm, and there is no evidence to suggest that the proposed development would affect the business viability of the Farm or of any other local business. On this consideration the proposal is in principle consistent with part a) of Policy 29 of NPF4.

The proposal is intended to create a family farm park, where members of the public would be able to view a range of farm animals whilst being able to utilise the other proposed activities and facilities. With an operational requirement for a countryside location, such use is in principle consistent with Policy DC1 of the ELLDP.

As a tourism use which is supported by Policy DC1 the proposal is therefore consistent with part a) of Policy 30 of NPF4.

There is currently no planning application currently before the Council in respect of the former East Fortune Hospital site. However there is nothing in the application submission to indicate that development of this proposal would prejudice a potential future development proposal for that nearby site.

It is proposed that the existing authorised touring caravan site be relocated with a new caravan pitch site proposed to be formed within the south east corner of the existing East Fortune Farm providing a total of twenty-four 8 metre by 6 metre caravan pitches which would be accessed directly off the B1377 public road utilising an existing gated access. A new shower and toilet block is proposed to be erected on the new caravan pitch site which would have a rectangular footprint measuring some 9.13 metres by 4.73 metres. The proposed shower and toilet block would have its walls finished externally in stained timber with a pitch roof clad in green powder coated profiled roofing material. It would have upvc framed obscured double glazed windows and dark grey lined composite door. The proposed caravan pitch site would be enclosed by new 1.1 metre high timber posts with 1 metre high rylock sheep mesh fencing.

The proposed use of the land for a twenty-four pitch touring caravan site is a use related to tourism,. Such a use has an operational requirement to be located within this countryside location. Furthermore, a successful touring caravan site has operated on a different part of East Fortune Farm for a considerable number of years and what is

proposed through this application is the relocation of the existing authorised touring caravan site to a different part of the East Fortune Farm to enable the existing touring caravan site business to continue and provide better facilities. Therefore the relocation of the caravan site to this location is consistent with Policies 29 and 30 of NPF4 and with Policy DC1 of the ELLDP.

The proposed touring caravan site is designed for the functionality of its intended use. Notwithstanding, in its proposed location, the caravan site would be located adjacent to an area of existing trees which will provide some screening and would help to ensure that it would be sufficiently well integrated into its countryside setting so as not to be harmfully intrusive or exposed. The **Council's Landscape Officer** has stated that a tree survey detailing how the proposed layout has been designed to avoid damage to these existing trees in accordance with British Standard 5837: 2012 - 'Trees in relation to design, demolition and construction - Recommendations', which also applies to the access arrangement and sight lines requires to be submitted prior to the commencement of any development. Should planning permission be granted then this matter could be controlled through the imposition of a planning condition.

The proposed shower and toilet block building, fencing and gates to enclose the proposed touring caravan site would not, when seen in their relationship with the proposed touring caravan site, have a harmful impact on the landscape character or appearance of the area.

Subject to the aforementioned planning control the proposed caravan site would not be contrary to Policy 6 of NPF4 or Policies DP1, DP2 or NH8 of the ELLDP.

Given the location of the proposed touring caravan site it would not harm the privacy or amenity of any nearby residential property or other land use.

The number of pitches proposed would not constitute an overdevelopment of the site. Were planning permission to be granted for the proposed development then a condition should be imposed limiting the number of caravan pitches to no more than that applied for (i.e. 24). This would safeguard against the creation of additional pitches with the effect of increasing site density and leading to an overdevelopment of the site.

The touring caravan use of the site all year round might allow the potential of use of the site for permanent residential purposes. With regard to this, the occupation of the touring caravans on the site should be restricted to prevent them from being used as permanent residences. Should planning permission be granted then such a restriction could be imposed through a planning condition. Such a condition should allow a reasonable time for tourists to stay on the site, to return to the site as a means of breaking a journey as part of the same holiday, and to return to the site within a reasonable length of time for subsequent holiday periods.

It is proposed that the existing agricultural building that currently occupies a central position within the East Fortune Farm site would change its use to form a café with indoor seating area, storage/fridge/freezer area, kitchen/cooking/food preparation area/servery, an office, indoor and outdoor toilets and a farm shop with check out tills and reception area for the family park.

A new viewing terrace/play area with concrete paved decking and outdoor seating area is proposed to be formed to the north of the building with a platform for the proposed light railway track running underneath the terrace/play area. The terrace/play area would have a largely square footprint measuring some 43 metres by 42 metres. A stainless steel chute/slide would be positioned in the northeast corner of the terrace/play area with stainless steel climbing net frame and rope nets being attached to the northwest corner of



the terrace/play area. The terrace/play area would be built to have the appearance of a fort/castle with two white carbon flagpoles and flags positioned on the top. The terrace would have its walls finished externally with stained/treated vertical /horizontal cedar/larch lining, protective barriers would be stained treated timber protective barriers and railway platform steps To the north of the terrace/play area at a lower level would be positioned a size 3 jelly belly/jumping pillow measuring some 6.25 metres by 7 metres, a size 5 jelly belly/jumping pillow measuring some 11.2 metres by 9 metres, six 3.5 metre diameter trampolines and an 18 hole mini golf course, a pedal go-kart track in the shape of a distorted figure of 8 with a rectangular storage container positioned in the middle would be formed to the north of the proposed mini golf/trampoline/jelly belly/jumping pillow areas. The go-kart area would be separated from the rest of the play facilities by a new footpath which is proposed to be formed over the existing fields of East Fortune Farm to provide pedestrian access to the farm while a circular light railway track is also proposed.

A new car park is proposed to be formed within the eastern part of the application site illustrated as providing some 150 car parking spaces including 10 disabled bays, 3 coach bays, a turning circle with a radius of 12.5 metres and an additional area which would serve as an overspill car parking area. A covered walkway is proposed to be provided within the car park area it would be some 4 metres in width and 87 metres in length with a pitched roof clad in green powder coated profiled roofing material and supported by stained timber posts and rafters. The walkway would have a ridge height of some 3.5 metres. The proposed car park is proposed to be served by a new vehicular access which would be formed through the upgrading of the existing gated entrance serving East Fortune Farm which accesses directly onto the B1377 public road. The proposed car park site would be enclosed by new 1.1 metre high timber posts with 1 metre high rylock sheep mesh fencing.

A new network of footpaths some 3 metres wide formed of whin dust with 1 metre wide grass verges on both sides is proposed to be formed through the existing fields of East Fortune Farm for visitors of the family park. The footpaths would be enclosed with new timber posts and rylock sheep wire mesh fence 5 metres apart and some 1 metre in height with gates to be erected at the end of the proposed family park footpaths where the proposed footpaths join the farm fields and associated existing farm tracks. Clarification has been sought from the agent as to what would prevent members of the public walking up the existing farm tracks and gaining access to the family park via the proposed footpaths. The agent has responded advising that while there is informal access to the farm tracks for the public at the moment that this will not continue and gates will be installed to prevent members of the public from walking up the existing paths to access the farm park.

Given that the existing agricultural building on site is proposed for a change of use to facilitate it to be used as the admissions building for the family park with associated café, toilet, shop, office etc there would be minimal visual impact for this element of the proposal given it is an existing building. The proposed viewing terrace and associated children's play structures/equipment would be located to the north of the existing building and as such behind it, as would the proposed circular railway line and footpaths which would all be set back from the main public road of the B1377 well into the site and given the topography of the site and existing buildings located within East Fortune Farm while they would be seen in public views from the B1377 public road they would be seen in relation to the existing structures on East Fortune Farm. Therefore they would not be unduly prominent or exposed and would not harm the landscape character of the area. They would not be contrary to Policy 14 or 30 Part b) ii) of NPF4 or Policies DP1 or DP2 of the ELLDP.

The proposed car park is to be accessed off and located to the immediate north of the B1377 public road and while there is hedgerow planting along the road frontage it would

be visually prominent from the road being a large area of hard surface together with the proposed pedestrian covered walkway. As detailed by the Council's Landscape Officer a condition would be required to be attached to any grant of planning permission to secure the submission and approval of a landscape planting scheme in and around the proposed car parking area to reduce the visual impact by breaking-up the mass of car parking bays and introducing tree planting, to create pockets of car parking prior to the commencement of any development. Subject to the imposition of that planning control this component of the proposed development would not harm the landscape character of the area.

The proposed circular railway line and proposed footpaths would not be visually prominent given they would comprise of a railway track at ground level and whin dust paths which would both be enclosed by 1m high rylock sheep mesh fences. The proposed railway line would be the closest element of the proposed family park to the residential properties of New Row Cottages, being located, at its closest point some 40 metres to the north of the mutual boundary. Given the intervening distances, the proposed play facilities, railway line and footpaths would not have a detrimental impact on the amenity of these residential properties by way of overlooking or overshadowing.

The **Council's Senior Environmental Health Officer** has been consulted on the application. He raised no concerns about the impact of the development on air quality. He did however initially state that noise, odour and artificial lighting associated with the proposed development may impact upon amenity of residential neighbours. A noise impact assessment was submitted by the applicant during the determination process of the application to assess impacts arising from the use of the train ride and play parks associated with the proposal. The original assessment of noise from the existing facility at East Links was carried out in the winter months when visitor numbers were deemed to be 50% of peak numbers in the summer, the assessment assumed a 3dB increase in associated noise for doubling of the intensity in the summer months. However, concerns were raised with the applicant's agent by planning officers regarding the accuracy of these visitor numbers and an amended report was submitted that predicted the visitor numbers in the winter were in fact only 25% of those anticipated in the summer. Given the more likely estimate of visitor numbers were applied in the updated assessment, the Council's Senior Environmental Health Officer is satisfied that an associated +6dB increase has been taken into account.

Noise from the different components of the development and from the vehicle movements have been assessed.

The Noise Impact Assessment concludes that noise associated with the development are deemed to be negligible and the Council's Senior Environmental Health Officer advises he accepts this conclusion.

On the matter of noise impact the Council's Senior Environmental Health Officer raises no objection to the proposals. The proposals are not therefore contrary to Policy 30 Part b) ii) of NPF4 or Policy NH13 of the ELLDP.

In order to protect residential amenity due to impacts associated with artificial lighting the Council's Senior Environmental Health Officer recommends that light trespass is controlled. This control could be secured through a condition, should planning permission be granted.

In order to protect amenity due to odour arising from the proposed development the Council's Senior Environmental Health Officer recommends a condition be attached to any consent granted requiring the submission of an Odour management Plan. This control could be secured through a condition, should planning permission be granted.

Accordingly the Council's Senior Environmental Health Officer advises subject to the recommended controls being imposed he has no objection to the proposed development, being satisfied that it would not have an adverse impact on any neighbouring land uses.

Consistent with Policy 30 part b) iii) the proposal would not have an unacceptable impact on communities, for example by hindering the provision of homes and services for local people.

It is recognised that there is significant public objection to this proposal from local communities in respect of various matters. These are assessed in this report. For example, the Council's Senior Environmental Health Officer is satisfied that subject to the recommended controls the proposal would have no adverse impact on neighbouring land uses within the community. Moreover in terms of Policy 30 part b) iii) the proposal would not have an unacceptable impact on communities

The **Council's Biodiversity Officer** originally advised that this proposal should have been supported by an ecological survey, not only to understand and qualify any impacts on biodiversity but to inform the biodiversity enhancement plan. According to the 'Developing With Nature' guidance issued by NatureScot, a Biodiversity Enhancement Plan should be informed by an ecological survey. The Council's Biodiversity Officer advised that in its original form, the submitted Biodiversity Enhancement Plan (Brand Family Farm, June 2023) was not sufficient to satisfy NPF4 Policy 3 and includes measures which will not enhance biodiversity (e.g. close mown grass in the caravan site). Accordingly, the Council's Biodiversity Officer advised that due to the lack of ecological information and potential for impacts on protected species, this application as originally submitted was not acceptable on biodiversity grounds.

During the determination period of the application the full consultation response from the Council's Biodiversity Officer was forwarded to the agent for his information and action. In response the agent submitted an Ecological Assessment report in support of the application.

The **Council's Team Manager of Countryside** within which team the Biodiversity Officer sits has reviewed the Ecological Assessment Report submitted and has raised no concerns about the methodology used or findings of the Ecological Assessment. The Council's Team Manager of Countryside does however recommend that a condition be attached to any grant of planning permission requiring the submission of a detailed Biodiversity Enhancement Plan for approval prior to the commencement of development. This control could be secured through a condition, should planning permission be granted. Subject to the imposition of that planning control the proposals would not be contrary to Policy 3 of NPF4.

The **Council's Landscape Officer** has been consulted on the application and has advised that the following matters require to be addressed through a condition of a grant of planning permission:

- i) Design a landscape planting scheme in and around the proposed car parking area to reduce the visual impact by breaking-up the mass of car parking bays introducing tree planting to create pockets of car parking etc.
- ii) The large area of agricultural land is being maintained as is, with only a relatively small part being occupied by the proposed buildings and changes of use, as well as the circular railway system, which due to its location is set back from the main road and behind existing buildings where the existing topography appears to work well in respect of the

proposals.

iii) The area along the west of the application site is within the riparian corridor. This shows an opportunity for riparian woodland along the western boundary of the site for the developer to include in their application.

iv) The proposed camp site to the southwest corner of the application site is adjacent to an area of existing trees as well as the riparian corridor. As such the Council's Landscape Officer advised he will require a tree survey detailing how the proposed layout has been designed to avoid damage to these existing trees in accordance with British Standard 5837: 2012 - 'Trees in relation to design, demolition and construction - Recommendations', this also applies to the access arrangement and sight lines etc. ~ also, to include additional planting as necessary to accord with the Tree and Woodland Strategy.

v) All planting proposals should meet with the satisfaction of the Council's biodiversity officer.

Subject to the imposition of that planning control the proposals would not have an adverse impact on nearby trees and would not be contrary to Policy 6 of NPF4 or Policy NH8 of the ELLDP.

Notwithstanding the above the Council's Landscape Officer advises there are concerns that if such a development was to increase the facilities into the agricultural areas, that this would likely detrimentally impact on the landscape, and as such the Council's Landscape Officer asks that this be considered in any grant of permission. However, the Council's Landscape Officer feels that the current application, taking cognisance of the above comments, is acceptable. This application stands to be determined on its own merits and any proposed future change of use of agricultural land would stand to be determined on its own merits. However notwithstanding this, should planning permission be granted for the proposed scheme of development, as previously mentioned it would be prudent of the Council as Local Planning Authority, in order to protect the further loss of prime agricultural land (as required by Policy 5 of NPF4) which is shown as being retained in agricultural use through this application to seek to secure a Section 75 Agreement (Planning Obligation) between the Council and the landowner to secure the retention of this agricultural land.

The **Council's Senior Engineer Flood Protection** advises that in terms of information that this Council has concerning flood risk to this site, SEPA's Flood Hazard Mapping indicates that the majority of the site is not at risk from a flood event with a return period of 1 in 200 years plus climate change. That is the 0.5% annual risk of a flood occurring in any one year with an allowance for climate change. A very small portion of the Southern side of the site is anticipated to be affected by surface water flood risk at a 1 in 200 year plus climate change flood event. Considering this the Council's Senior Engineer Flood Protection raises no objection to this proposal on the grounds of flood risk. The applicant has submitted a Drainage Impact Assessment Report dated July 2023. The proposed drainage is an infiltration system, which ultimately drains into the ground within the site. Infiltration rates are provided and appropriate for the site. The Council's Senior Engineer Flood Protection advises he is also content with their roof drainage (soakaway) and caravan area drainage proposals. Accordingly the Council's Senior Engineer Flood Protection advises he therefore has no objection on the grounds of flood risk.

Network Rail as a consultee on the application state that whilst they have no objections in principle to the proposal, due to its proximity to the railway, Network Rail request that the following matters are taken into account, and if necessary and appropriate included as conditions or advisory notes, if granting the application:

"No means of access to the railway or Network Rail assets shall be obstructed at any time during and after the construction of the development."

Construction works must be undertaken in a safe manner which does not disturb the operation of the neighbouring railway. Applicants must be aware of any embankments and supporting structures which are in close proximity to their development. During the determination period of the application the full consultation response from Network Rail has been forwarded to the agent so the applicant is fully aware of the comments of Network Rail. Should planning permission be granted an advisory note from Network Rail could be issued with any Decision Notice".

A copy of the consultation response from Network Rail has been forwarded onto the applicants for their information.

Scottish Water as a consultee on the application raises no objection.

Subject to the aforementioned conditions and the aforementioned conclusion of the required section 75 Legal Agreement the proposed development would not be contrary to Policies 3, 4, 5, 6, 14, 29(a), 30(a) (b) (ii), (iii) of NPF4 and DP1, DP2, DP5, DC1, NH7, NH8 and NH13 of the ELLDP.

Turning to transportation matters, the proposals include a car park of 200 spaces and associated coach parking, including accessible parking bays which Road Services are satisfied is acceptable in terms of its size and layout. 30 Electric vehicle charging spaces are required and the applicant has confirmed a willingness to provide this. This requirement could be secured through a relevant planning condition should planning permission be granted.

With regards to cycle travel, cycle parking is proposed within the site (24 spaces), which is in accordance with Council standards. Notwithstanding this, there is a limited catchment of potential customers within a reasonable cycling distance of the site, therefore limiting the likelihood of travel to the site by this mode.

The Transport Assessment (TA) includes an appropriate assessment of the impacts of the proposed vehicular trips associated with development on the local road network, this included traffic surveys to identify the base level of traffic on the network, the application of traffic growth to the future assessment year and the assignment of the proposed development traffic on the local road network. The methodology of this assessment is considered to be acceptable. Traffic capacity assessments have been undertaken which demonstrate that the junctions within the local road network could accommodate the additional traffic. Further, an accident analysis has been carried out that does not identify any noticeable patterns in the accidents recorded.

Policy 13b of NPF4 states that development proposals will be supported where it can be demonstrated that the transport requirements generated have been considered in line with the sustainable travel and investment hierarchies and where appropriate they:

- (i) Provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation; and
- (ii) Will be accessible by public transport, ideally supporting the use of existing services;

Policy 13d of NPF4 states that development proposals for significant travel generating uses will not be supported in locations which would increase reliance on the private car, taking into account the specific characteristics of the area.

Policy T1 (development location and Accessibility) of the ELLDP requires new developments to be located on sites that are capable of being conveniently and safely accessed on foot and by cycle, by public transport as well as by private vehicle, including adequate car parking provision in accordance with the Council's standards.

Policy T2 of the ELLDP states that new developments must have no significant adverse impact on:

- o Road safety;
- o The convenience, safety and attractiveness of walking and cycling in the surrounding area;
- o Public transport operations in the surrounding area, both existing and planned, including convenience of access to these and their travel times;
- o The capacity of the surrounding road network to deal with traffic unrelated to the proposed development; and
- o Residential amenity as a consequence of an increase in motorised traffic.

The submitted Transport Assessment states that "Due to the rural nature of the site, it is assumed that the vast majority of staff and visitors will arrive by car. It is noted that school trips and group bookings are likely to arrive by coach or bus".

While supporting information submitted with this application implies that this is not a new traffic generating tourism business rather it is simply relocating an existing business this is not the planning situation. As stated previously while the scheme of development proposed through this application is described by the applicant as a relocation of the existing 'East Links Family Park' business, the existing Family Park site at West Barns will retain its planning use, which it has had for some 20 years, as a Family Park. Once the current lease on that site expires it could continue to operate as a Farm Park but not under the business name of 'East Links Family Park'. As such the proposed Family Park sought through this application would be an additional Family Park site and not a replacement and as such would be an additional traffic generating tourism business.

The Transport Statement submitted in support of the application advises that in terms of public transport the closest bus stops to the application site are located on the B1347 Haddington Road within a 15 minute walk, these bus stops are currently served by Eve coaches service 121 travelling between North Berwick and Haddington. This service currently offers approximately 1 service every two hours in each direction on weekdays and Saturdays throughout the year and one service every two hours in each direction on Sundays between April and September. The Transport Statement also advises that the closest railway station to the development is Drem Station, which is located approximately 4km west of the site on the Edinburgh to North Berwick/Dunbar line and offers one service per hour in each direction each day which can be accessed in an approximate 15-minute cycle or via the number 121 bus service. While the Transport Statement states that discussions are ongoing with Eve coaches in terms of creating a direct bus connection between Drem and the site and that consideration is also being given to supplementing this with a private shuttle service, operated by the Family Park, no specific details of any such proposal has been submitted and there is no certainty that either would be formalised or indeed be provided. Additionally as mentioned previously during the determination process of this application it has been publicly announced that Eve coaches has been sold to Lothian buses and as such there can be no certainty that the new operator Lothian buses would provide a new diverted direct and regular bus service with increased frequency to the proposed family park.

As stated in the submitted Transport Statement the closest bus service to the site, the Eve coaches 121, provides only one service every two hours on weekdays throughout the year

and only one service every two hours on Sundays between April and September. The closest bus stops to the site are located on the B1347 Haddington Road a 15-minute walk from the site, with the B1377 being a two-way single carriage road with no pavements/footpaths on either side.

The proposal is for a tourism use which currently on its existing site, as stated by the applicant in their submission, attracts some 100,000 visitors per annum. As detailed previously the existing Family Park site at West Barns will retain its existing Family Park planning use when the current lease expires and as such could continue to operate as such. This application proposes a new site for the business of East Links Family Park on an application site which comprises of part of the land within the existing East Fortune Farm which occupies a countryside location.

Road Services advise that the existing bus facilities are insufficient for the needs of the development and, moreover, would represent a significant road safety risk. These road safety risks have not been satisfactorily addressed by the applicant during the determination period.

The assumptions within the TA are such that active and sustainable trips would form a very small share of the mode of travel split and no firm proposals are suggested within that document. Notwithstanding this, during negotiations the applicant put forward proposals to divert the 121 bus service to the site and some willingness to undertake this was expressed by the bus operator, however, in order for this to be delivered it would have needed a revision to the proposed site plan to include a bus stop and turning facility within the site as well as appropriate controls to secure delivery of a bus service to serve the site. The applicant has not promoted any measures to secure a bus service to serve the site. Moreover, it should be noted that even if the bus route diversion could have been delivered, given that the 121 is a low frequency service and serves a limited catchment of potential customers, such a diversion would have a limited impact on improving public transport accessibility. Overall, the applicants have not satisfactorily addressed the deficiencies in access by public transport to the site.

Road Services also note that there is no footway along the B1377 between the site and the existing bus stop at Merryhatton Garden Centre. This constitutes an unacceptable road and pedestrian safety risk. On this basis, Road Services advise that any combination of walking and bus travel would be unfeasible and there would remain considerable deficiencies in the safety, convenience and attractiveness of the use of active and travel modes to the site. These deficiencies are reflected in the non-compliance of the following local and national policies:

- o ELLDP Policy T1 - the attraction cannot be conveniently and safely accessed on foot given its rural location with no network of local footways. The attraction cannot be conveniently and safely accessed by public transport given the limited existing bus services and lack of safe pedestrian connections to the site from the nearest bus stops.

- o ELLDP Policy T2 - as above, the attraction cannot be conveniently and safely accessed on foot between the site and the nearest bus stops which would have an adverse impact on road safety and on the convenience, safety and attractiveness of walking in the locality.

- o NPF4 Policy 13a (i) - it does not provide direct, easy, segregated and safe links to the attraction on foot. It will not be easily accessible by public transport.

- o NPF4 Policy 13d - the chosen location for the attraction, which would be a significant travel generating use, would increase reliance on the private car.

Furthermore as this is a traffic generating use and as there is no alternative means of transport to it other than by private car the proposal has not taken into account its rural location to ensure it is a use that is compatible with its surrounding area. Therefore on that count the proposal does not accord with Policies 29(b) or 30(b)(iv) of NPF4.

The proposed site layout included in the TA report is inconsistent with the proposed site plans submitted with the application, whereby the location of the proposed main vehicular site access shown in the TA report is located 160m to the east of that shown on the proposed site plan. It should also be noted that the proposed access shown in the TA report is positioned outwith the red line application site boundary.

No visibility splays are shown on the main site plan, but given the alignment of the public road and the fact that it is 160m to the west the visibility splays that Road Services require would not be achievable. On this basis, the proposed site access to the Family Park would not meet Road Services requirements and would be unacceptable on road safety grounds.

It proposed that the touring caravan site would be accessed directly off the B1377 public road utilising an existing gated access. Road Services confirm that the visibility splays of this access would not meet the Council's requirements, and therefore on this basis, the proposed vehicular access at this location is unacceptable on road safety grounds. The agent has stated in writing that 'the sight lines for the caravan site entrance cannot comply'. The majority of visitors to the proposed Family Park would require to travel along the B1377 public road past the proposed caravan site and its junction. As such the proposed caravan site in its proposed location cannot be provided with an acceptable access and visibility splay which would be to the detriment of road safety. Accordingly as this element of the proposal would also have an adverse impact on road safety it too is contrary to Policy T2 of the ELLDP

The applicant has suggested a reduction in the speed limit to 40mph on the B1377 in the vicinity of the site in order to address the deficiency in the visibility splays of both site accesses. Such a reduction in the speed limit is something that Road Services would not support in this location for an isolated development proposal such as that proposed. They advise that the overall character of the area is not considered to be reflective of such a speed limit change meaning that such a proposal would likely be ineffective in reducing speeds to align with a 40mph limit. Furthermore, the legal process for implementing permanent changes to speed limits is lengthy and requires formal consultation with emergency services, bus operators, road haulage and Community Councils so there is no guarantee that such a speed limit change could be delivered. Road Services also point out that it is not normal practise for speed limit reductions to be implemented solely in order to mitigate substandard development proposals. On this basis, a reduction in the speed limit is not an acceptable measure and would not justify any relaxations of Road Services visibility splay requirements for both site access junctions.

In conclusion, and for the reasons set out above, Road Services recommend refusal of the proposal, advising that the proposed accesses are a risk to road safety, and that it falls short of the requirements of local and national transport policy for the use of active and sustainable travel modes to the site based on the deficiencies related to the safety, convenience and attractiveness of walking, cycling and public transport travel to the site.

Neither the proposed vehicle access for the proposed caravan site nor the proposed main family park vehicle access can achieve the required Road Services visibility splay requirements and as such both are unacceptable and as such the proposed scheme of development the subject of this application cannot be served by acceptable vehicle access junctions to the detriment of road safety. The chosen location for the proposed family park, which would be a significant travel generating use, would increase reliance on the private



car. Given all of this and as advised by Road Services the proposal is contrary to Policies 13b(i), 13b(ii), 13d, 29 part b) and 30 part b) (iv) of NPF4 and Policies T1 and T2 of the ELLDP.

At its meeting on Tuesday 27th August 2019 the Council approved a motion declaring a Climate Emergency. Given the rural location of East Fortune Farm and the fact that the proposed family park, would be a major development and a significant travel generating use, which would increase reliance on the private car with a consequently increase in carbon emissions. As such the proposal is contrary to Policy 30 part b) (iv) of NPF4. Notwithstanding the above, consideration has to be given as to whether there are any material considerations which outweigh the proposal's non-compliance with the Development Plan.

In this regard the Council's Economic Development Service have been consulted on the application. They support the proposal for the reasons that:

- o East Links Family Park is one of East Lothians's top visitor attractions and makes a significant contribution to the visitor economy;
- o Agritourism is a form of farm diversification that attracts recreational visitors and creates new rural jobs;
- o The proposal supports the aims and vision of the Scottish Agritourism Strategy 2030 to develop the rural economy and protect family farms for future generations; there are currently 23 agritourism businesses operating in East Lothian, the majority offer accommodation only, this proposal is positive in terms of an expanded accommodation offer linked with farm tours, activities, and increased productivity and sale of local produce;
- o The business model and activities proposed will increase the viability of an active farm and facilitate investment, increased food production, employment, and training;
- o Improvements proposed for the caravan park would be beneficial to the overall destination and to the business model proposed for the farm.

As a different model of family park based on a working farm it is not clear whether it would generate the same visitor numbers and revenue that the current model attracts at West Barns. Furthermore, if the landowner of the existing site at West Barns continues to operate a family park at that site under new management, then there could be two family park attractions operating within relatively close proximity to each other within East Lothian. Whilst Economic Development cannot advise on the detailed economic impact, they do conclude that there would be potential for economic benefit. Whilst there could be some economic benefit, this is not a material consideration that would outweigh the fact that the proposed scheme of development is contrary to the Development Plan with regards to it being located in an unsustainable location and the proposed vehicle accesses being unable to comply with the required Road Services junction visibility splays to the detriment of road safety. There are no other material considerations that outweigh this conflict with the development plan.

## **EQUALITIES AND HUMAN RIGHTS**

Due regard has been given to section 149 of the Equalities Act 2010 in carrying out the above assessment. Consideration has also been given to section 6 of The Human Rights Act 1998 and no incompatibility with Convention rights has been identified or raised.

## **CONCLUSION**

In conclusion, the proposal is contrary to Policies 13b(i), 13b(ii), 13d, 29(b) and 30(b) (iv) of NPF4 and Policies T1 and T2 of the ELLDP. There are no material considerations which outweigh the fact that the proposal is contrary with the Development Plan.

It is recommended that planning permission be refused for the following reasons:

- 1 The proposed family park would be a significant traffic generating use located in the countryside which would not be capable of being conveniently and safely accessed on foot, by cycle or by public transport and would increase reliance on the private car. Given all of this the proposal is contrary to Policies 13b(i), 13b(ii), 13d, 29(b) and 30(b) (iv) of National Planning Framework 4 and Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.
- 2 The proposed vehicular site access onto the B1377 to serve the proposed family park element of the scheme of development proposed cannot achieve the required visibility splay and as such would present an unacceptable road safety risk. Given this the proposal is contrary to Policy T2 of the adopted East Lothian Local Development Plan 2018.
- 3 The proposed vehicular site access onto the B1377 to serve the proposed caravan site element of the scheme of development proposed cannot achieve the required visibility splay and as such would present an unacceptable road safety risk. Given this the proposal is contrary to Policy T2 of the adopted East Lothian Local Development Plan 2018.
- 4 The proposed Family Park would be located within a rural location not well served by public transport. It would be a major development that would generate significant private car movements, with a consequential increase in carbon emissions. As such the proposal is contrary to Policy 30 part b) iv) of National Planning Framework 4.

**REPORT TO:** Planning Committee  
**MEETING DATE:** 4 June 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

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**Note:** *this item was called off the Scheme of Delegation List by Councillor Bruce for the following reason:* Because of local concern surrounding this application given the close nature of the proposed development to local housing in Cockenzie.

**ECU Application No.** ECU00004926

**ELC Reference No.** 24/00002/SGC

**Proposal** Electricity Act 1989 – Application to construct and operate an electricity generating station and associated infrastructure

**Location** Land South-West of Inglis Farm, Cockenzie, EH32 0JT

**Applicant** Naomi Warrenberg  
Cockenzie Storage Limited  
5 New Street Square, London, EC4A 3TW

**Ward** 02 Preston, Seton, Gosford

## REPORT

In Scotland, any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of 50 megawatts (MW) or over requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Such applications are processed on behalf of the Scottish Ministers by the Energy Consents Unit ("ECU"). Onshore generating stations which will have a capacity of less than 50MW when constructed are not within the scope of the Electricity Act, and such proposals require an application for planning permission to be submitted to the relevant local planning authority. A battery energy storage system is to be treated as an electricity generating station.

The ECU consults East Lothian Council on all Section 36 applications within East Lothian.

At the Council meeting of the 27 February 2024 a new procedure for processing Section 36 consultation requests was approved. It was agreed that once the consultation response has been completed by the Planning Service it will be placed on the Committee Expedited List. Members then have seven days in which to request referral to Planning Committee. Otherwise, the consultation response is deemed to be accepted and the Service Manager for Planning shall be authorised to proceed on that basis.

The ECU have consulted the Council in respect of a proposed battery energy storage system on land South-West of Inglis Farm, Cockenzie. The consultation response completed by the Planning Service is attached as Appendix 1.

## **RECOMMENDATION**

It is recommended that the content of Appendix 1 is approved as the Council's consultation response to the ECU.

## **APPENDIX 1**

**ECU Application No.** ECU00004926

**ELC Reference No.** 24/00002/SGC

**Proposal** Electricity Act 1989 – Application to construct and operate an electricity generating station and associated infrastructure

**Location** Land South-West of Inglis Farm, Cockenzie, EH32 0JT

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5 New Street Square, London, EC4A 3TW

**Ward** 02 Preston, Seton, Gosford

## **ENERGY CONSENTS UNIT (“ECU”) CONSULTATION: PROPOSED BATTERY ENERGY STORAGE SYSTEM ON LAND SOUTH-WEST OF INGLIS FARM, COCKENZIE (REFERRED THROUGHOUT THIS REPORT AS “COCKENZIE BESS”), EAST LoTHIAN COUNCIL’S RESPONSE**

Proposed Battery Energy Storage System (BESS), Transformers, Substations and Associated Infrastructure

## **BACKGROUND**

This application has been made to the Scottish Ministers under Section 36 of the Electricity Act 1989 for the construction and operation of a Battery Energy Storage Facility (BESS). In the case of S36 applications planning authorities are a consultee to the application process and is not the Consenting Authority.

With regard to paragraph 2(2) of Schedule 8 to the Electricity Act and regulation 8 of the Consents Regulations, if a planning authority makes an objection within the timescale given by regulation 8 (1) and that objection is not withdrawn, the Scottish Ministers must cause a Public Inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the planning authority.

The application site measures approximately 15.2ha in size and is located on land south-west of Inglis Farm, Cockenzie, East Lothian, EH32 0JT. The northern section of the site comprises agricultural land (categorised as prime agricultural land of class 1) with small areas of grassland and woodland. The southern section of the site covers part of the approved Cockenzie Link Road scheme (App Ref: 22/00440/P) and part of the former

coal store. The BESS equipment would be located within the northern section of the larger application site i.e. north of the approved, but as yet unbuilt, Cockenzie Link Road. The BESS equipment would be constructed within two separate compounds: 102MW and 240MW of installed capacity. The closest residential properties (at Inglis Farm and the Chimneys) are located approx. 80 metres north of the proposed battery containers. A large area of open space, including a playing field and play area called Whin Park is located immediately to the north of the application site. The nearest battery containers would be sited some 50 metres from this play area.

The site is within the inventory Battlefield for the Battle of Prestonpans and an area allocated in the adopted LDP as Proposal EGT1 (Land at Former Cockenzie Power Station).

On 11<sup>th</sup> of September 2023, the Scottish Ministers issued an Environmental Impact Assessment (“EIA”) screening opinion that the proposal does not constitute EIA development and that the application submitted for this development is not required to be accompanied by an EIA report.

## **PROPOSAL**

The proposed application is for a 342MW BESS facility that would consist of:

- 140 battery containers
- 35 transformers
- 70 inverters
- 3 switchgear containers,
- a control building,
- 2 water storage tanks,
- a surface water pump station,
- access tracks,
- fencing,
- a 4m high noise attenuation bund,
- planting, and
- gates and associated infrastructure.

The proposed BESS facility is intended to provide electricity for export to the grid from batteries which will store surplus electricity to be fed into the grid when required at short notice. A maximum of 342MW of electricity would be imported and exported to the grid network as required. The development would consist of 140 lithium-ion battery containers. There will also be three containers for Customer switchgear and one control building.

The battery storage units would be arranged in rows 7m in length, 2.8m wide, and 3.1m in height. The Proposed Development will also require associated infrastructure that will allow the power to be imported from and exported into the grid. This includes inverters and transformers.

The nature of BESS facilities means that the technology operates at varying times of the day dependent on demand.

There are two points of access to the site. The first being from the west, off the B1348, this would be for emergency and maintenance purposes only. The second main access would be taken from the south east, from the B6371. This would be for construction purposes. These points of access would be used until such time as they are replaced by a replacement road that would link the B1348 with the B6371 (the approved Cockenzie

Link Road).

The construction of the proposed development would take approximately 12-14 months with the majority of the construction to be completed in a 4–6-month period. Once completed, the site will be operated remotely, however there will be weekly maintenance and inspection visits (taking access from the west off the B1348).

## **THE DEVELOPMENT PLAN**

The application is made under the Electricity Act 1989 and not the Planning Act and therefore the development plan does not have the primacy it normally would for planning decisions. It is still an important material consideration in this instance and informs the Council's consultation response.

The development plan comprises National Planning Framework 4 ("NPF4"), which was adopted by Scottish Ministers on 13 February 2023, and the adopted East Lothian Local Development Plan 2018 ("ELLDP").

NPF4 identifies 18 national developments that are significant developments of national importance. National development 3 of NPF4 (Strategic Renewable Electricity Generation and Transmission Infrastructure) supports renewable electricity generation, repowering, and expansion of the electricity grid.

National development 3 informs that the electricity transmission grid will need substantial reinforcement including the addition of new infrastructure to connect and transmit the output from new on and offshore capacity to consumers in Scotland, the rest of the UK and beyond.

Whilst National development 3 references a Scotland wide rather than a specific location, the south of Scotland (including East Lothian) is identified for supporting on and offshore electricity generation from renewables and delivering new and/or upgraded infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.

## **National Planning Framework 4**

NPF4 is Scotland's national spatial strategy for Scotland. It sets out spatial principles, regional priorities, national developments and national planning policy. Relevant Policies are:

- 1 – Tackling the climate and nature crises
- 2 – Climate mitigation and adaptation
- 3 – Biodiversity
- 4 – Natural places
- 5 – Soils
- 6 – Forestry, woodland and trees
- 7 – Historic Assets and Places,
- 9 – Brownfield, vacant and derelict land and empty buildings
- 11 – Energy
- 13 – Sustainable Transport
- 14 – Design, Quality and Place
- 22 – Flood risk and water management
- 23 – Health and safety

## **Local Development Plan**

The following policies and proposal are relevant:

EGT1 (Land at Former Cockenzie Power Station),  
NH5 (Biodiversity and Geodiversity Interest, including Nationally Protected Species),  
NH7 (Protecting Soils),  
NH8 (Trees and Development)  
NH11 (Flood Risk),  
NH12 (Air Quality)  
NH13 (Noise)  
OS1 (Protection of Open Space)  
Policy CH5 (Battlefields)  
T2 (General Transport Impact),  
T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy),  
DP1 (Landscape Character),  
DP2 (Design); and  
SEH2 (Low and Zero Carbon Generating Technologies).

## **REPRESENTATIONS**

East Lothian Council has received 11 written representations, all of which make objection to the proposed development.

The main grounds of objection can be summarised as follows:

- Impact on health of nearby residents from noise or other impact of this untested technology;
- Proximity to a primary school, medical centre, local businesses as well as residential housing, play park and playing field;
- Potential impact of a major emergency due to fire or explosion;
- Insufficient detail in the application about the control measures to prevent thermal runaway reaction and any measures to mitigate the impact of an incident should it occur;
- Ground water pollution from contaminated run-off water;
- Potential for fire which would give off toxic fumes, heavy metals can pollute the ground which makes the ground unusable for centuries
- The Loss of Class 1 prime arable land. Food security
- Lack of consideration for future generations from land contamination and long-term health impacts;
- Adverse impact on tourism, the wild life and the birds;
- The application does not state what type of battery would be used;
- The size of the proposal is far too large;
- The proposal fails to provide any evidence of adhering to national and international guidance on the siting of the BESS, primarily the UK National Fire Chiefs Council document *Grid Scale Battery Energy Storage System planning – Guidance for FRS*
- The proposed earth bund cannot be considered an 'open zone'; it is inaccessible, ugly, and will dominate the land meant to be amenity and usable by all in the community;

- The proposed bund is too close to the existing high voltage overhead electricity line and therefore building this bund would cause the construction equipment to encroach into the safe working distance for overhead pylons;
- BESS sites require a schedule of 'augmentation', i.e. New batteries to be installed in the future to keep up capacity. Lack of information about the phasing proposals for augmentation
- Both noise limits are of no use if the contractor is not also required to monitor and submit readings to the Council. This is particularly important due to the residential areas nearby;
- The bund to the north of the site should be completed as a priority programme item in order to protect against the remaining construction noise from the site;
- Overnight generators or pumping will affect neighbouring residents and should not be permitted;
- The site should be used for employment and the current proposal is not job intensive;
- The proposal encroaches into the existing playing field;
- The proposed bund/noise attenuation will be ineffective for residents of Cedar Drive
- The BEESS should be within the former coal store site;
- In the case of fire SFRS will not be able to respond quickly as there are no large fire stations close by;
- Planning application and submitted documents and reports eg NFSS report are too ambiguous and in parts misleading;
- There is no 24/7 on-site personnel either monitoring engineers nor security, which would be unacceptable especially when over-heating resulting in thermal runaway and also "wilful damage" are events which could result in a catastrophic event.

## **COMMUNITY COUNCIL COMMENTS**

Cockenzie & Port Seton Community Council find nothing that reassures them that this development is suitable for this site and they object to this application in its current form. After considering the benefits and the risks the Community Council find the risks are not tolerable. The rationale for this is based on the UK National Fire Chief Council document 'Grid Scale Battery Energy Storage System planning – Guidance for FRS'. In particular, the first two principles of the guidance that should be considered in the development of such systems are:

1. Effective identification and management of hazards and risks specific to the siting, infrastructure, layout, and operations at the facility.
2. Impact on surrounding communities, buildings, and infrastructure.

- The Community Council draws attention to a recent study published by the Journal of Energy Chemistry, which highlights that fires resulting from BESS failures can pose serious safety risks to nearby personnel, communities, and emergency responders. The release of toxic fumes and hazardous materials during a battery fire can further exacerbate health and safety concerns;
- The document submitted with the application titled 'Battery Storage Safety Management Plan' (BSSMP) claims also to be an Emergency Response Plan. These are two separate plans and the management of risks to prevent a major incident should not be confused with the actions required to control a major



incident; this should be detailed in an Emergency Response Plan which must be site specific;

- The BSSMP is a generic template and fulfils neither requirement to manage risk proactively or reactively. It does not adequately detail how risk specific to this system and this site will be managed onsite and it does not detail the basic emergency actions that the HSE advise is necessary, for example evacuating an area;
- The BSSMP template has not been fully completed and in places is left blank where critical information is required (e.g. Section 4 Post Incident Recovery);
- The application fails to adequately consider the impact this development has on housing immediately adjacent to the site and the wider community. The most significant impact the Planning Design and Access Statement considers on neighbouring communities is noise, which the Community Council consider completely inadequate;
- The immediate and long-term impact from fire and explosion is the Community Council's main concern.
- In the Planning Design and Access Statement fire is addressed under 'Other matters'. Fire is well known to be a major factor in these systems which the planning applicant consistently under addresses throughout the application;
- The application does not meet the requirements of NPF4, Policy 11 e) i, which requires:
  - 'e) In addition, project design and mitigation will demonstrate how the following impacts are addressed:
    - i. impacts on communities and individual dwellings, including, residential amenity, visual impact, noise and shadow flicker
- The site is in a greenfield site (Class 1 agricultural land) immediately adjacent to housing and the obvious location for it is in a brownfield site away from housing. In the Planning Design and Access Statement the planning consultant acknowledges 'there may be other sites suitable for the proposal';
- This site is immediately to the SW of the community and the prevailing SW winds will direct toxic fumes in the event of a fire or explosion directly towards housing immediately adjacent to the BESS and to the nearby primary school and medical centre;
- The proposal does not meet the requirements of the Local Development Plan PROP EGT1. This development is not the best use of the location's assets because it not only results in the loss or amenity and prime agricultural land but it will prohibit the use of the land for future development where there are greater economic and employment benefits for the local community. There are no meaningful and sustainable employment opportunities associated with this development;
- Water suppression is a key control identified by the National Fire Chiefs Council guidance on BESS. Whilst water suppression is mentioned frequently in the Battery Storage Safety Management Plan there are no drawings or specifications for the application to support any assertion in the plan;
- The Battery Storage Safety Management Plan details that vents will be installed in the battery containers, which will, in the event of a runaway reaction, 'allow the pressure to release upwards and away from the container ensuring that the ventilation and dispersion will prevent any build-up of explosive gasses and that the upper and lower explosive limits are not reached'. However, there is no provision for deflagration venting systems on the drawings for the containers;
- Detection is mentioned frequently in the Battery Storage Safety Management Plan, however there are no drawings or specifications within the application to detail the systems that will be installed;

- The drainage strategy report makes no reference to any means of containment of contaminated run-off in event of a major incident;
- The drawings detail a distance between twin rows of 6m, however units on the same twin row are significantly less than 6m (2.5m), so do not meet the requirements of the NFCC guidance and in the event of a thermal reaction will significantly increase the risk of spread of fire and explosion;
- The Battery Storage Safety Management Plan predominantly refers to the battery type being Lithium-Ion (more reactive) but the same document also specifies batteries as being Lithium Iron Phosphate (more stable but lower energy density than Lithium Ion), and also refers to batteries on occasion as Lithium Ion Phosphate (the Community Council advises that this is not a recognised technology and appears to be an error). The type of battery chemistry must be clarified as a key element of the planning process and proven to meet the highest safety standard/ best available technique;
- The Planning Access and Design Statement acknowledges there will be a new link road directly along the southern perimeter of the BESS development. However, the visual impact of the BESS on the new road is not detailed in the Landscape & Visual Appraisal and the impact of noise of the BESS on the users of the new road is not detailed in the Acoustic Design Specification;
- Most importantly, the impact (or control) of a potential fire or explosion on the users of the new road is not detailed in the Battery Storage Safety Management Plan. The new road will feature shared use cycle lanes and pedestrian walkways so it will be a key link between the Cockenzie and Port Seton and Prestonpans communities, and children will use it to get to school. The safety of road users must be considered and has not been.

## **PRINCIPLE OF DEVELOPMENT**

The proposed development would enable the storage of electricity and would contribute to the delivery of infrastructure of national importance. As transmission infrastructure to support renewable energy, it is also part of National Development 3 and is thus supported by NPF4.

As the proposal supports renewable energy, the principle of the proposal is also consistent with Policy 11 of NPF4, which states that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported, including enabling works, such as grid transmission and distribution infrastructure.

Proposal EGT1 of the adopted East Lothian Local Development Plan 2018 is of relevance in the determination of this application, as almost the entire site is located within the EGT1 allocation. This Proposal states that land at the above site “will be safeguarded for future thermal power generation and carbon capture and storage consistent with National Development 3. Land at Cockenzie may also present significant opportunities for renewable energy-related investment. The Council will work together with developers, the landowner, the relevant agencies, local organisations and interested parties, including local residents to ensure that the best use is made of the existing land and infrastructure in this area. If there is insufficient land for competing proposals, priority will be given to those which make best use of the location’s assets and which will bring the greatest economic benefits. Development proposals must avoid unacceptable impact on the amenity of the surrounding area, including residential development”.

The ELLDP helps facilitate the transition to a low carbon economy by supporting means of energy generation that help to reduce greenhouse gas emissions. It seeks to support a diverse range of renewable and low carbon energy generation in appropriate locations, taking environmental, community and cumulative issues into account.

Generally, both NPF4 and the LDP look to focus development within settlements or previously developed land, with only limited types of development being acceptable in the countryside. Proposal EGT1, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may also present significant opportunities for renewable energy related investment. By being a form of renewable energy related investment, the proposal is not inconsistent with Proposal EGT1.

The northern tip of the site is allocated within the ELLDP as existing open space and therefore Policy OS1 (Protection of Open Space) is relevant to the determination of this application. This Policy states that recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and:

- i. the loss of a part of the land would not affect its recreational, amenity or landscape function, or
- ii. alternative provision of equal community benefit and accessibility would be made available, or
- iii. provision is clearly in excess of existing and predicted requirements.

With regards to this part of the application site, the proposal includes tree planting and landscaping and therefore it would not change the function of the existing open space allocation. Therefore, this element of the proposal is consistent with Policy OS1 of the ELLDP.

While the principle of this development is acceptable, there are several other issues that require to be considered. This is in line with Policy 11 of NPF which lists thirteen criteria relating to the design and mitigation of energy related developments that require to be addressed to determine their compliance with the Development Plan.

## **CLIMATE**

Policy 1 of NPF4 states that when considering all development proposals significant weight will be given to the global climate and nature crises.

The Scottish Governments Climate Change Plan sets out the national Scottish Government's pathway to achieve the ambitious targets set by the Climate Change (Scotland) Act 2009, as amended by the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019, and the commitment to end Scotland's contribution to climate change by 2045.

Scotland's renewable electricity generation has grown rapidly over the last twenty years, and a large contribution to achieving the commitment set out in the plan will be made by the increased decarbonisation of our electricity system.

The Climate Change Plan notes operating a zero-carbon electricity system will mean finding new ways to provide a range of technical services and qualities currently provided by fossil fuel and nuclear generation. Battery storage is one technology which helps achieve these goals.

However, it is important to ensure that the lifecycle carbon impacts of the proposal itself are assessed and mitigated. At its meeting on the 27th of August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on the 3

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 completed development should be imposed on consents for relevant development proposals.

It is recommended that such a condition should be imposed on any consent for this proposed development, consistent with the requirements of Policy 2 of NPF4 and Policy SEH2 of the ELLDP.

## **BIODIVERSITY**

The proposal is supported by Habitat Regulations Assessment (HRA) and Ecological Impact Assessment (EclA) which are included within this application. The Energy Consent Unit who, under the Habitats Regulations, are the competent authority is required to consider the effects of the proposal on the Firth of Forth Special Protection Area.

The **Council's Biodiversity Officer** notes the advice from NatureScot that it is unlikely that the proposal would have a significant effect on any qualifying interests either directly or indirectly and therefore an appropriate assessment under the Habitats Regulations is not required.

The Council's Biodiversity Officer has appraised the submitted Ecological Impact Assessment (EclA) report and concurs with its main findings, one of which is that the habitat of the site is of low biodiversity value due to its current use as agricultural field, with a high instance of disturbance by it being used as a dog walking area. The mitigation measures outlined in the EclA should be implemented in full.

Having considered the submitted information, the Biodiversity officer is content that the proposal would not impact on bats and that no further surveys or assessments are required in this regard.

The Biodiversity Officer advises that a Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 30-year period should be produced to detail proposals for landscape and biodiversity mitigation and enhancement. This should be informed by the ecological survey work and EclA and should consider the ongoing long-term management of biodiversity enhancement measures. The findings of the Ecological survey would be a starting point to identify which habitats to enhance, restore, expand and maintain. The BESS is located within a predominantly agricultural and grassland habitat and therefore this should be a significant focus to enhance the connectivity of this habitat in addition with any other measures as appropriate. The LEMMP should refer to the Scottish Biodiversity Strategy, the Council's Green Network Strategy SPG-Nature Networks section. The Council is currently in the process of reviewing its Local Biodiversity Action Plan, and if this is available in time the Biodiversity Officer recommends it should also be referred to.

The submitted LEMMP proposals should include:

- a. A full planting plan and planting schedule and specification; and
- b. a program of management, replacement planting, thinning and pruning with a typical 12 month cycle showing the detail and frequency of when different aspects of the landscape maintenance specification occur on site.

The submitted LEMMP proposals should also accord with the following requirements:

- Field margins surrounding the development should be supplemented with a local native wildflower seed mix to encourage the development of suitable habitat and nectar for pollinator species. Vegetation management is suggested to retain diverse wildflower rich swards.
- Planting of native hedgerows or scattered trees around the margins of the development to compensate for loss of habitat.
- If reptiles are found during construction works will stop and an ecologist contacted for advice
- Where removal of habitat suitable for bird nesting is required this should ideally take place outside the nesting bird season, or if that is not possible a nesting bird check should be carried out immediately prior to the works. A buffer zone to exclude works will be established while the nest is active.
- Precautionary measures to protect mammals during construction.

The submitted LEMMP proposals should include a timetable for implementation, and management thereafter. Development should thereafter be carried out in accordance with the LEMMP proposals so approved.

Subject to the imposition of this recommended condition the proposal conforms with NPF4 Policy 3.

## **LANDSCAPE AND VISUAL IMPACT**

The land of the application site is allocated by Proposal EGT1 of the ELLDP and thus forms part of the former Power Station site. It is located north to the approved (yet to be built) link road and to the southeast of the existing substation.

The **Council's Landscape Projects Officer** advises that the proposed development would be seen in the context of the existing infrastructure e.g. electricity pylons, electricity substations. The Landscape Officer advises that the submitted landscape proposals plan does not include any tree or hedgerow planting on the southern boundary of the proposed development. Therefore, the proposed development would lead to a localised adverse landscape and visual impact. Notwithstanding this, in the context of this industrial area the proposed development including the acoustic fence would not be unacceptable if coloured appropriately.

The Council's Landscape Projects Officer advises that through a pre-application discussion the applicant was alerted that the red line boundary for Cockenzie link road with planning reference 22/00440/P, overlaps with the proposed Substation and BESS site. There are trees G004 shown to be retained as part the link road application and it appears that the proposed BESS service road along the south eastern boundary will fall within the root protection area of trees shown to be retained.

The applicant has not carried out and submitted a tree condition survey, constraint and tree protection plan. It is necessary for this information (a tree condition survey, constraints and tree protection plans) to be submitted to establish impact on the trees and to identify any appropriate protection measures required to safeguard the woodland to the southeast (G004).

In addition, should the tree constraints plan indicate that the proposed access road to the southeast lies within the root protection area of retained trees within group G004 then information on its construction in accordance with section 7.4 of British Standard BS5837:2012 'Trees in relation to design, demolition and construction' should be submitted. If it is not possible to construct the road thus to prevent damage to retained trees then the development would need to be redesigned to remove it from the root

protection area of these trees to avoid losing the trees it is proposed to retain. Therefore, the Council's Landscape Projects Officer objects to this application unless a tree condition survey, constraints and tree protection plans are submitted to address the concerns raised above.

The Council's Landscape Projects Officer also advises that it may not be feasible to include trees on the southern slopes of the proposed 4-meter high earth bund due to their proximity to the overhead electricity lines. In addition, the proposed slopes of the bund at 1 in 1 are too steep to enable tree planting. There appears to be room to the north side of the bund to create a much shallower longer slope to enable tree planting to the north side. If it is established that the planting cannot be carried out, then it would be necessary for the applicant to submit an alternative scheme of landscape mitigation.

Without the further information and amended drawings the current proposal does not comply with Policies 4, 6 and 14 of NPF4 or Policies, NH8, DP1 and DP2 of the Lothian Local Development Plan 2018.

## **HISTORIC ENVIRONMENT**

The **Council's Archaeology/Heritage Officer** advises that given the location of the proposal there is no or minimal indirect impacts likely on the Historic environment. In relation to direct impacts there is some potential for buried archaeological remains to be impacted and therefore the Council's Archaeology/Heritage Officer would advise that an Archaeological Programme of Works (5% Evaluation by archaeological trial trench) is carried out on the area of the development which lies outside the former coal store. If consent is granted it is recommended that this requirement be secured by the imposition of a condition.

## **SOILS**

NPF4 has a strong policy presumption against development that is located on prime agricultural land. However, one exception is where the proposal is for 'essential infrastructure and there is a specific locational need and no other suitable site'. The definition of 'essential' infrastructure in the NPF includes energy storage and generation technologies therefore covering this proposal.

Policy EGT1 of the adopted East Lothian Local Development Plan 2018 states that land at Cockenzie may present significant opportunities for renewable energy-related investment.

The agricultural land classification for the site is the highest Class 1 – land capable of producing a very wide range of crops. However, this classification was previously considered when East Lothian Council allocated the wider site for development through Proposal EGT1 of the ELLDP.

The proposed development is essential infrastructure with a specific need for its location, justified by its site selection process, to reinforce the electricity transmission system, supporting a secure and stable supply of energy as part of National Development 3 of NPF4. Therefore, the proposed development is not inconsistent with Policy 5 of NPF4 or Policies NH7 and EGT1 of the adopted East Lothian Local Development Plan 2018.

## **NOISE AND VIBRATION AND AMENITY**

The applicant has undertaken an Acoustic Design Specification report which looks at the noise impact of the proposed BESS on properties ('noise-sensitive receptors'). A number

of residential and non-residential properties have been selected including those located in Cockenzie on: Inglis Farm (80m distance from the source of noise), The Chimneys (90m distance from the source of noise) and in Prestonpans on: Cedar Drive (150 distance from the source of noise) and Atholl View (168m distance from the source of noise).

The **Council's Senior Environmental Health Officer** reviewed the noise report submitted with the application and is satisfied that, subject to mitigation measures being adopted, the development will not result in any significant loss of amenity to the occupants of those nearby residential properties. He confirms that the following levels of attenuation will be required, the detailed engineering of which is to specified in an updated noise report:

- Battery Containers: -30 dB,
- Inverters: -16 dB,
- Transformers: - 4 dB,
- Substation Transformers: 0 dB.
- A 4m high bund will be installed to the north boundary of the compound to provide further attenuation to the houses of Inglis Farm, The Chimneys and Cedar Drive.
- All perimeter fencing around the equipment compounds will be 4m-high acoustic fencing (as outlined in Figure 6 of Ian Sharland Ltd's Noise Report of 14th January 2024).

The Senior Environmental Health Officer confirms that a further noise report should be submitted once specific mitigation measures have been incorporated into the final design layout to ensure the following recommended condition can be met:

- For operational noise, the Rating Level, LArTr, of noise associated with the operation of the proposed facility when measured at least 3.5m from the façade of any neighbouring residential property in freefield conditions, shall be no more than 5dB (A) above the background noise level, LA90,T. All measurements to be made in accordance with BS 4142: 2014+A1:2019 "Methods for Rating and Assessing Industrial and Commercial Sound".

Subject to the recommended noise control being secured by a conditional grant of consent, the Council's Senior Environmental Health Officer raises no objection to the proposed Cockenzie BESS, being satisfied that it would not have an unacceptable impact on the residential amenity of nearby properties.

The **Council's Senior Environmental Compliance Officer** raises no objection to the proposal in respect of ground contamination.

The Cockenzie BESS would be located sufficiently far from the nearest residential properties such that it would not harm their residential amenity through harmful loss of sunlight or daylight.

## **FLOOD RISK**

The proposal is supported by a Flood Risk Assessment (FRA) and Surface Water Drainage Strategy.

The **Council's Flood Protection Manager** confirms that SEPA's Flood Hazard Mapping indicates that the site is not at risk from a river or coastal flood event with a return period of 1 in 200 years plus climate change. That is the 0.5% annual risk of a flood occurring in

any one year with an allowance for climate change.

There are however small pockets of surface water flood risk shown on the northern side of the site at a 1 in 200-year surface water flood event.

The applicant has submitted a Drainage Strategy and Flood Risk Assessment as part of their application, highlighting the risk and proposed mitigation measures.

The Council's Flood Protection Manager advises that the Drainage Strategy is appropriate and highlights the measures which he would seek to see in a drainage strategy. It is stated that the surface water will be directed through the ground, to a SUDS detention basin, where it will then be pumped and discharged into a private sewer to the South. The discharge rate is limited to 10.9l/s/Ha, having been calculated using existing greenfield runoff rates. The detention basin is to provide attenuation up to a 1 in 200 + CC (40%) level without flooding. A safe route is shown for any overspill above this.

It is noted that the applicant has, as per Figure 5.4 of the FRA, highlighted that none of the infrastructure is situated within the river, surface water or coastal functional flood plain (1 in 200 year) as identified by SEPA's Flood Hazard Maps. The Senior Engineer is content with this approach.

The Council's Flood Protection Manager expects Micro Drainage or similar calculations to be submitted to provide evidence of the statement that the drainage will not surcharge at a 1 in 30 + CC (40%) flood event. The applicant will be required to submit this information.

The Council's Flood Protection Manager advises that within the drainage layout drawing, it is noted that the "Connection to Existing Drain to be confirmed". The applicant will be required to clarify that there can be a connection made to this drain before the Senior Engineer could accept the approach.

The submission of Micro Drainage or similar calculations and clarification that the new drainage can tie into the existing drain on the southern side can both be secured by a conditional grant of consent for the proposed development. Subject to this the Council's Flood Protection Manager raises no objection to the Cockenzie BESS proposal on the grounds of flood risk or drainage.

## **TRANSPORTATION AND ACCESS**

The Cockenzie BESS would be located immediately to the north of the link road approved by the grant of planning permission 22/00440/P. The approved link road includes a footway on the northern side of the carriageway. Such a footway is necessary to provide a safe means of access for pedestrians.

The plans submitted for the Cockenzie BESS show the provision of landscaping over part of the approved footway. Such landscaping would impede access and present a safety risk to pedestrians.

The **Council's Road Services** raise concern about this part of the proposal. As this represents a risk to pedestrian safety, the Council objects to the Cockenzie BESS. This objection could be overcome if the proposals were amended to ensure that the footway could be formed in accordance with planning permission 22/00440/P.

The Council's Road Services have also provided the following comments:



1. A dilapidation survey of the construction traffic access route should be undertaken before commencement of development
2. All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
3. The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
4. As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
5. Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.
6. Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.

These matters can all be secured by a conditional grant of consent for the proposed development.

The Council's Road Services further advise that all works within or affecting the public road including works on paths and footways must be authorised in advance by this Council. Further, any proposals, which include new or extended public roads, will also require Road Construction Consent prior to carrying out any works and for which application should be made to the Head of Infrastructure.

## **FIRE RISK**

Several objections have been received on this issue raising concerns about the fire risk and proximity to residential properties.

Scottish Fire and Rescue Services advises that there is currently no statutory requirement for Fire and Rescue Services (FRSs) to engage in the planning process of BESS sites. However, The National Fire Chiefs Council (NFCC) encourages early engagement with the local FRS, continuing throughout the planning process, and have therefore provided a guidance document. This document relates specifically to grid scale BESS, in open air environments, using lithium-ion batteries.

The Council recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation.

## **CONCLUSION**

The principle of the Cockenzie BESS is acceptable, as Proposal EGT1 of the ELLDP, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may present significant opportunities for renewable energy related investment. The proposed development would also contribute towards the increased decarbonisation of our electricity system, consistent with Scottish Government objectives.

Whilst the principle of development is accepted, based on the assessment against other policy considerations, the Council objects to the proposal on the following detailed matters:

1. No tree condition survey, constraint and tree protection plan have been submitted with this application. It is necessary for this information (a tree condition survey, constraints and tree protection plan) to be submitted in order to accurately identify whether any trees are detrimentally impacted by the development as proposed or require to be removed to facilitate the development and to establish any appropriate protection measures to the existing woodland in the south east corner of the site to avoid adverse impact on the trees by this development. If it is not possible to construct the road thus to prevent damage to retained trees then the development would need to be redesigned to remove it from the root protection area of these trees to avoid losing the trees it is proposed to retain.
2. The plans submitted for the Cockenzie BESS show the provision of landscaping over part of the footway approved by planning permission 22/00440/P as part of the new link road. Such landscaping would impede access and present a safety risk to pedestrians. An alternative landscape plan should be submitted that does not include any overlapping on the footway.

If these issues were resolved then the proposal would be considered to be in accordance with the provisions of the stated relevant Development Plan policies, subject to the imposition of the conditions mentioned below.

It should be noted that if these objections are not resolved then the application would likely have to go through an inquiry process.

The Council further recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation.

#### **RECOMMENDATION:**

1. That the Scottish Government Energy Consents Unit is informed that East Lothian Council objects to the granting of consent under Section 36 of the Electricity Act 1989 for the reasons set out in this report; and
2. That the East Lothian Chief Planning Officer be authorised to undertake any discussions with the Scottish Government Energy Consents Unit to resolve these objections and conditions to be attached to the consent if required; and
3. That if consent is granted then it be subject to the following conditions:

#### **REQUIRED CONDITIONS**

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

Reason:

To ensure that the development is commenced within a reasonable period.

- 2 Prior to the commencement of development details of the finishing colours for all of the components of development shall be submitted to and approved in writing by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the visual amenity of the area.

- 3 Prior to the commencement of any development a report on the actions to be taken to reduce the Carbon Emissions from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings including the consideration of any opportunities for heat recovery systems, where feasible and appropriate in design terms. The 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.

- 4 Unless otherwise agreed in writing by the Planning Authority through the submission and approval of a Species Protection Plan prior to the commencement of development, no removal of hedgerow, trees or clearance of vegetation within the site shall take place during bird breeding season (which is March- August inclusive).

Reason:

In the interests of safeguarding biodiversity interests.

- 5 A Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 30 year period should be produced to detail enhancements for landscape and biodiversity mitigation and enhancement. This should be informed by the ecological survey work and consider the ongoing long-term management of biodiversity enhancement measures. To include:

- a. A full planting plan and planting schedule and specification
- b. A program of management, replacement planting, thinning and pruning with a typical 12 month cycle showing the detail and frequency of when different aspects of the landscape maintenance specification occur on site

Reason:

In the interests of safeguarding biodiversity interests.

- 6 Prior to the commencement of development a Public Access Management Plan shall be submitted to and approved in writing by the Planning Authority. The Public Access Management Plan shall include the following details:

- (i) Measures to manage and control the speeds of construction traffic, including advisory speed limit signage on the local road network; and
- (iii) Details of any temporary and permanent infrastructure that will be delivered to ensure the safe and convenient active travel routes in the local area, including a timetable for the implementation of the measures.

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

Reason:

To ensure the safe continuation of public access and amenity.

- 7 No external lighting shall be installed on site unless and until details of it have been submitted to and approved by the Planning Authority.

Reason:

In the interests of the visual amenity of the area.

- 8 Prior to the commencement of development, a Construction Traffic Management and

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

- (i) All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
- (ii) a dilapidation survey of the construction traffic access route
- (iii) The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
- (iv) As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
- (v) Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.
- (vi) Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.
- (vii) details of temporary signage in the vicinity of the site warning of construction traffic;
- (viii) details of wheel washing facilities which must be provided and maintained in working order during the period of construction and/or decommissioning of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;
- (ix) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds; and
- (x) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds.

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

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

Reason:

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

- 9 Prior to the commencement of development, the following details shall be submitted to and approved by the Planning Authority:

- The submission of Micro Drainage or similar calculations; and
- clarification that the new drainage can tie into the existing drain on the southern side of the site.

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

Reason:

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

- 10 There shall be no commencement of development until the applicant has undertaken and reported upon a Programme of Archaeological Work (5% Evaluation by archaeological trial trench) of the area of the development which lies outside the former coal store with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the Planning Authority.

Reason:

In the interests of archaeological and natural heritage.

- 11 The Development will disconnect from the grid and cease to import or export electricity no later than the date falling forty years from the date of Final Commissioning. The total period for operation of the Development, decommissioning and restoration of the Site in accordance with this condition shall not exceed forty-one years and six months from the date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

Reason:

To ensure the development only operates within its designed and planning lifespan.

- 12 If the Development fails to export electricity via the grid connection for a continuous period of twelve months, then it shall be deemed to be redundant and unless otherwise agreed in writing with the Planning Authority, the Company shall undertake the decommissioning, restoration and aftercare of the Site as required by other stated conditions.

Reason:

To ensure that if the Development becomes redundant the equipment is removed from the site, in the interests of safety, amenity and environmental protection.

- 13 No development shall commence unless and until a Decommissioning, Restoration and Aftercare Strategy has been submitted to, and approved in writing by, the Planning Authority. The strategy shall include measures for the decommissioning of the Development and restoration and aftercare of the site, and shall include, without limitation, proposals for the removal of the above ground elements of the Development, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the treatment of ground surfaces, the management and timing of the works and environmental management provisions.

Unless the Development has been deemed to be redundant under condition 12, no later than twelve months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

If the Development has been deemed to be redundant under condition 12, no later than twelve months from the date the Development has been deemed to be redundant, a

Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

The Detailed Decommissioning, Restoration and Aftercare Plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of above ground elements of the Development, the treatment of ground surfaces, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the management and timing of the works and environment management provisions which shall include (but is not limited to):

- (a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- (b) details of the formation of any construction compounds, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- (c) a dust management plan;
- (d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- (e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (f) details of measures for soil storage and management;
- (g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- (h) details of measures for sewage disposal and treatment;
- (i) temporary site illumination;
- (j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- (k) details of watercourse crossings; and
- (l) a species protection plan based on surveys for protected species carried out no longer than eighteen months prior to submission of the plan.

The Development shall be decommissioned, the site restored, and aftercare undertaken in accordance with the approved Detailed Decommissioning, Restoration and Aftercare Plan, unless and until otherwise agreed in writing in advance with the Planning Authority.

Reason:

To ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

- 15 No development shall commence unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations are submitted to the Planning Authority.

The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations.

The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations.

The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

Reason:

To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

- 16 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.





**REPORT TO:** Planning Committee  
**MEETING DATE:** 4 June 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

**5**

*Note: This application was called of the Scheme of Delegation List by Councillor Collins for the following reason: Due to the historical architectural significance of the building and concerns raised by the Architectural Heritage Society of Scotland.*

Application No. **23/01477/P**

Proposal                      Erection of one house, widening of vehicular access and associated works

Location                     **Bonard  
Belhaven Road  
Dunbar  
EH42 1NW**

Applicant                     Mr David Calder

Per                                Ferguson Planning

**RECOMMENDATION**           Consent Granted

**REPORT OF HANDLING**

**PROPOSAL**

This application relates to the detached two storey house named Bonard and its garden ground which is located on the south side of Belhaven Road. It is located within a predominately residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The site is bounded to the north by Belhaven Road beyond which are the grounds of Belhaven Hill School which are designated as a conservation area. Furthermore, Belhaven Hill School and some of its buildings are listed as being of special architectural or historic interest (Category B).

To the east the site is bounded by Southfield House, a building listed as being of special architectural or historic interest (Category B). To the west is an area of wooded open space beyond which is an access road for neighbouring residential properties. To the south is a footpath beyond which are neighbouring residential properties.

The application site is largely rectangular in shape measuring some 1420 square metres and slopes gradually from north to south. It is enclosed by a stone wall and stone gate piers along its north boundary, by stone walls along its east and west boundaries and by a timber fence along its south boundary. There are a number of trees within the site.

The site is currently occupied by a two-storey house which was constructed in circa 1906/1907. A small garage is located in the rear yard to the south of the house. The remainder of the site is in grass cover with trees and hedges along the boundaries. The existing house is set back some 7m from the front, road side boundary of the site. It has a flat roof which is some 7.4m in height with decorative turrets and castellations that are some 9.6m in height. The house is not listed as being of special architectural or historic interest.

## **PROPOSAL**

Planning permission is sought for the replacement of the existing two storey house with a two storey, pitched roof house with accommodation in its roof space, and associated works. The proposed new house would be located towards the northern part of the site, some 11.5m back from the front, roadside boundary. All existing boundary treatments would be retained although it is proposed to widen the existing vehicular access in the north boundary wall of the site and to form a new pedestrian access in that north boundary wall.

The proposed house would have an L shaped footprint, would be two storeys in height with accommodation in its roof space. It would be some 10.3m in height to ridge height and due to the slope of the site between some 6.2-6.5m to eaves height. The house would be constructed of block walls which would be clad in white render. The roof would be clad in dark slate. The windows would all have timber frames with the exception of the French doors which would have metal frames.

The front elevation of the house would have a width of some 14.0m and contain a centralised door with stone surround at the ground floor, located between two sets of sash windows on either side. The first floor would contain five sets of sash windows and the proposed house would have 3 projecting gable dormers in its north (front) elevation roof slope.

Access to the proposed new house would be via the existing access in the north boundary of the site, which it is proposed to widen by some 2.6 metres. Thereafter the proposed new house would continue to benefit from two parking spaces with sufficient space to allow turning within the site to enable vehicles to leave the site in a forward gear.

The proposed house would have solar PV panels on its rear elevation roof slope and an air source heat pump would be attached to the southeast end of its side (east) elevation.

To facilitate the erection of the proposed new house the existing detached house is to be demolished and cleared from the site. Under Class 70 of the (General Permitted Development) (Scotland) Order 1992 the demolition of a dwelling house is permitted development if the dwelling house that is to be demolished is on land which is the subject of a planning permission for the redevelopment of the land. Therefore if planning permission is granted for the proposed new house, the demolition of the existing house would be permitted development.

In support of the application the applicant's agent has submitted a Planning Statement, A Carbon Emission Reduction Statement, an Arboricultural Impact Statement and

Preliminary Ecological Assessment report. A confidential costings report has also been submitted.

The Planning Statement informs that the existing dwelling was constructed in 1906/1907. It has been neglected for many years and as a result has suffered severe structural damage. Large patches of damp, structural cracks in the ceiling and walls, black mould and collapsed sections of the roof are all evident. In the area where the northern extension is attached to the original building, there are signs that this not constructed to suitable standards and there is an obvious lack of weather tightness. It states that the existing dwelling is not in a habitable condition. Therefore, it is proposed to demolish the existing dwelling and construct a new 4 bedroom house.

## **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), 3 (Biodiversity), 6 (Forestry, Woodland and Trees), 7 (Historic Assets and Places), 12 (Zero waste), 13 (Sustainable transport), 14 (Design, quality and place), 15 (Local Living and 20-minute neighbourhoods) and 16 (Quality Homes) of NPF4 are of relevance. Policies RCA1 (Residential Character and Amenity), CH1 (listed Buildings), CH2 (Development Affecting Conservation Areas), NH8 (Trees and Development), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), T1 (Development Location and Accessibility), T2 (General Transport Impact) and W3 (Waste Separation and Collection) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Material to the determination of the application are Sections 64 and 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

Planning Advice Note 67: Housing Quality explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in

isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

## **REPRESENTATION**

Two objections to this application have been received. The main grounds of objection are:

(i) The application does not meet the requirements of CH2: 'All development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the CA.'

(ii) The loss of this distinguished building will damage the integrity of the CA and townscape character of the main Belhaven to Dunbar approach. Since its sale in 2021, it has lain neglected - the application photos indicating it suffers from lack of maintenance. But the cost of restoration would be most unlikely to exceed the cost of demolition and new construction or compensate for the loss of this important heritage asset.

(iii) The existing vehicular access off Belhaven Road has stood the test of time and is adequate as can be seen in the attached photo (2010). There is no justified need to demolish and widen this architectural statement, on the roadside.

(iv) The design of the new house will damage the integrity of the CA and townscape character of the main Belhaven to Dunbar approach. This would be contrary to LDP policy on design, notably the importance placed in DP2 on a design which respects the site's context.

(v) There should be strict timescales on the hours of operation of any works in order to protect the amenity of other people in the residential area. Also to protect the safety of school children on what is a route to school along the main road.

(vi) There should be consideration of the movement of lorries and other vehicles associated with the works on this very busy section of road.

(vii) No works should take place during the bird nesting season in parts of the site where birds may be disturbed.

(viii) Trees that are to be retained on site should have their root systems protected from the works and a limit be set on how close works may take place in relation to trees and their root systems.

The proposed development is not of a scale or nature that would require controls on the hours of operation during construction or to control movements of lorries to and from the site.

There is no requirement in planning legislation for an applicant to submit a justification for a proposed development.

## **COMMUNITY COUNCIL COMMENTS**

None.

## **PLANNING ASSESSMENT**

The application site is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. Policy RCA1

does not actively promote the development of land for new build residential development. The principal purpose of Policy RCA1 is to ensure that the predominantly residential character and amenity of its area of coverage is safeguarded against the impacts of land uses other than housing. Policy RCA1 does state that infill, backland and garden ground development will be assessed against Policy DP7 of the adopted East Lothian Local Development Plan 2018.

Policies 14, 15 and 16 of NPF4 and Policy DP2 of the adopted East Lothian Local Development Plan also apply to this development to ensure that development proposals are designed to improve the quality of the area in which it is located, will contribute to local living and will improve the affordability and choice of housing in an area. Policy DP2 of the adopted East Lothian Local Development Plan 2018, amongst other things, requires that all new development must be well designed and integrated into its surroundings. It requires that a building must be appropriate to its location in terms of its positioning, size, form, massing, proportion and scale.

With respect to infill, backland and garden ground development Policy DP7 of the adopted East Lothian Local Development Plan 2018 states that, amongst other principles of development, it must, by its scale, design and density be sympathetic to its surroundings and not an overdevelopment of the site. The privacy of existing and future residents must also be protected and there should be no loss of important physical or natural features.

In this case regard must also be paid to the desirability of preserving or enhancing the setting of the Belhaven Conservation Area as required by Policy 7 of NPF4 and Policy CH2 of the adopted East Lothian Local Development Plan 2018.

Thereafter, the principal determining factor in this case is whether, having regard to national, strategic and local planning policy and guidance and other material considerations the design, positioning and layout of the proposed new house and the works associated with it are acceptable, with due regard to their potential impact on the character and residential amenity of the area, including their impact on the amenity of neighbouring residential properties and their impact on the character and appearance of the area.

The land of the application site is garden ground within the confines of the predominantly residential area of Belhaven, Dunbar. Accordingly, the development of the site for the erection of a house on it can be defined as being infill housing development within the predominantly residential area of Belhaven, Dunbar.

The part of Belhaven Road within which the application site is characterised by the existing houses that are generally detached and a range of sizes, styles and finishes, positioned within garden plots of a variety of sizes. On the opposite side of the road is the high stone wall that encloses the south roadside boundary of Belhaven Hill School.

The proposed new house would be a modern addition to this part of Belhaven Road. Whilst the proposed new house would not replicate the form and finish of the house it would replace, the existing houses within this part of Belhaven Road are generally characterised by detached houses of a range of sizes, styles and finishes, positioned within garden plots of a variety of sizes. Consequently, there is no established building line or pattern of development for the houses in this locality.

The proposed new house whilst different in architectural form and finish to the house it would replace would not due to its positioning on the plot and of its size and scale, harmfully change the existing pattern of layout or density of the built form of this part of

Belhaven Road. It would not be significantly closer to the neighbouring listed building than the house it would replace. Furthermore with its rendered walls and pitched, slate clad roof it would not be of such a height, size or scale to be out of keeping with the heights, size, scale and external finishes of nearby houses and buildings. Moreover, the proposed solar pv panels proposed for the rear facing roof slope and air source heat pump to be attached to the east side of the house would be well contained from public views and would not have an appreciable affect on the appearance of the house when viewed from Belhaven Road. Accordingly, the proposed new house would sit comfortably in its positional relationship relative to other neighbouring residential properties within this part of Belhaven Road and would not appear harmfully incongruous or exposed. It would not be of an architectural form, size, scale or finish that would be inappropriate to its setting or out of keeping with its surroundings. It would not due to its size, scale and positioning have harm the setting of the neighbouring listed buildings of Southfield House or Belhaven Hill School and would not have a significantly different impact on the setting of the Belhaven Conservation Area than the house it would replace. Consequently it would not harm the setting of the Belhaven Conservation Area.

Moreover, the application site is of a size sufficiently capable of accommodating the entire development in the manner proposed, including an adequate level of provision of garden ground, vehicle access and off-street car parking without being an over development of it. Therefore, the proposed new house and its associated works would not appear as a cramped form of infill housing development.

The proposed new house by fronting onto Belhaven Road would be set within a sustainable and well-connected location. Therefore, it would contribute to local living in the Belhaven, Dunbar area.

The principle of the proposed replacement house does not conflict with Policies 7, 14, 15 and 16 of NPF4 and Policies CH1, CH2, DP7 and DP2 of the adopted East Lothian Local Development Plan 2018.

To facilitate access into the house, It is proposed to widen the existing vehicular access in the north boundary of the property by moving the existing gate pier by some 2.6m and to erect a new 1.89m high gate within the widened access. In association with the widened access it is proposed to form a larger parking and turning area to the east side of the house and to install an EV charging point on the east boundary wall. By virtue of its extent, form, materials and positional relationship with the proposed new house, the proposed widened vehicular access and its associated driveway would be appropriate to their place and in keeping with their surroundings. So too would the proposed 1.89 metres high gate to be erected within the widened access and EV charging point. These component of the development would not harm the character and appearance of the area, the setting of the nearby listed buildings or the setting of the Belhaven Conservation Area.

It is also proposed to form a new pedestrian access within the north boundary wall and to install a wrought iron decorative gate within the new access. The formation of the new access would not harm the integrity of the wall which would otherwise remain unaltered. By virtue of its size, scale and positioning the proposed new pedestrian access and proposed new gate to be installed within it would not harm the character and appearance of the area, the setting of the nearby listed buildings or the setting of the Belhaven Hill conservation area.

The proposed new bike and bin stores to be erected adjacent to the east boundary wall of the front garden of the house would each be appropriate to their setting and in keeping with their surroundings. They would not harm the character and appearance of the area, the setting of the nearby listed buildings or the

setting of the Belhaven Hill conservation area.

On these considerations of design, layout and density the proposed house and its associated works are consistent with Policies 7, 14, 15 and 16 of NPF4 and with Policies RCA1, CH1, CH2, DP2 and DP7 of the adopted East Lothian Local Development Plan 2018.

Policy DP7 of the adopted East Lothian Local Development Plan 2018 requires, amongst other things, that in the case of infill, backland and garden ground development the occupants of existing neighbouring development experience no significant loss of privacy and amenity.

Policy DP2 requires, amongst other things, that new development should not result in any significant loss of daylight, sunlight or privacy to adjoining properties because of overshadowing or overlooking.

On the matter of the impact of the proposed house on daylight and sunlight on neighbouring properties, guidance is taken from "Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair.

In its proposed position the house would be more than 20m from its respective east, west and south boundaries. Due to this and of its orientation on the application site the proposed new house would not have a harmful impact on the sunlight and daylight received by neighbouring residential properties. The proposed new house and its garden would also receive a sufficient amount of daylight (skylight) and sunlight to give sufficient amenity to the future occupiers of the proposed new house.

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 Planning Authority to apply the general rule of a 9 metres separation distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

The windows and glazed doors to be formed in the front (north) elevation of the proposed new house would face onto Belhaven Road and thus would not allow for harmful overlooking in that direction.

The windows and glazed doors to be formed in the side and rear (east, west and south) elevations of the proposed new house would each be more than 20m from their respective east, west and south boundaries of the property. Therefore they would not allow for harmful overlooking of any neighbouring residential properties in those directions.

Use of the proposed widened access, driveway, and external areas associated with the proposed new house would not allow for harmful overlooking of any neighbouring residential properties.

On these considerations of overlooking and overshadowing, the proposed new house and its associated works would not have a detrimental impact on the privacy and amenity of any neighbouring residential properties as a consequence of overshadowing or overlooking. The occupiers of the proposed house would also have sufficient privacy and residential amenity. Accordingly, the proposed new house and its associated works do not conflict with Policy 14 of NPF4 or with Policies DP2 and DP7 of the adopted East

Lothian Local Development Plan 2018.

Scottish Water raise no objection to this application and advise that there is currently sufficient capacity in the Castle Moffat Water Treatment Works to service the proposed development. They note that this proposed development would be serviced by Dunbar Waste Water Treatment Works but are unable to confirm capacity at this time.

The **Council's Archaeology/ Heritage Officer** raises no objection to this application.

The general collection and management of waste and recycling from the proposed development will be operated by the **Council's Waste Services**. Accordingly, the proposals are consistent with Policy 12 of NPF4 and Policy W3 of the adopted East Lothian Local Development Plan 2018.

The **Council's Senior Environmental Health Officer** raises no objection to this application but recommends that noise associated with the operation of the air source heat pump should not exceed Noise Rating curve NR20 at any octave band frequency between the hours of 2300-0700 and Noise Rating curve NR25 at any octave band frequency between the hours of 0700-2300 within any residential property. All measurements to be made with windows open at least 50mm. This recommended control can be exercised by way of a condition imposed on a grant of planning permission and, subject to the imposition of such a condition, the operation of the proposed air source heat pump would not give rise to a harmful loss of amenity to neighbouring and nearby residential properties.

The **Council's Road Services** raise no objection to this application being satisfied that the widening of the access would not raise any issues of road safety and the parking area for the proposed house is of a sufficient size to accord with ELC parking standards. Accordingly, the proposals are consistent with Policy 13 of NPF4 and with Policies T1 and T2 of the adopted East Lothian Local Development Plan 2018.

The garden of the house has a number of mature trees within it, therefore to support the application a Tree Survey and Arboricultural Impact Assessment has been submitted. This initially proposed the removal of 11 trees, however during the application process this was amended and it is now proposed to only remove 6 of those trees - tagged 518, 521, 522, 526, 533 and 534 - due to their poor condition and restricted life expectancy. The Tree Survey and Arboricultural Impact Assessment also informs that hard surfacing works are proposed within the roof protection area of 3 trees (Ref: T517, T519 and T523). However this shall be undertaken in accordance with British Standard BS5837:2012 "Trees in relation to design, demolition and construction - Recommendations, to ensure that the trees are not harmed as a result of the works.

The **Council's Landscape Projects Officer** raises no objection to the loss of the 6 trees subject to (i) replacement trees being planted within the site to mitigate the loss of the trees, and (ii) that temporary protective fencing be erected in place to protect the existing retained trees within the site from damage during construction works in accordance with the submitted Arboricultural Method Statement. Subject to these recommended controls, which can be made conditions of any grant of planning permission the proposals do not conflict with Policy 6 of NPF4 or Policy NH8 of the adopted East Lothian Local Development Plan 2018.

Policy 3 of NPF4 states, among other things, that proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development.



The **Council's Biodiversity Officer** has been consulted on the application and raises no objection to the proposals provided that prior to commencement of development on the site, a survey for breeding birds, including an assessment of the structures and any mature trees, shall be submitted to and approved in writing in advance by the Planning Authority. If the survey establishes that there is a breeding bird interest, no development shall be carried out during the bird breeding / nesting season (March-August, inclusive) unless it is implemented wholly in accordance with a Species Protection Plan which shall be submitted to and approved in writing in advance by the Planning Authority, and thereafter, the development shall be carried out in accordance with the Species Protection Plan so approved. This can be made a condition of any grant of planning permission for the proposed development.

Therefore subject to that planning control and provided a further condition that requires the submission and approval of the measures to be taken to enhance biodiversity on the site is attached to any grant of planning permission the proposals do not conflict with Policy 3 of NPF4.

Policy 2 Climate mitigation and adaption of NPF4 states that development proposals will be sited and designed to minimise lifecycle greenhouse gas emissions as far as possible. However in the guidance issued by the Chief Planner in February 2023 it is acknowledged that there is currently no single methodology for calculating and/or minimising emissions from a development proposal. It states that the emphasis is on reducing emissions as far as possible. Therefore qualitative assessments are not expected for applications and there is no defined thresholds that require different levels of information at this stage.

Notwithstanding, a Carbon Emission Reduction Statement has been submitted with the application. It informs that as part of the building warrant process, calculations, including the SAP Dwelling Emissions Rate (DER) will be undertaken. It also states that other assessments related to energy efficiency and carbon emissions are required as part of compliance with Building (Scotland) Regulations 2004. However it informs that a number of carbon emissions reduction strategies have been integrated into the design of the proposed house, including:

- \* A Fabric First Approach to ensure the building is inherently energy-efficient and reduces the need for additional heating and cooling;
- \* Passive Design Principles to ensure the internal layout and orientation of the dwelling has been designed to maximise natural daylight, solar gains and natural ventilation;
- \* Energy Efficiency Measures to install an air source heat pump, biomass boiler or electric storage heating;
- \* Renewable Energy Integration in the form of solar thermal or solar photovoltaic panels to supplement hot water supply, and
- \* Electric Vehicle Charging Point will be provided in the driveway.

Provided the new house is built in accordance with the measures outlined in the Carbon Emissions Reduction Statement then the proposed development does not conflict with Policies 1 or 2 of NPF4.

The proposals do not conflict with Policies 1, 2, 3, 6, 7, 12, 13, 14, 15 and 16 of NPF4 or with Policies RCA1, CH1, CH2, DP2, DP7, T1, T2 and W3 of the adopted East Lothian

Local Development Plan 2018.

In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

**CONDITIONS:**

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

Reason:

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

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

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

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

Reason:

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

- 3 In the event of the presence of any previously unsuspected or unforeseen ground conditions (contamination) of the land on the application site being found at any time when carrying out the development hereby approved, work on site shall not begin, or shall cease to continue, until a scheme to deal with contamination on the site has been submitted to and approved in advance in writing by the Planning Authority. The scheme shall contain details of the proposals to deal with contamination to include:

- 1 the nature, extent and type(s) of contamination on the site,
- 2 measures to treat/remove contamination to ensure the site is fit for the use proposed,
- 3 measures to deal with contamination during construction works,
- 4 condition of the site on completion of decontamination measures.

The scheme to deal with contamination shall include a Site Investigation and subsequent Risk Assessment, a Remediation Strategy and Verification Report, if relevant.

Before any one of the flats is occupied the measures to decontaminate the site shall be fully implemented as approved by the Planning Authority.

If no previously unsuspected or unforeseen ground conditions (contamination) are encountered during the development works, then this should be confirmed to the Planning Authority prior to occupation of the new dwellings.

Reason:

To ensure that the site is clear of contamination prior to the occupation of the building.

- 4 Noise associated with the operation of the air source heat pump hereby approved shall not exceed Noise Rating curve NR20 at any octave band frequency between the hours of

2300 - 0700 and Noise Rating curve NR25 at any octave band frequency between the hours of 0700 - 2300 within any existing residential property. All measurements to be made with windows open at least 50mm.

Reason:

In the interests of safeguarding the amenity of the occupiers of the neighbouring residential properties from noise associated with the air source heat pump.

- 5 Prior to the occupation of the house hereby approved, the access, parking and turning areas shown on docketed drawing no. 5765 PH3 rev G shall have been formed and made available for use, and thereafter the access, parking and turning areas shall be retained for such uses unless otherwise approved in advance in writing by the Planning Authority.

On-site parking spaces for 2 vehicles shall be provided within the site and each parking space shall have minimum dimensions of 2.5 metres by 5.0 metres.

On-site turning space for vehicles shall be provided within the site to enable vehicles to access and egress the site in a forward gear.

The first 2 metres of the altered vehicular access hereby approved measured from the edge of the public road shall be hard formed over the full width of the vehicular access and driveway,

Any gates installed at the altered vehicular access hereby approved shall not open over the public footway.

Reason:

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

- 6 Prior to the occupation of the house hereby approved a 7kW rated Type 2 electric vehicle charging point for at least one car and infrastructure for it shall be installed and available for use and thereafter shall be retained for use, unless otherwise agreed by the Planning Authority.

Reason:

To minimise the environmental impact of the development.

- 7 Prior to commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. The measures as so approved shall be implemented prior to any use being made of the agricultural building hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.

- 8 Prior to commencement of development on the site, a survey for breeding birds, including an assessment of the structures and any mature trees, shall be submitted to and approved in writing in advance by the Planning Authority. Where the survey establishes that there is a breeding bird interest, no development shall be carried out during the bird breeding / nesting season (March-August, inclusive) unless it is implemented wholly in accordance with a Species Protection Plan which shall be submitted to and approved in writing in advance by the Planning Authority, and thereafter, the development shall be carried out in accordance with the Species Protection Plan so approved.

Reason:

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

- 9 Only the trees identified for removal in the (as revised) Tree Survey and Arboricultural Impact Assessment - Tagged 518, 521, 522, 526, 533 and 534 - appended to this planning permission shall be felled. No trees detailed in this Tree Survey and Arboricultural Impact Assessment to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority. If any tree to be retained on the site is damaged or dies within 10 years of first planting then replacement planting will be required.

All site works must be undertaken in accordance with the requirements of the Method Statement (as revised) of the Tree Survey and Arboricultural Impact Assessment appended to this planning permission.

Reason

In the interests of safeguarding the landscape character of the area.

- 10 A scheme of landscaping shall be submitted to and approved in writing by the Planning Authority. The scheme shall provide details of tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall include five number small species trees along the northern site boundary such as rowan, cherry and hawthorn. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding season following the completion of the development or occupation of the house hereby approved, whichever is the sooner in accordance with the approved scheme of landscaping. Any trees, hedges or plants which die, are removed or become seriously damaged or diseased within ten years shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

Reason:

In the interest of the landscape setting of the house.

- 11 All site works must be undertaken in accordance with the requirements of the Method Statement (as revised) of the Tree Survey and Arboricultural Impact Assessment appended to this planning permission.

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837\_2012 "Trees in relation to design, demolition and construction" and ground protection has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing and ground protection must be as indicated on the drawing 'Tree Protection Plan' numbered 23\_5837\_08\_32 rev 2 (as revised) of the Tree Survey and Arboricultural Impact Assessment as defined by BS5837:2012 for all trees.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

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

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

**Reason**

In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage.



**REPORT TO:** Planning Committee  
**MEETING DATE:** 4 June 2024  
**BY:** Executive Director – 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 Forrest for the following reason: Due to objections I have received, I feel that this would warrant a discussion at the Planning Committee.*

Application No. **24/00237/P**  
Proposal Installation of vent and air conditioning unit (Retrospective)  
Location **84 High Street  
Musselburgh  
East Lothian  
EH21 7BX**

Applicant Crown Nails & Spa  
Per One Foot Square

**RECOMMENDATION** Granted Permission

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to the ground floor commercial premises at 84 High Street, Musselburgh which is set within a two storey, mid-terrace building. The property is situated within the Musselburgh Town Centre as defined by Policy TC2. The property is within the Musselburgh Conservation Area and the building is listed as being of special architectural or historic interest (Category C). The property also falls within the Battle of Pinkie Cleugh Historic Battlefield Site.

The property is bounded to the north by High Street, to the east and west by commercial premises at ground floor with residential properties situated above and to the south by a neighbouring residential property.

Planning permission is sought retrospectively for:

- i) The installation of an extract vent to the fanlight situated above the entrance door

to the front (north) elevation of the building; and

- ii) The installation of an air conditioning unit to the security bars to the window at ground floor level on the side (east) elevation of the building.

Through separate application 24/00238/LBC listed building consent is sought for the installation of a vent, air conditioning unit, erection of signage and painting of the frontage of the building. That application stands to be determined on its own merits.

The painting of the shopfront in black does not form part of this planning application as the shopfront has been painted black since at least May 2016. Therefore, as this work has been in place for more than 4 years the painting of the shopfront in black is now deemed as lawful development.

## **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.

Material to the determination of the application are Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

Also material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 states that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

Policy 7 (Historic Assets and Places) of NPF4 is relevant to the determination of this application. Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), CH5 (Battlefields) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination of this application.

## **REPRESENTATIONS**

Two objections have been received in relation to this planning application. In summary, the main grounds of objection are:

- i) The works were undertaken without notification, consultation or consent of neighbouring properties;
- ii) The bin storage mentioned on the drawings were not discussed or agreed with neighbouring properties;



- iii) Damage has been caused to the building which is listed and situated within the Musselburgh Conservation Area as a result of the works;
- iv) The removal of a section of glazing to install the extract vent within the fanlight is detrimental to the Conservation Area and results in a loss of light to the communal close;
- v) The works are unsightly and have spoiled the character of the entry to the property which is listed and situated within the Musselburgh Conservation Area;
- vi) The works are detrimental to the amenity of neighbouring properties and the communal close;
- vii) The fumes from the business are now extracted below the windows of neighbouring residential properties and an objector notes they can smell fumes within their property;
- viii) The works raise fire safety concerns;
- ix) The business at 84 High Street allegedly has access to the communal close and south aspect of the property for maintenance and emergencies only; and
- x) No other nail shops on the High Street appear to ventilate their premises through a residential property.

In response to the above this planning application is of a local type development. There is no requirement in planning legislation to consult neighbouring properties prior to the submission of a planning application of a local development type.

The works carried out within the communal close are internal works that do not require planning permission. Therefore they do not form part of this planning application.

All relevant neighbours within 20m of the application site were notified of the application when it was first registered. The application was also advertised in the local paper. Therefore the notification and publication of the planning application has been carried out in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. Furthermore a site notice was placed close to the premises.

There is no proposals to build a structure within which bins will be stored. Therefore the matter of where bins are stored is not a matter relevant to the determination of this planning application. That is a civil matter between the applicant and the occupants of the flats within the building.

The alleged damage caused to the building as a result of the works is a civil matter between affected parties and as such is not material to the determination of this planning application.

The matter of fire safety as a result of the works is a matter controlled by legislation other than planning. Therefore it is not a material planning consideration relevant to the determination of this planning application.

The applicant has certified on the planning application form that the owner of the building was notified of the planning application being submitted. Thereafter it is for the applicant to ensure they have the legal right to carry out works on land or buildings that they do not

own. Therefore the matters raised regarding a right of access to the communal close by the applicant for maintenance and emergencies is a civil matter between affected parties and is not a material consideration relevant to the determination of this planning application.

Any complaints about fumes from the nail bar would be a matter for the Council's Protective Services to investigate. Those complaints would not be relevant to the determination of this planning application for the mechanical air vent and air conditioning unit.

Furthermore, the comments noting other nail shops have not vented their fumes via a residential property are not material considerations in the determination of this planning application.

## **PLANNING ASSESSMENT**

The mechanical extract vent has been installed within the fan light (window) above the door in the front (north) elevation of the building. It is readily visible from public views from High Street. However, the extract vent whilst visible is small in size and scale and is seen in relation to the commercial frontages of Musselburgh High Street. Therefore it is not an overly prominent feature on the building. By virtue of its form, size, materials and positioning the extract vent does not harm the special architectural or historic interest of the listed building and does not harm the character and appearance of the building, the surrounding area or the Musselburgh Conservation Area.

The air conditioning unit has been attached to a ground floor window on the rear (south) elevation of the building, below an external stair. In its positing below the external stair of the building it does not mask or draw focus from any part of the listed building that is of particular special architectural or historic interest. Therefore, by virtue of its form size, materials and positioning the air conditioning unit does not harm the special architectural or historic interest of the listed building and does not harm the character and appearance of the building, the surrounding area or the Musselburgh Conservation Area.

The mechanical air vent has been installed in a part of the fan light (window) above the front door of the building, which serves a communal close. As the communal close is not a habitable room then any loss of daylight would not harm the residential amenity of the neighbouring residential properties that access this communal close.

With regards to the impact of the works upon the amenity of neighbouring residential properties, the **Council's Senior Environmental Health Officer** has been consulted on the application. He informs that a formal Abatement Notice was served upon the proprietor of the nail salon at 84 High Street due to odour nuisance arising from solvent fumes emanating from the nail salon, into the flat above. The works that have been undertaken are to mitigate the odour nuisance. Accordingly, the Council's Senior Environmental Health Officer supports this planning application.

Therefore the works do not harm the residential amenity of neighbouring residential properties.

The works undertaken do not have a significant adverse effect on the Battle of Pinkie Cleugh Historic Battlefield Site.

Given the above considerations, the works are consistent with Policy 7 of NPF4 and Policies CH1, CH2, CH5 and DP5 of the adopted East Lothian Local Development Plan 2018. In conclusion, the works are considered to be in accordance with the provisions of

the stated relevant Development Plan policies and there are no material considerations which outweigh the proposals accordance with the Development Plan.

**CONDITION:**

- 1 None.



**REPORT TO:** Planning Committee  
**MEETING DATE:** 4 June 2024  
**BY:** Executive Director – 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 Forrest for the following reason:* Due to objections I have received, I feel that this would warrant a discussion at the Planning Committee.

Application No. **24/00238/LBC**

Proposal Installation of vent, air conditioning unit, erection of signage and painting of frontage of building (Part retrospective)

Location **84 High Street  
Musselburgh  
East Lothian  
EH21 7BX**

Applicant Crown Nails & Spa

Per One Foot Square

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to the ground floor commercial premises at 84 High Street, Musselburgh which is set within a two storey, mid-terrace building. The building is listed as being of special architectural or historic interest (Category C). The building is within the Musselburgh Conservation Area.

Listed building consent is sought retrospectively for:

- i) The installation of an extract vent to the fanlight situated above the entrance door to the front (north) elevation of the building and for its associated ducting which is enclosed within a timber bulkhead that has been installed within the common close;

- ii) The installation of an air conditioning unit to the security bars to the window at ground floor level on the side (east) elevation of the building;
- iii) The installation of signage in the form of gold raised lettering with associated backing board to the fascia to the front (north) elevation of the building;
- v) The installation of a projecting box sign to the front (north) elevation of the building; and
- vi) The painting of the shopfront in black.

Through separate application 24/00237/P planning permission is sought retrospectively for the installation of a vent and air conditioning unit. That application stands to be determined on its own merits.

The acrylic signage to the fascia to the front (north) elevation of the building comprises of raised gold lettering which reads 'Crown Nails & Spa'. The signage also includes the logo of the business, social media logos, telephone number and address in gold which are all mounted on the gloss black backing board. There is an existing trough lighting shroud with a neon light fitment situated at the top of the backing board.

The proposed acrylic projecting box sign is sited 3 metres above the street level and project out from the front (north) elevation of the building by 1.2 metres. The projecting sign contains the lettering 'Crown Nails & Spa' in white which is seen against the black backdrop of the sign which features an aluminium metal casing trim. The projecting sign is internally illuminated.

## **DEVELOPMENT PLAN**

Material to the determination of the application is Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building given in the Historic Environment Policy for Scotland (HEPS): April 2019.

The Historic Environment Policy Statement echo the statutory requirements of Section 14 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that in considering whether to grant listed building consent for any works to a listed building the planning authority shall have special regard to the desirability of preserving the building or any features of special architectural or historic interest which it possesses.

Also material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

Also material to the determination of the application is supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' adopted by the Council on 30 October 2018. The SPG states that painting external walls will only be supported where it is an established local practice accepted by the Council. It states that where appropriate, painting must respect the architectural features of a building or structure and that colours must harmonise on both the building itself and with adjacent buildings. It also states that

alterations to listed buildings must not harm the special architectural or historic interest of the listed building and must preserve, or enhance, the historic character and appearance of a conservation area.

Policy 7 (Historic Assets and Places) of NPF4 is relevant to the determination of this application. Policies CH1 (Listed Buildings) and CH2 (Development Affecting Conservation Areas) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination of this application.

## **REPRESENTATION**

Two letters of objection have been received in relation to this application. In summary, the main grounds of objection are:

- i) The works were undertaken without notification, consultation or consent of neighbouring properties;
- ii) Damage has been caused to the building which is listed and situated within the Musselburgh Conservation Area as a result of the works;
- iii) The removal of a section of glazing to install the extract vent within the fanlight is detrimental to the Conservation Area and results in a loss of light to the communal close;
- iv) The works are unsightly and have spoiled the character of the entry to the property which is listed and situated within the Musselburgh Conservation Area;
- v) The works are detrimental to the amenity of neighbouring properties and the communal close;
- vi) The fumes from the business are now extracted below the windows of neighbouring residential properties and an objector notes they can smell fumes within their property; and
- vii) No other nail shops on the High Street appear to ventilate their premises through a residential property.

There is no requirement in legislation to consult neighbouring properties prior to the submission of an application for listed building consent.

An application for listed building consent can only consider the impact of any works on the special architectural or historic interest of the listed building and on the character and appearance of a conservation area. Therefore the matter of damage caused to the building as a result of the works is not material to the determination of this application for listed building consent. That would be a civil matter between affected parties and as such

Any complaints about fumes from the nail bar would be a matter for the Council's Protective Services to investigate. Those complaints would not be relevant to the determination of this application for listed building consent.

The matters raised regarding a loss of light to the communal close is assessed in the associated planning application and is not a material consideration in the determination of this application for listed building consent.

Furthermore, the comments noting other nail shops have not vented their fumes via a residential property are not material considerations in the determination of this listed

building consent.

## **PLANNING ASSESSMENT**

The mechanical extract vent has been installed within the fan light (window) above the door in the front (north) elevation of the building. It is readily visible from public views from High Street. However, the extract vent whilst visible is small in size and scale and is seen in relation to the commercial frontages of Musselburgh High Street. Therefore it is not an overly prominent feature on the building. It does not harm the special architectural or historic interest of the listed building.

The timber bulkhead has been installed within the communal close enclosing ducting from the commercial premises at 84 High Street and connects to the mechanical extract vent installed within the fanlight on the front (north) elevation of the building. Whilst the timber bulkhead is visible within the communal close it is not visible from out with it. Neither does it mask or draw focus from any part of the listed building that is of particular special architectural or historic interest. Therefore provided the timber bulkhead is painted a colour to match the wall colour of the communal close which can be made a condition of any grant of listed building consent the timber bulkhead it is not harmful to the special architectural or historic interest of the listed building.

By virtue of the form, size and positioning of the mechanical extract vent and as the associated ducting and timber bulk head are within the communal close they do not harm the character and appearance of the Musselburgh Conservation Area.

The air conditioning unit has been attached to a ground floor window on the rear (south) elevation of the building, below an external stair. In its positioning below the external stair of the building it does not mask or draw focus from any part of the listed building that is of particular special architectural or historic interest. Therefore, by virtue of its form size, materials and positioning the air conditioning unit does not harm the special architectural or historic interest of the listed building and does not harm the character and appearance of the building, the surrounding area or the Musselburgh Conservation Area.

The ground floor shopfrontage of the building has been painted black in colour. Musselburgh High Street features a variety of buildings which feature different coloured shopfronts some of which are listed buildings. The painting of the shopfront of this building black in colour therefore does not appear overly prominent or incongruous and does not harm the special architectural or historic interest of the listed building or harm the character and appearance of the Musselburgh Conservation Area.

The signage that has been formed on the frontage of the building comprises gold coloured raised lettering on the existing fascia board which reads 'Crown Nails & Spa' that is illuminated by an external strip light. Other signage on the fascia includes the logo of the business, social media logos, telephone number and address in gold which are all mounted on the gloss black backing board. In the context of the shop frontages of Musselburgh High Street and in close proximity to other premises with illuminated fascia signage the signage is not harmful to the special architectural or historic interest of the listed building.

As these works do not detract from the special architectural or historic interest of the listed building, they also preserve the character and appearance of the Musselburgh Conservation Area.

The projecting sign is positioned on the western end of the front (north) elevation of the building. It is of a box like form and appearance and is internally illuminated. It is of a



form, appearance and illumination that is not supported on a listed building. Due to its projecting box like form and internal illumination it is harmful to the special architectural or historic interest of the listed building. Therefore it should be made a condition of any grant of listed building consent that the internally illuminated projecting box sign should be refused listed building consent.

Therefore, with the exception of the internally illuminated projecting box sign, the works are consistent with Policies CH1 and CH2 of the adopted East Lothian Local Development Plan 2018 and the Historic Environment Policy for Scotland (HEPS): April 2019. The proposals are also consistent with Policy 7 of NPF 4 and the Council's Supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment' (October 2018). Therefore, the proposals are considered to be in accordance with the provision of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposals accordance with the Development Plan.

The internally illuminated projecting box sign is unacceptable and hereby refused. If it is not removed from the front (north) elevation of the building within two months of the date of the decision notice then enforcement action will be taken to secure the removal of the unauthorised internally illuminated projecting box sign, with the period for compliance with the enforcement notice being 2 months.

**CONDITION:**

- 1 Listed building consent is not hereby granted for the internally illuminated projecting box sign on the front (north) elevation of the building.

Reason:

The projecting box sign is harmful to the special architectural or historic interest of the listed building and harmful to the character and appearance of the Musselburgh Conservation Area. It is Contrary to Policy 7 of National Planning Framework 4, Policies CH1 and CH2 of the adopted East Lothian Local Development Plan 2018, The Cultural Heritage and the Built Environment Supplementary Planning Guidance and the Historic Environment Policy for Scotland (HEPS): April 2019