



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

**THURSDAY 25 APRIL 2024  
VIA THE COUNCIL HYBRID SYSTEM**

**2**

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**Committee Members Present:**

Councillor D Collins  
Councillor N Hampshire (Convener)  
Councillor S McIntosh

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Ms J Squires, Planning Adviser to the LRB

**Clerk:**

Ms M Scott, Committees Officer  
Ms B Crichton, Committees Officer (meeting administrator)

**Apologies:**

N/A

**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.

On this occasion it was agreed that Councillor Hampshire would chair the Local Review Body (LRB).

The Planning Adviser made some introductory remarks regarding the status of the development plan which covered all of the applications. She advised Members that Section 25 of the Town and Country Planning (Scotland) Act 1997 required planning applications be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan for all applications was National Planning Framework 4 (NPF4) and the East Lothian Local Development Plan (LDP) 2018.

### **1. PLANNING APPLICATION NO. 23/01051/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 8 FORTH STREET LANE, NORTH BERWICK EH39 4JB – REVIEW AGAINST DECISION (REFUSAL)**

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 outlined the reason for refusal of planning permission.

She confirmed that the property was located within the North Berwick Conservation Area and referred to relevant legislation and policy: section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, NPF4 Policy 7 Historic Assets and Places and Policy CH2 of the LDP 2018. She also noted that the Conservation Area Character Statement for North Berwick Conservation Area was found in the Cultural Heritage Supplementary Planning Guidance.

The Planning Adviser noted that the case officer had not offered an assessment of whether the proposals preserved or enhanced the Conservation Area. However, as there were no physical alterations involved in the proposal there was no detriment in terms of the built environment. She commented that historic character could include issues such as levels of activity and ambience as well as built elements. However, the recognition in the North Berwick Conservation Area character statement of the areas expansion as a seaside resort suggested that some level of holiday accommodation was likely to be expected and that seasonal fluctuations in activity would accord with that character. The Planning Adviser noted that there were 1431 dwellings within the conservation area boundary, 137 of which had licensing applications granted. Given the recognition in the Conservation Area Character Statement, it was the Planning Adviser's view that the addition of one further holiday unit would not cause harm to the character of the Conservation Area.

The case officer had also noted that the property was within North Berwick Town Centre as defined by Policy TC2 of the LDP but had not offered any assessment of the proposal against that policy. The purpose of LDP Policy TC2 was to ensure that changes of use would not compromise the town centre's vibrancy, vitality and viability. NPF4 Policy 27 also supported proposals that enhanced and improved the vitality and viability of city, town and local centres, including proposals that increased the mix of uses. The Planning Adviser noted that use as a

short term let could contribute to viability through spending, as noted by the Economic Development Manager, however occupancy was also likely to be seasonal which would reduce vitality and vibrancy during times the property was not let.

The Planning Adviser referred to the North Berwick Town Centre Strategy Supplementary Guidance. The analysis included in the Strategy considered second homes and holiday lets in the town centre to be a weakness, though limited choice of hotels and tourist accommodation was also identified as a weakness. The Town Centre Walk and Talk had scored different elements: housing and community had scored low as the range of housing was considered very restricted, being mostly higher priced properties. One of the main reasons identified by respondents was the presence of holiday/second homes, which removed housing stock. However, no actions on short term lets were identified in the Strategy.

The Planning Officer then considered the planning case officer's assessment of Policy 30 Part E of NPF4. She reminded Members that to meet the terms of NPF4 Policy 30E, there should be no unacceptable effects on residential amenity, *and* the local economic benefits should outweigh the loss of residential accommodation. The case officer had noted the views of the Senior Environmental Health officer that short-term holiday let use could result in guests misusing and abusing the property in a manner that was antisocial and could result in significant impact upon the amenity of neighbours. The case officer had considered that the nature of comings and goings in the communal areas, disturbance associated with luggage, additional activity associated with cleaning and removal of waste, as well as impact on security were detrimental to amenity of the neighbouring first floor flat, contrary to NPF4 Policy 30 of NPF4 as well as Policy RCA1. However, it was the Planning Adviser's view that Policy RCA1 did not apply to this site.

The case officer then considered the second test of Policy 30, noting the views of the Council's Housing Strategy & Development Service which considered the loss of this flat would be a significant loss to housing supply. He had noted the views of the Council's Economic Development Service Manager that there were demonstrable local economic benefits delivered by all types of short-term holiday lets in East Lothian. The Planning Adviser noted that the case officer had then weighed the economic gains against amenity, which was in her view an incorrect application of Policy 30E as impact on amenity was a stand-alone test. Economic benefit should only be weighed against loss of housing supply.

No representations from the public were made to this planning application. The Council's Road Services Manager had no objection having considered the lack of designated parking.

The Planning Adviser then provided a summary of the applicant's submission. The applicant had noted that the need for planning permission for use as a short term let depended on whether there had been a material change of use, which was a matter of fact and degree. The applicant contended that the case officer was incorrect when he stated that as there was no licence or planning permission in place for 8A Forth Street Lane, the neighbouring flat to the applicant's, that flat 8A was in residential use. The applicant considered the use could be lawful if no material change of use had taken place which he considered had not been established.

The applicant had considered the views of the Council's EHO that there may be amenity issues to be a generic comment which did not address the risk from this particular application. There had been no objection from the Council's anti-social behaviour team or the police, despite the short term let being operational since 2021. The applicant noted there was no objection from the property owner of 8A Forth Street. The applicant felt that the case officer had not properly considered the existing amenity of the individual property which was between the beach and the centre of the busy tourist High Street, above a public house and close to other commercial businesses. The applicant noted that the impact of regulars and visitors to

the pub and smoking area caused more disturbance, nuisance and noise to both properties regardless of use, than short term let use.

Referring to the reason for refusal of planning permission, the applicant has suggested that the LRB also consider the following:

- Actual local benefits of the proposal
- The applicant being a small local business.
- Lack of amenity concerns raised by the owner of the other property.
- Lack of amenity objection from the EHO, roads, or police
- Location of the property in the centre of North Berwick above a public house which closed between 11pm and 1 a.m.
- In terms of security, the entrances to external steps and common hallway were not locked and security had not been raised as an issue.

The applicant concluded that the amenity impacts were not unacceptable and outweighed by economic and tourism benefits. The applicant had also cited potential barriers to the property being suitable to first time buyers and those with accessibility requirements. The applicant therefore considered the proposal acceptable under both tests of Policy 30 of NPF4, as well as RCA1 of the LDP.

The Planning Adviser concluded that, in her view, the key considerations for Members were, firstly, whether the proposal preserved or enhanced North Berwick Conservation area. Secondly, whether the proposal met the terms of NPF4 Policy 30E and the section of LDP Policy TC2 which protected housing from environmental impact. She reiterated that Policy 30E contained two tests. The first was that there should be no unacceptable impact on local amenity or the character of a neighbourhood or area. The second was whether the loss of residential accommodation was outweighed by demonstrable local economic benefits. Economic benefits should not be weighed against loss of amenity.

She provided further information on the status of short term let licence application for the flat at 8 Forth Street Lane and confirmed that as no licence application had been made for use of 8A Forth Street Lane as short term let, its potential use as such had been passed to the Council's planning enforcement officer for investigation. In the meantime, it was reasonable to assume that the lawful use of 8A Forth Street Lane was residential.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to refuse the application, to grant the application or to grant the application with conditions, and she suggested some conditions which may be appropriate for the Members to consider.

In response to a question from the Chair, the Planning Adviser advised that she couldn't comment on whether the outcome of the planning application would have been different if the neighbouring property had been a licensed short term let rather than a residential dwelling.

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

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

Councillor McIntosh said that during the site visit the close proximity of the doors to the two flats and the narrow passageway had been very noticeable. When considering this application, she said it was important to remember that properties may change ownership and, as such,

she agreed with the case officer's assessment that the change of use would represent an unacceptable loss of amenity. She would be supporting the case officer's decision.

Councillor Collins agreed that it was a very small communal lobby. She noted that it was above a pub and that there would be noise, however, as there was no documentary evidence confirming the neighbouring property's use as a short term let, it must be treated as a residential unit. Therefore, she agreed that there would be loss of amenity and she would be supporting the case officer's decision.

The Chair said that the site visit had been helpful to see the proximity of the two doorways and narrowness of the hallway. He felt that comings and goings would be more noticeable and that residents could be alarmed at meeting strangers in such a small space. He would therefore be supporting the case officer's decision in relation to Policy 30 of NPF4 and Policy RCA1 of the LDP.

The LRB members confirmed their decision via roll call vote. They agreed, unanimously, to confirm the original decision of the planning case officer to refuse planning permission.

### **Decision**

The ELLRB agreed, unanimously, to confirm the original decision of the planning case officer to refuse planning permission.

## **2. PLANNING APPLICATION NO. 21/01599/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS, LAND ADJACENT TO CASTLEPARK GOLF CLUB, YESTER, GIFFORD – REVIEW AGAINST DECISION (REFUSAL)**

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 outlined the reasons for refusal of planning permission.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. She noted that the case officer had considered the proposal to be acceptable in terms of design, and in terms of Yester Designed Landscape, and so would not conflict with Policies 7 and 14 of NPF4, nor LDP Policies DP1, DP2 or CH6 which concern design and Designed Landscapes. The case officer had noted that the Council's Environmental Health Officer did not object to the application but suggested a condition to address potential contamination of the site, should permission be granted. The Council's Civil Engineer (Flooding) advised that drainage proposals were acceptable subject to testing and suggested a condition should permission be granted. The Council's Road Services did not object. The case officer had considered that subject to imposition of the condition on actions to reduce carbon emissions the proposal would conform to NPF4 Policies 1 and 2 of NPF4 on climate mitigation.

The case officer had then considered the principle of a new house in this countryside location and the requirements of Policy 17 of NPF4, Policy DC1 and Policy DC4 of the LDP 2018. The case officer had considered that the main issue was whether or not there was a direct operational requirement for a house that derived from the business. The case officer had noted the information provided by the applicant in their Design and Access Statement in support of this need. The Council's Agricultural and Rural Development Consultant advised that the golf club business was not sufficiently financially robust to support the proposed development and therefore it was not demonstrated that the business was viable and required a home for a

manager or staff on site and that similar businesses operated without onsite accommodation. The case officer had considered that the applicant had not provided evidence to show that other security measures could not be used. They found that as the business had not been demonstrated to be viable and without operational justification of need for it, the principle of the house was contrary to Policy 17 of NPF4 and Policy DC1 and DC4 of the LDP and consequently also Policy 16 of NPF4.

The Planning Adviser noted that two objections had been received to the application.

She then provided a summary of the applicant's submission. It stated that the accommodation would house the owners, their children and guests or staff members to support the golf club. The development of 26 holiday lodges on the adjacent site amplified the requirement for an onsite presence. Therefore, the proposal accorded with Policy 17 of NPF4 and LDP Policy DC4. The house would help to attract and secure staff and provide around the clock security. Furthermore, the growth of Castle Park Golf Club aligned with the Council's Economic development and tourism strategies.

The applicant was of the view that the proposal conformed to Policy 17 of NPF4 as it would re-use an existing brownfield site which had no realistic prospect of returning to a natural state without intervention; and it would support the sustainable management of a viable rural business. The applicant submitted a letter from their accountants in support of this statement.

The Planning Adviser summarised the further representation made in relation to the appeal and the response to the comments by the applicant.

The Planning Adviser then set out her views on the case. She agreed with the case officer that the policies on design were met. The case officer had not mentioned that the proposal lay within the Lammer Law, Hopes to Yester Special Landscape Area. Policy DC9 of the LDP required that development within such areas accorded with their Statement of Importance. She considered that the proposal did conform to the Statement of Importance and did not harm the SLA. She also agreed with the applicant and case officer that there was no harm to the Yester Designed Landscape.

Furthermore, she agreed with the applicant that the proposal conformed to Policy 17 and Policy 16 of NPF4. In terms of LDP Policy DC4, she agreed with the case officer that the operational justification for a house in terms of security had not been demonstrated. She also agreed with the case officer in accepting the advice of the Council's agricultural and rural development consultant on the viability of the business. The applicant had argued that in addition to the business being viable now, the lodges would enhance the justification for permanent onsite presence as well as enhancing viability. However, it was not certain that the lodges would be built, and if they were, that they would be run as part of the same business. The proposal therefore did not, in her view, conform to LDP Policy DC4.

The Planning Adviser concluded her presentation by noting that the case officer had suggested conditions, should Members be minded to allow the appeal. She added that Members may also wish to consider a condition to secure biodiversity enhancement. This was a requirement of NPF4 Policy 3. The submission of a scheme of biodiversity enhancement could be made subject of a condition which would be necessary to secure compliance with NPF Policy 3.

In response to questions from Members, the Planning Adviser provided further advice on the protections available for nesting birds, how long the business had been running, whether staff had previously lived onsite and the economic assessment carried out by an independent adviser.

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 this was a very busy golf course, and that the applicant was clearly very enthusiastic about his plans for the site and business. She commented that in her view no properties situated around the site had a line of site to this property and this raised issues around safety and security in a rural setting. She also felt that the proposal would support this rural business and enhance local employment opportunities. For these reasons she would be supporting the appeal.

Councillor McIntosh agreed that the site visit had been useful and that the issue was whether it was necessary to have someone on site. She felt that it was appropriate and, that the economic assessment had been unusually strict and had not considered the potential benefits to people's wellbeing provided by the golf club. She also felt that the proposed design of the building would sit well within the landscape, and she was minded to support the appeal.

The Chair agreed with his colleagues that this was a good rural business and he added that it was important to support local employment opportunities. He also agreed that the proposed design would fit into landscape well and, for these reasons, he would be supporting the appeal.

The LRB members confirmed their decision via roll call vote. They agreed, unanimously, to uphold the appeal and to grant planning permission subject to the conditions suggested by the planning case officer and the addition of a further condition in relation to biodiversity enhancement in line with NPF4.

## **Decision**

The ELLRB agreed, unanimously to uphold the appeal and to grant planning permission subject to conditions.

### **3. PLANNING APPLICATION NO. 23/01289/P: CHANGE OF USE OF FLAT TO SHORT TERM HOLIDAY LET (RETROSPECTIVE), 12D BUSH TERRACE, MUSSELBURGH EH21 6DF – REVIEW AGAINST DECISION (REFUSAL)**

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 outlined the reason for refusal of planning permission.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had considered NPF4 policy 30 (Tourism) and policy RCA1 (Residential Character and Amenity) and T2 (General Transport Impact) to be relevant. They had considered the impact of the change of use on amenity of neighbouring properties and the views of the Council's Environmental Health Officer that use of property for short term let could lead to guests misusing the property in an anti-social way. However, the Council's Anti-Social Behaviour Team and the police had no records of any anti-social behaviour at the property. The Council's Road Services did not object to the change of use. The case officer had considered, however, that there would be harm to the amenity of occupants of the other flats in the building due to changed comings and goings, transport of luggage, access of communal areas for cleaning. Allowing frequently changing guests into communal areas

would change the actual and perceived security of residents. The case officer had therefore considered the proposal contrary to NPF4 Policy 30E part 1 and LDP Policy RCA1.

The case officer had noted that the Council's Housing Strategy and Development Service had no objection as, although this was a 2 bedroomed flat in Musselburgh, the property was a long term established let (since 2017). The Council's Economic Development Service Manager had supported the application advising that there were demonstrable local economic benefits from all types of short-term holiday lets in East Lothian. While noting the position of the two Council services, the case officer had not stated whether they considered the loss of residential accommodation to be outweighed by demonstrable local economic benefits.

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

The Planning Adviser summarised the applicant's submission which noted that there had been no objections from residents in the time the flat had been let; there were no objections from Police Scotland, the Council's Anti-Social Behaviour Team, Roads Services or the Housing Strategy and Development Service Manager. The Council's Economic Development Service Manager considered that short term lets were an asset. The use provided employment and holiday accommodation. The owner returned to the flat often, and intended to return permanently in four years so there would be no residential letting of the flat. The extended minimum let period of the flat (7 nights or more) would reduce footfall in the communal stairway.

The Planning Adviser provided her views on the case. She stated that the key issue was whether the proposal met the terms of NPF4 Policy 30E which specifically covered short term lets, and LDP Policy RCA1 which aimed to protect residential character and amenity. She reminded Members that Policy 30E contained two criteria which must both be met for proposals for short term let to be supported. The first was that there should be no unacceptable impact on local amenity or the character of a neighbourhood or area, which was similar to the provisions of LDP Policy RCA1. The second was whether the loss of residential accommodation was outweighed by demonstrable local economic benefits. Economic benefits should not be weighed against loss of amenity but against loss of residential accommodation.

The Planning Adviser concluded by reminding Members that it was open to them to refuse the application, either for the reasons given by the case officer or for other planning reasons, to grant the application or to grant the application with conditions.

There were no questions for the Planning Adviser.

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 said that the site visit had been useful. There were a number of flats which were accessed via the stairwell, and, in his view, it was inevitable that there would be conflict between residents and those using the short term let and that this could be intimidating for residents. He did not consider this to be a suitable property for a short term let and he would not be supporting the appeal.

Councillor Collins was sympathetic to the applicant who had been running their business for 7 years with no problems or objections noted. In her view, there would not be as much disturbance to other residents in the stairwell as might be expected, and she queried the current level of letting per year and its likely impact on residential amenity.



Councillor McIntosh also had some empathy for the applicant who had been running their business for a number of years. However, she felt it important to consider the issue of amenity as a whole. While conflict might be quite rare, when speaking to people in general who lived next to short term lets, her sense was that they were unsettled by the comings and goings and by not knowing their neighbours. She therefore agreed that there would be an unacceptable loss of amenity and she was minded to support case officer's original decision.

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

## **Decision**

The ELLRB agreed, by majority, to confirm the decision of the planning case officer to refuse planning permission.

### **4. PLANNING APPLICATION NO. 23/00503/P: ALTERATIONS TO ROOF TO PROVIDE TERRACED AREA, FORMATION OF DOOR FROM WINDOW OPENING, ERECTION OF CANOPY, PLANTER, TIMBER STORE, SHELF AND INSTALLATION OF LIGHTING (RETROSPECTIVE), 83A HIGH STREET, HADDINGTON EH41 3ET – REVIEW OF CONDITIONS**

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 a condition of planning permission. The majority of the works outlined in the original application were granted permission and this could not now be revisited through this review. The review covered only the matter of the condition preventing construction of the pergola. The property was situated in Haddington Town Centre and was Category B listed. The site was also within Haddington Conservation Area.

The Planning Adviser summarised the case officer's assessment of the application against relevant planning policy. The case officer had noted Section 59 of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 required that in considering whether to grant planning permission for development which affected 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 this Act was also of relevance. The case officer had noted there were four letters of objection to the proposal as a whole. Specifically, that the pergola should be removed from the building; that the application had not requested permission to install the pergola on the owner's property; that the pergola was not consistent with the aesthetic, character and amenity of the surrounding listed buildings; the works resulted in loss of privacy and security; and that the material and form of the pergola was inappropriate. The case officer had pointed out that issues relating to the right to occupy the roof were not planning matters.

The case officer had considered the rear elevation of the building not to be of the same special architectural or historic interest as the front. They noted that the timber pergola covered the area of the terrace that had stone paving on it. The pergola was not visible from any public view and was not visible in relation to the front elevation of the building. The case officer had therefore considered it did not harm the special architectural or historic interest of the listed building nor the character and appearance of Haddington Conservation Area. The case officer had considered that although views of the terrace were obtained from neighbouring flats, the terrace and fixtures did not have an unacceptable impact on their visual amenity. However,

the case officer had considered that the timber frame pergola, being a covered, permanent structure allowed for the intensification of the use of the external terrace, including storage of electrical equipment including a washing machine. This was harmful to the residential amenity of the occupants of other flats within 83 High Street, contrary to Policy 14 of NPF4 and LDP Policy DP5 on Extensions and Alterations to Existing Building. The use of electrical appliances could not in their view be controlled by condition as it was not enforceable. Therefore, a condition was placed on the planning consent to the effect that the pergola was not granted planning consent.

The case officer had considered that the proposal would not meet the terms of LDP Policy DP5, which included in part 1 that development must not result in a loss of amenity with neighbouring uses or be harmful to existing residential amenity through loss of privacy from overlooking, or from loss of sunlight or daylight. The case officer had also considered the pergola contrary to Policy 14 of NPF4 which provided that development proposals that were detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places would not be supported.

The Planning Adviser then summarised the applicant's submission. This provided information on the history of the roof terrace and stated that there were hazards from falling slates, stones and gutters to those using the terrace. The pergola was installed to safeguard the applicants from falling hazards. Dismantling the pergola would introduce risk to the health and safety of neighbouring residents. The pergola protected the roof by channelling rain and snow into a gutter. The applicant stated that noise could be mitigated by the structure of the pergola and its felted roof, and its removal would not result in less noise. The applicant also contended that the noise level of the washing machine fell within permissible limits in Scotland and that they had submitted audit test information, however its format could not be accepted.

The applicant considered that the pergola complied with Policy DP5 of the LDP as it is not dominant; it was smaller in scale than the remainder of the flat and building and complemented them. It was not at the front of the listed building and was not visible from the street. The applicant considered that the pergola facilitated safe enjoyment of the exterior space.

In terms of NPF Policy 14 the applicant considered that pergola enhanced the quality of the urban locale including for health and safety and noise considerations. It met the 'healthy' quality of successful places by improving safety of the area and so supporting time spent outdoors. It met the 'pleasant' quality by safeguarding against falling objects, protecting from the elements, offering shade and shelter, and serving as a noise barrier. It supported the 'sustainable' quality by allowing use of the outdoor space even when weather was poor, and the 'adaptable' quality by protecting the property.

The appellant considered the pergola was a design of merit that aligned with the six qualities of successful places, and therefore complied with Policy 14 of NPF4. The pergola did not result in loss of amenity of neighbouring uses or harm existing residential amenity.

The Planning Adviser summarised the further representations received from third parties and noted that the applicant had responded to the matters raised by reference to the case officer's report.

The Planning Adviser then provided comments on the case. She advised Members that they should first consider whether removing the condition to allow retention of the pergola would preserve the listed buildings or their settings or any features of special architectural or historic interest which they possess, and whether this would preserve or enhance Haddington Conservation Area. The second key issue on which the pergola was refused by condition was the issue of amenity. She advised that Members should consider whether the proposal met the terms of NPF4 Policy 14 in terms of amenity not being detrimental to the surrounding area

and was consistent with the six qualities of successful places. They should also consider whether any amenity issues were acceptable in line with either LDP Policies DP5 or TC2.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to retain the condition or remove the condition. If they considered that the removal of the condition to allow the pergola would be acceptable subject to appropriate conditions, it was open to them to place conditions on the consent.

There were no questions for the Planning Adviser.

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 said it had been useful to see the site. It had been clear that the building alongside the property was in a poor state of repair and there were signs of material falling onto the area where people were trying to enjoy outside space. The pergola would provide added safety to those using the area and it was not visible from public areas, and therefore did not contravene planning policy relating to conservation areas. For these reasons, he would be upholding the appeal.

Councillor McIntosh agreed with the point regarding the impact on the conservation area and that the pergola would not be harmful. While she sympathised with residents regarding the fabric of the neighbouring building, she had reservations that Members were being asked to make a planning decision because a third party had failed to maintain their roof to a reasonable standard. She was not convinced this was a good enough reason to allow such a large structure as the pergola. She agreed with the case officer's assessment that the intensification of use of the area caused by the pergola was harmful to the amenity of the occupants of other flats, and she would be minded to support the condition remaining in place.

Councillor Collins agreed with the previous comments about safety and the difficulties in resolving the building maintenance issue. She asked whether it would be appropriate to add a condition that put spikes or other security measures on the pergola but was advised that this could not be included as it had not formed part of the original planning application. Nevertheless, she was minded to uphold the appeal.

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

**Decision**

The ELLRB agreed, by majority, to uphold the appeal and to remove the condition of planning permission.

Signed .....

Councillor Norman Hampshire  
Chair of Local Review Body (Planning)



**REPORT TO:** Planning Committee  
**MEETING DATE:** 20 August 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

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**3**

Application No. **23/01367/PPM**

Proposal Planning permission in principle for the redevelopment of existing buildings and new build apartment buildings, associated landscape, roads, access and parking. The development proposals will provide up to 145 units of affordable housing for older people and community facilities within the Garleton building

Location **Former Herdmanflat Hospital  
Aberlady Road  
Haddington  
East Lothian**

Applicant East Lothian Council

Per Oberlanders Architects

**RECOMMENDATION** Granted Permission

## **REPORT OF HANDLING**

As the area of the application site is greater than two hectares and the principle of development is for more than 50 houses, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement for major development proposals this development proposal was the subject of a Proposal of Application Notice (Ref: 23/00001/PAN) and thus community consultation prior to this application for Planning Permission in Principle was carried out.

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 some 134 people attended four organised public

events on 24 and 27 January and 24 and 28 February 2023 which were held at the Trinity Centre and Haddington Primary School respectively. Additionally, some 50 people attended a meeting with the Haddington Central Tenants and Residents Association (HCTRA) on 22nd May 2023. Attendees made a number of queries and suggestions regarding the proposals. The development for which Planning Permission in Principle is now sought is of the same character as that which was the subject of the community engagement undertaken through the statutory pre-application consultation of the proposal.

The application site comprises the whole of the former Herdmanflat hospital site. It comprises the hospital buildings together with its extensive grounds covering an area of approximately 60,600m<sup>2</sup>. The site is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018.

The site is bounded to the north by a woodland strip beyond which is the A199 public road. To the east of the site lies the residential area of Herdmanflat. The site is bounded on its west side by an existing stone boundary wall and an existing hedgerow, beyond which is Aberlady Road. To the south is the public road of Lydgait. Between the site and the public road of Lydgait is a short row of three house and an ambulance depot. The site is outwith Haddington Conservation Area.

Vehicular access to the site is taken from Aberlady Road, and prior to the closure of the hospital access was also taken from Lydgait along Hopetoun Mews. Historically the grounds of the hospital were accessible to the public. Public access remains but is currently partly restricted to secure the remaining listed buildings.

The site levels fall from north to south with limited views over Haddington from the higher sections of the site across the central open parkland. The site contains mature woodland along its west, south and east boundary with an additional band running across the centre of the site. There is the remainder of a formal line of mature lime trees parallel to the former vehicle access off Lydgait. The Garleton Unit has mature woodland to the west and north which are linked to the woodland between the site boundary and the A199 road to the north. There is a community orchard to the east of this building.

The site has 3 distinct character areas (north, central and south areas). The northern section of the site is occupied mainly by the disused former Herdmanflat hospital buildings, areas of hardstanding and a grassed terrace. With the exception of the Garleton Building, which is a category B listed building, the hospital buildings are Category C listed buildings. There is a community orchard to the east of this building. There is no public access currently to this part of the site.

The central section of the site is an open area of parkland, some of which was previously landscaped for patients and visitors to the hospital. There is a line of formal mature trees located along its east boundary which runs parallel with Hopetoun Mews to the entrance at Lydgait to the south. There are also mature trees on the west boundary of this part of the site.

The southern section of the site was where the now demolished Hopetoun Unit had been located. This area has mature woodland along its north, west, south and east boundaries with younger trees growing on the areas where the buildings have been demolished. A row of modern ancillary buildings that were in the southwest corner of the site were demolished in 2022.

The central and southern sections of the site are presently open and are used by the public as an informal area of open space.

## **PLANNING HISTORY**

On 05 February 2007 planning permission (Ref:01/00062/OUT) was granted for outline planning permission for residential development on some 3.67 hectares of land located to the south of the Herdmanflat Hospital. Planning permission 01/00062/OUT has not been implemented and has expired.

Proposal of Application Notice ref 23/00001/PAN received 1/1/23. Decision notice issued 27/1/23. A Pre-Application Consultation Report on the public consultation events, and the comments received, forms part of the applicant's supporting information for this planning application.

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). On 25th April 2024 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 in Principle. It is therefore the opinion of East Lothian Council as Planning Authority that there is no requirement for the proposed housing development to be the subject of an EIA.

## **PROPOSAL**

This application seeks Planning Permission in Principle for the redevelopment of the former hospital buildings and for the erection of new build apartment buildings, associated landscape, roads, access and parking. The development proposals will provide up to 145 units of affordable housing for older people. Additionally, it is proposed that the Garleton building be repurposed to provide community facilities.

Whilst the details of the new build elements and associated buildings will be the subject of future Approval of Matters Specified in Conditions Applications this Planning Permission in Principle seeks permission for the details shown in the Masterplan including:

- \* Buildings to be converted and the location and heights of new buildings;
- \* Infrastructure including an active travel link to the A199, informal paths, public roads and footways, car parking and EV charging facilities;
- \* New access points (active travel link to the A199, 2 pedestrian access points to Aberlady Road;
- \* Open spaces including, recreational woodland, central area of open space, pétanque pitches, community garden and orchard;
- \* The drainage strategy for the site including the location of SUDS;
- \* Tree removal and compensatory planting;
- \* Biodiversity Strategy;
- \* Woodland Play locations:

The masterplan shows that vehicular access to the site would continue to be taken from Aberlady Road, with an internal access road being formed through the site. A secondary vehicular access is proposed to be created in the northeast corner of the site, via a road to the north of the houses of 55-65 Herdmanflat. To facilitate that new access an existing garage compound to the north of the houses would be demolished. The access road into the site from Herdmanflat has been detailed to include 9 no. parking spaces for the existing houses at Herdmanflat.

A third vehicular access would also be created off Lydgait to allow access to the parking spaces for the flatted building proposed in the southeast corner of the site, where the buildings demolished in 2022 were located.

The masterplan submitted with the application indicates how the residential units could be accommodated on the application site including for the retention and conversion of the existing buildings to provide a maximum of 47 residential units and the construction of new build residential elements accommodating a maximum of 98 residential units.

The masterplan shows that the new build elements would be in six different zones comprising:

Phase 1 – would be in the southern section of the site and would comprise four x three-storey buildings and one x two-storey building accommodating a total of 51 units;

Phase 2 – would be on the central area of the site comprising three x two-storey buildings accommodating 22 units and the refurbishment of Pencraig (8 units);

Phase 3 – would be the north eastern section of the site and would comprise two x two-storey buildings accommodating 19 units and the refurbishment of Lammerlaw (8 units);

Phase 4 – would be at the northwest section of the site, including the main hospital building, and would comprise of one x 2 storey building (6 units), the refurbishment of Main Building (30 units) and North Lodge (1 unit). This phase also includes a single storey energy centre;

Phase 5 – would comprise of the Garleton Building conversion to a community use.

It is also indicated that a SUDS pond be accommodated on the southern part of the site and that an area of recreational open space would be accommodated centrally within the site. It is also proposed that the former access road of Hopetoun Mews road be repurposed as a new active travel path between Lydgait and the A199 public road.

The site extends to include the existing garaging and extensive hard surfacing at the north of Herdmanflat. The garaging will be demolished and the land will accommodate the active travel connection to the A199, a secondary vehicle access to the site and car parking for the existing residents. This area also provides an opportunity for additional tree planting to extend the north tree belt into the site.

The residential units are to be affordable units for older people and would be Housing for Varying Needs compliant. A number of the units will be for learning disabilities or complex needs. The design of the site and buildings reflect dementia friendly principles.

The application has been revised during the consideration of the application and the representations received. The main revisions relate to:

The block E in SE corner has been made narrower and parking moved north to reduce impact on the adjacent trees' root protection zones (RPZs).

An adopted footpath is now included from the turning head located in phase 1 south section, linking through to the proposed active travel route on Hopetoun Mews, running along the southern edge of the SUDS basin.

New active travel linkage to A199 realigned to minimise the impact on the tree belt.



SUDS basin developed further to meet with Scottish Water and turning requirements.

Swale included on the southern side of the east-west access road with informal paths alongside and connecting into the main central open space.

The alignment of the east-west road has been adjusted to accommodate the turning head at the western end of this road, with parking allocated either side of the road and an adoptable footpath added to the northern side and to the front of the parking bays on the southern side.

The access road into the site from Herdmanflat has been detailed to include 9 no. parking spaces for the existing residence adjacent to Herdmanflat.

Access road to the Garleton Building has been updated to minimum 3.7m width road requirement for emergency vehicle access and a turning head at the end. Parking spaces have been added at the end of the turning head.

Pedestrian entrance at existing Aberlady Road access adjusted to meet adoptable standards.

Pedestrian routes rationalised in relation to car parking to better prioritise pedestrian routes.

The application is supported by:

Pre-Application Consultation report

Heritage Statement

Design and Access Statement

Ecological Appraisal Report

Flood Risk Assessment

Interim Report on Site Investigations

Landscape Visual Appraisal

Proposed Energy Strategy

Site Survey

Transport Assessment

Tree Survey/constraints plan

NPF4 Alignment Checklist

Policy and Planning Context

Phasing strategy, including sequence of development, construction access and temporary residents access

Illustrative detailed layout for phase 1

A number of these reports have been updated during the consideration of the application and the representations received. The tree survey has been updated and extended to include the area of the proposed active travel link to the A199. The Transport Assessment has been extended to include speed surveys on Aberlady Road to inform the alterations to the existing vehicular access, adjustments to the Lydgait active travel access and the junction of Lydgait and Aberlady Road.

The Design and Access Statement submitted with the application informs that following the opening of the East Lothian Community Hospital in Haddington NHS Lothian deemed the Herdmanflat Hospital site surplus to requirements. East Lothian Council purchased the site and its buildings from NHS Lothian in 2020.

The Design and Access Statement informs that East Lothian faces a growing demand for

housing, health and social care services, due to its rapidly ageing population. To address this challenge, the Council needs to plan strategically and provide adaptable and flexible housing that is integrated within well-connected accessible vibrant communities. The masterplan development has been a collaborative process which has sought to balance the needs of those living near the site, local service provision and by identifying gaps in service provision that might be addressed through future development. Whilst the biggest gap by far is the shortage of affordable housing to meet the needs of East Lothian's rising and ageing population, other important matters such as strengthening connections to the town centre, to healthcare and green space have been considerations. The masterplan aims to preserve and reuse the listed buildings on site, enhance the landscape quality, improve biodiversity, increase access for the wider community and deliver a meaningful level of new build affordable housing within the existing landscape setting.

## **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) and the adopted East Lothian Local Development Plan 2018 (ELLDP).

NPF4 is designed to be read and applied as a whole, but in the case of this application the following policies are all of some relevance to its determination:

NPF4 Policies 1: Tackling the climate and nature crises, 2: Climate mitigation and adaptation, 3: Biodiversity, 4: Natural places, 6: Forestry, woodland and trees, 7: Historic assets and places, 9: Brownfield, vacant and derelict land and empty buildings, 12: Zero waste, 13: Sustainable transport, 14: Design, quality and place, 15: Local Living and 20-minute neighbourhoods, 16: Quality homes, 18: Infrastructure first, 20: Blue and green infrastructure, 21:1 Play, recreation and sport, 22: Flood risk and water management, 31: Culture and creativity

ELLDP Policies RCA1 (Residential Character and Amenity), HOU3: Affordable Housing Quota, HOU4: Affordable Housing Tenure Mix, PROP CF1: Provision of New Sports Pitches and Changing Accommodation OS1: Protection of Open Space, OS3: Minimum Open Space Standard for New General Needs Housing Development, Policy OS4: Play Space Provision in new General Needs Housing Development T1: Development Location and Accessibility, T2 : General Transport Impact, PROP T3: Segregated Active Travel Corridor, PROP T5: Cycle Route Network, T6: Reallocation of Road Space and Pedestrian Crossing Points, T32: Transport Infrastructure Delivery Fund, T31: Electric Car & Bus Charging Points, T32: Transport Infrastructure Delivery Fund. SEH1: Sustainable Energy and Heat, SEH2: Low and Zero Carbon Generating Technologies, DC10: The Green Network, NH4: European Protected Species, NH5: Biodiversity and Geodiversity Interests, including Nationally Protected Species, NH8: Trees and Development, NH10: Sustainable Drainage Systems, NH11: Flood Risk, CH1: Listed Buildings, CH4: Scheduled Monuments and Archaeological Sites, DP1: Landscape Character, DP2: Design, DP3: Housing Density, DP4: Major Development Sites, DP7 (Infill, Backland and Garden Ground Development), DP8: Design Standards for New Housing Areas, DEL1: Infrastructure and Facilities Provision

Also relevant are Developer Contributions Framework Supplementary Guidance, Design Standards for New Housing and Transport Infrastructure in New Development.

Also material to the determination of this application is 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.

Also relevant to the determination of this application is Historic Environment Scotland Managing Change in the Historic Environment guidance series.

## **REPRESENTATIONS**

Thirty-eight letters of objection and one letter of support have been received to the application. The main grounds of objection are:

- \* Traffic congestion – increased traffic on Lydgait;
- \* Road Safety – narrow roads, Hope Park/Lydgait lack of footway and safe crossing;
- \* Safety of users on mixed/cycle route;
- \* Safety at Aberlady Road junction;
- \* Construction traffic routing;
- \* The existing Hopetoun Mews should be redesigned to provide service access to existing properties on Herdmandflat;
- \* Noise from construction works, associated machinery and traffic (hours of operation);
- \* Noise and light pollution from housing development;
- \* Zone 1 – loss of privacy to properties to the south;
- \* Flooding from surface water run off;
- \* South section has negative impact on woodland and wildland;
- \* Loss of trees and natural habitat, will obliterate the woodland;
- \* Loss of public access to green space and recreational opportunities; These should be retained for future generations;
- \* Tree and Woodland strategy should be considered;
- \* Design – development is out of keeping, too dense, too tall;
- \* Proposal not aligned with Nature Space and 20-minute Neighbourhood ideas;
- \* Development in zone 1 is contrary to NPF4 as it removes a park and replaces it with housing;
- \* Contrary to NPF4 themes of sustainable places, liveable places, healthier lives, reducing emissions, enhancing biodiversity;
- \* Contrary to NPF4 policy 1 Tackling the Climate and Nature Crises - the housing in the middle of the woodland should be removed as it does not create a nature positive response;
- \* Contrary to NPF4 policy 2 Climate Mitigation and Adaptation - It does not minimise the emissions;
- \* Contrary to NPF4 policy 3 Biodiversity - This proposal conflicts with this policy because it will harm biodiversity, accelerate biodiversity loss and weaken existing nature networks;
- \* Contrary to NPF4 policy 4 Natural Places – development of the 53 units in the south section will have an unacceptable impact on the natural environment;
- \* Contrary to NPF4 policy 5 Soils - The proposal should be revised with more focus placed on the existing brownfield site and no development on the existing woodland site;
- \* Contrary to NPF4 policy 6 Forestry and Woodland - This development fragments existing woodland rather than protecting and expanding it. The woodland has not been adequately integrated into the design;
- \* Contrary to NPF4 policy 14 Liveable Places – Development will remove a community asset;
- \* Contrary to NPF4 policy 15 Local Living and 20-minute neighbourhoods – The development actively harms local living by removing a park and green space;
- \* Contrary to NPF4 policy 20 Blue and Green Infrastructure - results in the net loss of green

infrastructure;

\* The community has not been adequately consulted throughout this process;

On the matter of consultation the developer has carried out all necessary pre application consultations as set out in the Pre-Planning Consultation Report submitted with their application. Therefore they have fulfilled the statutory requirements for public consultation as set out in Town and Country Planning (Pre-Application Consultation (Scotland) Amendment Regulation 2021.

The necessary notification and consultation have been carried out during the processing of the planning application in accordance with Statutory Requirements.

There is no requirement for this development to provide service access to neighbouring private properties.

Whilst the public have access to the vacant hospital site that area of land is not a public park.

Lack of info. on what the buildings will look like. As this application is for Planning Permission in Principle the details of the form and appearance of the proposed new buildings is not included. If Planning Permission in Principle were to be granted then that information would be included in the further application for Approval of Matters Specified in Condition.

The sale of the land is not material to the assessment of the planning merits of this application. Issues relating to the sale of the land and community buyout would be pursued independently of this application.

The grounds of support are:

\* The representation in support was general and did not specify any grounds.

## **COMMUNITY COUNCIL**

Haddington and District Community Council were consulted on this application. The community council are supportive of the development of the Herdmanflat site. They noted that changes were made following public feedback and that the final proposals are a sympathetic development, retaining much of the open ground. They also acknowledged the need for supported housing for the elderly and disabled people on a site that is close to the centre of Haddington and felt that this outweighs the changes that the development will bring to the site.

## **PLANNING ASSESSMENT**

The primary material consideration in the determination of this application is whether or not the principle of the proposed development accords with national and local plan policies, proposals and other planning guidance and, if not, whether there are material considerations that outweigh any conflict with those policies and guidance.

The proposal is for the conversion of the former hospital buildings on and the erection of new apartment buildings to create up to 145 new residential units on the former hospital site and its associated land.

NPF4 Policy 9 supports the sustainable reuse of brownfield land, vacant and derelict land and buildings. Therefore, the principle of the redevelopment of this former hospital site and its associated land is supported by Policy 9 of NPF4.

The application site is located within a predominantly residential area as defined by Policy RCA1 of the Local Development Plan. Policy RCA1 does not actively promote the development of land for new build residential development. Its principal purpose is to ensure that the predominantly residential character and amenity of existing housing areas is safeguarded from the adverse impacts of uses other than housing. Policy RCA1 does however state that proposals for new development will be assessed against appropriate local plan policies, which in the case of infill, backland and garden ground development is Policy DP7 of the ELLDP.

By its nature the proposed development amounts to urban infill housing development within the town of Haddington. The principle of such development is supported by Policy DP7 of the adopted East Lothian Local Development Plan 2018.

The site is not explicitly allocated by one of the proposals of the ELLDP as at the time of adoption of the ELLDP the site was not yet surplus to requirement by the NHS. However, the "Growing our Communities" section of the Haddington proposals of the ELLDP at paragraph 2.108 it states that "The redevelopment of the site of Herdmanflat Hospital and former Hopetoun Unit for housing would also be supported if these previously developed sites become surplus to NHS requirements during the life of this Plan." Therefore, whilst not explicitly allocated by one of the proposals of the ELLDP the principle of a residential development of the former Herdmanflat hospital site has support in the ELLDP.

The site is located within the settlement of Haddington and is close to the Town Centre, the Community Hospital, library, dentists and doctors surgery. Therefore, the proposed repurposing of this site for a residential development accords with the principles of a 20-minute neighbourhood consistent with Policy 15 of NPF4.

The buildings on the site are listed as being of special architectural or historic interest. As it is proposed to repurpose the listed buildings as residential units, the former hospital buildings will be retained and their future will be safeguarded. The new build elements proposed for the northern section would be sensitively designed to sit to the side of the listed buildings. In that location and provided the new building to be located on the west side of the site, was no higher than two storeys and the two buildings on the east side were no higher than three storeys they would sit comfortably alongside the listed buildings and would not mask or draw focus from them. Consequently, and as no development would not take place on the grassed terrace to the front (south) of the principal building, the proposals would not harm the setting of the listed buildings. Furthermore, the existing community orchard, which forms part of the upper terrace and setting to the Garleton Building, would be retained and enhanced through community growing space and succession planting. This would enhance the setting of that listed building.

The central area of the site would retain a large area of public open space which would safeguard the setting of the listed hospital building and retain its primacy on the site. Due to new build development being contained to either side of that area of open space and no more than two-storey in height, those new build components would not mask or interrupt views to and from the listed buildings.

The southern section of the site had previously contained the now demolished Hopetoun Unit of the hospital and the more modern buildings that had been positioned in the southeast corner of the site which have also been demolished. The area where the Hopetoun Unit buildings previously stood has mature woodland planting on its north, south, east and west boundaries. Therefore, that established woodland creates a naturally enclosed area within it that is visually separated from the remainder of the hospital site to the north. Due to this visual separation and due to the lower topography of this part of the

site the three storey buildings proposed for it would not appear harmfully prominent or exposed. Instead, they would sit comfortably within the retained woodland ensuring the new buildings would not mask or draw focus from the listed buildings to the north.

The proposed masterplan shows a proposal that will retain most of the mature trees / wooded areas within the site and the central area of open space all of which form the setting of the listed buildings. Moreover, the design of new buildings and associated infrastructure, and particularly the requirement for adoptable roads, has been minimised to safeguard the existing mature woodland throughout the site to safeguard the setting of the listed buildings.

Therefore, this is a proposal for a development that would be sensitive to its historic setting and would not harm the setting of the listed buildings consistent with Policy 7 of NPF4 and Policy CH1 of the ELLDP.

Policy 14 of NPF4 states that development proposals will be designed to improve the quality of an area whether in urban or rural locations and regardless of scale. They will be supported where they are consistent with the six qualities of successful places. Policy DP1 of the ELLDP requires all new development must be well integrated into its surroundings by responding to and respecting landform and by retaining and enhancing existing natural and physical features at the site. Policy DP2 states that all new development must be appropriate to its setting in terms of its positioning, size, form, massing proportion scale and colours.

The overall design approach to the reuse of the historic buildings, routing of accesses, formation of new connections and the number, location, size and height of the buildings has been developed taking a placemaking approach. The landscape and the mature trees are a valuable asset to the centre of Haddington and its community and the development seeks to secure and enhance this asset.

All of the historic buildings within the site are to be brought back into use. The Garleton building is to be used for a community use, with various options being explored. The remainder of the historic buildings and the new buildings will be for affordable housing.

The central space will incorporate new buildings to both sides of a central open space. These buildings would be modest in height at two storeys and will frame the views from the formal lawn space. While there is an access road and car parking proposed within the central space, by using the existing ground levels, the views from the terrace and the principal building to the open space and central tree belt will be retained. The central open space will be framed by the existing building to the north, new buildings to the east and west and the existing tree belt to the south. Greater detail of the open space will be assessed through subsequent Approval of Matter Specified in Conditions applications.

The Landscape and Visual Appraisal (LVA) submitted with the application notes that views of the proposed new development within the site will be limited from outwith the site due to landform, established retained tree cover and surrounding buildings particularly the houses of Herdmanflat. There will be views of buildings from local roads specifically at the junctions of at Aberlady Road with Davidson's Terrace and Baird Terrace, and at the Hopetoun Mews and Lydgait junction. However, in these views of the new development will be partially screened by the mature trees. Overall, there would be limited visual impact from the proposals outwith the site and the new build components would sit comfortably within their landscape setting.

The proposed masterplan shows a proposal that will retain most of the mature trees / wooded area and the central area of open space with enhanced access points from

Hopetoun Mews and improved circulation within the site. A community growing space and orchard will also be provided at the northern end of the site, with path connections and accessibility around the site. The applicant has also confirmed that the proposed “recreational space with pétanque pitches” would be publicly accessible for all to use and the proposal incorporates recreational circular walking routes and a number of “play on the go” / “natural play” spaces in the woodland area. Consequently, the development would not result in the loss of opportunities for access to the site for the public and would not lead to the fragmentation or net loss of the green infrastructure of the site.

The applicant has provided more detailed proposals for the Orchard and Community Gardens, Formal Terrace and Community Open Space, Woodland and the Semi-private Gardens. These more detailed drawings show how these spaces will create attractive spaces for future residents and the wider community. They demonstrate how the spaces will incorporate elements which contribute to biodiversity and also the accessibility and useability of these area, for example, the provision of benches throughout the woodland and wheelchair friendly raised planters in the community garden.

The design also incorporates recreational circular walking routes and a number of “play on the go” / “natural play” spaces in the woodland area. Given that the housing provision is specifically for the over 55s the principle of less formal play provision is supported in this location. Greater detail of these play facilities will be assessed through subsequent Approval of Matter Specified in Conditions applications.

As this would be a development that would reuse existing buildings, create a network of open space and footpaths to allow continued public access and retain and enhance woodland planting then the proposal is consistent with the 6 qualities of successful places. The proposals do not conflict with Policies 12, 14 or 20 of NPF4 or Policies OS3 and OS4 of the ELLDP.

NPF4 Policy 16 supports the delivery of high quality, sustainable homes that meet the needs of people throughout their lives. It supports proposals for new homes that improve affordability and choice by being adaptable to changing and diverse needs, and which address identified gaps in provision. This could include accessible, adaptable and wheelchair accessible homes; homes that meet the needs of older people; a range of size of homes; and other specialist groups. Therefore, the proposal is consistent with Policy 16 of NPF4.

Housing to 2040 (H2040) is Scotland’s long-term national housing strategy and recognises that “there is a considerable number of people whose needs are not being met and who are not able to choose a home or way of living that meets their needs”. The Local Housing Strategy (LHS) is the sole strategic document on housing priorities for East Lothian. The strategy recognises the impact that a growing older population will have on East Lothian and healthcare services and the requirement for more specialist housing and housing related services. East Lothian Council’s Housing Strategy and Development team consider the proposals to be compatible with the Council’s Housing Strategy and Scottish Government policy.

While the number of units is not to be agreed at this point the supporting information shows that the total will be no greater than 145 residential. The site area, for the residential component, is 5.5 ha and the resultant density would be 26 units per ha. ELLDP DP3 generally requires a minimum density of 30 units per ha but accepts a lower density of development if it can be justified on the basis of its townscape or landscape setting. In this instance as the design approach derived is to safeguard the setting of the listed building and the impact on the landscape character of the site then, in this particular circumstance, a lower density of development can be supported. The proposal is therefore not contrary

to Policy DP3 of the ELLDP.

All the new build elements would be located sufficiently far from neighbouring residential properties to safeguard the residential amenity of their occupants. Notwithstanding, if Planning Permission in Principle were to be granted, the details of the siting, design and external appearance of the proposed residential units would require the subsequent approval of the Planning Authority. Through the subsequent determination of such details in relation to the Council's Urban Design Standards for New Housing Areas, and the Council's policies and practices in respect of residential amenity, planning control would be exercised to ensure that the built form of the development would be fully acceptable, with due regard to the need to safeguard the character and appearance of the site and of the area.

The principle of the development of the site as proposed does not conflict with Policies 7, 9, 12, 14, 15 or 16 of NPF4 or Policies RCA1, CH1, DP1, DP2, DP3, DP7, OS3 and OS4 of the ELLDP.

Policy 6 of NPF4 states that development proposals that enhance, expand and improve woodland and tree cover will be supported. Policy 20 of NPF4 states that development proposals incorporating new or enhanced green infrastructure will be supported.

In respect of landscape matters the **Council's Policy and Projects (Landscape)** team advises that there have been pre-application discussions with the applicant and their agent. During the preapplication discussion the upgrading of the existing access at Hopetoun Mews to an adoptable standard was discounted due to the unacceptable adverse impact on the avenue of mature lime trees. The preapplication discussions have resulted in a masterplan that generally respects the existing landscape design and character of the site and aims to retain and protect this through the layout of the proposed development within the site.

She advises that the applicant has submitted a full tree survey and constraints plan which identifies a maximum of 210 trees for removal, including 157 shrubs. However, as this is an application for Planning Permission in Principle then through detailed design of the development it is hoped that not all these trees may need to be removed. Notwithstanding, the trees shown to be removed comprise:

14 poor quality to be removed for health and safety and woodland management reasons:  
39 individual trees:  
157 trees within shrub/scrub groups:

The largest area of tree removals would be the groups of trees that are within the centre of the southern area of the site, around and on the site of the now demolished Hopetoun Unit building. They are mainly young trees which are small in size. The woodland blocks to the north, east and west, and the trees to the south would largely be retained. Moreover, it is proposed that new tree planting will be carried out throughout the site where it is proposed to plant 1,250 new trees, comprising:

53 extra heavy standard trees  
132 standard trees  
1025 woodland trees (planted as bareroot and feathers)  
40 specimen trees (5no per semi-private garden space).

Therefore, the loss of the trees whilst unfortunate would be mitigated by the proposed compensatory planting which would expand and enhance woodland cover on the site. Therefore, the **Council's Policy and Projects Landscape Officer** does not object to the



removal of the trees subject to a condition that limits any tree removal to that shown on the docketed drawings and that remaining trees being protected during the period of construction.

The Council's Policy and Projects Landscape team also advises that the proposals give an opportunity to improve woodland habitat connectivity with new areas of tree planting strengthening the links between the existing woodlands. Therefore, notwithstanding the proposed tree removal, the proposals would not lead to the fragmentation or net loss of the green infrastructure or Green Networks and will ensure the ongoing management of the woodlands for recreation, all of which supports the aims of the Council's Tree and Woodland Strategy.

Consequently, although through the development of the site there would be some loss of trees and the character of this part of the site would change, as the woodland and trees on the site would overall be enhanced and expanded the proposal does not conflict with Policies 6 and 20 of NPF4 or Policies DC10 or NH8 of the ELLDP or conflict with the Council's Woodland Strategy.

NPF4 Policy 3 requires the proposal to be based on understanding of both the site and its local, regional, and national ecological context.

A Preliminary Ecological Appraisal (PEA), Ecological Appraisal (EA) and Outline Biodiversity Enhancement Plan (OBEP) have been submitted in support of the application. The PEA informs that the site area is approximately 60,600m<sup>2</sup> in size, and the proposed development will result in the building on of some 7,000m<sup>2</sup> of vacant land, the majority of which comprises amenity grassland, and species-poor neutral grassland and scrub.

The **Council's Biodiversity Officer** agrees with the findings of the PEA and the assessment of the habitats present as being of either poor condition or low conservation value. Therefore, she raises no objection to the application provided that biodiversity enhancement as set out in the OBEP is carried out to compensate for any habitat loss and which will include:

- Increase species diversity of grassland habitats within the Site, through the provision of species-rich seed mixes and an appropriate maintenance and cutting schedule.
- Increase species diversity of woodland and increase the connectivity of green corridors within the Site, through the provision of species-rich hedgerows, targeted tree planting, ground flora regeneration and woodland enhancement.
- Create new habitats within the site with the establishment of new damp SUDS and swale habitat features.
- Increase opportunities for bird, protected species and invertebrates, through the provision of food resources and homes for nature.
- Ensure adherence with legislation regarding protected species, including the survey and licensing regime. Provision for roosting bats and nesting birds will form a key mitigation measure associated with proposals regarding the retained buildings.

These measures can be secured through future Approval of Matters Specified in Conditions application which will include the details of the habitat management and the timescales for delivery of these biodiversity enhancement measures. Subject to these measures being carried out the proposal would not conflict with Policy 3 of NPF4.

At its meeting on Tuesday 27th August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on all applications for planning permission except Section 42 applications, householder applications, design changes, changes of use, non-householder alterations and extensions, or where it is not considered reasonable by the Planning Officer. As this application is for new build development such a condition should be imposed on a grant of planning permission for the proposed development consistent with Policy 1 and 2 of NPF4.

Policy 13 of NPF4 supports proposals that enhance and provide active travel infrastructure, are designed to incorporate safety measures including safe crossings for walking and wheeling and reducing the number and speed of vehicles. Policy T1 of the ELLDP requires that new developments should be located on sites that are capable of being conveniently and safely accessed on foot and by cycle as well as by private vehicles.

The site is well located for access to local services by foot and bike including access to public transport in the centre of Haddington. The proposed access arrangements include a new north to south active travel link from Lydgait to the A199 to the north, utilising Hopetoun Mews. There is also an active travel link proposed from east to west which includes a new pedestrian access through the boundary wall onto Aberlady Road with a new crossing facility over Aberlady Road.

Otherwise, a series of adopted footways and informal woodland paths are proposed which will ensure improved permeability within the site. These routes are enhanced by new pedestrian connections to Aberlady Road and Hopetoun Mews and improved pedestrian access at the main junction on Aberlady Road and onto Lydgait. Overall, the design prioritises pedestrian and cycle movement and will deliver attractive routes to encourage sustainable travel choices in accordance with Policy 13 of NPF4.

Policy 13 also supports proposals that are ambitious in terms of low/no car parking, particularly in urban locations that are well served by sustainable transport modes and where they do not create barriers to access by disabled people.

The proposal is designed with 75% car parking provision, all of which will be serviced for E.V charging. By being within the settlement of Haddington, this development is in a suitable location for reduced car parking and is designed to provide a high level of accessibility, including for disabled people, through the new and improved access points and routes through the site. The parking provision is therefore in accordance with Policy 13 of NPF4.

Policy 13 and Policies T1 and T2 require that new development must have no significant impact on road safety.

The former Hospital had vehicular access from Aberlady Road and Lydgait via Hopetoun Mews. The proposed vehicular access arrangement will continue to have a principle access from Aberlady Road and a secondary access off Herdmanflat. The development will incorporate a single flatted block (estimated at 6 units) which would have its own access from Lydgait.

In support of the application a Transport Assessment has been submitted to establish the impact of the development on the local road network. The **Council's Roads Services** are satisfied that traffic likely to be generated by the proposed development could be

satisfactorily accommodated on the local road network. Therefore, they raise no objection to the application subject to conditions being imposed that require:

- \* A new shared-use travel access point on Aberlady Road, including a raised table or signalised crossing facility which shall form part of the phase 1 application.
  - \* a raised table crossing at the junction of Hopetoun Mews with Lydgait and access to the adjacent factored courtyard to west. This shall form part of the phase 1 application.
  - \* New access points from existing footways on Herdmanflat to the active travel route on Hopetoun Mews., which shall form part of the phase 2 and 3 application and include details of boundary alterations and any required regrading.
  - \* A new shared-use linkage from Hopetoun Mews to the A199 which shall form part of the phase 3 application.
- \* a Construction Method Statement to minimise the impact of construction activity on the public road network be submitted to and approved by the Planning Authority prior to the commencement of development. It should recommend mitigation measures to control construction traffic and include hours of construction work; and
- \* wheel washing facilities be provided and maintained in working order during the period of operation of the site.

Subject to the imposition of those planning controls the proposed development of the site does not conflict with Policy 13 of NPF4 and Policies T1 and T2 of the adopted East Lothian Local Plan 2018.

The applicant has submitted a Drainage Strategy for the whole site. The information also includes a fully designed road and parking design which is a significant component of the surface water run off on the site. The drainage strategy and detailed drainage design show the required connections outwith the site as well as the works within the site.

The **Council's Manager - Structures, Flooding** is satisfied with the Drainage Strategy and that the proposed development could be carried out without unacceptable risk of flooding.

The **Council's Archaeology/Heritage Officer** advises that there are a number of listed structures which are proposed to be redeveloped on the site and there is a good potential for as yet unknown archaeological remains to survive in the areas of the new builds. Therefore, it should be made a condition of any grant of Planning Permission in Principle that no development shall take place on the site until the applicant has undertaken and reported upon a programme of archaeological work (Historic Building recording and Archaeological trial trenching) in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority. Subject to the imposition of that planning control The Council's Archaeology/Heritage Officer raises no objection to the application.

As set out in ELLDP Policy DEL1 there is a requirement for all residential developments of 5 units or more to contribute towards the infrastructure and community facilities required to accommodate the development.

The proposal is for up to 145 affordable homes designed specifically for an aging population by the Council and include provision for specialist housing. They are therefore consistent with policies HOU3 and HOU4 of the ELLDP and in line with the Council's Local Housing Strategy and the Supplementary Planning Guidance: 'Affordable Housing'.

The **Council's Education & Children's Services** have advised that provided a condition

is imposed on any grant of planning permission that restricts the occupancy of the residential units to people who are 55 years old or older then no financial contribution towards additional educational accommodation would be necessary, as there would be no school age children generated from the development. Therefore, subject to the imposition of such a condition they raise no objection to the application.

Policy T32 of the ELLDP specifically relates to the package of transportation interventions to mitigate the cumulative impact of development on the transport network which have been identified by the Council in consultation with Transport Scotland. In line with Policy DEL1, relevant developments are required to contribute to the delivery of these transportation interventions, on a proportionate, cumulative pro-rata basis, as set out in Developer Contributions Framework Supplementary Guidance.

The **Council's Transport Appraisal (TA)** provides the evidence base which has informed the Council's draft Developer Contributions Framework (DCF) and has been produced in conjunction with the Local Development Plan TA so that Road Services can assess the cumulative impacts of the Local Development Plan allocations on the Transport Network. The 145 units the subject of this application were not part of that transportation modelling. The traffic previously associated with the use of this site has been displaced with the opening of the new community hospital. There will therefore be an increased use of the road network associated with this development and developer contributions towards transport interventions are appropriate, including the provision of a Strategic Active Travel Corridor (£71,284.18) Proposal T3, A1 Interchange Improvements (Salters Road and Bankton Junction) (£1027.13) Proposal T17, Transport Improvements at Tranent Town Centre (£788) Policy T26, Transport Improvements at Musselburgh Town Centre (£362.76) Proposal T19 and Old Craighall Junction Improvements (£1424.53) Proposal T15 of the adopted East Lothian Local Development Plan 2018. Therefore, a developer contribution of £78,284.18 is required towards those Transportation Interventions indexed from Q1 2019 using the BCIS All-in Tender Price Index. Subject to the payment of those contributions the proposals are consistent with Policies T26 (Transport Improvements at Tranent Town Centre) and Policy T32 (Transport Infrastructure Delivery Fund) of the adopted East Lothian Local Development Plan 2018.

The **Council's Team Manager for Amenity Services** has been consulted and advises that a financial contribution towards the provision of additional/upgraded sports facilities capacity in the Haddington area is required to support the residents of the proposed development. While the accommodation is for older residents it is accepted that the occupants will make use of the sporting facilities and therefore it is reasonable to seek a contribution. This approach is aligned with the ELLDP Developer Contributions Framework Supplementary Guidance and consistent with other consented residential developments in the Haddington Area. In total the contributions equate to £187,050.00, indexed from Q1 2019 using the BCIS All-in Tender Price Index.

The payment of a financial contribution of £78,284.18 towards the transport interventions and £187,050.00 towards additional/upgraded sports facilities would in most cases be secured by a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or some other legal agreement. However, as the applicant is East Lothian Council Housing Service the use of a S75 agreement is not possible. Therefore, in this instance the sums will be secured through a Legal Undertaking where the Housing Service will commit to ensure that the contributions sought in association with this planning application will be paid within the necessary timescales to ensure that the required infrastructure and facilities can be developed to support the residents generated from this housing development will suffice. This would also be in compliance with Policy DEL1 (Infrastructure and Facilities Provision) which stipulates that new housing will only be permitted where appropriate provision for infrastructure required as a consequence of the

development is made.

If the applicant were to sell the whole or part of the site to a third party, then the Legal Undertaking will include that sales missives will require the successor(s) in title to agree to enter a S75 agreement(s) to ensure planning obligations are placed on the land prior to land title transfer. The items to be covered by the S75 are as follows:

- 1) The proportion payment of the Transportation Contributions and Sporting Facilities Contributions associated with the number of units with planning permission within the land being sold.
- 2) To ensure the provision for 25% of the overall housing units within the site are for Affordable housing (within the planning application red line site).
- 3) If the applicant submits a S42 application to increase the number of units that additional contributions will need to be secured through a new S75 to support further development of infrastructure to support higher levels of housing, and this may require further infrastructure assessments).

Subject to the use of a condition to restrict occupancy to over 55 years of age, and securing the aforementioned contributions, the development will accord with ELLDP Policy DEL1: Infrastructure and Facilities Provision and guidance.

## **RECOMMENDATION**

It is recommended that Planning Permission in Principle be granted subject to:

1. The undernoted conditions and
2. A Legal Undertaking designed to secure from the applicant a financial contribution to the Council of £78,284.18 for the transport interventions, £187,050.00 for additional/upgraded sports facilities capacity in the Haddington area and the provisions of a minimum of 25% affordable housing provision on site.

## **CONDITIONS:**

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

Reason:

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

- 2 The development shall generally accord with the approved drawings and strategies docketed to this planning permission in principle. The elements approved through the PPiP comprise:

Land Uses (Age restricted dwellings and community use (Garleton Building).

Masterplan Drawing REF: 12049-LD-PLN-001:

Building locations, level, heights and roof form:

Infrastructure, including, active travel routes, footpaths, recreational paths, roads, car parking, levels and adoption areas:

EV charging infrastructure locations (1 per parking space):

Outline Biodiversity Enhancement Plan:

Tree removal (worst case), protection, and compensatory planting strategy:

Open spaces, including, woodland, community orchard/garden, pétanque courts, central grassland, "play as you go" locations and semi-private space:

Drainage Strategy Plan including SUDS, swales and associated pipework:

Preliminary Drainage Proposal (Ref: HFH-GOO-ZZ-XX-DR-C-0500)

Reason:

To ensure the development is carried out in accordance with the consent.

- 3 The submission for approval of matters specified in conditions of this grant of planning permission in principle shall correspond with a development phase boundary (1-5) as set out in the approved phasing strategy and shall include details of:

- o the siting, design and external appearance of all the residential units and any other buildings or structures which should generally accord with the Masterplan and Proposed Heights drawing docketed to this planning permission in principle;
- o shared use routes, footpaths, roads, car parking, EV charging, lighting and adoption areas which should generally accord with the Masterplan and Road Adoption Layout docketed to this planning permission in principle;
- o landscaping, including woodland, tree, hedgerow, grassland and orchard planting, boundary treatments and hardsurfacing which should generally accord with the Masterplan docketed to this planning permission in principle;
- o drainage works including swales and SUDS which should generally accord with the Drainage Strategy docketed to this planning permission in principle;
- o "play and go" and seating provision;
- o Tree removal which should generally accord with the Tree Removal plan docketed to this planning permission in principle ;
- o Biodiversity enhancement which should accord with the OBEP docketed to this planning permission in principle:
- o any artwork to be erected on the site;
- o Detailed Energy Strategy.

Additionally, the matters listed below shall be included with the application for the matters specified in conditions in accordance with the phases specified.

- o New shared-use travel access point and pedestrian access point on Aberlady Road, including crossing facility. These shall form part of the phase 1 application;
- o New access points from existing footways on Herdmanflat to the active travel route on Hopetoun Mews. These shall form part of the phase 2 and 3 application and include details of boundary alterations and any required regrading;
- o New shared-use linkage from Hopetoun Mews to the A199. This shall form part of the phase 1 application;
- o New raised table junction at Hopetoun Mews and Lydgait, including access to private parking courtyard to west, and junction improvement at Lydgait and Aberlady Road. This shall form part of the phase 1 application.

No part of each phase of development hereby approved shall be begun on the site until all of the above details have been submitted to and approved in writing by the Planning Authority. The development shall be carried out in accordance with the details so approved and implemented in accordance with approved phasing strategy.

Reason:

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

- 4 Prior to the commencement of development on each phase, as set out on the approved phasing strategy, the applicant shall submit a Woodland Management Plan for the whole of the corresponding area of land. The Plan shall be approved by the Planning Authority prior to the commencement of development on the associated phase. The woodland shall be managed in accordance with the approved Woodland Management Plan unless agreed in writing by the planning authority.

Reason:

To ensure the Woodland is managed appropriately to provide amenity for the residents and wider community.

Prior to the commencement of development a woodland management plan for the

woodland on the site shall be submitted to and approved in writing by the Planning Authority. The plan shall further the value of the resource for biodiversity as well as people, and shall include the following measures:

The requirements of the woodland management plan shall thereafter be carried out in accordance with the details so approved.

Reason:

To maximise the ecological potential of the proposed development.

- 5 Prior to the commencement of development on each phase, as set out on the approved phasing strategy, the applicant shall submit the contaminated land information detailed in parts 1-4 below. The details shall be approved by the Planning Authority prior to the commencement of development on the associated phase. The development shall be carried out in accordance with the approved details.

#### Part 1 - Contaminated Land Assessment

Based on the additional investigative works and monitoring carried out, a suitable Geo-environmental Assessment should be submitted which details the extent, scale and nature of any contamination, and reporting on the appropriate risk assessment(s) carried out with regards to Human Health, the Water Environment and Gas Characteristic Situation as well as an updated conceptual model of the site.

The Assessment must be undertaken by suitably qualified, experienced and competent persons and must be conducted in accordance with the relevant guidance and procedures. If it is concluded by the Reporting that remediation of the site is not required, then Parts 2 and 3 of this Condition can be disregarded.

#### Part 2 - Remediation Statement

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

#### Part 3 - Validation Report

The approved Remediation Statement must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. Following completion of the measures identified in the approved Remediation Statement, a Validation Report should be submitted that demonstrates the effectiveness of the remediation carried out. It must be approved by the Planning Authority prior to the use of the new development.

#### Part 4 - 'Unforeseen' Contamination

In the event that 'unexpected' ground conditions (contamination) are encountered at any time when carrying out the permitted development, work on site shall cease and the issue shall be reported to the Planning Authority immediately. At this stage a Site Investigation and subsequent Risk Assessment may have to be carried out, if requested by the Planning Authority. It may also be necessary to submit a Remediation Strategy should the reporting determine that remedial measures are required. It should also be noted that a Verification Report would also need to be submitted confirming the satisfactory completion of these remedial works.

If no 'unexpected' ground conditions are encountered during the development works, then this should be confirmed to the Planning Authority prior to the use of the new development.

Reason:

To ensure the ground conditions are suitable for development.

- 6 Prior to the occupation of any part of development in phase 2 the applicant shall submit detailed proposals for the central grassland/open space and pétanque court area. These proposals may be prepared in collaboration with the local community (The Community Council and/or other bodies agreed with the Planning Authority). The detailed design may include, but not be restricted to, opportunities for organised occasional use of the space, landscaping, earthworks, biodiversity enhancements, planting and opportunities for public art.

Reason:

- To ensure the central space encourages public use and wider community involvement.
- 7 Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to, and approved by the planning authority,

The CEMP shall include, but not be limited to:

1. The specific mitigation measures to be implemented to control impacts from noise and dust during the construction phase;
2. Measures to minimise the impact from waste construction materials, including measures on the storage of waste;.
3. Measures to minimise the impact from construction traffic on road safety and residential amenity (as per the phasing strategy);
4. Temporary measures to control surface water drainage during the construction the SuDS.

The CEMP should also take account of the following guidance:

- o BS 5228-1:2009+A1:2014 "Code of practice for noise and vibration control on construction and open sites.
- o The Institute of Air Quality Management Guidance on the assessment of dust from demolition and construction (2014)

All construction works shall be carried out in accordance with the approved CEMP.

Reason:

To enable the Planning Authority to consider this matter in further detail.

- 8 The residential units hereby approved shall be occupied only by persons over 55 years of age.

Reason:

The applicant has proposed housing for an aging population. The educational authority would not be able to accommodate any children generated by this residential development without contributions to enable the development of additional educational accommodation. If all housing units occupancy is restricted to an age where there would be no school age children generated from the development then no additional educational accommodation would be necessary.

- 9 Each application for matters specified in conditions shall be accompanied by an updated phasing strategy document which sets out:

Sequence of buildings and infrastructure;  
Construction traffic routing (restricted to existing Aberlady Road only);  
Temporary access arrangements for existing and new residents (walking, wheeling and driving);  
Active travel routes;  
Walking and cycling connections at site boundaries;  
Roads;  
Landscaping and open space including "play as you go" and seating;  
Biodiversity enhancement;  
Off site infrastructure improvements, set out in the reserved matters.



The updated phasing plan for each Approval of Matters Specified in Conditions shall be approved by the Planning Authority prior to the commencement of development on the associated phase. The development shall thereafter be carried out in accordance with the approved phasing plan, unless otherwise approved in writing in advance by the Planning Authority.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the good planning of the site and road safety.

- 10 No development shall take place on a respective phase of development (as set out in the phasing strategy) until the applicant has undertaken and reported upon a programme of archaeological work (Historic Building recording and Archaeological trial trenching) in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority. Where the programme of works is submitted on a phased basis each phase shall include all area required for any temporary works, including construction access provision.

Reason:

To enable the Planning Authority to consider this matter in further detail.

- 11 Prior to commencement of development details of signage and minor improvements to the walking route from Hopetoun Mews to the access to Tesco supermarket on Fortune Avenue shall be submitted for the approval of the Planning Authority. The approved details shall be carried out prior to the occupation of the first residential units or otherwise agreed in writing by the Planning Authority.

Reason:

To improve the accessibility of the site from the town centre by active travel.

- 12 Wheel washing facilities must be provided and maintained in working order during the period of operation of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

Reason:

To ensure road safety is not compromised.

- 13 Prior to commencement of development a programme for monitoring the condition of the public road to be used by construction traffic for the period of development hereby approved, shall be submitted to and approved in writing by the Planning Authority.

The programme should include details of the inspection schedule and of the commitment by the developer for repairs to be made to the aforementioned roads, including emergency repairs for more serious damage to the road surface that could represent a significant road safety risk. Any non-emergency remedial works shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within three months of the completion of the final monitoring undertaken.

Reason:

To ensure road safety is not compromised.

- 14 Prior to the commencement of development the details of the following offsite measures, including a timetable for their implementation shall be submitted to and approved by the Planning Authority:

\* A new shared-use travel access point on Aberlady Road, including crossing facility - (between Baird Terrace and Hopetoun Drive (raised table or signalised crossing):

\* A raised table at the junction of Hopetoun Mews with Lydgait (raised table crossing) and access to the adjacent factored parking courtyard

- \* The junction improvement at Lydgait and Aberlady Road;
- \* New access points from existing footways on Herdmanflat to the active travel route on Hopetoun Mews, and include details of boundary alterations and any required regrading.
- \* A new shared-use linkage from Hopetoun Mews to the A199.

The offsite measures shall thereafter be installed in accordance with the approved details and in the timescales so approved.

Reasons:

In the interests of road safety and sustainable travel.

- 15 No residential unit within phase 2 shall be occupied unless and until details of artwork to be provided on the site have been submitted to and approved by the Planning Authority. The artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on phase 2.

Reason:

To ensure that artwork is provided in the interest of the visual amenity of the locality and the wider area within an appropriate timescale.

- 16 Each phase of development shall be carried out in strict accordance with the Drainage Strategy and Preliminary Drainage Proposal (Ref: HFH-GOO-ZZ-XX-DR-C-0500) docketed to this planning permission in principle. Prior to the commencement of development, full details of the finalised SUDS scheme 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:

To ensure adequate protection of the water environment from surface water run-off.

- 17 Prior to the commencement of development, details of how the areas of open space and "play and go" areas are to be maintained shall be submitted to and approved in advance by the Planning Authority. The maintenance of the openspace and play area shall accord with the details so approved.

Reason:

To ensure the satisfactory maintenance of open space and equipped play areas, in the interests of the amenity of the area.

- 18 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.

- 19 The only trees to be removed are those identified for removal on the 'Tree Removals, Protection and Planting Strategy' drawing numbered 12049-LD-PLN-103 rev D. 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" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed into 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 must be as indicated on the drawing 'Tree Removals, Protection and Planting Strategy' drawing numbered 12049-LD-PLN-103 rev D, shall be positioned outwith the Root Protection Area (RPA) as defined by

BS5837:2012 for all trees and approved in writing by the Planning Authority. Where construction space is required within the Root Protection Areas the ground should be protected in accordance with section 6.2.3 Ground protection during demolition and construction of BS5837:2012 approved by the arboriculturist and confirmed in writing by the Planning Authority.

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:** 20 August 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 Collins for the following reasons: Two residents from properties nearby are concerned the sign is being erected on their land without their consent, as the land does not belong to Taylor Wimpey. Also due to safety issues with the sign being next to a children's playpark and possibly obscuring sightlines for HGVs using the construction site, and for children crossing the road.*

Application No. **24/00421/ADV**  
Proposal Display of advertisement (Retrospective)  
Location **Land To North Of 3  
James Kirk Way  
Dunbar  
East Lothian**  
Applicant Taylor Wimpey East Scotland

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

### **PROPOSAL**

Advertisement consent is sought retrospectively for the display of advertisement signage on land adjacent to the junction of James Kirk Way with Yosemite Park and Brodie Road, in relation to the housing development approved by the grant of planning permission 20/00110/PM for the erection of 197 houses, 48 flats and associated works.

The signage for which retrospective consent is sought consists of two dibond panels attached to two aluminium poles which have been concreted into the ground. The sign measures some 4 metres in height and some 1.67 metres in width. The erected sign features details of the Taylor Wimpey housing development currently under construction at Hallhill North (Belhaven Way) which is located at the northern end of Yosemite Park, some 500m to the north. The signage is non illuminated.

### **DEVELOPMENT PLAN**

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 limits the exercise of the powers of control of advertisements solely to the interests of amenity and public safety. When exercising such powers a planning authority shall in the interests of amenity, determine the suitability of the use of a site for the display of

advertisements in the light of the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest; and when assessing the general characteristics of the locality the authority may disregard any advertisements being displayed therein.

The Council's Supplementary Planning Guidance (SPG) on 'Cultural Heritage and the Built Environment', which was adopted by the Council on 30th October 2018, sets out policies for the control of the display of advertisements within Conservation Areas. There are no policies of the SPG that are relevant to the determination of this application, as the site is not within a Conservation Area.

## **REPRESENTATIONS**

Three letters of representation have been received in relation to the application, all of which object to the proposal. The main grounds of objection are summarised below:

- (i) The previous sign at the junction of Kellie Road/Spott Road was also erected some time before planning permission was sought;
- (ii) The sign is more than a kilometre from the Hallhill North site, it gives no indication of where the actual building development is. It is very close to the Lochford Gardens development which is under construction by a different developer and could cause confusion;
- (iii) The Hallhill North site already has lots of signs and flags which have been consented, this sign seems superfluous to publicity needs for the site;
- (iv) The sign is close to a busy road intersection (Yosemite Park/Brodie Road/James Kirk Way) and could be distracting for drivers.
- (v) There are concerns in the area about the speed of traffic along with the number of HGVs who are still using Yosemite Park to get to Hallhill North as they are not able to use the U194. The sign is on the corner planting of the playpark which is well used. Children are crossing the busy road which has no crossing place and thus driver distraction should be avoided;
- (vi) The applicant does not own the land, residents pay factoring fees covering the ground where the sign has been erected and would expect that permission to use the site would be needed from each resident;
- (vii) The sign looks totally out of place being so distant to the building site; and
- (viii) The sign is not appropriate on land designated for recreation and detracts from the enjoyment of this space.

The applicant has stated on the application form that they do not own the land in which the sign is sited on. Advertisement consent applications do not require notice to be given to any land owners and as such the application is valid. Notwithstanding this, the granting of advertisement consent does not negate the need for the applicant to secure the legal right to undertake the works.

The matter of the sign being close to an unrelated housing development, a previous unauthorised sign being erected and speeding traffic including HGV's are matters not relevant to the determination of this application for advertisement consent.

## **PLANNING ASSESSMENT**

The advertisement signage that has been erected is of a relatively small size and scale and is positioned on the edge of an area of landscaped open space. It is related to land some 500m to the north which has planning permission for a new housing development with which its display is functionally related. It is of a form and appearance that is similar to other advertisements related to the sale of new houses within housing developments in East Lothian. Therefore, provided the timing of the display of the advertisement is

controlled to 5 years or to coincide with the sale of the last property to be erected on the land of the housing development to which the advertisements relate, whichever is the sooner, a matter which can be controlled by a condition imposed on a grant of advertisement consent, then the advertisement is not unacceptable. Consequently and by its overall sizes, position, colour and design, the advertisement does not appear as a harmfully prominent, intrusive or incongruous feature and thus is not harmful to the visual amenity of the area.

The **Council's Road Services** raise no objection to this advertisement consent application. It can therefore be reasonably concluded that, in its position, the advert does not cause undue driver distraction or impede sightlines to the detriment of public safety.

On all of the above considerations, it can be concluded that the advertisement is not harmful to amenity or public safety.

**CONDITION:**

- 1 This grant of express consent shall expire on 9th July 2029, or on completion of sale of the last property to be erected on the land of the housing development to which the advertisements relate, whichever is the sooner, after which date the advertisements shall have been removed from the site and the land made good to the agreement of the Planning Authority.

Reason:

In the interest of safeguarding the visual amenity of the area and pursuant to Part V 18(1) of the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984.





**REPORT TO:** Planning Committee  
**MEETING DATE:** 20 August 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 concerns and complaints from residents, I feel that Members of the Planning Committee would benefit from a site visit before making a decision on this application.*

Application No. **24/00405/P**  
Proposal Erection of portacabin and associated works (Retrospective)  
Location **Musselburgh Race Course  
3 Millhill  
Musselburgh  
EH21 7RG**  
Applicant Mr Philip Duncan

**RECOMMENDATION** Granted Permission

## **REPORT OF HANDLING**

### **BACKGROUND**

This application relates to an "L" shaped area of land within the grounds of Musselburgh Racecourse and therefore is within an area of open space designated by Policy OS1 of the adopted East Lothian Local Development Plan 2018. It is within Musselburgh Conservation Area.

The area of land is bounded to the south and west by a neighbouring residential property - Linkfield Cottage, and otherwise by other land of the racecourse, including a car park and service yard to the southeast.

The building of Linkfield Cottage is listed as being of special architectural or historic interest (Category B).

### **PROPOSAL**

Planning permission is sought retrospectively for the siting of a portacabin on the area of land and for fencing that encloses the "L" shaped area of land. The portacabin contains welfare facilities for use of the staff working at the racecourse.

The portacabin building measures some 6.53 metres long, some 3.16 metres wide and

some 2.242 metres in height. Its external walls and roof are constructed from plastisol-coated, galvanised steel. Glazed openings are seen in the north and east elevations. The portacabin is light grey in colour. The portacabin is to provide for welfare for the staff of the racecourse.

The fence that encloses the area of land is a 1.8-metre-high timber fence. A stepped access is provided to this enclosed area to the north as well as a gated access to the west. This area has previously been enclosed by 1-metre-high timber post fencing which has been retained inside the proposed 1.8-metre-high timber panelled fencing.

## **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 13 February 2023 and the adopted East Lothian Local Development Plan 2018.

The relevant policies contained within the National Planning Framework 4 consist of Policies 7 (Historic Assets and Places), 14 (Design, quality and place) and 20 (Blue and Green Infrastructure). Policies CH1 (Listed Buildings), CH2 (Development in Conservation Areas), DP2 (Design) and OS1 (Protection of Open Space) 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 Section 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 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 requires 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.

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 expands on policies that are set out in the East Lothian Local Development Plan 2018.

## **REPRESENTATION:**

One letter of objection to the application have been received. The main grounds of objection are;

- o Portacabin too close to boundary of neighbouring property which allows for anti social behaviour for people to climb onto roof of neighbouring garage;
- o Littering by racecourse staff and overflowing bins encourages vermin in the area;
- o Complaints have been made to Councillors regarding the retrospective nature of the proposal and they have asked that it be relocated away from residential properties. This request has been ignored;

- o Furniture being left adjacent to the gateway to the adjacent residential property;
- o Issues of rights of way across the racecourse and health and safety implications of the stepped access being blocked up;
- o Catering vehicles parked in roadway; and
- o Issues of dangerous driving from the Linkfield Road car park access.

In response to the above, the issue of anti-social behaviour is a matter for the Council's Protective Services and Police Scotland and as such concerns with regards to climbing on neighbouring structures should be directed to them.

The matters of right of way being blocked, health and safety, littering, inconsiderate parking and dangerous driving are matters controlled by legislation other than planning legislation. Therefore they are matters not relevant to the determination of this planning application.

The matter of furniture being left at the gateway of an adjacent property is a matter for the management of the racecourse and is not a material planning consideration relevant to the determination of this planning application.

With regards to the retrospective nature of the planning application, Section 33 of the Town and Country Planning (Scotland) Act 1997 allows for the making of a planning application for development already carried out. Therefore, the Council as Planning Authority cannot decline to determine application because it is retrospective.

## **PLANNING ASSESSMENT**

The portacabin and fence have been installed on an area of land designated as open space by Policy OS1 of the ELLDP. Policy OS1 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. "

In this instance the portacabin contains welfare facilities for staff working at the racecourse. Therefore it has a functional relationship with the racecourse and facilitates its continued operation. On that count it does not conflict with Policy OS1 of the ELLDP or Policy 20 of NPF4. Furthermore, in their position alongside the existing cottage and adjacent to the car park and service yard, the portacabin and fence do not appear prominent or exposed and do not harm the landscape setting of the area. Consequently, the portacabin and fence are not contrary to Policy OS1 of the ELLDP.

In its positioning to the side of the neighbouring listed building and by virtue of its size and scale, the portacabin does not mask or draw focus from the principle elevation of that listed building. Therefore and as they have a visual relationship with the adjacent car park and service yard, the portacabin and fence do not harm the setting of that neighbouring listed building or harm the character or appearance of the Musselburgh Conservation Area consistent with Policies 7 and 14 of NPF4 and Policies CH1, CH2 and DP2 of the ELLDP.

However, the portacabin is of a functional design that reflects its use for a temporary period and is not suitable for being permanently sited at this location. Therefore, it should be made a condition of any grant of planning permission that after the expiration of a period of 2 years and unless any further planning permission is granted to allow its retention, that the portacabin shall be removed and the ground on which it is sited be returned to its original condition.

The portacabin and fencing, do not harmfully impact on the residential amenity of this neighbouring residential property or any others through loss of privacy or loss of daylight /

sunlight. Accordingly, they comply with Policy DP2 of the East Lothian Local Development Plan 2018.

The **Council's Road Services** raise no objection to the proposals.

The **Council's Environmental Protection Officer** raise no objection to the application.

The area of land is within an area at risk of flooding. However, the **Council's Flooding and Structures Officer** concludes that as this is a small-scale development that is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems, they have no objection to the proposal on the grounds of flood risk.

The Coal Authority raises no objection to the application.

On these considerations, the proposals are consistent with Policies 7 (Historic Assets and Places), 14 (Design, quality and place) and 20 (Blue and Green Infrastructure). Policies CH1 (Listed Buildings), CH2 (Development in Conservation Areas), DP2 (Design), OS1 (Protection of Open Space) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

In conclusion, the portacabin and fencing 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. NFP4 raises no additional material considerations in relation to this application.

**CONDITION:**

- 1 This planning permission is granted for a temporary period of time only. The portacabin and fencing hereby approved shall be removed entirely from the land on which it is sited, and the land restored to its former condition within 2 years from the date of the grant of this planning permission. Within this time period, consideration should be made to a permanent solution for staff welfare on the site.

**Reason:**

The building, in terms of its form and appearance, is not appropriate for siting as a permanent structure and in the interests of protecting the character and appearance of the Musselburgh Conservation Area and the setting of the adjacent Category B listed building at No. 1 Linkfield Cottage.

**REPORT TO:** Planning Committee  
**MEETING DATE:** 20 August 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 **82 - 84 High Street  
Musselburgh  
East Lothian  
EH21 7BX**  
Applicant Crown Nails & Spa  
Per One Foot Square

**RECOMMENDATION** Granted Permission

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**

Four 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 the security bars of 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:** 20 August 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 **82 - 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 building of 82-84 High a two storey, mid-terrace building and in particular to the ground floor commercial premises and the associated communal close giving access to the rear of the building. The building is located within Musselburgh Conservation Area.

This application has been re-registered due to comments being received which raised issue with the land ownership and address of the application site.

Listed building consent is sought retrospectively for:

- i) The installation of a mechanical extract vent within the fanlight situated above the entrance door to the front (north) elevation of the communal close and for its associated ducting which is enclosed within a timber bulkhead that has been installed within the communal close of the building;
- 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 comprising acrylic gold raised lettering with associated backing board which is attached to the fascia on the front (north) elevation of the commercial premises within the ground floor of the building;

iv) The installation of a projecting box sign to the front (north) elevation of the building;  
and

vi) The painting of the shopfront of the commercial premises in black in colour.

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 that has been attached 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 acrylic projecting box sign is positioned 3 metres above the street level and projects 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 and National Planning Framework 4 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**

Four 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.

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.

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 is not a material consideration 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, some of which are listed buildings, which have different coloured shopfronts. Therefore, 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 non-traditional box like form and appearance and is internally illuminated. Due to its non-traditional projecting box like form and internal illumination it is of a form and appearance that is harmful to the special architectural or historic interest of the listed building and therefore harmful to the character and appearance of the Musselburgh Conservation Area. Therefore, to safeguard the special architectural or historic interest of the listed building 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.

As an unauthorised and unacceptable form of advertisement the illuminated projecting box sign is a breach of planning control. If it is not removed from the frontages of the premises of 84 High Street within one month of the date of the decision notice for this application then enforcement action will be taken to secure the removal of the unauthorised advertisement, with the period for compliance with the enforcement notice being two 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