

**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 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 McIntosh for the following reasons: As it has clearly caused a significant amount of interest and comment within the town, it would benefit from a discussion at Planning Committee.*

*Note: This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reasons: A high level of engagement from the community both for and against the application.*

Application No.      **24/00126/P**

Proposal              Formation of pump track, skate park, basketball court, erection of cafe building (Class 3), changing room building and associated works

Location              **Land South of Hallhill Sports Centre  
Kellie Road  
Dunbar  
East Lothian**

Applicant              Mr Robert Peters

Per                      Blueprint (Dunbar) Ltd

**RECOMMENDATION**      Consent Granted

## **REPORT OF HANDLING**

### **SITE CONTEXT**

This application relates to five parcels of land that are located within a larger area of land approved as open space through the grant of planning permission 20/00110/PM for the erection of 245 residential units and associated works at Hallhill North in Dunbar. Planning permission 20/00110/PM has been implemented and works to build the residential units are well underway. The land the subject of planning permission 20/00110/PM was allocated and safeguarded by Proposals DR2 and DR3 of the adopted East Lothian Local Development Plan 2018 respectively. Proposal DR2: Hallhill North allocated the land for a residential development and includes an area of land on which the open space and play area for the development is to be provided. Proposal DR3: Hallhill Healthy Living Centre Expansion Land safeguarded a further area of land for the provision of a community sports pitch.

Planning permission 20/00110/PM was granted subject to the prior conclusion of a S75 legal agreement which amongst other things required (i) the transfer to East Lothian Council at no cost of the land of Proposal DR3 of the adopted East Lothian Local Plan 2018, and the northern access strip of land projecting from it, required for the new community facilities (community sports pitch and changing facilities) as shown on the docketed drawings and (ii) the transfer to East Lothian Council at no cost of the land of the play area and surrounding open space as shown outlined in red and marked as 'East Lothian Council Transfer Land' on the docketed drawings. To date that land transfer has not yet taken place but is expected to take place in the next month.

The larger area of land, approved as open space through the grant of planning permission 20/00110/PM, is bounded to the north, east and west by Lochend Woods which is a local biodiversity site and designated as ancient woodland. To the south of the site, there is an existing lit footpath which is the primary pedestrian and cycle link between the housing development to the west at Hallhill South and Kellie Road to the east, and beyond to other facilities within Dunbar. The nearest neighbouring residential property, named 'Lochend Cottage', is located to the southeast and is listed as being of special architectural or historic interest (Category C). The larger area of open space is within the Battle of Dunbar II Historic Inventory Battlefield and within a surface water flood risk area.

Through the grant of planning permission 20/00110/PM the larger area of open space was approved to have the community sports pitch formed on the northern part of it, a play area formed on the southwest part of it and otherwise to be laid out as grassed open space. However, through a non-material variation (NMV) Ref: 20/00110/NMV1, approval has been given to amend the layout of the open space. Through that NMV the play area, which will be delivered by Taylor Wimpey, has been reduced in size to allow the community sport pitch to be formed on the southern part of that larger area of open space. Construction access for the community sports pitch will be from an access to be formed from the road serving the Lochend Campus of Dunbar Primary School.

Whilst the community sports pitch and play area have not yet been formed, soil has been transported from the western part of the site, where the houses are currently being built, and is being stored on a fenced off part of that open space land. The soil will be used to level the land to allow the formation of the community sports pitch, play park and open space and otherwise to form bunding associated with the play park. The levelling of the area of land and the work to form the community sports pitch will be undertaken as the first phase of development of the site and the works to form the pump track, skate park, cafe and changing room building will follow on from that work.

## **PROPOSAL**

Planning permission is now sought for the formation of a pump track, skate park, basketball court, changing room and cafe building on the larger area of land approved by planning permission 20/00110/P as open space.

The proposed pump track would be formed on the area of land that will be to the north of the grassed community sports pitch and the proposed skate park would be formed on the area of land to the north of the proposed pump track. The proposed cafe building (Class 3) and a changing room building would be formed on the area of land to the west of the proposed skate park and the basketball court would be formed on the area of land to the west of the community sports pitch. For the avoidance of doubt all the proposed new facilities will be on land already approved as open space by planning permission 20/00110/P and will not encroach into the woodland to the north, east or west. In addition, the community sports pitch and play area are already approved through the grant of

planning permission 20/00110/PM and thus they are not the subject of this planning application.

The proposed pump track would be orientated on an east to west axis and would occupy some 2,100 square metres of the area of open space which it would be sited on. It would be positioned to the north of the approved grass community sports pitch.

The proposed skate park would be orientated on an east to west axis and would occupy some 1,925 square metres of the area of open space land. It would be positioned immediately to the north of the proposed pump track.

The proposed basketball court would be orientated on a north to south axis and would be positioned on the area of open space land in a position to the west of the approved grass community sports pitch. It would be rectangular in shape and would measure some 32 metres long and some 19 metres wide.

The proposed café building would be single storey in height, orientated on a north to south axis and rectangular in shape. It would measure some 15 metres long, some 9.8 metres wide and some 2.7 metres high to the upper surface of its flat roofed top above ground level. It would be positioned to the west of the proposed skate park.

The proposed changing room building would be single storey in height, orientated on a north to south axis and rectangular in shape. It would measure some 12.3 metres long, some 3.1 metres wide and some 2.7 metres high to the upper surface of its flat roofed top above ground level. It would have 10 solar panels installed on top of its roof. It would be positioned to the west of the proposed skate park and café building.

The proposed new facilities will be constructed after the works to form the community sports pitch have commenced and will use the same access from the road serving the Lochend Campus of Dunbar Primary School as will be used in the works to form the community sports pitch.

The larger area of open space, prior to part of it being fenced off, was accessed from the road serving the Lochend campus of Dunbar Primary School via an existing opening in the woodland adjacent to the school campus. The application drawings indicate that the existing access path is to be upgraded to an adoptable standard by East Lothian Council as a safe route to school and will connect to the existing lit footpath that lies to the south of the application site. The works to upgrade the existing access path, located adjacent to the application site, are permitted development and thus they do not form part of this planning application.

Subsequent to the registration of this planning application, the applicant's agent has submitted a Supporting Statement, a Biodiversity Plan, a Parking Strategy report and a diagram to show the proposed changes within the existing car park/grounds of Dunbar Primary School.

The supporting statement submitted with this application states that the area of open space in the middle of Lochend Woods was identified by East Lothian Council (ELC) as land to be used for recreation as part of the Local Development Plan at Hallhill North. It states that this land will be transferred to the Council's ownership and will include a children's play park delivered by Taylor Wimpey Ltd through planning permission 20/00110/PM. It states that ELC will also develop a new football pitch on part of this land. It states that Council staff have also been looking for a site in Dunbar for a pump track that will provide a safe route to school and that this site, the subject of this current planning application, has been identified as the best location for these new facilities. It states that, during the development

process, it was also clear that the community had a desire to have a skate park and a basketball court and that this location was seen as the best place to develop these facilities. It states that Dunbar Community Development and Heritage Trust (DCDHT), who own the land at Hallhill Sports Centre and the land at Lochend Woods, became involved and supported the community groups to bring forward an application that would deliver these proposed facilities (alongside the football pitch that will be delivered by the Council together with the proposed pump track). It states that it was also agreed that they would benefit from having a community café with toilet facilities and hanging rooms for the different sports that will take place in the new park. It states that the proposed facilities will be available for the whole community to use (just like all the existing facilities at Hallhill).

It states that the proposed skate park, basketball court, changing rooms and café will be delivered through the DCDHT for the community and that DCDHT will also manage the day-to-day operation of the facilities through an agreement with another community organisation. It states that the land and the proposed facilities will continue to be owned by the Council but would be managed by DCDHT through a Service Level Agreement. It states that the café and toilet facilities are expected to be open between 10am and 10pm every day. It states that DCDHT have an agreement with the Education Estates Department and the Head Teacher of Dunbar Primary School to fence off the school car park from the school and use it in the evenings, and at weekends, when the school is closed. It states that signage will be erected to inform the community of the access times of the car park. It states that the construction of the site will be required to comply with the planning consent for the houses being developed at Hallhill North and, to deliver this, the Council will create a new park entrance from the access road to the school at Hallhill Sports Centre. It states that the construction management plan will be agreed with ELC. It states that the site has good access, at all times, for any emergency vehicles from both the south and north ends of the site and that a drainage system for the surface water will have a SUDS system at the north end of the site before entering into the Scottish Water drainage system.

It goes on to state that Councillor Norman Hampshire is a community volunteer and is the chairman of DCDHT. It states that DCDHT has been working with people in the community who are interested in developing sporting facilities for bikes, skateboards, and other wheeled equipment. It states that, as part of his role as a local Councillor, Norman Hampshire agreed to have meetings with them and agreed to try and help the community to and deliver the new facilities they want. It states that this planning application was submitted by the Development Company Trustee, Mr Robert Peters, as Councillor Hampshire is a member of the planning committee. It states that Councillor Hampshire has been supporting the skateboarding group named 'Space Dunbar' to help develop their plans for the new skatepark and that Council officers have been working on the development of the design of the pump track along with other proposed tracks across East Lothian. It states that the proposed facilities will be a great addition to the fantastic sporting facilities already in place at Hallhill Sports Centre. The successful management of these facilities will be replicated within the application site and will be enjoyed by the Dunbar Community.

The submitted Parking Strategy report states that it is anticipated that many visitors to the application site will live in the local community and will travel to the site by walking, skateboarding or cycling as many of its users will not be at an age to drive. However, it states that to accommodate the few people who have no alternative but to use the car to use these facilities, it is proposed to share the use of the existing school car park when it is closed. It states that it will be at this time (i.e. when the school is closed) when there will be the greatest demand to use the proposed facilities. It states that, to improve safety and security at the school, the applicant proposes to erect a fence and gate around the school car park to separate it from the school grounds. It states that this will allow the school car

park to remain open when the school is closed - particularly in the evenings, weekends or during the school holidays. The car park will also have disabled parking to help people with disabilities who are able to take part in the sports facilities proposed within the site. It states that the proposed pump track, skate park and basketball court will be used by people for casual activity and that the majority of the time they will arrive at the facility by walking or on their bikes and skateboards. However, should any organised event be scheduled to take place, the organisers will work with the Hallhill Centre Manager to make sure it will not clash with events at the Sports Centre such that the Parking available at the school car park and at the Hallhill car park will accommodate any cars attending the event. It states that there are 30 parking spaces within the school car park and 78 spaces at the Hallhill Sports Centre car park. It states that whilst there is the potential to increase the car parking spaces available at the school, the applicant's aim is to try and encourage more people to travel by sustainable means rather than provide additional parking. It also states that the majority of customers using the proposed café will be by people using the proposed pump track, skate park and basketball facilities and thus it will not generate any additional parking requirements.

## **DEVELOPMENT PLAN**

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

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

Policies 1 (Tackling the climate and nature crises) 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural places), 7 (Historic assets and places), 13 (Sustainable Transport), 14 (Design, quality and place), 15 (Local Living and 20-minute neighbourhoods), 21 (Play, recreation and sport) and 22 (Flood risk and water management) of NPF4 are relevant to the determination of this application.

Proposals DR2 (Hallhill North, Dunbar) and DR3 (Hallhill Healthy Living Centre Expansion Land) and Policies CH1 (Listed Buildings), CH5 (Battlefields), NH3 (Protection of Local Sites and Areas), NH10 (Sustainable Drainage Systems), NH11 (Flood Risk), DP1 (Landscape Character), DP2 (Design), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination of this application.

Material to the determination of the application is Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

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

## **REPRESENTATIONS**

A total of 76 representations have been received to this application. Of these representations, 55 object to the application, 20 representations support the application and 1 representation makes comment but neither objects nor supports the application.

The main grounds of objection, as summarised, are:

- (i) the location is inappropriate as it is used by local wildlife (particularly deer and foxes) and as an area of outdoor green space;
- (ii) the application site is in a secluded area where young people congregate to drink, take drugs and make fires etc. and the proposals would exacerbate these anti-social behaviour matters;
- (iii) the application site is at risk of surface water flooding and is flooded for at least two thirds of the year and there appears to be no drainage plans submitted to demonstrate how flooding will be alleviated;
- (iv) the proposals will result in a destruction of valuable wildlife habitat and green space and should be located elsewhere - similar facilities are already provided at Hallhill which includes a café, sports fields and a play park. There is also a skate park in the woods at Dunbar which is underused and thus there appears to be no justification or requirement for these facilities at this location;
- (v) the proposals could impact upon the safety of children as anyone using this area could approach children at school or take photographs of them in the playground;
- (vi) there has not been any significant consultation with the public relating to these proposals;
- (vii) there is insufficient car parking in this area to accommodate the proposals and cars are often parked on double yellow lines and on both sides of the road when other recreational events are taking place in the area;
- (viii) construction traffic is to be taken next to the primary school and there are on-going safety concerns with increased traffic generation and parking in the area;
- (ix) Dunbar Community Development and Heritage Trust, who appear to be behind the proposals, list Norman Hampshire as the chair of the Trust but there appears to be a conflict of interest given his role as Leader of the Council. It also raises questions as to whether any profit will be made from the facilities (particularly the café) and, if so, to whom will the proceeds benefit?
- (x) the proposals contradict the objectives outlined by Policy 3 of NPF4 and they will neither conserve, restore or enhance biodiversity;
- (xi) the proposals threaten to diminish one of the last remaining semi-natural open spaces close to the town centre which provides local residents with accessible green space for leisure and relaxation;
- (xii) the proposals are intrusive to the environment and will disrupt the existing ecosystem and landscape;
- (xiii) there is no ecological and environmental impact assessments, hydrological surveys, archaeological surveys or carbon or climate impact statements submitted with this application and thus the impact on the proposals on the environment, local wildlife, habitats and community is unclear;
- (xiv) there is no feasibility study/options appraisal or assessment of net biodiversity gain;
- (xv) there are concerns relating to safety, access for emergency services and serving of the site. Operational details such as predicted user numbers and hours of operation remain unclear;
- (xvi) the application site is in the middle of woodland and will result in the cutting down of trees and irreversible damage to the green space;
- (xvii) there is no provision for disability access and it is not clear how deliveries will be made, or how refuse will be collected, to and from the café when there is no means of access road to serve it;
- (xviii) it is not clear how litter will be managed or what the long term management plans/funding for the site will be in the future;
- (xix) it is not clear what lighting and safety provision is in place for the proposed location of these facilities and that flood lights will further erode and damage the wildlife and biodiversity of the woods and open space land;
- (xx) the proposals are likely to degrade the woodland through removal of buffer habitat and the proposed facilities will exert visual and noise disturbance on the surrounding

habitat and species that live and forage in the area, contrary to Policies NH3, NH4 and NH5 of the ELLDP 2018;

(xxi) the existing skate park located in the "tree scheme" to the north of the railway and the existing pump track at Lochend Woods are barely used which indicates that there is little demand for the proposed facilities at this location. If there is a need for the proposed facilities then the existing skate park and pump track should be upgraded and improved rather than building new ones;

(xxii) the application site is inhabited by a diverse range of species, including bats, mammals, birds, reptiles, amphibians, insects, grasses, wildflowers and fungi which will be obliterated by the proposals;

(xxiii) the use of the proposed facilities may result in noise intrusion to local residents in the area;

(xxiv) the proposals will negatively impact upon the environment and are inconsistent with the declaration by ELC of a Nature Emergency and a Climate Change Crisis;

(xxv) the planning application forms do not appear to be competent in that it states that the applicant is 'Mr Robert Peters' yet the forms indicate that the applicant is not an individual but rather an organisation/corporate entity and that no details of the organisation/corporate entity are provided;

(xxvi) the drawings supplied by 'The Space' and 'Velosolutions' identify ELC as the client and drawings prepared by the architect 'Blueprint' name DCDHT as the client;

(xxvii) it is not clear if the land ownership details are correct as there was a land transfer to Dunbar Community Development and Heritage Trust on 15th March 2024 and part of it was previously used by the school for outdoor learning; and

(xxviii) the application ignores the environmental issues outlined within the deer impact survey and ecology survey relating to the Hallhill North development which recommends that this area should remain habitat.

In response to some of the points raised by objectors:

This planning application is a local development type in accordance with the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. Accordingly, there is no statutory requirement for public consultation to have taken place prior to the submission of the planning application.

The supporting statement states that the application was submitted by the Development Company Trustee, Mr Robert Peters, and that the Chair of the DCDHT is Norman Hampshire who has been assisting with the promotion and submission of this planning application. Councillor Hampshire's involvement does not, in itself, result in a conflict of interest, however, should this planning application be heard and decided at planning committee, Councillor Hampshire would have to declare an interest in this application such that he would not be able to take part in the discussion or cast a vote.

The **Council's Active Business Unit & Amenity Services Team Manager** advises that the area of land, in which the proposed pump track, skate park, café and changing room buildings would be sited on, is on the area of land to be transferred to the Council. He advises that the Council has included money within its approved capital plan for the delivery of pump tracks (subject to planning approval) across each main town in East Lothian. However, in this instance, the DCDHT have submitted one application to cover all amenities to demonstrate how they will all work together. It is also stated that the Council has considered options for the location of a pump track within Dunbar taking feedback from community representation and internal departments. It states that consideration was given to Winterfield Park and Pine Street in addition to Hallhill, however given the application site's proximity to existing provision for management at Hallhill, as well as adjacent parking, facilities and access, the site the subject of this application is the preferred location.

One of the objector's to this application states that the proposals will impact upon the wildlife and green space at Deer Park yet the application site is not located within that area of Dunbar.

On the matter of land ownership as stated above planning permission 20/00110/PM was granted subject to the prior conclusion of a S75 legal agreement which amongst other things included (i) the transfer to East Lothian Council at no cost of the land of Proposal DR3 of the adopted East Lothian Local Plan 2018, and the northern access strip of land projecting from it, required for the new community facilities (community sports pitch and changing facilities) as shown on the docketed drawings and (ii) the transfer to East Lothian Council at no cost of the land of the play area and surrounding open space as shown outlined in red and marked as 'East Lothian Council Transfer Land' on the docketed drawings.

In terms of emergency access the supporting statement states that the site has good access for emergency vehicles from both the south and north ends of the site.

There are no trees located within the application site and the submitted drawings do not show the intention to remove any trees from outwith the site. In addition, no floodlighting is proposed to serve the pump track, skate park, basketball court, café or changing room buildings.

The remaining points raised by the objectors and representors are addressed elsewhere within this report of handling.

The main grounds of support to this application, as summarised, are:

- (i) there is little for children to do in Dunbar and thus the addition of a pump track and stake park near the school and Hallhill Sports Centre will be hugely popular as those wishing to use facilities of this nature either have to travel to neighbouring towns or outwith East Lothian;
- (ii) the proposals will provide outdoor facilities for new families who move into the area;
- (iii) the proposals have the ability to inspire and improve the lives of the whole community by providing much needed community space;
- (iv) Skate parks and pump tracks are multi-generational spaces that build respect in communities and allow the younger generation to learn and grow from the older generations, in a relaxing and supportive environment, which is lacking in Dunbar;
- (v) the play park area and football pitch at this site have already received planning permission and the additional facilities proposed through this application addresses the need for inclusive community facilities in Dunbar for young people within a growing town;
- (vi) the proposed skatepark and pump track would create a social hub and could become a great place for a diverse mix of young people to hang out, to be safe, to do positive things and to be supported and encouraged;
- (vii) a survey carried out in 2022 focused on the skate park and pump track proposals at Hallhill with around 500 people responding - 73% of which were under the age of 18 - just over half were male and just under half were female. 88% of the respondents supported the idea of a new outdoor skate park and pump track in Dunbar and 72% said that someone in their family would use the facility. In terms of the location at Hallhill, 54% were positive, 32% were negative and 14% were neutral;
- (viii) the proposed skate park is designed to be an inclusive park, perfect for beginners, with social spaces built in for relaxing and chatting with friends. It will encourage young people to stay out of trouble, become part of the skate community, learn new skills, bond and take up a sport;
- (ix) a community cafe will provide jobs for young people and will compliment the other



facilities proposed. It will give children a safe space to gather;  
(x) a small area of unused land is not going to be missed and the benefits that this proposal will bring to the community outweighs any loss of green space land; and  
(xi) the neighbouring woods are currently used by dog walkers who do not keep their dogs on a leash - dogs off the lead in the woods pose more of a threat to wildlife than children have a place to play.

## **COMMUNITY COUNCIL COMMENTS**

Dunbar Community Council (DCC), as a consultee to this application, state that this application was discussed at their open meeting held on 18th March 2024. They state that, with the exception of one of their members, DCC are supportive of the development proposals recognising that it has the potential to add greatly to the recreation and sports offer for Dunbar residents, particularly for younger people looking for positive, informal recreation in a supported quality environment.

However, DCC also state that there were concerns at the lack of any clear plan in respect of:

- (i) meeting the requirements of Policy 3 of NPF4, that the development should contribute to the enhancement of biodiversity;
- (ii) limitation of risk that the new facility would exacerbate an existing issue with youth anti-social behaviour in the woods;
- (iii) management of traffic and parking both during the construction phase and on completion;
- (iv) access for emergency vehicles at any time of day or night; and
- (v) mitigation of the risk of ground water flooding to the site and adjacent infrastructure.

West Barns Community Council (WBCC) state that this application was also discussed at their meeting on 29th February 2024. They state that they object to this application as it is felt to be inconsistent with the declaration by ELC of a nature emergency and a climate change crisis. They state that the proposals are also felt to be inconsistent with the charitable objective of the applicant, DCDHT, regarding "the preservation, enhancement and interpretation of the built and natural heritage of Dunbar and environs, whether as principal or otherwise".

WBCC also state that there are a number of errors and omissions on the submitted planning application forms as (i) part of the site is believed to be an area previously used by Dunbar Primary School for outdoor education; (ii) the applicant is named as Robert Peters but the application is said to be on behalf of an organisation - the name of the organisation is not given on the forms; (iii) the applicant address is given as Hallhill Healthy Living Centre which is the same address recorded for DCDHT at Companies House. However, the recorded address is the residential home of Councillor Norman Hampshire who is the Chair of DCDHT but also the Leader of ELC and Planning Convenor; (iv) the Jampot area and the grass open space are regularly wet and are prone to flooding contrary to what is stated in the application forms and it is not clear from the forms or plans if there will be SUDS drainage provision; (v) there was no public consultation process regarding demand/need for the proposed facilities although there is known to be some interest in skateboarding/BMX within Dunbar and East Lothian; (vi) there is potential for duplication of existing facilities (there is already a skatepark and a basketball court at Pine Street, a café at Hallhill Sports centre and at Bleachingfield Centre and a pump track within Lochend Woods) and no options appraisal appears to have been carried out. There is also no feasibility study to consider the suitability of the site; (vii) the proposals are not supported by Policy 3 of NPF4 and will be damaging to the biodiversity of the area which is a mix of grassland and wet woodland habitat. The proposals have also not taken that into account

the impact on climate change; (ix) the application forms state that there will be no new access provided to the site and thus it is unclear where construction traffic, emergency vehicles, delivery vehicles (for the café facility) or refuse/recycling collection will be taken from; (x) the proposals do not show any parking for the facilities but suggests that parking would be utilised within the existing school car park which is only for staff and pupils with disabilities.

## **PLANNING ASSESSMENT**

The proposed pump track, skate park, cafe and changing room and basketball court would be sports and recreational facilities that would be formed on an area of land already approved as public open space. As facilities to be used in association with the open space they are appropriate to their setting and would not prejudice the scheme of development approved by the grant of planning permission 20/00110/PM, including the use of the proposed community sports pitch and the approved play area. Furthermore, the proposed pump track, skate park, cafe and changing room and basketball court would provide additional recreational facilities to support, and enhance, the current sport and recreational facilities available at Hallhill for use by the local community in the Dunbar area. Therefore, the proposals do not conflict with Policy 21 of NPF4 or Proposals DR2 or DR3 or Policy OS1 of the adopted East Lothian Local Development Plan 2018.

The proposed pump track would be orientated on an east to west axis and would be positioned to the north of the approved community sports pitch. It would comprise of a continuous looped track with closely spaced rollers, rolling features of variable heights and bermed corners. The pump track would measure some 32 metres long as its longest length and would have a minimum width of some 2 metres wide. It would measure some 1.5 metres high above ground level at its highest point. It would have an Asphalt surface finish. Parts of the proposed pump track would be contained within grass bunds.

The proposed skate park would also be orientated on an east to west axis and would be positioned immediately to the north of the proposed pump track. It would contain a skate bowl, steps, ramps, railings and platforms. It would measure some 2 metres high above ground level at its highest point. It would have a concrete surface finish. Parts of the proposed skate park would be contained within grass bunds.

The proposed café building would be single storey in height, orientated on a north to south axis and would be rectangular in shape. It would measure some 15 metres long, some 9.8 metres wide and some 2.7 metres high to the upper surface of its flat roofed top above ground level. It would be positioned to the west of the proposed skate park.

The proposed basketball court would be orientated on a north to south axis and would be positioned to the east of the approved play park area and to the west of the approved community sports pitch which are to be delivered on parts of the open space land. It would be rectangular in shape and would measure some 32 metres long and some 19 metres wide.

The proposed café building would be single storey in height, orientated on a north to south axis and would be rectangular in shape. It would measure some 15 metres long, some 9.8 metres wide and some 2.7 metres high to the upper surface of its flat roofed top above ground level. It would be positioned to the west of the proposed skate park.

The proposed changing room building would be single storey in height, orientated on a north to south axis and rectangular in shape. It would measure some 12.3 metres long, some 3.1 metres wide and some 2.7 metres high to the upper surface of its flat roofed top above ground level. It would have 10 solar panels installed on top of its roof. It would be

positioned to the west of the proposed café building.

The proposed pump track, skate park, basketball court, café and changing room buildings would be well contained within the area of open space to which they would be sited on due to the high trees to the north, east and west of the application site. They would be seen from the existing footpath to the south of the site. Whilst the form and appearance of the proposed facilities would reflect the simple functionality of their use, they would nevertheless, as part of a larger area of open space, be appropriate to their place and well absorbed into their surroundings. They would also be viewed in the context of the already approved grass community sports pitch and children's play area and against the backdrop of the existing trees to the north, east and west of the application site. Furthermore, the grass bunding of parts of the proposed pump track and skate park would further help to soften their visual impact from the access paths to the west and south respectively. So too would the single storey flat roofed forms of the proposed café and changing room buildings. By virtue of their sizes, heights, forms, materials and positions, the proposed pump track, skate park, basketball court, café and changing room buildings would not appear as harmfully dominant, intrusive or incongruous features within their setting. They would not be harmful to the character and appearance of the area of open space or to the character and appearance of this part of the area. They would not be harmful to the setting of the listed building named 'Lochend Cottage'.

The use of the proposed pump track, skate park, basketball court, café and changing room buildings would not, due to their positions and orientations, allow for harmful overlooking of any neighbouring residential properties.

Owing to their sizes, forms, positions and orientations, the proposed pump track, skate park, basketball court, café and changing room buildings would not give rise to a harmful loss of sunlight or daylight received by any neighbouring residential properties.

Historic Environment Scotland raise no objection to this planning application. It can therefore be reasonably deduced that the proposals would not harm the designated Battle of Dunbar II Inventory Battlefield Site.

The **Council's Senior Environmental Health Officer** advises that he has concerns regarding potential noise associated with the use of the pump track and skate park. He states that noise, in the form of impact noise from bikes/skateboards on the track surfaces or noise from speech from users of the tracks, will be time varying and will depend on the conduct and behaviour of the individual users such that the impact of noise is difficult to predict. He states that it would be difficult to impose any enforceable conditions on a grant of planning permission with regards to noise and thus is unable to advise whether or not the use of the pump track and skate park will generate noise that may impact upon neighbouring amenity. Notwithstanding the above, the Council's Senior Environmental Health Officer also advises that if the proposed facilities are used correctly then they will not cause any issues. He also states that it is the behaviour of persons who may congregate there or use them/abuse them that could be an issue which would be for Police Scotland and/or the Council's Antisocial Behaviour Team to investigate as and when such issues arise.

The **Council's School Estate Planning Officer** advises that he is willing to support this planning application if the existing school gates remain at the front of the school car park to give the option of closing them and if security fencing and an access gate is installed at the opposite end of the car park to secure the school boundary.

The **Council's Amenity Services Officer** raises no objection to this planning application and advises that the proposals will provide a positive local amenity resource and enhance

the outdoor play and sport provision for the Dunbar area, as well as benefiting young people and the wider community. She also states that the design of the pump track and skate park make good use of the space and location and is supportive that the facilities are not enclosed.

The **Council's Acting Active Business Unit Team Leader** raises no objection to this application and advises that the proposals will increase physical activity levels, assist and improve mental health and wellbeing and create more intergenerational socialisation opportunities for Dunbar residents and the wide county. He advises that, with increased housing across the area, the proposals the subject of this application increases the available space for different groups to be physically active at the same time, as well as providing different stimuli to be active (i.e. wheeling, skateboarding and multi play opportunities). He states that each of the facilities (i) can be used for formal and informal play and sport; (ii) can be used by different age groups at the same time; (iii) foster community cohesion; (iv) can be utilised by the local schools and Active Schools programmes; and (v) lend themselves to existing and the creation of future associated groups or clubs. He also states that the proposed pump track is an excellent entry level activity for wheeled activity, which allows for progression at the participants pace and personal development, and that the location of it will encourage active travel to and from the site, further increasing activity levels and reducing environmental impact. The Council's Acting Active Business Unit Team Leader also advises that the proposed café building will be key to providing a safe, secure social space for all ages and that the proposed changing room building will provide toilets and baby changing facilities.

The **Council's Structures and Flooding Team Manager** advises that SEPA's Flood Hazard Mapping indicates that the site is at risk from a surface water flood event with a return period of 1 in 200 years plus climate change. He also advises that within SEPA's Land Use Vulnerability Guidance, the proposed pump track, skate park, basketball court and changing room building are classed as 'Water Compatible Uses' and thus they are acceptable to be built/located within the 1 in 200 year plus climate change functional flood plain. However, he advises that the proposed café building falls under the 'Least Vulnerable Uses' category where there is less scope for buildings in the functional flood plan. Notwithstanding the above, the Council's Structures and Flooding Team Manager states that the surface water flood risk is shown to be at depths below 0.3 metres, and at potentially very low levels, such that he raises no objection to the café building if it were to incorporate a minimum 300mm freeboard. He advises that he has no objection on the grounds of flood risk to the basketball court and that the skate park and pump track show land raising and very small levels of reduction which, whilst not generally encouraged by SEPA, is recognised that the functionality of the proposals rely on land raising. He also advises that the submitted drainage plan for the skate park is relatively low on detail and thus he recommends that a drainage layout plan and details of the proposed Sustainable Drainage System and Surface Water Management Plan for the site be submitted prior to the commencement of development. Subject to such controls, the proposals do not conflict with Policy 22 of NPF4, Policies NH10 and NH11 of the adopted East Lothian Local Development Plan 2018 or with the Council's Supplementary Planning Guidance 'Sustainable Drainage Systems (SuDS)'.

The **Council's Biodiversity Officer** advises that the application site is located adjacent to Lochend Woods, a Local Biodiversity Site, and that there are no records of protected species in the area. She also notes that the submitted drawings do not show any trees to be felled to facilitate the proposed development and thus advises that the proposals will not impact bats or breeding birds. The Biodiversity Officer also notes that two biodiversity conditions were imposed on the grant of planning permission 20/00110/PM which required a preliminary ecological assessment and a deer impact assessment to be undertaken prior to the commencement of that approved scheme of development and that no further survey

work is required relating to the proposals being sought for through this current planning application. However, she advises that a Biodiversity Enhancement Plan be produced in accordance with Policy 3 of National Planning Framework 4. Subject to this recommended control, which can reasonably be imposed as a condition on a grant of planning permission, the proposals do not conflict with Policy 3 of NPF4 or Policy NH3 of the adopted East Lothian Local Development Plan 2018.

The **Council's Road Services** note that this application is for additional sports facilities (a pump track, skate park and basketball pitch) on land to the south of Hallhill Sports Centre in Dunbar. They note that a football pitch and a play area, which were approved in May 2022 through the grant of planning permission 20/00110/PM, will be constructed alongside the proposed new facilities along with a new café/changing room facility to support their use. They also note that a 'Parking Strategy' document has been provided and, upon review, that the parking demand for each of these facilities is 12 spaces for the basketball pitch and 6 spaces for the skate park and pump track. They state that the proposed café/changing facility is an auxiliary use which is not expected to generate additional parking demand and, whilst no parking allocation was made for the football pitch when it was granted planning permission, consider that the football pitch requires 11 spaces.

Accordingly, the Council's Road Services advise that 29 parking spaces will be required, with 5% of these (2 spaces) to be accessible and notes that the parking spaces will be accommodated within the school car park at Dunbar Primary School. They state that the school car park has 30 parking spaces which is deemed to be acceptable given that the main use of the new facilities will be outwith school times and that there is additional parking outside the main Sports Centre building. They state that they have no objection to this application providing that all works shown on the plan titled 'Proposed changes within the existing car park / grounds of Dunbar Primary School' are completed and brought into use prior to the use of the facilities proposed in this application which includes (i) 2 accessible parking spaces within the eastern end of the school car park (as shown within the area coloured in blue); (ii) the formation of a turning head within the southwest end of the school car park (in the location shown in yellow); (iii) the erection of new fencing and lockable gates at the western end of the car park (in the location shown in red); and (iv) the retention of the existing fence and gates at the eastern end of the car park and the retention of the existing turning head to the east of the car park (as shown in green). They also recommend that a Construction Method Statement, to minimise the impact of construction activity on the safety and amenity of the area, be submitted for the prior approval of the Planning Authority prior to the commencement of development and that a wheel washing facility be provided and maintained in working order during the period of construction works to prevent deleterious materials being carried onto the public road. Subject to appropriately worded conditions, the proposals do not conflict with Policy 13 of NPF4 or with Policies T1 or T2 of the adopted East Lothian Local Development Plan 2018.

At its meeting on Tuesday 27 August 2019, 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(s) and from the completed development should be imposed on relevant applications for planning permission. Such a condition should be imposed on a grant of planning permission for this proposed development. Subject to the imposition of this condition, the proposals do not conflict with Policies 1 or 2 of NPF4.

On these considerations, the proposals are consistent with Policies 1, 2, 3, 4, 7, 13, 14, 15, 21 and 22 of National Planning Framework 4 and with Proposals DR2 and DR3 and Policies CH1, CH5, NH3, NH10, NH11, DP1, DP2, T1 and T2 of the adopted East Lothian Local Development Plan 2018. Therefore, the proposals are considered to be in

accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

#### **CONDITIONS:**

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

Reason:

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

- 2 Prior to commencement of development hereby approved, a drainage layout plan and full details of the proposed Sustainable Drainage System scheme including a Surface Water Management Plan for the site, which both must meet the vesting requirements of Scottish Water and be in accordance with the Council's Supplementary Planning Guidance 'Sustainable Drainage Systems (SuDS)', shall be submitted to and approved by the Planning Authority. The development shall thereafter be carried out in strict accordance with the details and Surface Water Management Plan so approved, unless otherwise agreed in writing with the Planning Authority

Reason:

To ensure that development is not at risk from flooding, there is no increase in flood risk elsewhere and appropriate long-term maintenance arrangements are in place.

- 3 Prior to the commencement of development hereby approved, the details of the measures to be taken to enhance biodiversity within the application site shall be submitted to and approved by the Planning Authority which shall include a timetable for their implementation. Thereafter those measures identified to enhance biodiversity shall be carried out within the timescales stated unless otherwise agreed in writing by the Planning Authority.

Reason:

To enhance biodiversity in accordance with Policy 3 of NPF4.

- 4 Prior to the use of the pump track, skate park, basketball court, café and changing room buildings hereby approved all works shown on the docketed plan titled 'Proposed changes within the existing car park / grounds of Dunbar Primary School', shall be completed and brought into use in accordance with agreement by the Roads Authority and shall include:

- (i) 2 accessible parking spaces within the eastern end of the school car park (as shown within the area coloured in blue);
- (ii) the formation of a turning head within the southwest end of the school car park (in the location shown in yellow);
- (iii) the erection of new fencing and lockable gates at the western end of the car park (in the location shown in red); and
- (iv) the retention of the existing fence and gates at the eastern end of the car park and the retention of the existing turning head to the east of the car park (as shown in green).

Reason:

In the interests of road and pedestrian safety.

- 5 Prior to the commencement of development hereby approved, a Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area shall be submitted to and approved by the Planning Authority. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic (including parking, routes to/from site and delivery times) and shall include hours of construction work and details of any temporary measures to be put in place throughout the duration of the construction process. The Construction Method Statement shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site.

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development. Development shall thereafter be undertaken in accordance with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

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

- 6 No work shall be carried out on the site unless and until an effective vehicle wheel washing facility has been installed in accordance with details to be submitted to and approved by the Planning Authority prior to its installation. The wheel washing facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth or mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason

In the interests of road safety.

- 7 Prior to the commencement of development hereby approved, 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. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason:

To minimise the environmental impact of the development.





**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

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2

Application No. **24/00117/PM**

Proposal Section 42 application to remove condition 10d of planning permission in principle 15/00670/PPM

Location **Land South of  
Tantallon Road  
North Berwick  
East Lothian**

Applicant Dandara East Scotland Limited

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

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

## **BACKGROUND**

On 20 July 2016 planning permission in principle (ref: 15/00670/PPM) was granted for a mixed-use development to include some 125 homes, business units, a Sustainable Urban Drainage System (SUDS), open space including allotments and a play area, and for associated infrastructure on some 10.2 hectares of agricultural land on the south side of Tantallon Road, on the southeast edge of North Berwick. That land is the strategic mixed-use site of Proposal NK4 of the adopted East Lothian Local Development Plan 2018.

Prior to the grant of planning permission in principle 15/00670/PPM the Council had issued a formal screening opinion to the applicant concluding that it is East Lothian Council's view that a mixed-use development of the scale proposed 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 mixed-use development to be the subject of an Environmental Impact Assessment (EIA).

## **PLANNING HISTORY**

Approval Of Matters Consent (Ref: 16/00921/AMM) was granted in July 2017 for matters specified in conditions of planning permission in principle 15/00670/PPM for the erection of 109 houses and 16 flats (a total of 125 residential units), the siting of an allotment area and associated works including the formation of SUDS on part of the land to which planning permission in principle 15/00670/PPM applies.

Development of the residential area of the site is now largely complete.

Planning permission in principle (ref: 15/00670/PPM) was granted subject to a number of conditions.

Of those, condition 10 secures the provision of the various roads and footpaths of the development in the interests of road safety and to enable safe access to schools. Part 10d of that condition states:

“d. a pedestrian route between the northernmost part of the site to the supermarket to the west of the northernmost part of the site shall be provided and shall include pedestrian provision within the existing supermarket car park to enable direct access for pedestrians from the residential units of the site.”

## **PROPOSAL**

Through this current application, submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997, as amended, permission is being sought to remove part d of condition 10 of planning permission in principle 15/00670/PPM. Removal of condition 10d would remove the planning requirement to form a pedestrian route between the site and the neighbouring Tesco supermarket site.

The applicant has submitted supporting information informing that they have formed the footpath the subject of Condition 10d up to their site boundary with the supermarket site and explaining that as the land beyond their site boundary is outwith their control, and instead falls entirely within Tesco's ownership, they are unable to complete any further works within the Tesco car park and as such cannot comply with the condition.

The applicant has also submitted copies of emails which they have sent to Tesco Stores Ltd.'s Assets & Estates Department in which they enquire if Tesco would have any desire to provide a footpath link on their land to link into the applicant's path. The applicant advises they have not received any replies from Tesco to their emails.

## **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 (ELLDP).

In terms of Policies 1, 2 and 3 of NPF4, the contribution this development could make to addressing the climate and nature crises (Policy 1), to make adjustments or incorporate

features that reduce greenhouse gas emissions (Policy 2), or to protect, conserve, restore and enhance biodiversity (Policy 3), is largely predetermined by the previous grants of planning permission in principle 15/00670/PPM and approval of matters consent 16/00921/AMM.

Policy 13 (Sustainable transport) of NPF4 and Policies T1 (Development Location and Accessibility), T2 (General Transport Impact) and Proposal NK4 (Land at Tantallon Road, North Berwick) of ELLDP are relevant to the determination of this application.

Policy 13 of NPF 4 supports, amongst other things, development proposals that provide direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks before occupation.

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

Policy T2 of ELLDP states that new development must have no significant impact on road safety or on the capacity of the surrounding road network to deal with traffic unrelated to the proposed development.

Proposal NK4 of ELLDP allocates land at Tantallon Road, North Berwick for a mixed-use development incorporating circa 125 homes, approximately 1 ha of land for employment and commercial uses, infrastructure and associated works. It states any new development proposals for the site must include a comprehensive masterplan for the entire allocated site that integrates development with the surroundings.

Also material to the determination of the application is the Council's approved non-statutory Supplementary Planning Guidance (SPG) on 'Design Standards for New Housing Areas'. The Council's SPG expands on policies that are set out in the ELLDP.

There is no Development Brief for the site the subject of Proposal NK4.

Also material to the determination of this application is the Scottish Government Policy Statement entitled "Designing Streets". It provides an overview of creating places, with street design as a key consideration. It advises on the detail of how to approach the creation of well-designed streets and describes the processes which should be followed in order to achieve the best outcomes.

## **REPRESENTATIONS**

Material to the determination of the application are the written representations received to it. There have been ten written representations received to this application, all of which raise objections to the proposal to remove condition 10d of planning permission in principle 15/00670/PPM. Copies of the written representations are contained in a shared electronic folder to which all Members of the Committee have access.

The main grounds of objection in respect of the proposed development are summarised below:

\* the current situation would have been well known by all parties when the original planning consent was granted (Dandara, Tait, Tesco and East Lothian Council). It is disingenuous and wrong of any of these parties to now claim that it is no longer necessary. They should be collaborating to find a resolution that upholds their commitments, not only to the

residents of the development, but also to broader environmental goals;

\* This footpath was documented in the Landscape and Visual Impact Assessment submitted in 2015, in the Dandara Green Travel Plan and in the 2015 Officer's Report re App 15/00670/PPM. Condition 10d was therefore, not an unknown one. It's unacceptable for the developer to agree conditions, which are then used to sell houses, which are then dispensed with once the houses are sold;

\* The footpath has been part completed since the site works began and property sales were made on the promise by Dandara of such a short cut being completed. Nothing has changed over the period of building works to justify removal of the condition;

\* The existing footpath is not a recent construction so Dandara has had possibly 4-5 years to notify homeowners and ELC of any obstacles re- its pathway extension to Tesco's car park, and to provide an alternate solution. They did neither;

\*In the face of the current climate crises, promoting sustainable modes of transportation is paramount and condition 10d serves as a crucial step in this direction. Removing such a provision would not only undermine efforts to reduce carbon emissions but also hinder the development of environmentally conscious infrastructure;

\*Not having the footpath will lead to an avoidable increase in car journeys. It would also jeopardise accessibility and social inclusion, in particular for those who do not own a car;

\*It would continue to inconvenience, create safety concerns and frustrate several groups of residents e.g. individuals using motorised mobility scooters/walking aids whose safety and mobility needs are being compromised; school aged children and parents with baby buggies whose commutes on Tantallon Road pavements are shared with cyclists;

\* In lieu of the extension of the pathway, pedestrians have created their own informal footpaths around the north, east and west sides of the SUDS basin which has, as a result, damaged the existing landscape and damaged shrubs and trees;

\* The applicant should be required to negotiate with Tesco on how best to comply with the planning requirement;

\* The path is already built up to the fence. Presumably it would be relatively inexpensive to open up the fence and provide access;

\* Any granting of Dandara's request might foster a domino effect with further requests to ELC to remove other conditions which were all previously agreed to e.g. installation of public art (sculpture/bench); seating and landscape around the SUDS basin which have yet to be installed by Dandara.

## **COMMUNITY COUNCIL COMMENT**

North Berwick Community Council advise that rather than dropping the planning condition they would like pressure put on Tesco to assist in making the direct connection to Barley Brae happen. They also advise they would like to see progress in providing a safe route to school from Barley Brae at the back of the Tesco site.

## **PLANNING ASSESSMENT**

The principle of the erection of a mixed-use development to include some 125 homes, business units, a Sustainable Urban Drainage System (SUDS), open space including

allotments and a play area, and for associated infrastructure on the site has been established by the grant of planning permission in principle 15/00670/PPM. Since then approval of matters consent 16/00921/AMM for the detail of the erection of 109 houses and 16 flats (a total of 125 residential units), the siting of an allotment area and associated works including the formation of SUDS on part of the land to which planning permission in principle 15/00670/PPM applies has been granted and the approval of matters consent has been largely implemented to the extent that all of the residential units have been built and the majority of associated works have been completed.

The determination of this application therefore rests only on the planning consideration of the consequences of removing condition 10d. Removal of condition 10d would remove the planning requirement to form a pedestrian route between the site and the neighbouring Tesco supermarket site.

The potential to form a footpath between the site of planning application 15/000670/PPM and the adjacent Tesco supermarket was originally promoted by the applicants of that planning permission in principle application. It was not a requirement of Proposal NK4 of the ELLDP and nor was it required by a development brief for this site (there is no development brief for this site). The potential for such a footpath link being formed is indicated in the 'Indicative Development Framework' plan docketed to planning permission in principle 15/00670/PPM and in a number of the supporting documents submitted by the then applicants.

The **Council's Road Services**, in consultation on planning permission in principle application 15/00670/PPM, recommended that a condition be imposed on that planning permission in principle to secure various traffic calming measures, footpath improvement works, new road and path links and including the footpath to the adjacent supermarket site indicated by the applicant in their submission. That condition was imposed and thereafter, following the approval of the details of the development, a hardsurfaced footpath was completed within the site of the residential development up to the point of the boundary fence separating the residential development from the adjacent supermarket site. No works have been carried out to form an opening in the fence or to form a footpath on the supermarket side of the fence to connect the newly formed footpath with existing footpaths within the supermarket car park.

The **Council's Access Officer** objects to the proposed deletion of condition 10d of planning permission in principle 15/00670/PPM on the basis that he considers the pedestrian link is very necessary, particularly in these days of Climate Crisis.

The Council's Road Services advise they have no objections to the proposed deletion of condition 10d of planning permission in principle 15/00670/PPM. They comment that while the completion of the path within the Tesco site is desirable, they do not consider the length of the alternative route through the housing development and via Tantallon Road to the supermarket to be of such a significantly longer distance that it necessitates this path being formed. The Council's Road Services do not raise any concerns relating to pedestrian safety.

The path, if completed, would allow for a shorter, more direct and off-road route between the housing development and the adjacent supermarket site but it wouldn't serve as a link to any other land uses or serve any other purpose than to allow direct access between the housing development and the supermarket. Although desirable as a connection between the residential development and the supermarket, it is not necessary for access to schools, other amenities within the town or for wider active travel purposes. The alternative route between the housing site and the supermarket site, via the other footpaths of the site and of Tantallon Road, would still be within reasonable walking distance and there is no

evidence to suggest that such a trip would result in any more car trips than would otherwise exist if the path the subject of condition 10d were to be fully formed. There is therefore no evidence to suggest that not forming the footpath to the supermarket site would contribute to the climate emergency through additional vehicle trips.

Policy 13 of NPF 4 provides support for direct, easy, segregated and safe links to local facilities via walking, wheeling and cycling networks and the unfinished pathway between the residential site and the supermarket site, if finished, would have been the type of direct, easy, segregated and safe link which NPF4 supports. However, it is not the only route between the housing site and the supermarket, the alternative being the slightly longer route along the pavements of the development and Tantallon Road, and nor is it a route to anywhere else. The Council's Road Services have confirmed that the alternative route is safe and not such a significantly longer distance to be inconvenient. Although it would have provided greater route choice and permeability between the development and the neighbouring supermarket site, the omission of this footpath from the overall development does not result in the overall development being contrary to Policy 13 of NPF4, Proposal NK4 or Policies T1 or T2 of the ELLDP or to the 'Design Standards for New Housing Areas' SPG or to Scottish Government Policy Statement "Designing Streets" on transportation and road and pedestrian safety matters.

In conclusion, based on the above assessment, the removal of condition 10d of planning permission in principle 15/00670/PPM is considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh that proposal's accordance with the Development Plan. Thus, the proposed removal of condition 10d is acceptable.

Annex H of Circular 3/2022: Development Management Procedures gives guidance on applications for planning permission under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex H states that planning authorities need to attach to the new permission any of the conditions from the previous permission which it is intended should apply to the new planning permission and need to secure any Section 75 legal obligation (or other agreement) to the new permission, where it is intended this should still apply. Therefore, it is recommended that planning permission should be granted subject to the applied for removal of condition 10d and subject to all of those conditions from planning permission in principle 15/00670/PPM, where it is intended these should apply. In this case, with the exception of condition 10d, all of the previous conditions should continue to apply.

The **Council's Planning Obligations Officer** has advised that all of the obligations of the Section 75 Legal Agreement associated with planning permission in principle 15/00670/PPM have been fulfilled and therefore there is no requirement to secure any section 75 legal obligations (or other agreements) to a new planning permission.

#### **RECOMMENDATION:**

That planning permission be granted subject to the following conditions:

- 1 The submission for approval of matters specified in conditions of this grant of planning permission in principle in accordance with the timescales and other limitations in Section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended) shall include details of the siting, design and external appearance of the residential and business units, the means of access to them, the means of any enclosure of the boundaries of the site and the landscaping of the site. Those details shall generally comply with the Indicative Development Framework docketed to this planning permission in principle, but additionally

shall comply with the following design requirements:

a. The residential dwellings shall be no more than two storeys in height other than those adjacent to Tantallon Road which shall be one storey in height (including for accommodation in the roof space) and the external finish to their walls shall be predominantly rendered and coloured in accordance with a co-ordinated colour scheme that respects the layout of the development. The buildings for Class 4 use shall be no more than one storey in height and shall be finished in a co-ordinated scheme of materials and colour finishes to minimise their visual impact in the landscape;

b. Other than in exceptional circumstances where the layout or particular building type does not permit, the residential units shall be orientated to face the street;

c. There shall be no integral garages, unless it can be justified as an exceptional design feature, or where the house and garage would not be on a primary street frontage;

d. The detailed design of the layout shall otherwise accord with the principles set out in the Council's Design Standards for New Housing Areas and with Designing Streets;

e. Notwithstanding that shown in the Indicative Development Framework docketed to this planning permission in principle, there shall be at least a 9 metres separation distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing or proposed neighbouring residential properties;

f. Notwithstanding that shown in the Indicative Development Framework docketed to this planning permission in principle, the SUDS provision for the development if retained in the position shown shall be a dry retention basin not requiring fencing and maintainable as a managed recreational area; otherwise the SUDS provision shall be accommodated in an alternative position or by other means as agreed in writing with the Planning Authority.

g. Notwithstanding that shown in the Indicative Development Framework docketed to this planning permission in principle, the southern boundary of the site shall be fully enclosed by a post and wire fence and by the planting of a mixed native species hedgerow along the post and wire boundary fence.

h. Notwithstanding that shown in the Indicative Development Framework docketed to this planning permission in principle, site access to the business use on the northwestern part of the site shall be taken from a point along either the north or west boundaries of that part of the site, in accordance with details to be agreed in advance with the Planning Authority;

i. a detailed vehicle tracking (swept path) for both the residential and business areas shall be provided using the large design rigid vehicle for the whole site. 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" and for the business area the vehicle tracking (swept path) should also include tracking for the "Design Articulated Vehicle".

j. access to the residential area to be accessed directly from the A198 shall be taken via a priority junction with corner radii of 10.5 metres on either side of the junction. Visibility splays of 4.5m by 90m in both directions shall be provided and maintained at the proposed site access junction so that no obstruction lies within them above a height of 1.05 metres measured from the adjacent carriageway surface;

k. access to the business area to be accessed directly from the A198 shall be taken via a priority junction with corner radii of 10.5 metres on either side of the junction. Visibility splays of 4.5m by 70m in both directions shall be provided and maintained at the proposed site access junction so that no obstruction lies within them above a height of 1.05 metres measured from the adjacent carriageway surface;

l. the proposed development shall provide footpath links within the development to the northern and western edges of the development and, where required by the Council's Road Services and Access Officer, to the existing footpath network in the area to provide appropriate routes to primary and secondary schools and to play facilities at Recreation Park to the north;

m. parking for the residential development hereby approved shall be provided at a rate as set out in the East Lothian Council Standards for Development Roads- Part 5 Parking Standards;

n. all access roads shall conform to East Lothian Council Standards for Development Roads and Design Standards for New Housing Areas in relation to roads layout and construction, footways and footpaths, parking layout and number, street lighting and traffic calming measures. This shall include for a co-ordinated design to accommodate street trees and swales;

o. driveways shall have minimum dimensions of 6 metres by 3 metres. Double driveways shall have minimum dimensions of 5 metres width by 6 metres length or 3 metres width by 11 metres length. Pedestrian ramps to houses may encroach by up to 300mm on the width (but not the length) provided they are no greater than 150mm in height above the adjacent driveway surface;

p. within residential private parking areas the minimum dimensions of a single parking space shall be 2.5 metres by 5.0 metres. All visitor parking spaces within these areas shall be clearly marked for visitors with the remaining private parking spaces allocated to individual dwellings;

q. vehicle accesses to private parking areas (i.e. other than driveways) shall be via a reinforced footway crossing and have a minimum width of 5.5 metres over the first 10 metres to enable adequate two way movement of vehicles;

r. cycle parking be included at a rate of 1 space for each unit of any flatted accommodation in the form of 1 locker per flat or communal provisions in the form of a lockable room or shed;

s. vehicle parking and cycle parking for the business units shall conform with East Lothian Council Standards for Development Roads;

t. the garden boundary treatments of the development that are publicly visible shall be stone or rendered walls, or hedges, and all residential units and other buildings shall have appropriate boundary treatments on their frontages;

u. a toddlers play area shall be provided within the application site. Details of the toddlers play area, including the equipment to be provided within it and a timetable for its implementation, shall be submitted to and approved in advance by the Planning Authority and the play area shall be installed in accordance with the details so approved;

v. acoustic screening measures shall be provided along the boundary of residential properties with the supermarket site to the north, in accordance with acoustic and landscape details to be agreed with the Planning Authority including for their implementation prior to the occupation of any residential property;

Reason:

To enable the Planning Authority to control the development in the interests of the amenity and visual quality of the development and the area, of the setting of the scheduled monument of North Berwick Law and in the interests of road safety.

2 No more than 125 residential units are approved by this grant of planning permission in principle. Unless otherwise approved in writing by the Planning Authority: those residential



units shall be completed in accordance with the applicant's proposed phasing of the site: year 1 – 24 residential units; year 2 – 24 residential units; year 3 – 24 residential units; year 4 – 38 residential units; year 5 – 15 residential units; and any slippage in any single year shall revert to year 6 or beyond, and not be added to the subsequent year.

Reason:

To ensure sufficient education capacity can be provided for the pupil product of the development.

- 3 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall be generally based on the landscape proposals shown in principle on the docketed Indicative Development Framework, and shall otherwise accord with requirements of Condition 1 above. It shall include for tree and hedge planting along the northern boundary with the Tesco site, tree planting along the internal roads and within the internal open spaces and the planting of a mixed native species hedgerow along the southern boundary of the site.

It shall also provide details of: the height and slopes of any mounding on or recontouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall also include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting, seeding or turfing comprised in the approved details of landscaping 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.

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.

- 4 No development shall be commenced unless and until a delivery plan for the Class 4 business units hereby approved has been submitted to and agreed in writing with the Planning Authority. Thereafter, the business units shall be delivered in accordance with the delivery plan so agreed.

Reason:

In the interests in securing the delivery of the Class 4 business units in accordance with the aims, objectives and targets of the Council's Economic Development Strategy 2012 -22.

- 5 Prior to the commencement of development at the application site, a scheme to connect to the public waste water network shall be submitted for the written approval of the planning authority, in consultation with Scottish Water. The scheme must demonstrate appropriate alignment of the phasing and timing of the development with the provision of secondary treatment by Scottish Water at the North Berwick Waste Water Treatment Works.

Reason:

To protect people and the environment from the impact of waste water and ensure that the development can be serviced by the public waste water sewerage scheme.

- 6 No development shall take place on the proposed site until the applicant has undertaken and reported upon:

(a) a programme of archaeological work (Field Walking Survey and Evaluation) in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority; and

(b) a Heritage assessment of the potential impacts upon the Scheduled Monument of North Berwick Law has been carried out to inform the detailed master planning of the development. This shall follow the guidelines and methodologies outlined in Managing Change in the Historic Environment – Setting Historic Scotland 2010.

Reason:

In the interests of archaeological and natural heritage.

- 7 A Green Travel Plan shall be submitted to and approved by the Planning Authority prior to (i) the occupation of any of the residential units hereby approved and (ii) the business units coming into operation. The Green Travel Plan shall have particular regard to provision for walking, cycling and public transport access to and within the site, and will include a timetable for its implementation, details of the measures to be provided, the system of management, monitoring, review, reporting and duration of the Plan.

Reason:

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

- 8 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area 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 and shall include hours of construction work, routes for construction traffic and details of wheel washing facilities to be provided. 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 minimise the impact of construction activity in the interests of the amenity of the area.

- 9 Unless otherwise approved in writing by the Planning Authority the allotments hereby approved shall be provided and made available for use prior to the occupation of 60 residential units of the development.

Reason:

In the interests of the amenity of the area.

- 10 Prior to the occupation of any of the residential units hereby approved or any use being made of the business units, all roads and footpaths, including external footpaths as required shall be completed and brought into use in accordance with a phasing of them as agreed with the Roads Authority:

a. a signal controlled pedestrian crossing shall be provided over Dunbar Road (A198) in a position between Glenburn Road and Heugh Road;

b. the existing footway along the site frontage on Tantallon Road shall be replaced and upgraded to include dropped kerb crossings over the A198 to allow barrier free access to the existing bus stops on this part of Tantallon Road;

c. a pedestrian route shall be provided through the business land to the west of the site to allow connection to Heugh Road from the residential units on the site;

Details of the new signal controlled pedestrian crossing, the upgraded footway and the crossing points and the provision of a pedestrian link to the adjoining business land use shall be submitted to and approved in advance by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road safety and to enable safe access to schools.

- 11 Details of the proposed integrated sustainable urban drainage scheme (SUDS) for the application site shall be submitted to and approved in writing by the Planning Authority following consultation with the Scottish Environment Protection Agency and such detail shall provide for two levels of treatment. Details shall include:
- o Results of any investigation of the receiving watercourse and culvert upstream of Tantallon Road as per the recommendations provided in SEPA's consultation response dated 29 September 2015;
  - o Amended details of the proposed SUDS system including adoption and maintenance Arrangements; and
  - o Details of flow paths with regards to exceedance flood events

The integrated sustainable urban drainage scheme (SUDS) for the application site shall thereafter be fully implemented in accordance with the details so approved.

Reason:

To ensure the provision of a satisfactory sustainable urban drainage scheme for the application site.

- 12 The design and installation of any plant or equipment associated with the operation of each of the Class 4 business units shall be such that noise emanating from them shall not exceed Noise Rating Curve NR25 at any Octave Band Frequency when measured within any existing or proposed neighbouring residential property assuming windows open at least 50mm.

Reason:

To ensure the Class 4 business units do not harm the amenity of nearby residential properties.

- 13 No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority and the artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

Reason:

To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.



**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

**3**

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*Note: This application has been called off the Scheme of Delegation List by Councillor Allan for the following reasons: The development appears to be a sympathetic and efficient use of a gap area in North Berwick town centre, and the development for a new home should be what we are promoting and encouraging in a site such as this.*

Application No. **24/00527/P**  
Proposal **Erection of one house and associated works**  
Location **Land to the East of St Andrew’s House  
St. Andrew Street  
North Berwick  
East Lothian**

Applicant **Mr Ben Woods**  
Per **APT Planning & Development**

**RECOMMENDATION** **Application Refused**

### **REPORT OF HANDLING**

This application relates to an area of garden ground associated with the property of 69 High Street North Berwick and to a car parking space located within the parking court to the (rear) north of the neighbouring flatted building of 1-4 Kirk View. It is located within North Berwick Town Centre as defined by policy TC2 of the adopted East Lothian Local Development Plan 2018 (ELDP). The site is within North Berwick Conservation Area. To the rear (north) lies garden/yard of the Category C listed buildings at Nos.59-71 High Street. The site is accessed from Law Road.

The site is on the north side of St. Andrew Street to the west of the corner of Law Road and St Andrew Street. To the west lies a single storey commercial property with 2 ½ storey residential properties beyond. To the east lies 3-storey, plus roofspace, residential flatted properties. To the south of the site, across St. Andrew Street, lies the public car park.

## **PLANNING HISTORY**

Planning permission REF: 05/01103/FUL was granted in December 2005 for the erection of 3 flats and 1 house, double garage, formation of vehicular and pedestrian accesses and associated works (Part Retrospective) on an area of land which includes the application site. The flatted building is now known as 1-4 Kirk View.

This application site lies wholly within the site boundary of the aforementioned planning permission (05/01103/FUL) which has been implemented. The application site is an area of green space that was specifically consented to be retained as garden ground for 69 High Street. The car parking space formed part of the parking provision for the flatted building of 1-4 Kirk View development and is controlled through condition 13 which states "The flats and the house hereby approved shall not be occupied unless and until the new access, parking spaces and turning area shown on drawing No.238:01 docketed to this planning permission have been formed and made available for use. Such access, parking and turning areas shall not thereafter be used other than for those specific purposes."

## **PROPOSAL**

Planning permission is sought for the erection of a largely 3-storey house with an additional sunroom/home office component formed on its flat roof. A single parking space that exists within the parking court to the north of 1-4 Kirk View would be given to the proposed house with vehicular access from Law Road. To facilitate the proposed development, it is proposed to partly demolish the existing stone boundary wall to St. Andrew Street to form a pedestrian access and to install a sliding gate.

The main 3-storey component of the house would be some 8.5m in height with the top of the sun room component being a further 2.6m in height. The building line of the front (south) elevation of the proposed house would align with the building line of the front (south) elevation of the flatted building of 1-4 Kirk View. The building line of the side (east) gable elevation would be set off 1-4 Kirk View by approximately 1m. The west gable elevation of the proposed house would abut the single storey commercial building to the west. The upper floor of accommodation comprises a sun room which would be set back from the building lines of the west, north and south elevations of the main building. A roof terrace is proposed to the south side of the sun room component.

The proposed house would be finished in grey render from ground to second floor with the upper floor clad in quartz zinc. There would be full height double doors with Juliette balcony centrally located on the front elevation of the 1st and 2nd floors of the new dwelling. Otherwise the building would have modern style windows in its rear (north) elevation.

The rear elevation has been amended to remove the north most windows above ground floor and to introduce obscure glazing to two rear windows.

To the rear of the building there would be a pedestrian access route and stepped access to the parking courtyard. To the north east of the proposed building, separated by approximately 1m lies the residential amenity space for Kirk View.

Parking for the house would be within the parking courtyard for the adjoining flatted building of 1-4 Kirk View. An air source heat pump would be located at ground level to the rear of the proposed dwelling.

Through separate application 24/00580/CAC Conservation Area Consent is sought for the alterations to the existing south boundary wall. That application stands to be determined on its own merits.

## **DEVELOPMENT PLAN**

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

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

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 7 (Historic Assets and Places), 12 (Zero Waste), 13 (Sustainable Transport), 14 (Liveable Place), 15 (Local Living and 20 minute neighbourhoods), 16 (Quality Homes) of NPF4 and Policies CH2 (Development Affecting Conservation Areas), TC2 (Town and Local Centre), T1 (Development Location and Accessibility), T2 (General Transport Impact), SEH2 (Low and Zero Carbon Generating Technologies), W3 (Waste Separation and Collection), NH11 (Flood Risk), DP2 (Design), DP7 (Infill, Backland and Garden Ground development) of the ELDP are relevant to the determination of the application.

Also material to the determination of this 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.

Section 64 of the (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires 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 the North Berwick Town Centre Strategy 2019(SG).

Also relevant to the determination of the application is Planning Advice Note 67: Housing Quality.

Planning Advice Note 67: Housing Quality explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity

and coherence for the development or the wider neighbourhood.

## **REPRESENTATIONS**

Ten letters of objection have been received in relation to the application. In summary, the main grounds of objection are:

- i. Loss of amenity;
- ii. Loss of privacy to neighbouring properties;
- iii. Loss of privacy to neighbouring communal gardens ground. A number of the windows will directly overlook this space and a number will have angled views of this space;
- iv. Loss of daylight to windows in neighbouring property;
- v. Design out of keeping with local vernacular and traditional design elements found in the conservation area. This proposal is nondescript and more suited to a city;
- vi. Top floor is unlike tiled roofs of conservation area;
- vii. Does not relate to the gables of the adjoining properties;
- viii. Use of quartz and zinc to top floor is out of character;
- ix. Traffic generation during construction;
- x. Noise and pollution during construction;
- xi. Loss of view to south;
- xii. Loss of view from the south to the back of the High Street;
- xiii. Loss of sunlight to gardens and properties;
- xiv. Proposal is too high;
- xv. Not brownfield land as defined by NPF4 Annex F;
- xvi. Unauthorised tree removal and loss of biodiversity;
- xvii. Inadequate levels information including ground level alterations;
- xviii. Proposed wall removal conflicts with neighbouring gas pipe for Kirk View;
- xix. Overdevelopment of the site with inadequate amenity space for a family house;
- xx. The proposal is too bulky, over-scaled, and too high;
- xxi. No additional parking as the parking space is already associated with residential unit at 69 High Street;
- xxii. The development will result in the loss of a parking space for Kirk View, secured as part of planning permission 05/01103/FUL condition 13;
- xxiii. No route to parking space to provide EV charging point
- xxiv. Development does not fill in a gap as it leaves a gap;
- xxv. Bin storage at top of steps is not accessible;
- xxvi. Contrary to LDP policies and the Town Centre Strategy 2019;
- xxvii. Proposal will result in two properties without garden ground or amenity space;
- xxviii. Disturbance to neighbouring residents from noise, dust etc, during construction;
- xxix. There is no archaeological survey with the planning documents.

There a number of non-material points raised in the representations including: property maintenance and potential blocking of car parking spaces and the removal of a section of wall and gas pipe that are owned by the adjoining property at Kirk View. These are not material to the consideration of this application as they are legal matters relating to ownership of land.

## **COMMUNITY COUNCIL**

The North Berwick Community Council were consulted and have objected on the grounds that;

1. The planning report refers to a “brownfield gap site” this is factually wrong, because this plot has never been developed before. It is in fact garden land.



2. The planning report describes the site as being “without any use/value as amenity ground”. This is not true, it is garden space with real amenity value. Furthermore, the site contained a mature tree near the wall to Kirk View; this has been felled without the consent necessary in a Conservation Area and it ought to be replaced by a new tree.

3. There is reference in the report to the development effectively filling a space and masking an unsightly view, whereas the view from St Andrew Street is a traditional mishmash mash of buildings and roof forms which characterise the Conservation Area.

4. Paragraph 1 claims that the site “benefits from a dedicated car parking space (to the rear of the site off Law Road)”. The related parking space shown in the plans currently belongs to 69 High Street. If it is to become a space for the new development, then 69 High Street no longer benefits from a dedicated parking space.

5. Disruption from construction vehicles.

6. The properties at Kirk View share a modest garden area at the western side of that property. This would be totally overshadowed and dominated by the new development and the amenity value of this space would be significantly reduced. Furthermore, the dining room window on the first floor and the hall window on the second floor would totally overlook the Kirk View garden area and reduce its value further.

## **PLANNING ASSESSMENT**

The Council's Senior Environmental Health Officer advises he has concerns about the proposed air source heat pump and the potential for noise to impact on neighbouring amenity. However subject to the imposition of a condition controlling noise levels associated with this air source heat pump he raises no objection to the application.

The Council's Contaminated Land Officer has been consulted on the application and advises there may be issues arising from ground conditions and radon gas. However subject to the imposition of a condition requiring site investigations he raises no objection to the application.

With regards to Policies 1 and 2 of NPF4, the proposal includes an air source heat pump. It is noted that the proposal does not include an E.V. charging point for the parking space or photovoltaic panels. At its meeting on Tuesday 27th August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on relevant applications for planning permission. Such a condition could be imposed on any grant of planning permission for this proposed development. Subject to such a condition the proposal could comply with Policies 1 and 2 of NPF4.

Policy 15 of NPF4 supports development that will contribute to local living, including where relevant, 20 Minute Neighbourhoods. In this instance the application site is located within North Berwick Town Centre and would be well located for access to local services and facilities, and therefore would contribute to local living. Consequently, the principle of the development of the site for residential development would be entirely compatible with Policy 15 of NPF4.

Policy 16(e) of NPF4 states that development proposals for new homes on land not

allocated for housing in the LDP will be supported where the proposal is otherwise consistent with the plan spatial strategy and other relevant policies including local living and 20-minute neighbourhoods and the proposal is for smaller scale opportunities within an existing settlement boundary. Consequently, as the application site is within North Berwick and is sited within the town centre and its associated facilities, the principal of the erection of a dwelling building on this site is not contrary to Policy 16 of NPF4.

The proposed house would be situated within part of the North Berwick Town Centre as defined by Policy TC2 of the ELDP which states:

“Residential use may also be acceptable, particularly in a backland or above ground floor location. However, changes of use from a ground floor town or local centre use to residential use will only be permitted where there is evidence that the premises is no longer viable as a town or local centre use.

New buildings within a town or local centre will be expected to reflect the prevailing vertical mix of land uses in the area by providing town or local centre uses at the ground floor where appropriate in their context.”

However, this site is located to the rear of the commercial premises of High Street and has a primary frontage onto St. Andrew Street. Therefore, it is located in a part of the town centre that is not characterised by buildings with commercial premises on their ground floor. In this particular circumstance it would not be appropriate to require the new house to reflect the vertical mix of uses expected of new buildings fronting onto High Street. As the proposed residential use of the site would not compromise the North Berwick town centre's vibrancy, vitality or viability it does not conflict with Policy TC2 of the ELLDP.

The adjoining buildings on St Andrew's Street are separated from the listed buildings on the High Street with lower secondary buildings between. This separation and hierarchy forms part of the setting of the listed buildings. The proposal creates a similar spatial separation and therefore would not harm the setting of those listed buildings.

Notwithstanding the above the principal determining factor in this case is whether, having regard to national, strategic and local planning policy and guidance and other material considerations the principle of a new house and the works associated with it would be acceptable, with due regard to its potential impact on the character and residential amenity of the area, including the impact on the character of the character and appearance of the North Berwick Conservation Area. Furthermore, due regard has to be placed on the impact of the proposed development on neighbouring residential properties.

The erection of a house on the site would amount to infill housing development within this part of North Berwick and therefore Policy DP7 would apply. Policy DP7 of the ELDP requires that the following design principles are met:

1. The site can accommodate the entire development, including an appropriate amount of open space, satisfactory vehicle and pedestrian access, car parking and where necessary vehicle turning space; and
2. The occupants of existing neighbouring development experience no significant loss of privacy and amenity and occupants of any new development must also enjoy privacy and amenity; and
3. The scale, design and density of the proposed development will be sympathetic to its surroundings, overdevelopment of the site will be unacceptable and landscape and boundary features important to the character of the area must be retained where possible;

and

4. There will be no material loss of greenfield land or open space important to the character or recreation and amenity requirements of the area, and no loss of important physical or natural features.

Policy DP2 of the adopted ELDP requires that all new developments must be well designed and sets out a number of design principles. Amongst these are the requirement that all new development must be appropriate to its location in terms of its positioning, size, form, massing, proportion and scale and use of a limited palette of materials and colours that complement its surroundings and retain physical or natural features that are important to the amenity of the area or provide adequate replacements where appropriate.

Policy CH2 of the ELDP requires all development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. Proposals for new development should accord with the size, proportions, orientation, alignment, density, materials, and boundary treatment of nearby buildings and public and private spaces.

The application site lies to the south of the High Street which is part of the historic core of North Berwick Conservation Area. The Character Statement for North Berwick Conservation Area states:

“The oldest areas of the present town around the harbour, Quality Street and High Street are characterised by tightly packed buildings and narrow streets of a type common to many Scottish burghs. Buildings are generally compact and small scale fronting directly on to streets and most buildings date from the 18th and 19th century. 20th century infill development is also commonplace. The relationship of the height of the buildings to the width of the streets of the earlier parts of the town form intimate, human scale spaces, the built form reflecting North Berwick’s windy, coastal position. Use of colour and architectural detailing, differences in roof height, shop fronts that adhere to original plot widths and retention of many original features and shopfronts make for a busy centre of variety and interest.”

At present the site has no buildings on it and is characterised by the south stone boundary wall and garden ground.

The application site is located adjacent to two relatively modern infill developments – 1-4 Kirk View and St Andrews House – both of which incorporate traditional design elements and materials that allow them to sit comfortably within the conservation area.

In contrast the proposed house would be of a modern architectural form and design that would not reflect or take any design reference from its context or setting. The flat roof design of the proposed house would create a box like roofscape which would conflict, and be at odds with, the more traditional pitched roof form of nearby buildings. Moreover, the proposed roof terrace to be formed on it would be an alien feature within its setting that would appear out of keeping with its surroundings. Furthermore, the proposed stepped plan form of the house does not reflect the more traditional plan form of buildings addressing the street with space, or subservient buildings, to the rear. In addition the extensive areas of blank rear elevation and obscured glazing, in an attempt to overcome issues of privacy, results in large expanses of unattractive elevation which conflict with the more articulated front and rear elevations in the conservation area. Consequently, the proposed house would not be of an architectural form, scale, design and massing that would be sympathetic to its surroundings. It would not be appropriate to its location in

terms of its positioning, size, form, and massing and would neither preserve nor enhance but would be harmful to this part of the North Berwick Conservation Area. On those matters of design the proposal would be contrary to Policies 14 and 7 of NPF4 and Policies CH2, DP7 and DP2 of the ELLDP.

Policy DP7 part 1 of the ELDP requires that the site can accommodate the entire development, including an appropriate amount of open space. The proposed building fills the majority of this site and other than the proposed roof terrace, has no open space for the occupants. As the other areas of ground would not be of sufficient size or positioning to afford the occupants of the house any private amenity as useable garden ground the proposal cannot be accommodated on the application site.

Consequently, the application site is physically incapable of accommodating the entire development, including satisfactory garden ground and suitable relationships with boundaries and adjoining properties, without resulting in an overdevelopment of it or increasing the density of development such that the established character of the area would not be harmfully altered.

Policy DP7 part 2 of the ELDP requires that the occupants of existing neighbouring development experience no significant loss of privacy and amenity. This site is currently the garden ground for the dwelling at 69 High Street. The loss of the garden ground for an existing dwelling would be harmful to the amenity of the occupants of that neighbouring house and is contrary to policy DP7 of the ELLDP.

Furthermore, the proposal would place a largely four-storey building immediately to the south of the amenity space for the residential flats on 1-4 Kirk View. Due to its height and proximity to this amenity space the proposed house would have an overly dominant and overbearing impact on the external space of those neighbouring properties. This would be harmful to the amenity of the occupants of that neighbouring flatted building contrary to Policy DP7 of the ELLDP.

The proposed house would not be in accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, and Policies 7 and 14 of NPF4 and Policies CH2, DP2 and DP7 of the adopted ELLDP 2018.

The Council's Road Services have been consulted on the application and are not in a position to support the application as the parking standards require that, for a dwelling of 5 habitable rooms or fewer, that is infill development, 1.5 parking spaces are provided. The application information indicates that only one dedicated parking space will be available. It is noted that Policy 13 (e) of NPF4 supports low car parking in locations within town centres that are well supported by public transport such as that of the application site. On this basis the provision of one space may have been accepted however, it is noted that the proposed car park space is already in use as a car parking space for the property at 69 High Street. Therefore, the proposal will not result in the provision of any additional parking spaces. One of the main issues identified within the North Berwick Town Centre Strategy is the lack of parking. Given that there is already an identified issues in this location it is not considered appropriate to support development with zero parking provision. It is also noted that the application does not include E.V charging for the proposed car parking space and that this may be problematic due to the space being remote from the proposed dwelling and the applicant not controlling the land around the proposed parking space.

The site is currently private garden laid to grass. It is noted that a tree on the site has recently been removed. With regards to Policy 3 of NPF4 the application contains no details of measures to be taken to enhance biodiversity on the site. As the site is to be

covered in building and hard surfacing it is not considered feasible that this proposal could deliver measures to enhance biodiversity and therefore the proposals conflicts with Policy 3 of NPF4.

In conclusion, the proposed house is contrary to Policy 7 (Historic Assets and Places) and 14 (Liveable Place) of NPF4 and Policies CH2 (Development Affecting Conservation Areas), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development), of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposal is considered not to be in accordance with the aforementioned provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's discordance with the Development Plan.

#### **REASONS FOR REFUSAL:**

- 1 The proposed house would not be of an architectural form, scale, design and massing that would be sympathetic to its surroundings. It would not be appropriate to its location in terms of its positioning, size, form, and massing and would neither preserve nor enhance but would be harmful to the character and appearance of this part of the North Berwick Conservation Area contrary to Policies 14 and 7 of NPF4 and Policies CH2, DP7 and DP2 of the ELLDP.
- 2 The proposed house would be erected on a tightly constrained site and would occupy most of the plot. Consequently, there would be no land on which to form any useable garden ground for the occupants of the proposed house. As the application site cannot accommodate the entire development of the proposed house and suitable open space, the proposal is contrary to Policy DP7 part 1 of the adopted East Lothian Local Development Plan 2018.
- 3 Due to the height of the proposal and its relationship with the rear boundary and neighbouring external amenity space the proposed house would have an overly dominant and overbearing impact on the external space of neighbouring properties. This would harm the residential amenity of the occupants of neighbouring properties at Kirk View and High Street, contrary to Policy DP7 part 2 of the adopted East Lothian Local Development Plan 2018.
- 4 The Council's standards require 1.5 spaces for a dwelling of the proposed size and this proposal will not result in the provision of any additional parking spaces. The site is in an area of known parking pressure as identified in the North Berwick Town Centre Strategy. The proposal is contrary to ELDP policy T1 of the East Lothian Local Development Plan 2018 and the North Berwick Town Centre Strategy.
- 5 As the site largely comprises garden ground and is to be covered in building and hard surfacing it is not considered feasible that this proposal could deliver measures to enhance biodiversity and therefore the proposals conflicts with Policy 3 of NPF4, parts a) and c).



**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

**4**

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*Note: This application has been called off the Scheme of Delegation List by Councillor Collins for the following reasons: To allow a full discussion, as many see this as a benefit to the town.*

Application No. **24/00605/P**  
Proposal Alterations to shopfront and installation of pharmacy dispenser  
Location **25 High Street  
Dunbar  
EH42 1EN**

Applicant Romanes Pharmacy  
Per MI Design

**RECOMMENDATION** Application Refused

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to a ground floor, commercial premises located on the northeast side of High Street, Dunbar within Dunbar Town Centre as defined by Policy TC2 of the adopted East Lothian Local Development Plan (ELLDP) 2018. It is also located within Dunbar Conservation Area. The building is listed as being of special architectural or historic interest (Category C).

Planning permission is sought for alterations to the existing shopfront of the premises to allow for the installation of a pharmacy dispenser unit within the left side of the shopfront which would replace the large glazed panel of the shop front. The proposed pharmacy dispenser unit would be installed within a solid aluminium panel which would have an overall width of 1.6 metres and a height of 2.0 metres. The pharmacy dispenser unit would be predominantly white in colour.

Subsequent to the registration of this application, concerns were raised that the proposal

to reduce the height of the existing stall riser on the left side of the shopfront to facilitate the pharmacy dispenser would impact the uniformity of the shop, a listed building, and as such would be harmful to the special architectural and historic interest of the building. The applicants' agent submitted further revised drawings on 29 August 2024 showing that the installation of the pharmacy dispenser would no longer impact on the existing stall risers on the shopfront.

By way of separate application (Ref: 24/00606/ADV) advertisement consent is in part retrospectively sought for signage that is being displayed on the ground floor frontage of the building and for signage that would be installed on the proposed pharmacy dispenser unit. Listed building consent (Ref: 24/00697/LBC) is part retrospectively sought for the alterations to the building and erection of signage. These applications are pending consideration and stand to be determined on its own merits.

## **DEVELOPMENT PLAN**

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

The development plan is the adopted National Planning Framework 4 (NPF4) and the adopted ELLDP 2018.

Policies 7 (Historic Assets and Places), 14 (Design, Quality and Place) and 27 (City, town, local and commercial centres) of NPF4 and Policies CH1 (Listed Buildings), CH2 (Development Affecting Conservation Areas), TC2 (Town and Local Centres) and DP5 (Extensions and Alterations to Existing Buildings) of the adopted ELLDP 2018 are relevant to the determination of the application.

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 states 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 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.

Also material to the determination of the application is "The Cultural Heritage and the Built Environment Supplementary Planning Guidance" of the ELLDP 2018, adopted by the Council in October 2018.

## **REPRESENTATIONS**

Three representations have been received in relation to the application. Two of the representations object to the application and the other representation neither supports or objects to the application. The main grounds of objection are that:

- i) it is out of keeping with the character of the conservation area and C listed building;



- ii) disruptive to nearby residents; and
- iii) parking at all hours when parking is already an issue, chaotic and often dangerous.

## **PLANNING ASSESSMENT**

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

The **Council's Environmental Health Officer** has no comments with regard to this proposal.

The proposals would not harm the residential amenity of any neighbouring residential properties.

Policy 27 of NPF4 supports town centre uses which will enhance and improve the vitality and viability of any city, town and local centres, including proposals that increase the mix of uses.

Policy TC2 of the adopted ELLDP 2018 states that within a town or local centre, uses that will be acceptable in principle include retailing, business and office use, restaurants, leisure and entertainment, and the principle of a change of use from one of these uses to another will be supported. The policy also states that proposals that would have a significant environmental impact, particularly on housing, will not be permitted.

In this regard, the proposed alterations and installation of a pharmacy dispenser unit would not change the overall use of the building and instead would allow the service provided at the shop unit to operate at a more flexible basis therefore enhancing the offer of the premises and the overall local centre.

Furthermore, the **Council's Senior Environmental Protection Manager** has not expressed any concerns with the use of the pharmacy dispenser unit with regards to noise or disturbance to any neighbouring residential properties over and above what would be expected for a local centre location.

As such, the proposal is acceptable and would not conflict with Policy of 27 NPF4 or Policy TC2 of the adopted ELLDP 2018.

Notwithstanding the above due to the building the subject of this application being listed as of special architectural or historic interest and located within a conservation area then the determining issues are whether the proposed alterations to the shop front to install the pharmacy dispenser would in-accordance with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997:

- i. adversely affect the special architectural or historic interest of the listed buildings or its setting
- ii. adversely affect the character or appearance of the conservation area.

Thereafter it must be established whether the proposed alterations to install the pharmacy dispenser would accord with Policy 7 of NPF4 and Policies CH1, CH2 and DP5 of the ELLDP.

Policy 7 of NPF4 states that development proposals in or affecting conservation area will only be supported where the character and appearance of the conservation area and its setting is preserved or enhanced. Relevant considerations include the: (i) architectural and

historic character of the area; existing density, built form and layout; and (iii) context and siting, quality of design and suitable materials.

Policy CH1 of the adopted ELLDP 2018 states that internal or external alterations or extensions to listed buildings will only be permitted where they do not harm the architectural or historic character of the building.

Policy CH2 of the adopted ELLDP 2018 states that development proposals within or affecting a Conservation Area or its setting must be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area.

The existing shopfront is of a traditional architectural form and character comprising a recessed doorway with a large glazed panel on either side of the doorway. The traditional frontage is a significant component of the special architectural or historic interest of the listed building and makes a positive contribution to the character and appearance of the Dunbar Conservation Area.

The proposed alterations would result in the loss of the entire glazed panel on the left side of the recessed doorway of the shop front, and its replacement with a large white coloured solid aluminium panel which would include the pharmacy dispenser unit. Such a non traditional, modern intervention would radically alter the character and appearance of the shop front and would be visibly different in appearance to the existing glazed shop front. Such alterations to the shop front would be out of keeping with the special architectural or historic interest of the listed building. Therefore, the proposed alterations to install the pharmacy dispenser unit would adversely affect, and would harm, the special architectural or historic interest of the listed building. By adversely affecting the special architectural or historic interest of the listed building the proposed alterations to install the pharmacy dispenser unit would in turn adversely affect, and be harmful to the character and appearance of this part of Dunbar Conservation Area.

As the proposed alterations to install the pharmacy dispenser would adversely affect the special architectural or historic interest of the listed building and be harmful to the character and appearance of the Dunbar Conservation Area the proposals are therefore not in accordance with Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and would be contrary to Policy 7 of NPF4 and Policies CH1 and CH2 of the adopted ELLDP 2018.

In conclusion, the proposal is considered not to be in accordance with the provisions of the stated relevant Development Plan policies. Furthermore, the benefits the proposed pharmacy dispenser would bring to the local town centre, do not outweigh the adverse impact they would have on the listed building and Conservation Area. Accordingly, there are no material considerations which would justify granting planning permission.

#### **REASON FOR REFUSAL:**

- 1 The installation of a pharmacy dispenser unit to the front (west) elevation of the building would not preserve or enhance the character and appearance of the listed building but would detract from it. It would also be harmful to the special architectural or historic character or appearance of the Conservation Area. Consequently the alterations and installation of a pharmacy dispenser unit would be contrary to Policy 7 of the National Planning Framework 4 and Policies CH1 and CH2 of the adopted East Lothian Local Development Plan 2018.

**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 2024  
**BY:** Executive Director – Place  
**SUBJECT:** Application for Planning Permission for Consideration

**5**

Application No. **23/01519/PM**

Proposal Change of use of agricultural land for the formation of battery energy storage system and associated works

Location **Land to the North of Dunbar Grid Substation  
Dunbar  
East Lothian**

Applicant FRV TH Powertek

Per Sirius Planning

**RECOMMENDATION** Consent Granted

### **REPORT OF HANDLING**

As the energy generation from the proposed facility would exceed 20MW 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.

### **PRE-APPLICATION CONSULTATION**

As a statutory requirement for major development proposals this development proposal was the subject of a Proposal of Application Notice (Ref: 23/00004/PAN) and thus community consultation prior to this application for Planning Permission was carried out. 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.

As an outcome of the statutory requirement for dealing with major development applications a pre-application consultation (PAC) report is submitted with this application. The report informs that the consultation comprised of two consultation events. The first event was on 13th June 2023 in West Barns Hall. The second event was on 6th July 2023 in Stenton Village Hall. Both events ran from 2:30pm to 8:30pm. The PAC report informs that eight people attended each event. The development for which planning permission 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.

## **SITE DESCRIPTION**

The application site comprises 0.87ha of agricultural land adjacent to the northeast boundary of an existing electricity distribution site. It is to the west of the B6370 and north of the existing Dunbar substation. The application site lies 2.5km south west of Dunbar and approximately 850m north of hamlet of Pitcox.

The site and surrounding areas are rural in nature, characterised by arable farmland and defined by hedges, scattered hedgerow trees, post and wire fences and stone walls. A watercourse within a woodland area runs to the west of the site (Biel Water), beyond which is agricultural land. To the north of the site is a horse livery (Belton Livery) and residential property.

The site is located within the open countryside as allocated by Policy DC1 of the East Lothian Local Development Plan 2018 (ELDP) and is also located within a Local Designed Landscape (Belton). The site is identified as Prime Agricultural Land.

## **PLANNING HISTORY**

Proposal of Application Notice ref 23/00004/PAN received 5/5/23. 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.

Planning permission Ref: 24/00607/P for the formation of a vehicle access to serve this BESS facility on land adjacent to the north of this application site was granted in September 2024. However, a condition attached to that grant of planning permission prevents its formation unless and until planning permission is also granted for the BESS the subject of this planning application.

There is no other relevant planning application history for this site.

## **PROPOSAL**

Planning permission is sought for a battery energy storage system (BESS) and associated works for a temporary period of 40 years. This facility would store and supply energy for export to the grid (Distribution network) as and when required, typically at points of peak demand. It would have an export capacity of up to 49.9MW. The Proposed Development would connect into the existing adjacent substation.

This facility would comprise the installation of:

34 (previously 52) BESS cabinets including inverters:

12 (previously 13) skids containing 33kV transformers:

Customer substation:

Storage container:

Welfare container:

Fire water storage tanks (Note: fire water pumphouse removed):

HV substation containing HV switchgear and isolation equipment:

Security fence (2.4m in height), with two access gates:

Security CCTV cameras:

Access roads.

Associated infrastructure including underground pipes, power and communications cables.

The proposed development will connect into the point of connection (substation) located immediately to the south of the site via an underground cable connection.

The site will comprise an extensive gravel area measuring 94m x 36m. This area will accommodate the battery storage cabinets and transformers, fire water tanks, switchroom, welfare cabin, emergency vehicle circulation space and three car parking spaces. Each battery container will measure approximately 7.1m long, 3.35m wide and 2.5m in height. This area is to be contained by the security fence and two gates for vehicular access. Immediately outside this area is the underground contaminated firewater tank (measuring 28m x 10m) and the landscape mitigation areas.

When first submitted it was proposed that the BESS be accessed by an existing farm access into the field from the B6370 public road. However, to achieve the required visibility sightlines the **Council's Road Services Officer** required a significant level of intervention to the wall including the widening and lowering of it. This level of intervention would reduce the visual screening capacity of the wall which would unacceptably impact on the landscape character of the area. To address these concerns, it is now proposed to form a new vehicular access some 5m to the north of the existing access, and to block up the existing farm access. By relocating the new vehicular access to the north, further from the bend in the road, the level of intervention to the wall has been significantly reduced and is acceptable in terms of its landscape impact and in terms of road safety. Planning permission for that vehicular access, which is outwith the red-line boundary of this planning application, has recently been granted with a condition imposed on it that works to create that access cannot commence unless and until planning permission for the BESS the subject of this planning application is also granted.

## **EIA**

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 (part 3 Energy Industry), being one that may require the submission of an Environmental Impact Assessment (EIA). On 21 April 2023 a Scoping Request was submitted to East Lothian Council. On 31 May 2023 the Council issued a formal scoping opinion to the applicant. The application is accompanied by an Environmental Statement.

## **DEVELOPMENT PLAN**

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

The development plan is the approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 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 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural Places), 5 (Soils), 7 (Historic assets and places), 11 (Energy), 13 (Sustainable Transport), 22 (Flood Risk and Water Management), 23 (Health and Safety) and 29 (Rural Development).

Policies DP1 (Landscape Character), DP2 (Design), T1 (Development Location and

Accessibility), T2 (General Transport Impact), DC1 (Rural Diversification), CH4 (Scheduled Monuments and Archaeological), CH6 (Gardens and Designed Landscapes), NH4 (European Protected Species), NH5 (biodiversity and geodiversity), NH7 (Protecting Soils), NH10 (Sustainable Drainage Systems), NH11(Flood Risk) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

## **REPRESENTATIONS**

One letter of objection was received. The main grounds of objection are:

- \* Loss of prime agricultural land.
- \* Precedent.
- \* Fire.
- \* Pollution.
- \* Proposal is not adequately screened by landscaping.

In respect of precedent the Planning Authority will consider each application on its own merits.

## **COMMUNITY COUNCIL**

West Barns Community Council objects to this proposal on the grounds that:

- \* Cumulative impact requires joined up thinking.
- \* Loss of prime agricultural land.
- \* Adverse impact on biodiversity and wildlife.
- \* Road safety.
- \* Fire safety.

West Barns Community Council were reconsulted on the revised proposal. They noted the revisions and updated information but retained their grounds of objection.

## **ENVIRONMENTAL IMPACT ASSESSMENT**

An Environmental Impact Assessment (EIA) has been submitted with the application, and has been duly advertised and consulted on.

The submitted Environmental Statement (ES) contains chapters on the method and approach to preparing the Report, policy and legislation, the description of the development, site selection and analysis of alternatives, landscape, biodiversity, climatic factors, cultural heritage, population and human health (noise) and cumulative effects.

Following a soil survey which advised that the land did not comprise prime agricultural soil this topic was scoped out of the EIA.

Major Accidents and Hazards were considered to be a “maybe” by ELC at the scoping stage. This matter is addressed through a stand alone Battery Safety Management Plan. This document is considered adequate and has been updated during the application process following comments from ELC.

A standalone report Flood Risk Assessment and Drainage Strategy accompanies the application and is considered adequate.

The Environmental Statement finds a number of minor adverse impacts were identified in respect of landscape, noise and ecology. However, it is considered that the benefits the

scheme realised through the reduction in carbon emissions, the enhancements to local biodiversity and the positive effects to the local economy outweigh these limited impacts. The potential effects have been fully assessed and where appropriate mitigated as a result of an iterative design process for the development, and through careful consideration of environmental control and abatement techniques.

An Environmental Statement Addendum was submitted following points raised by ELC in relation to the number of units on the site, landscape mitigation, vehicular access and cumulative impact. The report contains an updated Landscape and Visual Assessment and an updated Fire Safety Statement. The Environmental Statement Addendum has been duly advertised and consulted on.

The Addendum finds that as a result of the revisions, including revised mitigation, there will be no significant cumulative landscape and visual effects. The updated Fire Safety Strategy sets out greater detail in respect of this issues and demonstrates how the proposed scheme complies with relevant guidance.

## **PLANNING ASSESSMENT**

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

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

The Climate Change Plan notes operating a zero-carbon electricity system will mean finding new ways to provide a range of technical services and qualities currently provided by fossil fuel and nuclear generation. Battery storage is one technology which helps achieve these goals. However, it is important to ensure that the lifecycle carbon impacts of the proposal itself are assessed and mitigated.

At its meeting on the 27 of August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on the 3 49 September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the completed development should be imposed on consents for relevant development proposals. Therefore, a condition should be imposed on any consent for this proposed development, requiring such a report. Subject to the imposition of this planning control the proposals would be consistent with the requirements of Policy 2 of NPF4 and Policy SEH2 of the ELLDP.

The proposed development of a battery storage energy system (BESS) would enable the storage of electricity and would contribute to the delivery of infrastructure of national importance. As the proposal supports renewable energy, the principle of the proposal is also consistent with Policy 11 of NPF4, which states that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported, including enabling works, such as grid transmission and distribution infrastructure.

Policy 5 of NPF4 sets out that development on prime agricultural land will be supported for development including essential infrastructure. Similarly, ELLDP policy NH7 supports proposals for renewable energy generation on prime quality agricultural land where

provision is made for restoration of the land to its former status.

The proposed site is on an area of agricultural land which Council records indicate could be prime agricultural land. However, at the Environmental Statement Scoping Stage the applicant undertook a soil survey which demonstrated that the quality of soil within the application site was not prime agriculture land. Notwithstanding a condition is attached to ensure that the land is returned to an agricultural use after the facility is decommissioned and the site suitably remediated. In addition, a condition requiring the developer to provide a suitable financial bond, in favour of ELC, has been imposed to ensure that adequate funding is secured to carry out restoration of the land, should this not be done by the developer/operator following the decommissioning of the facility.

The proposal is also supported by Policy DC1 of the ELLDP which supports renewable energy related development within the countryside subject to the consideration of the other plan policies. The principle of this BESS proposal is therefore aligned with the Development Plan.

The site forms part of a wider agricultural field which lies within the Belton Local Garden and Designed Landscape. The proposed 34 No. Containerised Battery Units and Containerised Switchgear and Control Rooms with associated ancillary equipment, underground cabling, inverters, transformers, CCTV and surrounding palisade security fencing and other associated works would be sited to the north east of the existing Dunbar substation compound.

The Environmental Statement (ES) contained an assessment of the visual impact of the proposal on the landscape including an analysis of 11 viewpoints.

The **Council's Landscape Policy Officer** has been consulted on the proposal. They are in agreement with the submitted ES Volume 1 section 7.11.1 in that the proposed development (BESS) can be successfully integrated into the local landscape without causing significant wide scale harm to the landscape character. However, they do not agree that the original proposal allows for adequate landscape mitigation. They agree that the stone wall boundary to the east will provide some screening but the original proposal significantly reduced this effect due to the alterations to the wall to create a safe access.

However, the proposal has been altered to address the concerns relating to landscape impact. The ES Addendum contains a revised visual assessment including photomontages at year 15 year. The amended proposal will minimise the impact of the proposal on the surrounding open countryside by way of the additional planting and retained boundary wall to screen the proposed development. Overall, with its visual relationship with the existing substation the proposed battery storage facility whilst visible, would not appear, unduly prominent, intrusive or unduly exposed in its landscape setting. By virtue of its nature, scale and siting, the proposed development would be satisfactorily integrated into the landscape in a manner that would reflect the character and quality of place of the application site and would be compatible with its surroundings. As such, the Council's Landscape Policy Officer states that in landscape terms the proposal appears to have limited landscape and visual impact and does not appear to harm the Special Qualities and Features of the adjoining SLA.

The Landscape Policy Officer also advises that they support the planting mitigation as it accords with the Council's Tree and Woodland Strategy (TWS) Native Woodland Expansion map which identifies the site area and around as offering opportunity for native woodland creation. The Landscape Policy Officer recommends that the details and implementation of the planting be made a condition of any planning permission. Subject to the imposition of that planning control the proposals do not conflict with Policies 14 and 29



or NPF4 or Policies DP1 and DC9 of the ELLDP 2018.

The **Council's Biodiversity Officer** advises that the application site is currently an arable field and is of limited biodiversity value. However, there are records of protected species in close proximity of the site with the potential for the edges of the site being in foraging range for the species. The Planning Statement submitted in support of the application states that it is proposed to implement a 30m buffer zone of the Biel Water and that a pre-construction survey for protected species will be carried out by an Ecological Clerk of Works prior to any construction of the BESS. The provision of these measures can be secured through the imposition of a condition on any grant of planning permission. Subject to the imposition of that planning control the proposals would not harm any protected species.

As the site has limited biodiversity value the Council's Biodiversity Officer welcomes the development of the lowland meadow within the proposal site. With respect to the landscape mitigation the trees and scrub planting this would be expected to be species local to East Lothian. Species shown in the Landscape Mitigation are not all appropriate for local conditions and therefore a condition is attached requiring final details of the planting to be submitted and agreed in writing. Nature Scotland were consulted on the proposal and revisions and noted the changes. They advise that they do not anticipate any adverse impact on natural heritage interests. Subject to a condition requiring the biodiversity enhancement measures be implemented once the BESS is in place then the proposals do not conflict with Policy 3 of NPF4 and Policy NH4 of ELLDP.

The **Council's Heritage Officer** notes that the site has historically been open fields lying at the very southern end of the Local Designed Landscape (LDL). This part of the LDL was not formally laid out but was part of the wider policies for Biel which focus upon Biel water rather than the fields and woodland either side of the dean. Given the nature of the proposal he is satisfied that the proposed BESS will not have a significant impact upon the wider LDL to or unduly change the understandability of it. This area is not an integral part of the LDL and as such can accommodate a degree of change as proposed by this development. Therefore subject to the imposition of a condition requiring Programme of Works (Archaeological Evaluation by trial trench) is carried out The Council's Heritage Officer raises no objection to the application.

Historic Environment Scotland were consulted and advised that they did not consider there to be any impact on assets of national significance. They raise no objection to the application.

Subject to the imposition of the aforementioned planning control the proposals do not conflict with Policy 7 of NPF4 or Policies CH4 and CH6 of ELLDP 2018.

Due to the location of the proposed BESS in relation to neighbouring residential properties it would not harm the privacy or amenity of any neighbouring land use through overlooking or overshadowing.

The closest residential properties to the proposed BESS - Belton House and Gardeners Cottage which are located over 150m to the northeast and East Lodge which is located to some 120m to the southwest. The **Council's Environmental Protection Officer** has advised that he has no concerns with regards to the potential adverse effects of noise from the operation of the facility in relation to adjoining residential properties to the north and south. During construction there is potential for additional disturbance, the duration and extent of which would be typically secured by limited working hours set out in appropriately worded planning conditions, and within a Construction Environmental Management Plan (CEMP). Subject to a condition requiring the CEMP is submitted to and approved prior to

works commencing the proposals would not harm the residential amenity of neighbouring residential properties through noise.

As stated above it is proposed that the BESS be accessed via a new vehicular access to be formed some 5m to the north of the existing field access. Whilst that access is not part of this planning application site, a condition can be imposed on any grant of planning permission for the BESS to ensure that the new vehicular access is formed and available for use prior to the works to construct the BESS commence. Subject to the imposition of that planning control it would be possible to provide a safe means of access to the BESS.

The proposed layout is designed to facilitate emergency vehicular access and manoeuvring within the site. During the operational phase the BESS will be unmanned and will only be accessed for maintenance. Three parking spaces are to be provided on the gravelled surfaced area within the BESS for maintenance purposes.

Road Services have raised no objections to the application subject to the imposition of conditions on any grant of planning permission requiring the submission of a Construction Environmental Management Plan (CEMP) and a Construction Traffic Management Plan (CTMP) to address issues of construction related traffic. Subject to the imposition of those planning control the proposal accords with policies T1 and T2 of the ELLDP.

The battery and associated equipment will be contained behind a secure fence and gates, thereby minimising the risk to the public. As designed the proposal accords with NPF4 policy 5 Health and Safety.

SEPA raised no objection to the application.

The **Council's Flooding Team** were consulted in respect of flooding and surface water run-off and the team have confirmed that there is no risk of flooding on this site. With regards to surface water runoff, there may be an increase in runoff when altering from agriculture to battery storage. The Flood Risk Assessment has detailed a SUDS strategy in Chapter 5.5, which includes no flooding on the site at a 1 in 200 year flood event, no increase in runoff rate from the site and using 56% climate change uplifts. The proposal is to use infiltration, using permeable surfacing and then soakaways. The Flooding Team are satisfied with this approach subject to the imposition of a condition requiring the submission of the detail of the drainage layout and appropriate filtration tests. Subject to the imposition of this planning control the proposals do not conflict with Policy 22 of NPF4 or Policy NH7 of ELLDP.

The Fire Service have been consulted on the application and have responded to say they wish to make no site specific comments and have directed the Planning Service to the guidance provided by the National Fire Chief Council (NFCC). While the NFCC best practice note is only guidance it is currently the only reference for fire safety in relation to BESS in the UK.

The application is supported by a Fire Report which has been updated following planning officer comments. The revised Fire Strategy and site layout plan contains information on access points, separation distances between battery storage units (6m), on site water storage, fire hydrants, water run off from fire suppression etc. This report sets out how the site has been designed to mitigate the risk of fire, the strategy for fire suppression, the provision of fire fighting equipment amongst other matters. The site layout plan includes greater detail relating to the fire strategy, including a fire hydrant, on site water storage facilities and a retention tank to treat any potential contaminated water. The applicants supporting Fire Report contains details of meetings and correspondence with the Fire Service. Within this correspondence the Scottish Fire Rescue Service have confirmed that

they consider the proposal, as amended, to accord with the current guidance.

The proposed development is in accordance with the Development Plan and there are no other material considerations which outweigh this consideration.

## **RECOMMENDATION**

It is recommended that Planning Permission be granted subject to the undernoted conditions.

## **CONDITIONS:**

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

Reason:

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

- 2 Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the approved drawings.

Reason: To ensure that the Development is carried out in accordance with the approved details.

- 3 The Development will disconnect from the grid and cease to import or export electricity no later than the date falling forty-one years from the date of commencement of development.

The total period for decommissioning, restoration and aftercare works of the site in accordance with this condition shall not exceed forty-two years from the commencement of development without prior written approval of the Planning Authority. Unless otherwise agreed in writing by the Planning Authority, there will be a one year aftercare period from completion of restoration, to ensure that the restoration works are monitored and any remedial works undertaken and completed to ensure optimal end use to the satisfaction of the Planning Authority.

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

No later than 3 years prior to decommissioning of the development or the expiration of the consent (whichever is the earlier) a detailed Decommissioning, Restoration and Aftercare Plan shall be submitted to the Planning Authority for written approval. The detailed decommissioning, Restoration and Aftercare Plan, will provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include:

- a. a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases); to include the items listed in the CEMP site waste plan.
- b. details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;

- c. a dust management plan;
- d. details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- e. a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- f. soil restoration;
- g. a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- h. sewage disposal and treatment;
- i. temporary site illumination;
- j. the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- k. details of any watercourse crossings;
- l. a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.
- m. traffic management plan
- n. timetable for decommissioning and restoration and aftercare, which period shall not exceed one year unless otherwise agreed in writing by the planning authority.
- o. Restoration Layout Plan showing the indicative final restored layout including agricultural grade land which shall include restoration of the topography which existed prior to the commencement of the development unless otherwise agreed with the Planning Authority.
- p. The Development shall be decommissioned, the site restored, and the aftercare period thereafter undertaken in accordance with the approved detailed Decommissioning, Restoration and Aftercare Plan, unless otherwise agreed in writing in advance with the Planning Authority.

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

- 4 The Company shall supply to the Planning Authority an annual written report confirming that the battery energy storage facility is importing and exporting electricity to the grid. If the battery storage facility fails to import or export electricity to the grid for a continuous period of 12 months, then unless otherwise agreed in writing with the Planning Authority, the Company shall no later than one year after the last day of this 12-month period submit the site Decommissioning, Restoration and Aftercare Plan to the Planning Authority for approval and implement it in accordance with condition 3.

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

- 5 No development shall commence unless and until a Construction and Environmental Management Plan ("CEMP") outlining site specific details of all onsite construction works, post-construction reinstatement, drainage, and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority.

The CEMP shall include (but shall not be limited to):

- a. A site investigation and ground monitoring plan detailing all preliminary site investigation and ground investigation works, in compliance with BS 59300:2015 or successor guidance;

- b. a site waste management plan to include:

- i. Waste expected to be produced and how materials will be stored, reused, recycled or reclaimed;
- ii. Steps to minimise waste and maximise the use of recyclates;
- iii. Management of waste on site and leaving the site; and
- iv. Relevant evidence of waste carrier/waste transfer.

- c. details of contingency planning in the event of accidental release of materials which could

cause harm to the environment;

d. details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any compound boundary fencing;

e. a dust management plan;

f. a soil management plan;

g. details of measures to be taken to prevent loose or deleterious material being deposited on the local road;

h. a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;

i. sewage disposal and treatment;

j. temporary site illumination;

k. the method of working cable trenches;

l. the method of construction (insofar as constructed on site) and erection of BESS, HV transformers, CCTV columns;

m. details of watercourse crossings;

n. post-construction restoration/ reinstatement of the working areas not required during the operation of the Development, construction compound, storage areas, laydown areas, access tracks, other construction areas. Details should include all seed mixes to be used for the reinstatement of vegetation;

o. a description of the proposed activities, structures or tracks within the laydown area and details of its restoration including a timetable.

p. biodiversity mitigation measures in relation to any on site or off site construction works (to be agreed with Council's Biodiversity officer).

q. standards outlined in British Standard 4 2020 : 2013 - Biodiversity Code of Practice for Planning and Development for the protection of badger, bat, otter and birds.

The development shall be implemented thereafter in accordance with the approved CEMP unless otherwise approved in advance in writing by the Planning Authority.

Reason: To ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment.

6 No construction work associated with the Development shall take place on the Site on any Sunday or Bank Holiday or on any other day except between the following hours: Monday to Friday: 08:00 to 18:00, Saturday: 08:00 to 13:00.

Unless such work:

a. does not cause the existing ambient background noise levels to be exceeded at any of the noise sensitive receptors identified in the application; or

b. is associated with essential maintenance / testing; or

c. is associated with an emergency; or,

d. is approved in advance in writing by the Planning Authority.

No HGV movements associated with construction of the Development (excluding abnormal loads) shall enter or leave the Site on any Sunday or Bank Holiday or on any other day except between the following hours: Monday to Friday: 08:00 to 18:00, Saturday: 08:00 to

13:00.

Unless such movement:

- a. is associated with an emergency; or
- b. is approved in advance in writing by the Planning Authority.

Reason: In the interests of local amenity.

- 7 There shall be provided within the curtilage of the site a turning area for vehicles suitable for use by the largest vehicles expected to visit or in connection with the operation of the site. The turning area shall be formed outwith the parking areas and both shall be available as required through the lifetime of the development unless otherwise agreed in writing by the Planning Authority.

Reason: In the interest of road safety; to ensure that all vehicles taking access to and egress from the site can do so in a forward gear.

- 8 No development shall commence unless and until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Planning Authority in consultation with the Roads Authority to ensure that general construction traffic can be transported along the road network safely and efficiently. The CTMP shall contain details on routing and timing of deliveries to site, site operatives parking area, and traffic management required to allow off site operations (such as public utility installation, pedestrian access etc).

The CTMP shall include (but shall not be limited to) details on the following:

- a. Estimate of traffic vehicle movements;
- b. Proposed construction traffic routes and key traffic management;
- c. Proposed delivery route;
- d. Safety measures in regard to pedestrians and cyclists during construction;
- e. Detailed site access design and details of any required traffic management measures, including visibility splays; and
- f. Information on wheel-washing facilities.

Thereafter, the Development shall be constructed in accordance with the approved CTMP, unless otherwise agreed in writing by the Planning Authority in consultation with Transport Scotland.

Reason: To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the Site.

- 9 No abnormal load movement shall take place on the road network unless and until details of the route and any accommodation measures required including the removal of street furniture, junction widening, and traffic management have been submitted to and approved in writing by the Planning Authority in consultation with the roads authority.

During the delivery period of components any additional signing or temporary traffic control measures deemed necessary due to the size or length of any loads being delivered or removed must be undertaken by a recognised QA traffic management consultant, to be approved by the trunk roads authority before delivery commences.

Reason: To minimise interference and maintain the safety and free flow of traffic on the Trunk Road as a result of the traffic moving to and from the development and o ensure that the transportation will not have any detrimental effect on the road and structures along the route.

- 10 No development shall commence unless and until a Phase I Contaminated Land Assessment (Desk Study) is submitted to and approved by the Planning Authority. This should investigate the scope of any intrusive investigations required prior to construction, and should assess and remediate any contamination issues prior to the commencement of

development.

Reason: To address potential contamination issues on the site.

- 11 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a detailed planting plan and schedule based on the details on the 'Landscape Mitigation' drawing referenced FRV1001 /04/08 revision 2. The scheme shall provide details of: tree and shrub sizes, species, habitat, siting, planting distances, a programme of planting, and implementation, establishment and maintenance details. A full landscape maintenance and management plan for the life of the development shall be included with the planting plan to show how the landscaping will be established and developed.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development. All planting shall be established and maintained in accordance with the details on the approved drawings. Any trees or plants which die, are removed or become seriously damaged or diseased within a period of ten years from the completion of the development shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority. All landscape shall be maintained to accord with the details of the approved details of landscaping.

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.

- 12 No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.

Reason: To minimise the impact on breeding birds and to allow the Planning Authority to consider this matter in further detail.

- 13 Prior to the commencement of development, the vehicular access approved by planning permission ref: 24/00607/P, or a suitable alternative vehicular access agreed in writing by the planning authority, shall be completed and available for use. Thereafter there shall be no use of the existing farm access to access the site of the BESS and that existing farm access will be blocked up in accordance with the docketed drawings.

Reason:

To ensure the provision of a suitable vehicular access to the site.

- 14 a. 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 (B6730), prior to and immediately following the completion of the construction phase of development and then again at the completion of decommissioning, shall be submitted to and approved by the Planning Authority.

b. Damage to the public road during the period of construction, operation and decommissioning associated with the Development shall be repaired by the Company at no expense to ELC (the Planning Authorities/ roads authority), unless an alternative means of securing the works is approved in writing by the Planning Authority.

Reason: to avoid the costs of repair to damage to the roads caused by vehicles associated with the development falling to the public authorities.

- 15 Prior to the commencement of development, the applicant shall submit a Drainage Layout Plan, aligned with the supporting Flood Risk Assessment and Drainage Strategy (October 2023), and details of infiltration tests and/or confirmation that the infiltration method is suitable. The Drainage Layout Plan shall be approved in writing by the Planning Authority prior to the commencement of development on the site. All works contained in the approved Drainage Layout Plan shall be complete prior to the commissioning of the facility, unless agreed in writing by the planning authority.

Reason To ensure the site is suitably drained.

- 16 No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological work (Archaeological Evaluation by 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.

Reason:

To enable the Planning Authority to further consider the possible historic environment implications of the proposal.

- 17 No development shall take place unless the Planning Authority has approved in writing the terms of appointment by the Company (FRV TH Powertek or such other person who from time to time may lawfully have the benefit of this consent) of an independent and suitably qualified environmental consultant as the Planning Monitoring Officer to assist the Planning Authority in monitoring compliance with the terms of the deemed planning permission and conditions attached to this consent, unless otherwise agreed in writing by the Planning Authority. For the avoidance of doubt the PMO shall be funded by the Company throughout the term of appointment.

The terms of appointment shall:

- a. Impose a duty to monitor compliance with the terms of the deemed planning permission and conditions attached to this consent;
- b. Require the PMO to submit a report to the Planning Authority summarising works undertaken on site post construction of the development which confirms the development has been built in accordance with the approved plans. ;
- c. Require the PMO to report to the developer and the Planning Authority any incidences of noncompliance with the terms of the terms of the planning permission and conditions attached to this consent at the earliest practical opportunity; and
- d. Monitor any remedial work undertaken due to noncompliance with point c to ensure work undertaken to required standard and in accordance with consent.

Reason: To ensure that the development is constructed in accordance with the consent.

- 18 The development hereby approved shall not operate unless and until evidence of a bond or other form of financial guarantee in terms which secures the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 3 and condition 4 has been submitted to the Planning Authority. The financial guarantee shall be maintained in favour of the Planning Authority until the completion of all decommissioning, restoration and aftercare obligations referred to in condition 3 and condition 4.

Reason:

To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this planning permission in the event of default by the Company (FRV TH Powertek or such other person who from time to time may lawfully have the benefit of this consent).





installation of solar panels. That application stands to be determined on its own merits.

## **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 ELLDP 2018.

The relevant policies contained within NPF4 consist of Policies 7 (Historic assets and places), 11 (Energy) and 14 (Design, quality and place). Policies DP5 (Alterations and Extension of Existing Buildings) and CH1 (Listed Buildings) of the adopted ELLDP 2018 are also relevant to the determination of the application.

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 states 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 Managing Change in the Historic Environment: Micro-Renewables, a guidance note published by Historic Environment Scotland, which sets out the principles that apply to the use of micro-renewable technologies in historic buildings and sites.

## **REPRESENTATIONS**

One written objection to this application has been received. It is from the Architectural Heritage Society of Scotland. The main grounds of objection are that the proposal is contrary to Policies CH1 (Listed Buildings) and CH2 (Development in Conservation Areas) of the adopted East Lothian Local Development Plan 2018.

The property is not located within a Conservation Area and as such Policy CH2 (Development in Conservation Areas) is not applicable to this application.

## **PLANNING ASSESSMENT**

The building occupies a prominent position on North High Street and its front elevation is readily visible from the public road. The unaltered roof slope of the listed building is a significant component of the building that contributes to its special architectural or historic interest.

Historic Environment Scotland provide guidance which sets out principles that apply to the use of micro-renewable technologies in historic buildings and sites. In relation to solar power, the guidance states that 'installation of solar panels on the principal elevation of a historic building should be avoided because of the detrimental visual impact. Therefore, if historic buildings face south, their main roof slopes may be inappropriate as location for solar panels. Alternative solutions should be explored, such as installation on secondary roof slopes, on locations hidden from main views, or on surroundings areas such as sheds, gardens or fields.'

The guidance provided by Historic Environment Scotland also advises that 'for the integrity of the building, it is usually desirable to mount panels over existing slates, rather than replace historic building fabric with look-alike materials.' It is proposed to fix the solar panels on the pitched and hipped roofs using an insertion rail system which allows the solar panels to be fixed over the existing slates and only the removal of a small number of slates to allow for the installation of the rail fixings.

Subsequent to the registration of the application, concerns were raised with the applicant regarding the position and number of solar panels proposed on the principal (south) elevation of the building. It was suggested that alternative solutions should be explored such as ground mounted solar panels, relocating the solar panels to different roof slopes of the building and/or air source heat pumps. The applicant confirmed that these alternative solutions were not financially viable and therefore was not able to relocate the solar panels off the principal south elevation.

In their position on the principal (south) roof slope of the building, the proposed 27 solar panels would be visible from the public road of North High Street. The proposed solar panels would cover a large proportion of the roof slope and as such would radically alter the character and appearance of that otherwise unaltered roof slope. This would neither preserve nor enhance but would be harmful to the special architectural or historic interest of the listed building.

Furthermore contrary to the guidance from HES, the proposed solar panels would be integrated into the slates on the roof and would not be fixed to railings that would sit on top of the slates. Therefore this would result in the loss of the existing historic fabric of the listed building which would be harmful to the special architectural or historic interest of the listed building.

The proposed solar panels are therefore contrary to Policies 7 and 14 of NPF4 and Policies CH1 and DP5 of the adopted ELLDP 2018.

The proposals would not harm the residential amenity of any neighbouring residential properties.

In conclusion, the proposal is considered not to be in accordance with the provisions of the stated relevant Development Plan policies. Furthermore, the benefits that the solar panels would provide to the building and, in a very small way, to the environment through lowering the carbon footprint, do not outweigh the adverse impact they would have on the listed building. Accordingly, there are no material considerations which would justify granting planning permission.

## **REASONS FOR REFUSAL**

- 1 The addition of the 27 solar panels to the principal elevation roof slope of the building would not preserve or enhance the character and appearance of the listed building but would detract from it. Furthermore, the integration of the solar panels into the roof would result in the loss of historic fabric of the listed building. Consequently, the proposed solar panels would be contrary to Policies 7 and 14 of the National Planning Framework 4 and Policies CH1 and DP5 of the adopted East Lothian Local Development Plan 2018.



**REPORT TO:** Planning Committee  
**MEETING DATE:** 1 October 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 reasons: Due to the concerns raised by the community about this application, I feel that this item would benefit from a site visit and a discussion at full Committee.*

Application No. **24/00264/LBC**  
Proposal Installation of solar panels  
Location **Staggs  
81 North High Street  
Musselburgh  
EH21 6JE**

Applicant Mr Nigel Finlay

**RECOMMENDATION** Application Refused

## REPORT OF HANDLING

### PROPOSAL

The application relates to a two-storey end-terrace building which is listed as being of special architectural or historic interest, Category C. The building is located on the northern side of North High Street, to the north of the Brunton Hall.

Listed building consent is sought for the installation of 27 solar panels on the principal (south) roof plane of the building. Each of the proposed solar panels would measure some 1.7 metres by some 1.1 metres.

Through separate application 24/00267/P planning permission is sought for the installation of solar panels. That application stands to be determined on its own merits.

### 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.

HEPS and National Planning Framework 4 (NPF4) echoes 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 which 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.

Policy 7 (Historic Assets and Places) of NPF4 is relevant to the determination of this application. Policy CH1 (Listed Buildings) of the adopted ELLDP 2018 is also relevant to the determination of this application.

Also material to the determination of the application is Managing Change in the Historic Environment: Micro-Renewables, a guidance note published by Historic Environment Scotland, which sets out the principles that apply to the use of micro-renewable technologies in historic buildings and sites.

## **REPRESENTATIONS**

One written objection to this application has been received. The main grounds of objection are that the proposal is contrary to Policies CH1 (Listed Buildings) and CH2 (Development in Conservation Areas) of the adopted East Lothian Local Development Plan 2018.

The property is not located within a Conservation Area and as such Policy CH2 (Development in Conservation Areas) is not applicable to this application.

## **PLANNING ASSESSMENT**

The building occupies a prominent position on North High Street and its front elevation is readily visible from the public road. The unaltered roof slope of the listed building is a significant component of the building that contributes to its special architectural or historic interest.

Historic Environment Scotland provide guidance which sets out principles that apply to the use of micro-renewable technologies in historic buildings and sites. In relation to solar power, the guidance states that 'installation of solar panels on the principal elevation of a historic building should be avoided because of the detrimental visual impact. Therefore, if historic buildings face south, their main roof slopes may be inappropriate as location for solar panels. Alternative solutions should be explored, such as installation on secondary roof slopes, on locations hidden from main views, or on surroundings areas such as sheds, gardens or fields.'

The guidance provided by Historic Environment Scotland also advises that 'for the integrity of the building, it is usually desirable to mount panels over existing slates, rather than replace historic building fabric with look-alike materials.' It is proposed to fix the solar panels on the pitched and hipped roofs using an insertion rail system which allows the solar panels to be fixed over the existing slates and only the removal of a small number of slates to allow for the installation of the rail fixings.

Subsequent to the registration of the application, concerns were raised with the applicant regarding the position and number of solar panels proposed on the principal (south) elevation of the building. It was suggested that alternative solutions should be explored such as ground mounted solar panels, relocating the solar panels to different roof slopes of the building and/or air source heat pumps. The applicant confirmed that these alternative solutions were not financially viable and therefore was not able to relocate the solar panels off the principal south elevation.

In their position on the principal (south) roof slope of the building, the proposed 27 solar panels would be visible from the public road of North High Street. The proposed solar panels would cover a large proportion of the roof slope and as such would radically alter the character and appearance of that otherwise unaltered roof slope. This change to the roof slope would neither preserve nor enhance but would be harmful to the special architectural or historic interest of the listed building.

Furthermore contrary to the guidance from HES, the proposed solar panels would be integrated into the slates on the roof and would not be fixed to railings that would sit on top of the slates. Therefore this would result in the loss of the existing historic fabric of the listed building which would be harmful to the special architectural or historic interest of the listed building.

On these considerations, the proposed solar panels are contrary to Policy 7 of NPF4, Policy CH1 of the adopted ELLDP 2018 and with the HEPS: April 2019. Therefore, the proposals are considered not 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.

#### **REASON FOR REFUSAL:**

- 1 The addition of the 27 solar panels to the principal elevation roof slope of the listed building would not preserve or enhance, but would be harmful to its special architectural or historic interest. Furthermore, the integration of the solar panels into the slates on the roof of the building would result in the loss of historic fabric of the listed building, which would also be harmful to its special architectural or historic interest. The proposed solar panels are therefore contrary to Policy 7 of the National Planning Framework 4, Policy CH1 of the adopted East Lothian Local Development Plan 2018 and Historic Environment Policy for Scotland (HEPS): April 2019.