



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

**TUESDAY 25 JUNE 2024
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON
& HYBRID MEETING FACILITY**

Committee Members Present:

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

Other Councillors Present:

Councillor L-A Menzies

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Mr C Grilli, Service Manager – Governance
Ms A Law, Planner
Mr C Clark, Senior Environmental Health Officer
Mr R Montgomery, Head of Development
Ms J Hargreaves, Team Manager – Countryside
Mr G Marsden, Project Manager – Growth & Sustainability
Mr R Miller, Transportation Planning Officer
Mr G McLeod, Transportation Planning Officer
Ms M Haddow, Transportation Planning Officer
Ms P Gray, Communications Adviser

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 1: Mr C McNiven, Mr J Stinson, Ms N Tyrrell, Ms S Boocock, Ms L Doherty, Mr B Hall,
Mr G Jones, Mr B Hickman
Item 2: Mr D McNeill
Item 3: Ms P McKeown, Mr P Cooper

Apologies:

Councillor A Cassini
Councillor S McIntosh

Declarations of Interest:

Item 2: Councillors McMillan and Gilbert, due to being East Lothian Licensing Board Members.

1. PLANNING APPLICATION NO. 24/00324/PM: ENABLING WORKS COMPRISING THE RELOCATION AND REGRADING OF MATERIALS FROM ON-SITE EARTHWORK BUNDS FOR THE CREATION OF DEVELOPABLE PLATFORMS AND ASSOCIATED WORKS, LAND AT FORMER COCKENZIE POWER STATION AND COAL STORE, PRESTONPANS

A report had been submitted in relation to Planning Application No. 24/00324/PM. Emma Taylor, Team Manager – Planning Delivery, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Responding to a question from Councillor Findlay, Ms Taylor reiterated the two roles of the Council in this application and in the development. Due this being a major-type application, she explained that there had been a requirement for consultation in the pre-application stage. She acknowledged that the public may have felt that they had not been consulted on options to be brought forward, but she advised that the Planning Authority could only consider the application that came before it; applicants were not expected to go to public consultation on a number of different options.

Councillor Yorkston highlighted public concern over levels of contaminants, heavy metals, and asbestos. Ms Taylor responded that the Contaminated Land Officer had been satisfied with the reports submitted, including assessments of land quality and water environment risk. Subject to conditions which required remediation statements, such as asbestos remediation/removal, the officer did not raise objection to the proposals and had been satisfied that proposals did not pose a risk to public safety.

Responding to further questions from Councillors Yorkston and Gilbert, Ms Taylor confirmed that land from the bunds would be used on the two sites to infill the void and then regrade the land within the coal store. The bund material was mainly the soils and the land within the coal store. She advised that the first phase to take the material to the void in the power station site was expected to take five months, and the second phase was expected to take nine months, dependant on weather.

Graeme Marsden, Project Manager – Growth & Sustainability, spoke to the application on behalf of East Lothian Council. He explained that the proposal was to make the remaining areas of the site ready for development, using bund material to infill a void in the power station site to allow the creation of a 10-hectare developable area. Removal of the bund material and redundant concrete structures would increase the accessibility of the coal store, which was currently only accessible under the former railway line. He highlighted Section 8 of the 2017 Cockenzie Masterplan (the Masterplan), which stated that the existing bund walls and disused railway infrastructure could be removed and dismantled locally to ensure the most flexible use of the area. He highlighted that the Masterplan also showed the former power station area being developed as a single-level site. He noted that future development proposals would be subject to separate planning applications. He advised the phasing of work was due to the presence of bats, and said works had also been designed to minimise disruption to residential properties. He advised that the volume and breadth of reports submitted had been similar to that of an Environmental Impact Assessment (EIA) development, and he listed the range of topics covered by the various submitted reports. He said that the development sought to avoid

heavy vehicles driving through Cockenzie and the Memorial Junction following community feedback from the Inchcape development; thus, an existing private service road and a temporary haul route would be used. He advised that mitigation measures would be used to bring construction noise below acceptable thresholds. He acknowledged the strength of feeling around contaminated land, but highlighted various reports confirming that the coal store site was developable for commercial and industrial uses and the bund material was suitable for upfilling the construction site. He confirmed that no exceedances of the assessment criteria protective of human health were recorded within the bund material. He confirmed that there was no asbestos contamination within the bund material to be moved. Asbestos at low levels had only been found within the demolition material left on part of the demolition site, and advised that a Remediation Method Statement had been submitted. He acknowledged community concerns relating to dust produced through concrete demolition and the movement of bund material, and advised of dust suppression measures, but also noted that the wet and clay-like bund material would not be easily blown around. He advised that the arboricultural study detailed that trees being removed were self-seeded and of low quality, and confirmed that none of the trees from the perimeter of the site would be removed. He said the Council aspired for biodiversity enhancement of the entire site. Although the bunds themselves have biodiversity value, this could not be replicated on the coal store part of the site at this stage because future development proposals would undo this work; a proposal for biodiversity enhancement would be submitted for land to the south of the coal store instead. He confirmed that future development proposals would require biodiversity enhancement and landscaping. He advised that it was proposed that construction would take place at the same time as the construction of the link road.

Responding to questions from Councillor Yorkston, Mr Marsden advised that the site had been considered as a landfill site to bring the level of the void in the power station site up to the same level as the rest of the site, but had not been taken forward as this work would take many years and would have incurred a long term traffic impact. He advised that various external companies had analysed the soil over the years. The Council had been able to access several reports produced before it took over the site in 2018, and two separate reports by different companies had been commissioned since taking this project forward. He also advised that bat numbers were still to be fully determined through hibernation and roosting reports; the second phase could not be undertaken before completion of this survey.

Responding to a question from Councillor Findlay, Mr Marsden highlighted some of the dust suppression methods, such as minimising the amount of aggregate, and watering down material before transporting it; the suite of proposals was still to be finalised, and work could not begin until the Planning Authority had given approval. He noted the short-term construction period and that the nearest housing to the access road was more than 100m away.

Responding to questions from Councillor Gilbert, Mr Marsden gave an account of the various reports into possible contamination to which the Council had access, as well reports it had commissioned. The reports had spanned a period from 2013 to 2023.

Responding to a question from the Convener, Mr Marsden advised that the area of developable land within the coal store would increase by around eight hectares. The main power station site would be levelled together to produce a 10-hectare developable site, and access to the site would also improve.

Brian Hall spoke against the application. His written objection had centred on noise disturbance and dust exposure because of the proximity of his home on Cedar Drive to the development, and because of a family member's health condition. He would concentrate his submission on atmospheric exposure to toxic materials as he believed the potential risk of asbestos resulting from the development had been underestimated. He was particularly concerned about the proposed work associated with the large eastern bund. He said there were many references in the Land Quality Risk Assessment to a sample identified as 6F2 with

respect to its asbestos content. He stated that all analyses were positive. He said there were references to procedures to be adopted when handling this material, even though the overall risk was classed as 'low' and 'very low'; this was because asbestos was a special case where no level of risk was acceptable. He was concerned that some samples, which were being described as negative for asbestos, had in fact been described by the experts as being positive for asbestos because of its association with 6F2, demolition material, which he said was of concern. Mr Hall had looked back at data and reports and understood that the asbestos present in the residual foundations and concrete structures of the former power station had also been of great concern to further development, for example of the cruise terminal. He said it was logical to assume that the concrete tunnels and other structures in the eastern bund would be constructed of similar materials to the power station, and hence the asbestos content could be expected to be similar to the asbestos data from sample 6F2 and any other power station site samples. He said that any demolition material associated with the eastern bund must take this into account. He said data on this matter from soil surveys should be discarded because no pre-demolition bund soil samples would detect this incorporated asbestos. He said there would be significant noise and dust generated from the demolition of this bund, as mentioned in the Air Quality Assessment Report, which only considered the level of dust and not the content. He considered that the main issues of dust and noise would come from the demolition of the eastern bund. He was also concerned that there was no definitive undertaking regarding the mitigation measures and precaution. He said that no type of mitigation would entirely remove the threat of asbestos exposure to residents, and he formally objected to the removal of the eastern bund on these grounds. Moving to the presence of bats, he pointed out that all species were protected, so a crime may be committed if places bats used for resting or roosts were damaged or destroyed, even if the bats were not occupying the roosts at the time. He reiterated that he, as an environmental chemist, considered that the soil analyses were not representative of the amount of asbestos that residents would be exposed to. He concluded that the eastern bund should be left undisturbed in the interests of noise disturbances, of residents' health, and of preservation of wildlife habitats.

Responding to questions from Councillor McMillan and the Convener, Mr Hall clarified that the 6F2 created at the time of the power station demolition was now bound in the tunnels under the bund, but another pile of 6F2 was about to be created by disturbing the bund. He reiterated that statements such as 'low risk' were not acceptable when it came to asbestos, as he considered that any risk was unacceptable. His position was that the eastern bund should be retained, and this would also be beneficial to the bats.

Gareth Jones spoke against the application. He said that the scheme did not conform with the adopted East Lothian Local Development Plan 2018 (LDP) and considered it to be poorly conceived. He said the public did not consider the Council's level of self-interest in the scheme to be fair or reasonable. He took issue with comments from the bid proposal, such as that the proposals were essential, and that there had been no opposition to the bid proposal; he stated that there had been no consultation until after submission. He questioned this lack of consultation, and suggested other places money could be spent, such as at Cockenzie Harbour. He said the Masterplan document suggested creating openings in the bunds and retaining them as screening rather than removing them entirely; he suggested the Council was ignoring the Masterplan because it did not accord with plans under the Levelling Up Fund bid. He was concerned that removal of the bunds would destroy a well-established habitat for no benefit. He said that ecological mitigation on battlefields had been offered late in the day and would probably require planning permission which was not in place. He questioned the report's enthusiasm for the view being created across an industrial site, and said the soil would only fill in what would otherwise be useful space. He questioned why any contamination in the coal store was not being surveyed and dealt with prior to commencement. He pointed out the scoping document, which meant an EIA had not been required, was not publicly available. He could not see any evidence to suggest that the biodiversity of brownfield land which had been naturalised had been taken into account, per NPF4 Policy 9. He pointed out that between £15-20m would be spent on levelling land that he suggested would be worth around £4m, and

asserted that this money should otherwise be for communities. He listed negative impacts of the development, including the loss of habitat, and the loss of screening of the coal store for future employment related uses. He felt strongly that the scheme was being mis-sold to spend a grant, and said there was nothing in the development to benefit residents or the wider community. He listed alternative actions, such as retaining the bunds, remediating the coal store, introducing services to the site, and building a developable platform over the basement, which he said would meet the objectives of the bid. If granted, he asked that a condition to restrict future development of the site in terms of the height and the massing be added. He also suggested that Condition 15 be altered to being prior to the beginning of the development, rather than before the second phase, and he implored the Council to act responsibly with regards to biodiversity. He suggested the £40,000 Section 75 agreement would not redress the cost of ecological remediation. He said converting 12 hectares of fields would see a loss of rental income; he questioned why the Council would pay itself to replant trees that it had cut down, but be prepared to accept the loss of the fields without any charge. He said the two substations and the BESS had potential to create a significant contribution to the Council and county, but he felt nothing had been done to leverage benefit to local residents.

Responding to a question from the Convener, Mr Jones reiterated that he did not consider the cost of £15-20m to remediate seven hectares of land to be a good investment, and pointed out that loss of screening removed the possibility of future industrial purposes.

Bryan Hickman spoke against the application on behalf of Cockenzie & Port Seton Community Council (C&PSCC). He had been asked by C&PSCC to undertake biodiversity survey work because of his previous experience working with the RSPB. He had undertaken three visits of roughly two-and-a-half hours, where he had walked around the perimeter fence. He highlighted a good deal of wildlife movement between bunds and adjoining areas of good habitat. He had observed 33 different species and had 254 contacts with different species. He then detailed all the wildlife he had observed, which included a wide range of species of warbler birds, including whitethroats and sage warblers, which were in decline in Britain. He noted that many of the birds observed preferred different habitats, which showed how diverse the area was, and he said the trees and scrub were important and valued. He listed further species he had recorded, including red-list species such as grey partridges and yellowhammers. He pointed out that the site must have value for insects for there to be such a range of bird species. He said the site also had a local and national value for species such as roe deer. He disagreed with the assumption that wildlife would happily move to another habitat; it would take years for these species to reestablish on another habitat. He thought a proper environmental survey would identify many more species than he had named, and he urged Members to consider the proposals from an environmental point of view.

Responding to questions from the Convener, Mr Hickman felt that NatureScot's lack of objection was irrelevant; he reiterated that developers could not destroy one area and expect wildlife just to move into what was left.

Councillor Yorkston, Local Member, said he had listened to the concerns raised, and acknowledged a recent petition. He had also considered the officer report and recommended conditions. He acknowledged that to infill the void with general waste would have extended the development timescale, and the bunds remaining in situ would mean that further land would not be made available. He felt being able to reuse the material from the bunds was a major bonus. He said there were understandable concerns about the site being contaminated, but he noted that: SEPA had given Scottish Power a certificate to surrender the site; external experts had deemed that traces of heavy metals and asbestos were within acceptable levels; and mitigations would minimise risks to the public and workforce. He understood the apprehension of some of the community, but firmly believed that measures were adequate for the work being proposed. He pointed out that the site had been purchased to bring employment to the area, and he thought there were real positives in school leavers being able

to walk or cycle to work. He thought the proposals would help deliver 20-Minute Neighbourhoods, and he would support the application.

Councillor Gilbert, Local Member, echoed Councillor Yorkston's comments. He would support the officer recommendation, as the work would add value to the site and make it more developable.

Councillor McMillan said he had listened to objectors, but also thought that the officer report addressed their concerns. He highlighted various recommended conditions which addressed concerns relating to asbestos, habitat, and birds. He said he respected officers' professionalism and their own respect for communities. He also pointed out his economic development role in considering this major site. He said this site needed to be levelled up, and he knew the proposals would help the Council to bring in good jobs to the area. He reiterated that conditions addressed all concerns, and he trusted that the Council officers would not work in a way that would adversely affect communities. He thought the development would present long term and sustainable economic opportunities. He wanted to see all recommended conditions fulfilled, and reiterated that he had listened carefully to objectors, but thought that the innovative project would be of real benefit to the economy and community. He felt that mitigation measures were in place to protect the environment, and highlighted the Council's other environmental work across the county.

The Convener understood the nervousness of the community living alongside the Cockenzie Power Station site. He said the Council had purchased the site to control its future, but the government's decision that the site should be energy related had delayed plans for the site. He said the Council had done as much as possible to ensure the buildings on the site were as attractive as could be. He said the site delivered fantastic opportunities for Cockenzie and Prestonpans. He had never felt the artificial bunds improved the village, and thought their removal would enhance the area. Although it was not yet known what development would take place within the site, he commented that the Planning Authority would make great efforts to ensure it was attractive, while creating high-quality jobs. He said that efforts would also be made to enhance the biodiversity of the site. He would take the advice of both Council officers and national agency officers who said it would be possible to develop the site and protect the environment around housing. He said the Council would do all it could to minimise disruption, and said there should be dust control measures in place. He would support the officer recommendation to grant consent, but reiterated that he understood the concerns of neighbours to the site.

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

Decision

Members agreed to grant planning permission be granted subject to:

1. The undernoted conditions.
2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other agreement designed to secure from the applicant a financial contribution to the Council of £49,230 for the cost for the supply, planting and ten-year maintenance of new trees to mitigate for those proposed to be removed from the former coal store bund.
3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of a Section 75 Agreement or other agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the

application shall then be refused for the reason that without the developer contributions to be secured by an agreement the proposed development is unacceptable due to the loss of trees, contrary to Policy 1 of the Council's Tree and Woodland Strategy for East Lothian (TWS) and Policy DP2 of the ELLDP.

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

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving finished ground levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing.

Reason:

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

- 2 An updated Construction Traffic Management Plan (CTMP) to minimise the impact of construction activity on the amenity of the area, including from the effects of noise and dust, shall be submitted to and approved by the Planning Authority prior to the commencement of development. The CTMP shall recommend mitigation measures to control construction traffic, shall include hours of construction work and routes of construction traffic to/from the site. It shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site.

The CTMP will show that all construction traffic will arrive to and depart from the site from the B6371 to the east, coming from the A1 and the B6371 to the south.

The CTMP shall also include a scheme of monitoring and engagement to understand how motorised and non-motorised general traffic interacts with the crossing controls on the B1348 public road, including on pupil movements on the route to and from Preston Lodge High School.

Thereafter, the CTMP shall be implemented and complied with in accordance with the approved details for the period of construction of the development hereby approved.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 3 Prior to the commencement of the development hereby approved a programme for monitoring the condition of the public road to be used by construction traffic throughout the period of the development shall be submitted to and approved in writing by the Planning Authority. The public road to be monitored shall be 20 metres in each direction of the construction traffic crossing point of the B1348 Edinburgh Road.

The programme shall include details of the monitoring inspection schedule and a plan of how any emergency repairs shall be identified and repaired for damage to the road surface that could represent a significant road safety risk arising from the construction of the development.

Thereafter the approved programme of monitoring shall be implemented. Any remedial works shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority.

Reason:

To ensure that damage to the public road network resulting from the proposed development is rectified.

- 4 Prior to the commencement of development, a Public Access Management Plan shall be submitted to and approved in writing by the Planning Authority. The Public Access

Management Plan shall include details of any temporary rerouting of informal active travel routes in the local area, including a timetable for the implementation of the measures.

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

Reason:

To ensure continuity of active travel routes in the interests of public access.

- 5 Prior to the commencement of development, an updated Drainage Impact Assessment (DIA) shall be submitted to and approved in writing by the Planning Authority.

The DIA shall include detail of the drainage infrastructure including SuDS and swales and shall show there to be no right-angled bends in the piped network. The DIA shall also include a timetable for the installation of the drainage infrastructure.

The drainage infrastructure as so approved shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Reason:

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

- 6 Prior to commencement of development, a Dust Management Plan (DMP) shall be submitted to and approved in writing by the Planning Authority. The DMP shall identify all potential sources of dust that may arise as a result of the development hereby approved and shall specify any mitigation measures considered necessary to ensure that the amenity of nearby residential properties is not harmed from impacts of dust throughout the period of the development hereby approved.

Thereafter the measures identified in the approved DMP shall be implemented as so approved.

Reason:

In the interests of protecting the amenity of neighbouring residential properties.

- 7 Prior to commencement of development a Noise Management Plan (NMP) shall be submitted to and approved in writing by the Planning Authority. The NMP shall identify all potential sources of noise that may arise as a result of the development hereby approved and shall specify any mitigation measures considered necessary, including details of monitoring and compliance with Threshold Values at Noise Sensitive Receptors as detailed in Table 4-4 of the docketed Construction Noise and Vibration Impact Assessment dated 14 March 2024, to minimise noise impacts upon noise sensitive receptors throughout the period of the development hereby approved.

Thereafter the measures identified in the approved NMP shall be implemented as so approved.

Reason:

In the interests of protecting the amenity of neighbouring residential properties.

- 8 Prior to the commencement of development, a detailed Remediation Statement shall be submitted to and approved by the Planning Authority. The Statement shall demonstrate how the identified asbestos contamination (particularly within the Coal Store material - 6F2) will be dealt with in order to remove unacceptable risks to all relevant and statutory receptors. The Statement shall 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.

Thereafter the detail of works to be undertaken shall be implemented as so approved.

Following completion of the measures identified in the approved Remediation Statement, a Validation Report shall be submitted and approved by the Planning Authority to demonstrate the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable in the interests of the amenity of the area.

- 9 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.

Reason:

To ensure that the site is clear of contamination.

- 10 The phase 1 works of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 shall be carried out in strict accordance with the mitigation measures in section 8.0 of the Species Protection Plan - Bats report dated 28 May 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

To safeguard potential bat roosting space in the interests of the biodiversity of the site.

- 11 Prior to commencement of development an updated Invertebrate Survey Report shall be submitted to and approved by the Planning Authority. It shall inform measures to be included in the submission of a final Biodiversity Enhancement and Restoration Management Plan as required by Condition 15 below.

Reason:

In the interests of the biodiversity of the site.

- 12 No tree clearance shall take place during the breeding bird season (March-August), unless in strict compliance with a Precautionary Method of Work Plan for breeding birds, including provision for pre-construction surveys, that shall be submitted to and approved in advance by the Planning Authority.

Reason:

In the interests of the biodiversity of the area.

- 13 All site clearance works shall be carried out in strict accordance with of the Ecological Impact Assessment report dated 5 June 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

In the interests of the biodiversity of the area.

- 14 Prior to the commencement of phase 2 of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 an updated Species Protection Plan - Bats report shall be submitted to and approved by the Planning Authority in consultation with NatureScot, which shall include further bat survey work and outline mitigation measures to protect bats in the construction of the development.

Any mitigation measures highlighted to be required as a result of the approved Species Protection Plan - Bats report shall thereafter be carried out in accordance with a timetable to be submitted to and approved in advance by the Planning Authority.

Reason:

In the interests of the biodiversity of the area.

- 15 Prior to the commencement of phase 2 of the development hereby approved as shown on docketed drawing no. CLUW-PLAN-012 Rev P0 a final Biodiversity Enhancement and Restoration Plan (BERP) shall be submitted to and approved by the Planning Authority in consultation with NatureScot. The BERP shall set out in detail the habitat enhancement and compensatory measures to take place, the location for these measures and shall also include provision for new artificial hibernation roosts for bats to be formed prior to the phase 2 works taking place. The BERP shall also include a timetable for its implementation.

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

Reason:

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

- 16 The mitigation measures for the prevention of disturbance and/or displacement of SPA species throughout the period of the development hereby approved shall be implemented in strict accordance with those detailed in Table 4-7: Construction Mitigation Measures and Tables 4.6.1 to 4.6.5 inclusive within the Shadow Habitat Regulations Appraisal Screening and Appropriate Assessment Report dated 14 March 2024 by SLR Consulting that is docketed to this planning permission.

Reason:

To ensure the specified mitigation measures are fully implemented in order to safeguard SPA species.

Sederunt: *Councillors McMillan and Gilbert left the meeting.*

2. PLANNING APPLICATION NO. 24/00236/P: CHANGE OF USE OF OPEN SPACE TO BEER GARDEN WITH SEATING AREA, ERECTION OF FENCING AND GATES (PART RETROSPECTIVE), 131 CHURCH STREET, TRANENT

A report had been submitted in relation to Planning Application No. 24/00236/P. Amy Law, Planner, presented the report, highlighting the salient points. The report recommendation was to refuse consent.

Ms Law responded to questions from Councillors Findlay and McGinn. She advised that the area was privately owned, but was classed as a grassed area of open space. The landowner had given the applicant permission to use the area.

Dominic McNeill, applicant, answered questions from Members. He advised that a small area of decking had already been licensed. He was content to accept the suggested conditions contained within the report. He advised Members that the Licensing Board had recently discussed that the Tower Inn received minimal complaints when compared to other premises. He reassured Members of good measures in place to minimise complaints, including good communication with neighbours. He understood that having an 8pm curfew was important to maintain neighbourly relationships. He advised that customers would be unable to enter the outdoor area through the gate, which would be used only as an accessible entrance. He advised that the gate would be controlled by staff, and the area would be under constant CCTV monitoring. Mr McNeill agreed that the Tower Inn could be considered a community pub, and provided background information as to how he had come to take over the premises when it had been due to be closed down two-and-a-half years before. He spoke about the community connections made at the premises and how the pub helped some people to combat loneliness.

He felt the addition of the outdoor area would mean that more people would access the premises.

Councillor McGinn, Local Member, had been one of two Councillors who had called the application to Planning Committee, and wanted to add context. He spoke about the community outcry when the Tower Inn had been due to close a few years before, and of the work of Mr McNeill and the community to bring the pub back to life as a place where families could gather. He said constituents had reached out to him about this application, but no objectors had come to him. He was aware that many people were pleased with the premises' plans for an outdoor area. He knew that Mr McNeill and his team were committed to the area, to providing a good service, and working with Council officers.

Councillor McLeod, Local Member, supported Councillor McGinn's comments. He commented that many hubs and gathering places had been lost in Tranent over the years, and the addition of a beer garden would allow the Tower Inn to compete with other premises. He now felt reassured in his previous concerns about ownership of the land. He would vote against the officer recommendation to refuse consent.

Councillor Collins said the site visit had helped her to understand how the space could be used to benefit the community, and she was happy to support the application.

Councillor Menzies, Local Member, had also called the application before the Planning Committee. She acknowledged that the officer recommendation to refuse consent was correct in terms of planning guidance, but felt that further context would change opinion. She noted that the proposed development was in a small green space in the heart of Tranent, which was already well screened on one side by a hedge. She thought use of this land, currently only used by dog owners, should be changed for the better. She suggested that hedging could be used to conceal wooden fencing to preserve the character of the area. She thought noise concerns could easily be mitigated with a curfew on use of the outdoor area. She felt it was important to support businesses, and described the Tower Inn as a thriving business with a broad clientele. She felt the beer garden would encourage greater use by families and as gathering places. She noted that the weather would limit the use of the beer garden in any case, and also highlighted the suggested conditions. She felt that the Tower Inn was becoming a community hub, and said she had called the application before the Planning Committee out of a sense of fairness. She felt the outdoor area would add cultural and economic value to the setting. She hoped that other Members would support the premises and hoped that ways to mitigate concerns over noise could be found.

The Convener commented that pubs struggled if they did not have a decent outdoor space. He was concerned about the gate and said staff needed to know when customers were coming in and out. He would support the application, but felt that conditions should be in place in relation to the access gate, planting along the fencing, and times of use for the outdoor area.

Mr Dingwall listed the report's suggested conditions, noted below. He further suggested conditions relating to staining the fence and to require a scheme of landscaping to reduce the impact of the fence. Mr McNeill responded that there were already plans in place to put planters in front of the fence. He said the fence was for security purposes and to be able to control customers' access to the outdoor area; he intended for the fence to disappear behind the planting. He also mentioned that he had been in touch with the Tranent Wombles about creating another seating area on the other side of the pub.

Mr Dingwall and Mr McNeill discussed possible timescales for submission of plans for planting and fencing. Mr Dingwall strongly advised that Members require details of the planting to be submitted to and approved by the Planning Authority. He further suggested that Mr McNeill could meet with the Council's Landscape Officer.

The Convener moved to a roll call vote, and Members unanimously voted against the offer recommendation to refuse consent.

Five recommended conditions were reiterated by Mr Dingwall, noted below. These conditions were proposed by the Convener and seconded by Councillor McGinn. Members unanimously agreed to add these conditions by roll call vote.

Decision

Members agreed to grant planning permission, subject to the following conditions:

- 1 No amplified music and/or amplified speech shall be permitted in the beer garden at any time.

Reason
In the interests of protecting the amenity of nearby properties.
- 2 The beer garden shall only be used between the hours of 1100-2000 hours on any day of the week, including bank holidays.

Reason
In the interests of protecting the amenity of nearby properties.
- 3 The beer garden hereby approved shall not be used unless and until any doors providing access to the beer garden have been provided with a self-closing mechanism. Any such doors shall remain self-closing and shall not be retained in a continuous open position, and shall be retained as such in perpetuity.

Reason
In the interests of protecting the amenity of nearby properties.
- 4 Within one month of the grant of this planning permission, details of the paint or stain for the finish of the fence or gate shall be submitted to and approved by the Planning Authority. Thereafter the fence and gate shall be painted or stained the colour so approved within one month of the date of that approval.

Reason
In the interests of safeguarding the character and appearance of the Tranent conservation area.
- 5 Within three months of the date of grant of this planning permission, and scheme of landscaping to reduce the impact of the fence and gate shall be submitted to and approved by the Planning Authority. The submitted details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the details so approved.

Reason
In the interests of safeguarding the character and appearance of the Tranent conservation area.

Sederunt: *Councillor McMillan re-joined the meeting.*

3. PLANNING APPLICATION NO. 23/00498/AMM: APPROVAL OF MATTERS SPECIFIED IN CONDITIONS (1A TO I & K, 2(II), 7, 8, 24, 26, 27 & 29) OF PLANNING PERMISSION IN PRINCIPLE 15/00537/PPM - ERECTION OF 137 HOUSES, NINE FLATS, AND ASSOCIATED WORKS – LAND LOCATED TO THE SOUTH AND EAST OF WALLYFORD AND AT DOLPHINGSTONE

A report had been submitted in relation to Planning Application No. 23/00498/AMM. Emma Taylor, Team Manager – Planning Delivery, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Ms Taylor responded to questions from Councillors McGinn and McMillan. She advised that the wider infrastructure, including play areas and the junction from the application area to the old A1, had been approved under another application. Depending on timings, the new junction being brought forward could serve this development. She further explained that as a recent planning application to develop the large area of open space had been refused, there was no permission in place for this area to be anything other than open space. She advised that other areas of open space would come forward, and one of the play areas would come forward prior to occupation of the thirty-first unit on this phase of the application.

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

Decision

Members agreed that approval of matters specified in conditions be granted subject to the following conditions:

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

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

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

Reason:

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

- 2 Notwithstanding that which is stated on the drawings docketed to this approval of matters specified in conditions permission a detailed specification of all external finishes of the houses and flats hereby approved shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. The external finishes of the houses and flats shall be in accordance with a co-ordinated scheme of materials and colours that shall in detail promote render as the predominant finish to the walls of the houses and flats, with a use of more than one render colour and with a strongly contrasting difference in the colours such that they will not each be of a light colour, and shall show the roofs being clad in more than one colour of roof tile. All such materials used in the construction of the houses and flats shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 3 Prior to their occupation, mitigation in the form of glazing units that afford closed window attenuation of 28dB and attenuated ventilation systems that achieve a minimum attenuation of $D_{n,ew}$ 28dB shall be installed in the elevations of the houses as shown in purple on docketed drawing no. 23346/11/01 Rev A.

Thereafter such form of attenuation shall be retained in place unless otherwise approved by the Planning Authority.

Reason:

In the interest of safeguarding the residential amenity of future occupiers of the proposed residential development.

- 4 Mitigation in the form of an acoustic barrier comprising a 2 metre high type C-1 screen wall with close boarded timber fence as shown on docketed drawing no. DET/13 shall be erected in the positions for them as shown on docketed drawing no. 23346/11/01 Rev A prior to the occupation of the houses on the plots where such acoustic barriers are required.

Thereafter the acoustic barriers as so erected shall be retained in place unless otherwise approved by the Planning Authority.

Reason:

In the interest of safeguarding the residential amenity of future occupiers of the proposed residential development.

- 5 With the exception of the acoustic barriers as required by Condition 4 above, notwithstanding that shown on the drawings docketed to this planning permission, the boundary enclosures shown on those drawings are not hereby approved. Instead, and prior to the commencement of development, revised details of all boundary enclosures to be erected on the application site, and the timescales for their provision, shall be submitted to and approved in advance by the Planning Authority. Those details shall show 1.8 metre high solid enclosures around and between rear gardens of the houses hereby approved except where those boundaries are adjacent to a road or pathway where they shall be feature boundaries in either render, stone or stone with timber panel infills and not full height close boarded fencing to heights and finishes to be approved in advance by the Planning Authority. The details shall also show all semi private and defensible spaces in front of or to the side of the houses hereby approved and to the side of parking courtyards to be enclosed by walls/hedges/fences/ or railings to define areas of private space from public space.

Thereafter the boundary treatments erected shall accord with the details so approved unless otherwise agreed in writing by the Planning Authority.

Reason:

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

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

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

Reason:

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

- 7 The development shall comply with the following transportation requirements:

(i) All roads and paths shall conform to East Lothian Council's Transport Infrastructure in New Developments;

(ii) driveways shall have minimum dimensions of 6 metres by 3.3 metres. Double driveways shall have minimum dimensions of 6 metres width by 6 metres length or 3.3 metres width by 11 m length.

(iii) Vehicle accesses to private parking areas (i.e. other than driveways) shall be via a reinforced footway crossing. Within private parking areas, the minimum dimensions of a single parking space shall be 2.5 metres by 5 metres. The circulation lane should be 6m wide for nose-in parking; a narrower lane is acceptable for echelon parking;

(iv) Cycle parking for dwellings without a private back garden with a gate (e.g. flats/mid-terraces), shall be included at a rate of 1 space per dwelling. This shall be in the form of a lockable room or shed;

(v) Where a priority junction joins a main distributor road, a visibility splay of 4.5 metres by 70 metres in both directions shall be provided and maintained on each side of the vehicular access such that there shall be no obstruction to visibility above a height of 1.05 metres measured from the adjacent carriageway surface;

(vi) Where a private access joins a main distributor road, a visibility splay of 2.4 metres by 70 metres in both directions shall be provided and maintained on each side of the vehicular access such that there shall be no obstruction to visibility above a height of 1.05 metres measured from the adjacent carriageway surface.

Reason:

In the interests of road safety.

- 8 Prior to the commencement of development, a swept path, or vehicle track assessment, of the road layout shall be submitted to and approved by the Planning Authority. For the avoidance of doubt the Design Vehicle to be used is the "Large Rigid Vehicle" as outlined in the Freight Transport Association's document "Designing for Deliveries" - this will permit access by the occasional refuse/recycle collection vehicle, deliveries, social care buses and emergency & firefighting appliances.

Reason:

In the interests of road and pedestrian safety.

- 9 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area, including from the effects of noise and dust, shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control construction traffic, shall include hours of construction work and routes of construction traffic to/from the site. It shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site.

The Construction Method Statement shall also include details of wheel washing facilities to be provided, and that these facilities shall be 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.

The Construction Method Statement shall also provide details of utility/service drainage connections, including what temporary measures shall be put in place to control surface water drainage during the construction of any drainage system.

Thereafter, the Construction Method Statement shall be implemented and complied with in accordance with the approved details for the period of construction of the development hereby approved.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 10 A Travel Information Pack shall be submitted to and approved by the Planning Authority prior to the occupation of any of the residential units hereby approved. The Travel Information Pack shall have particular regard to provision for walking, cycling and public transport access to and within the site, shall include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents. It shall also include a timetable for its implementation, details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Pack.

Reason:

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

- 11 Prior to the commencement of development a Quality Audit shall be submitted to and approved by the Planning Authority, which shall be undertaken for the preliminary and detailed design of all roadworks, footways and cycle paths within the development hereby approved. The Quality Audit shall provide details on accessibility and connectivity from the wider transport network and between different elements of the application site and consider all different modes of transport including walking and the need of users who are mobility impaired.

The approved Quality Audit shall thereafter be implemented through the detailed design stages and the full audit process completed through to construction/occupation.

Reason:

In the interests of road and pedestrian safety.

- 12 Prior to the commencement of development a Stage 2 Road Safety Audit shall be submitted to and approved by the Planning Authority, which shall be undertaken for the detailed design of all roadworks, footways and cycle paths within the development hereby approved, and shall include an implementation programme describing when measures identified in the audit will be provided in relation to construction of the proposed development.

Immediately following completion of the development, the date of which shall be provided in writing to the Planning Authority, a Stage 3 Road Safety Audit - Post Opening shall be submitted to and approved by the Planning Authority.

12 months following approval of the Stage 3 Road Safety Audit a Stage 4 Road Safety Audit shall be submitted to and approved by the Planning Authority.

All the Road Safety Audits shall be carried out in accordance with the most recent revision of GG119 Road Safety Audit.

Reason:

In the interests of road and pedestrian safety.

- 13 The play area, equipment within it and surfacing materials hereby approved shall all be installed and available for use prior to the occupation of the last residential unit also as hereby approved.

The equipped play area, when provided, shall be used for such purposes at all times thereafter unless agreed in writing by the Planning Authority.

Reason:

To ensure the satisfactory provision of a play area in the interest of the amenity of the future occupants of the residential units hereby approved.

- 14 All planting, seeding or turfing comprised in the details of landscaping on docketed drawing nos. 1982/02 Rev C, 1982/03 Rev B, 1982/04 Rev B and 1982/05 Rev C shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

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

All the new planting shall be maintained in accordance with the maintenance and management programme as detailed in the docketed 'Pod 2A Dolphingstone Planting Notes & Landscape Maintenance and Management Proposals' document dated February 2024.

Reason:

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

- 15 Prior to the commencement of development, a scheme for the provision of electric car charging points to serve all of the residential units, and associated infrastructure for them, where feasible and appropriate in design terms, shall be submitted to and approved in writing by the Planning Authority. The scheme shall show 1:1 ratio provision with the installation of one 7kW Type 2 charger per dwelling, either socketed or tethered. Where it is not possible to connect to the household's own electrical supply then a factored arrangement shall be provided.

The scheme shall include a timetable for implementation and details of factoring and maintenance arrangements for any charging units which are to be installed outwith the curtilages of residential units. Development shall thereafter be carried out in accordance with the details so approved and charge points shall be maintained in accordance with the details so approved and shall remain in place unless otherwise approved by the Planning Authority.

Reason:

To minimise the environmental impact of the development.

- 16 Prior to the commencement of development, a report on the actions to be taken to reduce the carbon emissions from the build and from the completed development shall be submitted to and approved in writing in advance by the Planning Authority. This report shall include, but not exclusively, the provision of renewable technology for all new buildings, 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.

Note: Summary of information

The Committee excluded the public from item 4 in terms of paragraph 12 (any instructions to/opinions of counsel and any advice/information received/obtained or action taken in connection with legal proceedings or any other matter affecting the authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

4. APPLICATION FOR A CERTIFICATE OF LAWFULNESS

The Planning Committee agreed that the Planning Convener should pursue a judicial review.