



**MINUTES OF THE MEETING OF THE
PETITIONS AND COMMUNITY EMPOWERMENT REVIEW COMMITTEE**

**WEDNESDAY 20 MARCH 2024
ONLINE DIGITAL MEETING FACILITY**

Committee Members Present:

Councillor C Cassini
Councillor N Hampshire
Councillor G McGuire
Councillor J McMillan (Provost/Convener)

Council Officials Present:

Mr M Grilli, Service Manager – Governance
Mr P Forsyth, Project Manager – Growth & Sustainability
Ms W McGuire, Head of Housing
Mr D Russell

Others Present

Mr M Hensman, HUB South East
Mr S Gholami, on behalf of J Davis, Principal Petitioner (Item 1)
Mr S Pe-Win, Principal Petitioner (Item 2)

Clerk:

Ms B Crichton, Committees Officer

Apologies:

Councillor L Jardine (sub. Councillor C Cassini)

Declarations of Interest:

None

1. PETITION PET0323 – CALLING ON EAST LOTHIAN COUNCIL TO REMOVE MUSSELBURGH ACTIVE TOUN ROUTES 3 & 5 AND THE PROPOSED NEW GOOSE GREEN BRIDGE FROM THE MUSSELBURGH FLOOD PROTECTION SCHEME

A report had been submitted by the Executive Director for Council Resources to advise of a petition submitted by Janice Davis, principal petitioner, calling on East Lothian Council to remove Musselburgh Active Toun Routes 3 & 5 and the proposed new Goose Green Bridge from the Musselburgh Flood Protection Scheme (the 'Flood Protection Scheme').

The Provost explained the procedure for the meeting and invited Siroos Gholami, who was present on behalf of the principal petitioner, to speak to the petition.

Mr Gholami explained that the petition had been raised as a matter of democracy and did not address the technical aspects of the Flood Protection Scheme. He highlighted Planning Advice Note (PAN) 82 Section 20, which said that the Council must create two separate teams, one as proposer/sponsor, and the other as the assessing officers in the planning department, and Mr Gholami said he therefore made his presentation to the Members in their role as representatives who safeguarded democratic rights, and not as the proposers of the Flood Protection Scheme.

Mr Gholami highlighted that the petition called on Provision 38 of the Town and County Planning (Scotland) Act 1997 (the 'Town and County Planning Act'), which empowered the public to make representations when a planning application was submitted, and said the petition asked that those rights be safeguarded by representatives. He said that the Flood Protection Scheme and Musselburgh Active Town Active Travel Paths (the 'MAT Scheme') were technically separate. He explained that petitioners were concerned that in respect of planning issues and the Flood Protection Scheme having deemed granted status, it could be claimed at some point that the MAT Scheme and the Flood Protection Scheme were intertwined and could not be separated, and therefore, certain parts of the paths (Routes 3, 5 and the Goose Green Bridge) would automatically be granted planning permission through the deemed consent. He said this would remove the public's legislative right to make objection. Mr Gholami asked the Council to reassure petitioners that this would not happen under any circumstances, and that all aspects of the MAT Scheme would remain available for the public to make representation.

Continuing, Mr Gholami illustrated his points, and said that the deemed consent could not be understood to mean that procedure did not have to be followed; only where procedure could not be followed because of the flood risk reduction requirements could permission be deemed granted. He proposed that having the MAT Scheme shown as part of the Flood Protection Scheme drawings breached this point. He felt it was problematic for the public to be asked to comment on a Flood Protection Scheme where part of it may not happen, as the paths did not have planning permission.

The Provost responded that he also recognised the various roles of Councillors, and reminded Mr Gholami that Councillors were acting as Members of the Petitions and Community Empowerment Review Committee.

Responding to a question from Councillor Hampshire, Mr Gholami confirmed that he was aware that the MAT Scheme had to go through the planning process, and sought reassurance that planning permission would not be deemed granted. Councillor Hampshire said that active travel paths would go through a formal separate planning application, and said the two schemes had been brought together to minimise construction disruption. He confirmed that the active travel paths had to go through a separate planning process where the public would have opportunity to view and make representations. He said the only part of the MAT Scheme that was deemed to have consent was through the bridge, as one bridge had to be removed and replaced. He advised that the public could object through the Flood Protection Scheme process. Mr Gholami responded that petitioners understood that, should the active travel paths receive planning permission, it made sense for construction to take place at the same time as the Flood Protection Scheme, but he highlighted that this was subject to the active travel paths receiving planning approval. He said the petitioners sought guarantee that the opportunity would remain for the public to make full representations

on all parts of the active travel paths. He asserted that the opportunity to argue that the Goose Green Bridge was actually a different and new bridge would be removed from the public if planning permission for the bridge was deemed granted; he felt this constituted a denial of the public's rights.

Councillor Hampshire said the decision to remove one bridge and replace it with the Goose Green Bridge had been taken through the Flood Protection Scheme. He said it was necessary to remove one bridge and replace in a different location, and it had been deemed as part of the legal process to be part of the Flood Protection Scheme. He advised that the public would still have opportunity to object to that part of the Flood Protection Scheme through the process currently underway. In response, Mr Gholami highlighted that there was a marked difference to objections through the Flood Risk Management (Scotland) Act 2009 and the Town and County Planning Act. He felt that the Town and County Planning Act had advantages for the public in that a planning assessing team protected the public interest, which may conflict with the interests of the proposer-sponsors. He also highlighted that when an application went through normal planning procedures, which the petitioners proposed that Goose Green Bridge should do, then the public and planning officers would question the need for the development in an entirely different relationship than if deemed consent was given; he argued that the need for a bridge at the mouth of the river would have to be established, and simply replacing a bridge further up the river would not constitute sufficient reason for a new and much larger bridge. Mr Gholami said that approval of Goose Green Bridge through the Flood Protection Scheme meant that the public had been denied the right to object to replacement with a much larger bridge. He advised that petitioners would submit an objection if Goose Green Bridge were not removed from the Flood Protection Scheme.

Responding to a question from the Provost, Carlo Grilli, Service Manager – Governance, said that the public could still raise objection regarding the Goose Green Bridge, including where it was positioned. From a planning perspective, he agreed that there was to be a separation of process to allow the Planning Committee to make a full and fair determination. He raised a complexity in this case, where there was deemed consent in the case of the Flood Protection Scheme and the active travel paths, the majority of which would not be put in place through the Flood Protection Scheme. He explained that that the parts highlighted by Mr Gholami would be put in place as part of the Flood Protection Scheme because they were deemed to be necessary requirements to provide logics for the Flood Protection Scheme works.

Peter Forsyth, Project Manager – Growth and Sustainability, spoke to his submitted report. He advised that Cabinet had agreed on 21 January to seek multiple benefits as part of the Flood Protection Scheme work, potentially by combining externally funded opportunities from other infrastructure projects, such as the MAT Scheme. The purpose would be to match funds through external grant funding opportunities to consult, consent, design, and construct through one project, thus avoiding abortive work and wasting public money. He advised that on 23 August 2022, a report to Council identified the ability of the Flood Protection Scheme to provide multiple benefits. He advised that the Flood Protection Scheme absorbed sections of the MAT Scheme, which shared the same footprint where they would provide the same benefit. He advised that the Flood Protection Scheme would require replacement of the existing footbridge to achieve flood risk reduction outcomes, so therefore the Goose Green Bridge would be replaced under the Flood Protection Scheme.

Mr Forsyth reported that the decision of Council on 23 January had been to move to consultation on the Flood Protection Scheme, which included the blended elements. He stated that there was no longer time to separate the blended elements of the MAT

Scheme from the Flood Protection Scheme. He advised that formal notification of the Flood Protection Scheme would allow individuals to object, which included the blended elements, but he noted that they would be objecting to the Flood Protection Scheme and not to the MAT Scheme; the MAT Scheme would be consulted on in due course, and would not include the Flood Protection Scheme elements. He confirmed that the MAT Scheme was not part of the Flood Protection Scheme; opportunity to object to the MAT Scheme would be available in due course, but would not include the blended elements which were part of the Flood Protection Scheme. He therefore recommended that the Scheme be permitted to progress in accordance with the Flood Risk Management (Scotland) Act 2007.

Responding to a question from Councillor Hampshire, Mr Forsyth confirmed that the MAT Scheme would go through a formal planning application, apart from the elements which would have deemed consent through the Flood Protection Scheme. Mr Forsyth advised of consultation with the planning authority on MAT Scheme delivery; the planning authority required the Council to seek planning permission for the MAT Scheme, so the public would have opportunity to make representations in due course.

In summing up, Mr Gholami said that petitioners and the Members were clearly not going to agree on the Goose Green Bridge. He said that this would therefore have to be dealt with as an objection through the Town and County Planning Act as well as an objection through the Flood Protection Scheme. He appreciated responses that the MAT Scheme would come forward through a planning application, but said petitioners wanted Councillors to ensure that, should a planning application for the active travel paths be refused, that these paths would be taken out of the Flood Protection Scheme and dealt with otherwise, and not brought back in through the deemed consent of the Flood Protection Scheme. He said the petition asked that legislative rights under the Town and County Planning Act be upheld.

Councillor Hampshire said that the petition looked both at the Flood Protection Scheme, which included the Goose Green Bridge, and the second part, the MAT Scheme. He said that the Flood Protection Scheme was now available for consideration and representation, and this included the new Goose Green Bridge. The MAT Scheme would be brought forward through a formal planning application and the public would have opportunity make representation in due course. He summarised the points raised by Mr Gholami as being that the public were unable to object to the Goose Green Bridge under a formal planning application, but Councillor Hampshire said that if the MAT Scheme did not go ahead, then the bridge at the mouth of the Esk would not go ahead, and at that point, there would have to be consideration of an alternative bridge. Councillor Hampshire felt the process provided opportunity for the community to consider and make representation to both the Flood Protection Scheme and the MAT Scheme; he therefore thought the petition request should be rejected and formal processes for the Flood Protection Scheme and MAT Scheme should proceed as planned.

Councillor McGuire supported Councillor Hampshire's comments. He was content that Musselburgh residents would still have opportunity to object to the proposals. He noted that if the MAT Scheme was not approved, that the Goose Green Bridge would have to be revisited. He was content that the current process be allowed to proceed, thus allowing representations to be made, and hoped that Musselburgh residents would be content with this.

Councillor Cassini was content the process was strong, and said that notices would guide the public on how to object should they choose; she thought this process was very fair. She would vote to reject the petition because due process was in place.

The Provost thanked Mrs Davis and Mr Gholami for bringing the petition forward, and said the petitioners had made the importance of the democratic process clear. He said that the petitioners and Councillor Hampshire had marked the interdependencies of the Flood Protection Scheme, and Councillor Hampshire had outlined that the link had been made due to planning, management, and operational issues. He said the Planning Committee would base its decision on evidence and conditions may also be added. He felt that Members had listened to the petition and were reacting based on their role as Petitions and Community Empowerment Review Committee Members; he summarised their opinion that there would be many opportunities for individuals and groups to form consultation responses and make objections through the process. Therefore, Members would not support the petition.

Mr Gholami acknowledged that the Councillors had explained their position. He said he did not agree with the current proposals, and felt having active travel paths all over the drawings did not make good presentations for the public to assess the Flood Protection Scheme.

Councillor Hampshire formally proposed that the petition be rejected on the basis that there was a formal process within the planning process to deal with the active travel paths and a formal process to deal with the Flood Protection Scheme, and that people had the opportunity in both cases to express their views. Councillor Cassini formally seconded this proposal.

The Provost then moved to a roll call vote and Members unanimously voted to reject the petition.

Decision

The Petitions and Community Empowerment Review Committee agreed to reject the petition and therefore no further action would be taken.

2. PETITION PET0124 – CALLING ON EAST LOTHIAN COUNCIL TO CEASE THEIR CURRENT PLANS FOR HERDMANFLAT

A report had been submitted by the Executive Director for Council Resources to advise of a petition submitted by Stuart Pe-Win, principal petitioner, calling on East Lothian Council to cease their current plans for Herdmanflat.

Mr Pe-Win spoke to the petition on behalf of the Haddington Central Tenants and Residents' Association. He felt that submitting the petition had been a great way for the community to express their feelings and concerns on the matter of the Herdmanflat development. He advised that he would not address the technical side of the development as this was still at the planning application stage and there may be potential challenges to this, and because the Herdmanflat Sub-Committee were in dialogue with East Lothian Council and other stakeholders with regards to a community ownership of part/all of the site.

Mr Pe-Win advised that the petition had begun following several public meetings where it had been felt that decisions regarding the Herdmanflat site were being made too quickly. The group requested an extension prior to the project moving to the planning phase, but this had been declined. He said the group felt many people were unaware of the decisions, despite the council having advertised through the newspaper and on their website. They found that, as volunteers, being able to discuss the nuances of the Herdmanflat site presented challenges, and more time for discussion before moving to

the planning phase would have been appreciated. The group felt there was an issue with the Community Council only being able to discuss the site once it had reached the planning phase. He acknowledged that there had been a number of consultation events, but said consultations presented the entire site being developed for housing, whereas his group felt there were other options, including a community ownership option. It was felt that a great number of people and community groups could have had a say if this dialogue had been held earlier. He advised that HUB South East Ltd. and the Council had objected to the wording of the previous petition, and the second petition had been less successful in collecting signatures. He said the Council had been helpful in answering questions, but it had been difficult to get into a dialogue about such a project. He felt that people could be frightened off by the technical language. He summarised that the overall feeling was that other options could have been explored for Herdmanflat, and his group would have liked for the consultation phase to have discussed other options.

Responding to questions from Councillor Hampshire, Mr Pe-Win said he did not oppose the building of affordable housing in Haddington, but the group felt that Herdmanflat was a unique site and there were other areas which would be better suited to such development. Mr Pe-Win accepted the point that the process had overtaken the petition, but said that the petition had originally sought to delay the planning phase.

Councillor McGuire asked which part of the unique area of Herdmanflat the group considered would be lost under the proposals. Mr Pe-Win reported that the group felt that the proposed buildings were not in-keeping with the surrounding areas and historic character of the town. He said that there was a push to re-wild sites, and this site had already done so. The group felt that even a small amount of development would change the character of the site. He highlighted spaces at Gifford and the Meadows in Edinburgh, which had become the lungs of the towns, and felt that Herdmanflat also represented such a unique site.

Responding to questions from the Provost regarding the Tenants and Residents' Association's ability to make comment on the proposals, Mr Pe-Win highlighted the communication difficulties associated with running a group solely of volunteers, whereas he noted that the Community Council had statutory powers. He said when Herdmanflat was discussed with HUB South East, decisions had already been made regarding the disposition of the site. Mr Pe-Win said that school summer holidays had caused a dip in attendance at meetings and business could not proceed effectively. He reported having no concern with the process itself, and felt the group had been able to advertise how people could object to a planning application, but reported that people wanted to go back to discussing other options.

The Provost highlighted Mr Pe-Win's contrasting language about struggling to be heard and opportunities to be heard. He understood that in the last Local Development Plan (LDP), the land had always been designated for housing, but felt there may be a point about ensuring tenants and residents' associations and community councils engaged with the Council through the development of LDPs as part of the Council's support for communities. Mr Pe-Win responded that many people were very emotionally attached to the site, and felt that opportunity for constructive dialogue had been missed because the site had already been earmarked for housing. He noted that although Herdmanflat was a brown field site, it had developed over time into a grassy wooded area which had been the site of various events.

Wendy McGuire, Head of Housing, introduced Martin Hensman, project director from HUB South East, to present the report on behalf of the Council. She advised that HUB South East had been appointed at the outset to help deliver a complex project on the

site. Mr Hensman had played a role in the consultation events and bringing on board specialist consultants to help respond to concerns from the public.

Mr Hensman provided information on the background of the site. He advised that the Council became aware that the NHS had decided to sell the site for housing on the open market in 2016/17, as indicated within the LDP as a suitable site for housing once surplus to NHS requirements. The site was sold to the Council at a discount with conditions to ensure the site would be developed to support ongoing Health and Social Care Partnership (HSCP) service delivery aspirations, namely to provide affordable housing options for older people. He advised that 100% of the development would be to provide affordable housing for older people to allow ageing in place, and provision for people living with dementia and other disabilities to rent their own homes. He advised that part of the due diligence had been engagement with: the HSCP; the planning department to ensure alignment with national and local planning policy; local people; and Historic Environment Scotland, who said that development should be focused towards the bottom of the site in order to respect the setting of the remaining listed buildings. He believed that there had been substantial consultation, which had been advertised widely, with comments and objections considered and reflected in the planning permission in principle application submitted in November 2023. He confirmed that the Council's proposals had been assessed against over 20 national and local policies, and designed to meet specific aspirations and policy objectives including housing, health and social care, climate change, and dementia. He referred to the high level of advertisement of consultation, which was reflected in the submitted easy-read version of the consultation responses. Through the planning permission in principle, a letter of support had been received from the Community Council, and there had been only 38 objections to the major application through the planning process, which was deemed to be low. He also highlighted that 50-60% of the open space and woodland had been maintained through the masterplan proposals, and it was believed that the benefits of the proposals far outweighed any alternatives or retaining the site substantially in its existing form. He urged that Members reject the submitted petition.

Responding to a question from Councillor Hampshire, Ms McGuire confirmed that the proposals were for affordable housing, but said that the proposals still had to be worked up in terms of project delivery and financial viability; it was likely that housing association partners may also help to develop the units. She advised that the concept of 'local connection' stood and was part of all allocations policies.

In summing up, Mr Pe-Win said he felt that community groups could have been brought in earlier to discuss the plans. He said that the residents and volunteers would be directly affected by the proposals and it was important that community groups were involved in the decision making process. Mr Pe-Win was disappointed that there had been a low number of submitted objections, and felt the flow of information was one-directional because the Council had access to this information whereas community groups did not; this had been one of the reasons for the petition. He reiterated that affordable housing could be developed on other sites in Haddington, and said the petitioners wanted to protect a unique site at Herdmanflat.

Councillor Hampshire acknowledged the account from Mr Hensman on how the proposals had come together. He accepted that there were concerns that an area which was currently a large green open space would change to affordable housing, but felt the planning process was the best way to make the public aware of what was happening in the area and to allow them to express their opinion.

Councillor McGuire commended Mr Pe-Win and his group for their dedication to improving Haddington, and thought it was vital that the community felt they could do this. He had been previously unaware of the conditions of the NHS' sale of the land at

Herdmanflat, and said that the conditions from the sale of this land meant that the Council must build affordable housing for older people. He felt that the plans were considerate and balanced, and tried to address the need for specialist housing while maintaining green space for the community. He agreed that the proposals should move through the planning process so that people could make representations in that forum.

The Provost commented that the processes discussed had been statutory process as laid down in planning guidelines, and stakeholders had been identified. He said that there had been real engagement and desire for the development of the site, and said that Councillors were very aware of the need for small single-living modules, especially in the town centre, and felt that objection without proposing alternatives was of limited use. He felt there had been sound community engagement in this case. In response to Mr Pe-Win's remarks about encouraging people to use the petitions process, he said there were different ways of making representations, and in this case it was through the planning process and through the Community Council. He would not support the petition as he believed that people had the opportunity to engage with, object to, and support the proposals coming forward.

Councillor Cassini believed that the consultation feedback documents showed that concerns had been taken very seriously. She hoped the petitioners would be able to accept that there had been considerate plans brought forward to help fulfil a need for housing for elderly people.

The Provost proposed that the ask of the petition be rejected, and Councillor McGuire seconded this proposal. Members then unanimously voted to reject the petition in a roll call vote.

Decision

The Petitions and Community Empowerment Review Committee agreed to reject the petition and therefore no further action would be taken.

Signed

Councillor J McMillan
Convener of the Petitions and Community Empowerment Review Committee