



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

**TUESDAY 3 SEPTEMBER 2024
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON
& HYBRID MEETING FACILITY**

1a

Committee Members Present:

Councillor N Hampshire (Convener)
Councillor L Allan
Councillor C Cassini
Councillor D Collins
Councillor A Forrest
Councillor N Gilbert
Councillor S McIntosh
Councillor K McLeod
Councillor J McMillan
Councillor C Yorkston

Other Councillors Present:

Councillor S Akhtar
Councillor L Jardine

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Ms J McLair, Planner
Mr C Grilli, Service Manager – Governance
Ms M Haddow, Transportation Planning Officer
Mr S Cooper, Service Manager – Communications
Ms J Newcombe, Biodiversity Officer
Ms P Gray, Communications Adviser
Mr J Canty, Transportation Planning Officer

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 2: Mr J Grey, Mr A Black, Ms S Bolton, Ms J Jack, Mr N Kilkeny, Ms S Fletcher, and Ms L Shaw Stewart
Item 3: Mr T Thomas

Apologies:

Councillor J Findlay
Councillor C McGinn

Declarations of Interest:

Item 2 – Councillor Allan, due to having signed a petition in support of the proposals.

The clerk advised that the meeting was being held as a hybrid meeting, as provided for in legislation; that the meeting would be recorded and live streamed; and that it would be made available via the Council’s website as a webcast, in order to allow public access to the democratic process in East Lothian. She noted that the Council was the data controller under the Data Protection Act 2018; that data collected as part of the recording would be retained in accordance with the Council’s policy on record retention; and that the webcast of the meeting would be publicly available for six months from the date of the meeting.

The clerk recorded the attendance of Committee members by roll call.

1. MINUTES FOR APPROVAL
a. PLANNING COMMITTEE, 4 JUNE 2024

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

b. PLANNING COMMITTEE, 25 JUNE 2024

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

Sederunt: Councillor Allan left the meeting.

2. 24/00001/SGC: ENERGY CONSENTS UNIT (ECU) CONSULTATION: PROPOSED WINDFARM AND BATTERY ENERGY STORAGE SYSTEM ON LAND AT NEWLANDS HILL, EAST LOTHIAN COUNCIL’S RESPONSE

A report had been submitted regarding the Council’s proposed response to the above consultation by the Energy Consents Unit (ECU) on an application to them under the Electricity Act 1989, East Lothian Council planning online reference 24/00001/SGC. Keith Dingwall, Service Manager – Planning, spoke to the proposed response, highlighting the salient points. The report recommendation was to approve the proposed consultation response as outlined at Appendix 1 to the report, which objected to the proposals on five different grounds.

Officers responded to questions from Committee members. Mr Dingwall provided context to the national picture in terms of choosing strategic sites. While the application fell within National Planning Framework 4 (NPF4) National Development 3 Strategic Renewable Electricity Generation and Transmission Infrastructure, NPF4 policies did not specify location; therefore, Planning Authorities were required to assess each application on its own merits. Members would have to take into account NPF4’s strong presumption in favour of the principle of renewable energy, but he highlighted that this location was not consistent with East Lothian Council’s previously-undertaken Landscape Capacity Study.

James Grey spoke on behalf of the applicant, Belltown Power. He highlighted the application in the context of climate and nature emergencies, and Scotland’s ambitious net zero targets; he asserted that there was clear need for projects in areas of high wind capacity, of which Newlands Hill was one. He highlighted the two years of pre-work, including site surveys, assessment, and consultation, and said that a pro-active approach to consultation had been taken. He also highlighted the lack of objections from other statutory consultees, and considered that consultations and engagement had demonstrated strong public support.

Continuing, Mr Grey addressed each of the five grounds for objections in turn. On Objection A, Landscape, he acknowledged that turbines at Newlands Hill would be more visible than other sites, but believed this to be in line with NPF4 policy, which recognised that the landscape would change and going forward, new wind development would inevitably be more visible. Turning to Objection B, which included comments from the Council's Heritage Officer, he highlighted Historic Environment Scotland's involvement in the pre-work and their lack of objection. On Objection C, concerning mountain hare conservation, he described the approach as proportionate, as having been adopted elsewhere as standard, and as being fully aligned with the legal protection afforded to mountain hares. It was felt that the ecological enhancements proposed would help to reverse the decline in mountain hare population. He also highlighted Nature Scot's lack of objection to the proposals. On Objection D, relating to green networks and core paths, he considered that policies had not been properly applied in the report, and noted that there had been no consideration of the 120 hectares of biodiversity and habitat mitigations proposed; however, he said Belltown Power recognised the strong views held regarding access to green networks and core paths, and would be open to discussion of potential enhancements and appropriately-worded conditions to enhance access and recreation. Regarding Objection E, he reaffirmed that all possible alternative routes to the site had been assessed and discounted, and provided further information. He described the proposed route from the north as being the best available route, which would justify the limited, temporary, and reversible impact to prime agricultural land. He advised that Belltown Power would also be happy to agree to a set of conditions which set out reinstatement and replanting obligations post construction. He concluded by highlighting various local, regional, and national benefits of the proposals, including: commitments to prioritising the local supply chain; two local community councils benefitting from a significant financial commitment; and a local ownership offering.

Representatives of Belltown Power answered questions from Committee members. Mr Grey advised that Belltown Power would be willing to take a collaborative approach to biodiversity commitments, and advised that they participated in the East Lammermuir Proposed Development Forum. Andy Black felt there had been a misunderstanding regarding hedgerow removal. The road would have to be expanded to bring large components to site, but this was only at discreet pinch points, and could be reinstated post-delivery.

Responding to further questions, Mr Grey acknowledged that there would be a visible impact on the East Lothian plain, but it was Belltown Power's position that the impact would be localised and therefore acceptable under NPF4. He also noted that projects would be required in more visible areas to accommodate the evolution of infrastructure required to double operational capacity. He outlined other projects Belltown Power had built and operated for 13 years. He also outlined the community benefits being offered by Belltown Power, including: an £5000/mW per annum to Gifford Community Council and Garvald and Morham Community Council, for use as an energy discount scheme and community benefit fund; and a pioneering community ownership scheme in which 1% of the project's equity would be given to the Association of Community Councils, and a further 4% at cost.

Mr Grey responded to further questions from Committee members. He advised that, despite the turbines' large size, the Landscape Visual Assessment indicated that the significant adverse impact of the windfarm would be localised to up to five kilometres from the site; although there would be a wider visual impact, this would not be to an extent that would be considered beyond a localised impact. He highlighted ownership constraints which had meant that other sites in the area would not have been viable. He advised that the front row of turbines had been reduced to improve issues of visual impact. He reiterated that NPF4 had changed visual impact expectations. He described Newlands Hill as being one of the best remaining available sites which had not already been developed across Scotland, England, and Wales.

Sharon Bolton spoke against the proposals. She advised she had lived at a farm near Garvald for 20 years, and gave an account of her own actions to mitigate climate change, including running a sustainable fashion business from her home; despite her various commitments to the climate emergency, she was against this development. She said she spoke on behalf of the many residents who would be impacted by the huge increase in traffic during the construction and site maintenance periods. She pointed out that the proposed access route for HGVs from East Linton to Newlands Hill was along 13 miles of an already well-used B-road network in varying states of repair, and she highlighted the various current groups of road users. She felt the width of the roads, in places at only two metres, was entirely unsuited to a constant flow of HGVs. She thought the single-carriageway road from Luggate to Morham, south of Traprain Law, would be irretrievably damaged by abnormal indivisible loads (AILs), and noted the archaeological potential of this area. She also highlighted that the two miles of new haul roads to be constructed at West Mains and Baro would disrupt historic field patterns and the distinctive rural character of the landscape. She felt that the huge cost of carving this route through unspoilt East Lothian countryside meant that it would be unlikely that the site would remain with only 17 turbines, particularly when it was being referred to as an 'energy hub'. She pointed out that East Lothian already hosted 300 turbines, and felt that the skyline was becoming industrialised. She suggested that the applicant speak with the residents of Innerwick to understand how destructive and divisive the industry was to the rural landscape and its communities. She referred to fashions in energy generation, and said the trend in onshore windfarms was being replaced by offshore windfarms; she felt that the precious asset of the Lammermuir Hills should be protected and should not be sold to private windfarm companies. She agreed that a more clearly defined national strategy for green energy production would help to direct this type of development more appropriately. She urged the Planning Committee to vote in support of the report's recommendations.

Jane Jack spoke against the proposals. She ran a family farm at Snawdon, which was adjacent to the site of the proposed turbines, and also farmed at Newlands Farm and Cranshaws Farm. She highlighted the scale of the turbines, which, at 200m, would be almost as high as the Queensferry Crossing towers, and considerably taller than the existing Lammermuir turbines. Their positioning on top of Newlands Hill would render them clearly visible from an extremely wide area of East Lothian and beyond, visible from much of her farm, and dominant on the landscape. She was also concerned about the noise level, the loss of dark sky due to the aviation lights, and the nighttime flicker from the rotating blades. She was also concerned that the seven households which received their water from two bore wells on the farm would suffer from a decrease in water quality and quantity, and from microplastic pollution from the breakdown of the turbine blades. She highlighted concerns about safety during construction and maintenance periods on the idyllic country roads, such as the B6355. She highlighted the large windfarms already sited on the Lammermuirs, and felt it was tragic to now consider developing and destroying the untouched central section with its uninterrupted skyline, which was popular with visitors. She pointed out that the development went against the East Lothian Landscape Report 2018, which concluded that it was essential to: retain the open landscape character of the Lammermuirs; preserve the key views; to maintain the skyline; and protect visually sensitive areas from the potential threat of windfarm development. She described her family as custodians of the special landscape for future generations, and described the visual impact of the proposals as devastating to the area.

Responding to a question from Councillor McMillan, Ms Jack advised that she had spoken with a shepherd at Priestlaw, which was nearby to a windfarm. He reported being able to hear the windfarm from his house, especially the clunking of the turbine breaks in periods of high winds.

Neville Kilkenny spoke against the proposals. He was a mycologist and worked as a consultant specialising in fungal ecology, and raised concerns about the proposed development's negative impact on biodiversity. He believed that the proposals failed to meet NPF4 guidance, in that support would only be given to proposals which would conserve, restore, and enhance

biodiversity, including nature networks, so they would be in a demonstrably better state than without intervention. He stated that the Environmental Impact Assessment (EIA) did not fully assess the biodiversity value of the development area or the AIL route, and noted that only low, minor, not significant, or negligible impacts had been identified. He commended the Biodiversity Officer's contribution to the report, and particularly their appraisal of the AIL route, and the effect of the development on mountain hare populations.

Continuing, Mr Kilkenny then referred to the Phase 1 Habitat and National Vegetation Classification (NVC) Survey carried out over the windfarm site in August 2022, and the assessment of the AIL route in April 2023. He quoted from the report to illustrate that ground flora had been notably sparse due to the late spring in 2023, thus making identification of species and of NVC communities challenging. He was concerned that relevant data was not available for the desk study of many taxon groups, and felt that further specialist surveys would have been appropriate. He was also concerned by specific taxonomic oversights within the list of protected notable plant species. He raised concern over a dubious recommendation for grassland habitat species enrichment contained within the outline Habitat Management and Enhancement Plan, and was also concerned that no fungal survey had been carried out at the development site. He pointed out that a survey had not been carried out in the areas identified as ancient woodland, and said the important continuity of ecosystems would be compromised even if they were ever reinstated after the 40-year lifespan of the windfarm. He asserted that new peat soil thresholds were urgently required to reveal the real impact of the proposed development. He pointed out that the grid connection for this development was inseparable from the proposals; he asserted that underground cabling would have a far greater environmental impact, despite an above-ground solution being considered to have an unacceptable visual impact. He considered that the International Treaty for the Conservation of Biodiversity must take precedence above any current planning policy. He also asserted that there was a responsibility to protect species as the climate changed, and some of the most vulnerable communities were those loyal to the upland and montane heath. He concluded that these communities must not be seen as expendable commodities as humans attempted to remediate the damage they had done on the planet.

Susie Fletcher made representation on behalf of East Lammermuir Community Council (ELCC). ELCC welcomed the report, and on surveying residents in and around Stenton, had found an even split between support for, and objection to, the development; however, they had found that 88% of respondents objected to the proposed construction traffic and access routes. She made comments on behalf of ELCC regarding traffic and visibility. On traffic, ELCC felt that the developers, contractors, and sub-contractors should be required to form and support a Community Traffic Liaison Group, including representatives from East Lammermuir, Dunpender, Gifford Community Council and Garvald and Morham Community Council, East Lothian Council, and BEAR Scotland. It was felt that this group should consider learning from the East Lammermuir Construction Traffic Group and the Lorries in Our Lane group, which sought to establish new baselines of good practice for construction traffic through learning from existing construction programmes. She stated that no construction traffic should move through Stenton village at any time, and ELCC felt that construction traffic access from the south must be explored further. On visibility, ELCC felt that the developers and relevant contractors should be required to join and work with the East Lammermuir Biodiversity Community Liaison Group, to ensure that the efforts made to mitigate impact and enhance the local area were in line with the group's 'summit to shore' vision for the local ecosystems. She disagreed with the assessment that the Lammermuir Ridge was the backdrop, rather than a focal point, of the Stenton Conservation Area. She advised that ELCC noted the near certainty of further electricity infrastructure-related developments in East Lammermuir, and she highlighted a map of the upcoming developments available online; ELCC were deeply concerned that the developments would do irreparable damage to the local area and communities. ELCC strongly supported the Council's recommendation that this proposal should be rejected, given the disproportionate number of developments the area had absorbed to support offshore generation and transfer of electricity to England.

Linda Shaw-Stewart made representation on behalf of Dunpender Community Council (DCC). She advised that DCC was in favour of alternative energy sources, but had specific reservations about this project, given the overdevelopment of the area, and the feeling that the development was surely surplus to requirements. She made comment relating to visual impact, construction traffic, and the absence of compensatory payments for Dunpender residents. On visual impact, DCC felt that the proposals appeared to entirely disregard the 2018 Landscape Report. She highlighted important features of the area, such as the hillfoot coastal plain area, Traprain Law, and the network of roads used for horse riding, cycling, and walking. She noted the overpowering effect of the enormous turbines on the views across the county, and their invasive flicker-effect lighting. On construction traffic, DCC wanted to highlight the proposals' devastating impact on local roads, which already had to cope with agricultural traffic. Ms Shaw-Stewart also noted that there was no timeframe for restoring the damage caused to roads, and said previous windfarm projects had left permanent scars across the small roads into the hills. It was felt that a strict timescale of one year should be imposed if the project was to go ahead, enforced by a road bond held by the Council. On the absence of compensatory payments for Dunpender residents, she reported that those who lived near the transportation route felt abandoned, despite being deeply affected by the project; it was therefore felt that the compensation scheme should be widened, and that DCC should have greater interaction with the developers on this matter. It was also felt that the local liaison staff should be properly compensated. She emphasised that DCC asked the Planning Committee to reject the application, and felt that the area had already accommodated its share of green energy projects.

Councillor Jardine indicated that although she lived in the Dunpender Ward, which would be impacted, she sought to comment as impartially as she could on the proposals. She had called the application in because there were a significant number of supporters and objectors to the proposals, and was mindful that the very public campaign against the proposals may have deterred people who may have wished to speak in support. Although the decision on the application would be determined by the ECU, she felt the Council must take forward community views and consider its own responsibilities for strategic development; she commented that energy and climate concerns had overtaken the current Local Development Plan (LDP) 2018. She commented that the community were largely supportive of renewables and alternative energy sources, but wanted to be taken with the developers; she felt it was important that Councillors considered this in their evaluations. She would not declare a position for or against the development, but had wanted to ensure that proper consideration was given to the response.

Councillor Collins commented on the damage to the countryside road network by previous developments, and she supported the local concerns relating to construction traffic, AILs, and the roads to be constructed. If the proposals were to go ahead, she felt that a collaborative plan was needed so that communities felt taken along on the journey.

Councillor McMillan, local member, commented on the quality of contributions to the meeting. He indicated that he would support the officer recommendations, and felt the presentation of the officer report summed up his experience of living in the area, rambling in the Lammermuirs, and also his position as Economic Development Spokesperson and someone who was supportive of green energy. He thought that infrastructure so far had been well planned, but commented that such proposals would have been refused under the LDP. While he supported green energy and the move towards zero carbon, he thought that consideration must be given to the landscape and the negative effects this development may have on the nature of the Lammermuirs. He thought the noise potential was huge, and he also thought that the water supply to the homes around Snawdon would have to be tested should the proposals go ahead. He urged Scottish Ministers and the ECU to watch this debate, visit, and consider carefully why he and officers felt the proposals were unacceptable. He commented that it would be detrimental to the rural economy, environment, and way of life. He described the Lammermuirs

as precious, and thought that the development went against local economic aspirations, preservation of the landscape, and how we wanted East Lothian to be in the future.

Councillor Cassini described herself as being a huge supporter of green energy, but felt that the supply of green energy had a tipping point. She felt that this development, with its construction routes and associated traffic, noise pollution, and loss of dark sky, resulted in proposals which were not very green in nature at all. She would support the officer's recommendations.

Councillor Menzies highlighted that in January 2024, Scotland was already producing the equivalent of 113% of Scotland's energy consumption, so she felt Scotland could not be described as 'in an energy crisis'. She felt that Committee members should consider the impact on the locality and on Scotland more than electricity production and export to England.

Councillor McIntosh said she had struggled with her decision, as a fan of renewable energy, and as someone who was greatly concerned about the climate emergency. She had felt uneasy about objecting to the windfarm on the grounds of landscape, because this had to be weighed against the impact catastrophic climate change would have on the landscape; however, she felt the report was very thorough, and she would support the officer's recommendations. She commented that the contributors seemed to be struggling to be able to say that the development was now enough, the turbines were too high, and so on; she had the impression that many of the objectors might have been more content with a smaller size of turbine. She commented that the scale of the development would have a significant impact on the road access network. She also commented that the transition to renewable energy was big business, and while developers wanted to make energy production cleaner, they were also interested in profits. She highlighted that the grid could not currently take the amount of energy being produced, so large sums were being spent switching off the offshore turbines; it was clear that greater strategic planning was required for such infrastructure, and she suggested that people lobby the Scottish Government to take this work forward. She also commented on the long and terrible impact of the fossil fuel industry on communities, and cited some examples from around the world. She commented that the country's energy consumption had to be considered in terms of using our fair share of resources, and highlighted Earth Overshoot Day on 3 June each year in the UK. However, she understood the cumulative impact of these developments on East Lothian; she still felt that that a line must be drawn and this development should be considered to be too much for the area. She would support the officer's recommendation, but also commented that the suggested conditions, should the development go ahead, had also been good work.

Councillor Forrest felt the site visit had been of great benefit, and allowed him to put the content of the submitted objections in context. He had also found it useful to see the road network that would have to accommodate HGVs, and the damage the vehicles would cause. He would support the officer's recommendation.

Councillor Akhtar, local member, thanked everyone who had spoken, and particularly Mr Kilkenny for sharing his expertise. She felt that the work of the Planners, Biodiversity Officers, and Transport Officers in producing the report had made it easy for Committee members to support the recommendations to object to the proposals. She agreed that the proposals were unacceptable in terms of visual impact, cumulative impact, and because the development would compromise the whole ecosystem. She felt that the erection of 17 turbines could turn out to be the thin end of the wedge. She hoped that the ECU would take the comprehensive paper on board and the comments of the local community. She encouraged all Planning Committee members to support the officer's recommendation.

The Convener highlighted that the Planning Committee had already supported a number of windfarms within East Lothian onshore and offshore. They accepted that renewable energy was needed to combat climate change, but felt the face of the Lammermuir Hills must be

strongly defended; other developments would have sought to expand to this area, but he said that the Council had held firm and kept developments to the upper Lammermuirs. He commented that the positioning was not only on the front of the Lammermuirs, but also with the largest turbines; thus, the impact on the countryside would be extremely damaging. He also supported the officer's recommendations on the basis of biodiversity. He was concerned that adding another junction onto the A1 for construction traffic would also be problematic. He also highlighted the disruption caused on the East Lammermuir rural road network by traffic to other developments. He commented that the country roads were not built to withstand HGVs, and noted that compacting of the grass verges by heavy vehicles could lead to flooding on rural roads. He regretted the disruption caused by developments, but felt that turbines were needed, however, he felt that this development on the front on the Lammermuir Hills was a step too far. He commented that East Lothian was playing its part in generating electricity, and felt that other such applications could follow if these proposals were not strongly objected to. He was also concerned about impact on the farming community caused by HGVs travelling on the rural roads. He further commented on the cumulative impact of the developments. He reminded Committee members about the process in objecting to the ECU, who could overrule the view put forward by the Council; he expressed that it would very unfair if the ECU granted the application when East Lothian had already delivered a great deal of energy-related developments and turbines in the countryside.

Responding to point raised by Councillor McMillan, Mr Dingwall provided more information on the process after the Council had submitted its objection to the ECU. Although the applicant would be given the opportunity to respond to the objections, as the objections were in principle, they were unlikely to be overcome by amendments. He advised that, where a Council objected and that letter was not later withdrawn, the matter would go to an inquiry. At this time, the proposals would be debated and Scottish Ministers, through the ECU, would decide on the outcome. Should the ECU determine that the development could go ahead, then he hoped that the Council would be part of the process to impose conditions.

The Convener moved to a roll call vote, and Committee members unanimously voted to approve the proposed consultation response objecting to the proposals, as outlined at Appendix 1 to the report.

Decision

Planning Committee agreed:

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

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

3. PLANNING APPLICATION NO. 24/00672/P: ERECTION OF THREE HOUSES AND ASSOCIATED WORKS, LAND WEST OF THE STABLES, MAIN STREET, ELPHINSTONE

A report had been submitted in relation to Planning Application No. 24/00672/P. Julie McLair, Planner, presented the report, highlighting the salient points. The report recommendation was to refuse consent.

Responding to questions from Councillor McLeod, Ms McLair advised that the site would be considered on its own merits should the applicant put it forward for consideration under the next iteration of the LDP. She also confirmed that the paddocks at the site belonged to the applicant.

Tony Thomas spoke to the application. He said that application asked for consideration of this site-specific context at the western edge of Elphinstone. He pointed out that not every approved development had been identified within the LDP. He said the proposals were not isolated, sporadic, or inappropriate. He described the applicant as a local woman who lived and worked in Elphinstone, whose business had been running for 30 years and had 30 employees. He advised that the site had belonged to the family for 40 years. He assured Committee members that the applicant would be happy to accept a legal agreement tying her family to the site for ten years. He advised that animals were kept onsite, and police had been called to break ins. He advised that the applicant found the site a burden after suffering an accident a year ago. Mr Thomas advised that the west of the site was used for a landscaping and horticulture business, and explained there would be no issues with noise. He pointed out that 200 homes had been built on the other side of the road, and was disappointed that the applicant and her family could not build on their small plot. He felt there was sufficient context for the Planning Committee to vote against the officer recommendation to grant consent.

Mr Thomas responded to questions from Committee members. He advised that the properties would be two metres back from the side of the pavement, and the Bellway houses would be set back ten metres from the road. He felt the properties would define the edge of Elphinstone. He advised that the development would provide homes for the applicant, her daughter, and her family. He described the development as a sustainable place to live, with family living next door to one another, and on a site they already owned and used to keep animals and as part of their business. He thought the development would have a positive impact on the edge of Elphinstone. He said that alternative housing was available, but there was an operational need in the business for all three houses, and to help with the animals and security of the site. He felt that the development was appropriate to the site, and the personal reasons behind the application made it even more appropriate. Regarding the entrances to the site, Mr Thomas advised that the transport team had been satisfied with the plans in terms of safety and access; the design and layout could have been reconsidered had they not been satisfied.

Councillor Menzies, local member, commented on the vast expansion of the village, and felt that the three self-build homes proposed by a family with history in the village was small when compared to the 180 Bellway homes nearby. She felt that self-builds should be encouraged for people to invest in East Lothian. In this case, the applicant sought to keep family close by, to bring their investment to the village, and Councillor Menzies felt the proposals made sense both economically and emotionally. She encouraged Committee members to give due consideration to the applicant and her family and to treat them fairly in relation to the much larger development over the road.

Councillor McLeod, local member, commented that the family was well known and respected in the area. He felt that the development would enhance the entry into Elphinstone. He would not support the officer recommendation for refusal, and felt that the local family should be supported in building homes next to their place of work, particularly when there had been some disturbances on site previously.

Councillor Forrest had been surprised that there had not been a further reason for refusal relating to the loss of prime agricultural land. He felt that approval of the application would set a precedent for development in the countryside, and felt that others considering similar countryside developments would be waiting to hear the outcome of this application.

Councillor Cassini commented that building in the countryside had already been opened up to developers. She recounted that she had voted against the Bellway application, but felt that refusal of this application could be perceived as unfair, and would go against policies promoting local growth.

The Convener reminded Committee members that the sites which had been approved for housebuilding had been within the LDP, and officers had recommended refusal because this site was not allocated for development within the LDP.

Councillor Allan compared the proposals to the huge development on the other side of the road. She felt that the proposed houses, once built, would look as if they had always been there. She thought that the request was not unreasonable, and felt that local families should be supported.

Councillor Collins commented that although the plot was considered prime agricultural land, little more could be done with this half acre than use as rough grazing. She felt that that the area would suffer from a loss of its young people and lose community vibrancy, and this proposal was from a local family with a business who wanted to stay in the local setting. Although the application went against LDP policy, she reiterated that little could be done with such a small portion of land, and felt that the development would keep the buildings and animals secure; she would support the application.

Councillor Gilbert noted that each application was taken on its own merits, and therefore approval of this application would not open floodgates. He felt that some applications came before the Committee where the family and people element outweighed narrow planning considerations.

Councillor McMillan felt the decision not to uphold Policy DC1 was a difficult one. He also felt that the future of the school and community should be considered, and he could see the benefit of the development. He was unsure whether three houses could be considered as a business need, and would have liked to have considered a different application linked to business need. He would consider his position further before voting.

Councillor McIntosh expressed that, when the site could be reallocated for development under the next iteration of the LDP, it was unnecessarily bureaucratic to ask the applicants to try again in two years' time.

Councillors McLeod and Gilbert enquired about adding a condition that the family would have to keep the properties in their possession for a minimum term of ten years. Mr Grilli and Mr Dingwall both felt that this would not be a reasonable condition to add and, if challenged, would be likely to be struck off.

The Convener commented on the importance of LDP Policy DC1 within the suite of policies available to East Lothian Council, and highlighted that every village within the county would have similar situations to those proposed here. He thought that overturning this offer decision would open floodgates, and asserted that the Planning Authority must hold firm on Policy DC1 to avoid weakening their position to stop sporadic development in the countryside. He acknowledged the suggested condition that the family would have to keep the property within their possession for a specified number of years, but highlighted that this would be easily challengeable. Although the applicant may, in the future, put in a bid to have this land allocated

for development under the next iteration of the LDP, and this bid might find support, the Convener highlighted that this would be done properly through the planning process. He strongly encouraged the Planning Committee not to overturn the officer decision and to follow the DC1 policy.

In response to the Convener's comments, Councillor McIntosh indicated that she had found his argument persuasive and would vote to uphold the officer's recommendation.

The Convener moved to roll call vote on the officer recommendation to refuse consent. Votes were cast as follows:

Support:	5	(Councillors Hampshire, Forrest, McIntosh, McMillan, and Yorkston)
Against:	5	(Councillors Allan, Cassini, Collins, Gilbert, and McLeod)
Abstain:	0	

The vote was tied, so the Convener had a casting vote. The Convener confirmed his casting vote to support the officer recommendation to refuse consent.

Sederunt: *Councillor Gilbert left the meeting.*

Councillor Forrest then formally proposed an additional reason for refusal relating to loss of prime agricultural land, and this was seconded by the Convener.

The Convener then moved to a roll call vote on this proposal. Votes were cast as follows:

Support:	4	(Councillors Hampshire, Forrest, McMillan, and Yorkston)
Against:	5	(Councillors Allan, Cassini, Collins, McIntosh, and McLeod)
Abstain	0	

Decision

Planning Committee supported the officer recommendation to refuse consent for the following reasons:

- 1 The erection of three houses on the application site would be new build housing development in the countryside of East Lothian on land which is not allocated for housing development, is not brownfield land where a return to a natural state will not happen without intervention, does not reuse a redundant or unused building, and for which a need to meet the requirements of the operation of an agricultural, horticultural, forestry, countryside recreation, or other business, leisure or tourism use has not been demonstrated, and which is not proposed as affordable housing development of an existing rural settlement. The proposal is therefore contrary to Policy 17 of NPF4 and Policies DC1 and DC4 of the adopted East Lothian Local Development Plan 2018.
- 2 The erection of three houses on the application site would be new build housing development in the countryside of East Lothian for which a desirable primary use supported in principle by criterion b of Policy DC1 and with benefits that outweigh the normal presumption against new build housing in the countryside has not been demonstrated; and which is not an appropriate use of a historic environment asset or promoted to fund the restoration of a listed building, building of recognised heritage value or significant designated feature of the built or natural environment, the retention of which is desirable. The proposal is therefore contrary to Policy 17 of NPF4 and Policy DC5 of the adopted East Lothian Local Development Plan 2018.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee



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

**TUESDAY 5 NOVEMBER 2024
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON
& HYBRID MEETING FACILITY**

1b

Committee Members Present:

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

Other Councillors Present:

Councillor L Jardine

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Mr S Robertson, Assistant Planner
Mr C Grilli, Service Manager – Governance
Ms S Cheyne, Project Officer – Landscapes
Ms J Newcombe, Biodiversity Officer
Ms M Haddow, Transportation Planning Officer
Mr J Canty, Transportation Planning Officer

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 2: Mr A Clarkson, Ms C Duffy, Mr C Wilson, Mr D Moynihan, Ms F McGibbon, and Mr C Bruce
Item 4: Mr G Drummond

Apologies:

None

Declarations of Interest:

None

The clerk advised that the meeting was being held as a hybrid meeting, as provided for in legislation; that the meeting would be recorded and live streamed; and that it would be made available via the Council's website as a webcast, in order to allow public access to the democratic process in East Lothian. She noted that the Council was the data controller under the Data Protection Act 2018; that data collected as part of the recording would be retained in accordance with the Council's policy on record retention; and that the webcast of the meeting would be publicly available for six months from the date of the meeting.

The clerk recorded the attendance of Committee members by roll call.

1. MINUTES FOR APPROVAL
a. PLANNING COMMITTEE, 20 AUGUST 2024

The Committee agreed that the minutes were an accurate record of the meeting.

b. PLANNING COMMITTEE, 1 OCTOBER 2024

The Committee agreed that the minutes were an accurate record of the meeting.

2. PLANNING APPLICATION NO. 23/00616/PM: ERECTION OF 400KV SUBSTATION AND ASSOCIATED DEVELOPMENT, INCLUDING ASSOCIATED TEMPORARY INFRASTRUCTURE INCLUDING CONSTRUCTION COMPOUNDS AND ACCESS ROAD, FIELDS TO THE SOUTH OF THORNTON BRIDGE, SEALING END COMPOUND, BRANXTON

A report had been submitted in relation to Planning Application No. 23/00616/PM. Emma Taylor, Team Manager – Planning Delivery, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions. Responding to questions from Councillor McIntosh, Keith Dingwall, Service Manager – Planning, advised that community benefits were not a material planning issue, but suggested that Planning Committee members could enquire as to the applicant's position. He also advised that Committee members should not seek to add a condition to require the developer to sign up to the charter developed by East Lammermuir Community Council (ELCC), and added that the recommended conditions and following a Construction Method Statement should require good practice in any case.

Officers responded to questions from Councillor Jardine. Mr Dingwall provided an account of how the developer contribution figure had been reached. Regarding cumulative impact, and a 'tipping point' being reached, Ms Taylor advised that the application had been subject to an Environmental Impact Assessment (EIA), which could only look at the cumulative impact of developments which had been consented or were nearing consent; she also advised that the Landscape Visual Impact Assessment had been undertaken in the knowledge of other proposals coming forward. She gave an account of how the consultee Landscape Team had reached their conclusions; in this case it was acknowledged that there would be some impact, but it would be relatively localised because of the undulating landscape. She confirmed that proposed developments in the future would be subject to Landscape Visual Impact Assessments, even if they did not require EIAs. Although she could not assess what the tipping point would be, she reassured Committee members that checks and balances were in place. She said that officers acknowledged there had been disruption and that it would be noticeable, but also would be manageable and safe.

Andrew Clarkson spoke to the application on behalf of SP Energy Networks (SPEN). He set the application in the context of SPEN's wider obligation to maintain energy transmission systems, and the Scottish Government's net zero targets. He advised that the development included a temporary access road, and would connect Eastern Green Link 1 (EGL1) into the transmission network, which would allow 2GW of power to be transmitted across the UK network. Branxton also connected Berwick Bank Offshore Windfarm. He advised that SPEN were content with the recommended conditions. He described elements of the development, including some temporary sections, and parts which had been consented in 2023. He advised that the temporary access road would, for the most part, avoid use of the local road network. It was intended for the substation to be operational for testing purposes by Q2 2028, with commissioning in 2029. He advised that the location had been discussed with East Lothian Council, had been selected to minimise visual impact on the community, and sat adjacent to existing electrical infrastructure. He referenced the range of mitigation commitments to reduce impact on the community and environment, and pointed out that the landscape planting proposals would result in a 42% biodiversity net gain. He highlighted various statutory and non-statutory consultation activities, attendance at ELCC-led groups, and said SPEN would continue to engage with the community during the construction phases. He concluded by highlighting the development's national significance, and its compliance with NPF4 and the Local Development Plan (LDP) 2018.

Claire Duffy, also representing SPEN, responded to questions from Councillors. She advised that the substation had capacity to both bring connections in and allow generation to move through the network; there was spare capacity within the design to accept additional connections within the footprint of the building. She explained that the project had to take around five years because of works to build the A1 slip road, and then the whole road, before construction could begin. She advised that once the site was ready and construction began, road movements would reduce significantly. Responding to a point made by Councillor Jardine, she advised that workforce accommodation was not part of the planning application. She advised that SPEN were involved in conversations about workforce accommodation as part of other projects. Responding to points made by Councillor Collins, Ms Duffy noted that conditions would require SPEN to repair any damage done to roads, but she noted that the majority of vehicle movements would be off the local road network. She gave an account of the process for reporting anything found as part of trenching and geophysical work for archaeological surveys, and agreed that SPEN could look at publishing this information on their website.

Ms Duffy then responded to a number of questions from Councillor McIntosh. Ms Duffy explained how this site had been chosen, including following a routing assessment, and advised that five sites had been considered. She explained that the main driver had been finding a site that would not require further extension of overhead lines. She pointed out that the routing assessment had formed the basis of initial consultations with the community. Since 2020, discussions had been held with East Lothian Council because SPEN was confident it had chosen the right site; in response, Councillor McIntosh pointed out that there was a difference between talking to the local authority and the people who lived in the local area. Ms Duffy advised that the development was primarily to: create a new point of connection on the network; provide a point of connection for EGL1 and Berwick Bank Offshore Windfarm; and to allow Torness Nuclear Power Station to be removed through the network through its decommissioning process. She advised that SPEN was part of the Biodiversity Local Liaison Group with ELCC, where they had discussed community benefits. She also highlighted that the EGL1 project was looking at more specific community benefit packages, and said that other community benefits were being considered. Councillor McIntosh asked whether community ownership of renewable generation was being actively encouraged, but Ms Duffy was unable to provide an answer on this matter.

SPEN representatives answered further questions from Councillor McIntosh. Christopher Wilson advised that engineers were comfortable that they understood the site conditions; they expected to find rock since they were digging down to limit visual impact, but there was no suggestion that blasting operations would be required. Ms Duffy confirmed that there were no plans to impact ancient woodland, but a small section of mature trees would have to be felled for drainage purposes. Mr Wilson advised that the diesel generator was to be used only in a worst-case scenario if power was lost to the site.

Responding to questions from Councillor McGinn, Ms Duffy advised that the biodiversity gain would be achieved by putting in grasslands, hedgerows, and areas of woodland edge planting and further woodland areas. The DEFRA Matrix had been used to calculate the 42% biodiversity gain for habitats achieved. She advised that the plan would be produced and approved, then planting would be undertaken, and there would follow a period of monitoring.

Chris Bruce spoke against the application on behalf of Dominic Moynihan, who lived in one of the closet properties to the development. Mr Bruce outlined the content of two representations Mr Moynihan had submitted relating to application, concerning: the site location being south of the A1: local topography in relation to ground and surface water drainage issues; an absence of projected traffic flows on the proposed temporary access road across agricultural land between Bilsdean and Branxton; and the lack of a cumulative impact assessment. Mr Moynihan had wished to draw attention to the high number of documents associated with the various applications from companies looking to take advantage of the revenue opportunities from such grid a connection. He advised that SPEN had provided detailed information as to why the site had been selected only in summer 2024, referring to a site close to Torness Nuclear Power Station. Mr Moynihan highlighted the lack of any competent cumulative impact assessment, despite the flood of documentation relating to the dozen projects huddled around this location; he also highlighted a number of errors and omissions in the documents which had been produced, including use of out-of-date data, and incorrect traffic route selections. He therefore suggested that a competent and up-to-date impact assessment be submitted to the Council and Planning and Monitoring Officer to be engaged; he also suggested that the Planning and Monitoring Officer should be written into planning conditions on this and other projects. As a chartered civil engineer, Mr Moynihan imparted his experience that developer care and attention would diminish significantly following the grant of planning permission.

Fiona McGibbon spoke against the application, and referred to various slides throughout her presentation. She was a geologist and local resident. She pointed out that, as well as a climate crisis, there was also a biodiversity crisis caused by habitat loss; she acknowledged that more green energy was needed nationally, but questioned whether so much of the infrastructure had to be here. She outlined the various electricity generation sites and projects; she felt that the east of East Lothian had done its bit, and further projects made it less pleasant to live in the area and greatly impacted the remaining wild space. She said the Branxton Substation placed a massive structure in an area of special landscape value, and threatened a designated local biodiversity site. Further, it opened the door to another eight bolt-on developments, which would industrialise a quiet rural area, open up the space for battery storage projects, and leave farms and dwellings surrounded by machinery. She pointed out that levelling the hill would require movement of 190,000 cubic metres of excavated material, causing major and irreversible impact on the landscape, and further raised concerns about an increase in HGV movements and their impact on noise and safety; she argued that when a hill had to be moved and a whole road had to be built, it was not the right site. She felt strongly that the applications had to be considered in a linked way. She pointed out that all ways in and out of Innerwick would encounter construction traffic for many years and affect residential amenity and safety. She reported that there had already been a mass exodus from Innerwick as a result of the developments in the area. She was concerned about the impact of cabling on the deans, parts of which were managed as nature reserves; these valleys provided important habitats and travel corridors in an area of intensive agriculture. She noted that roadkill had already increased because of HGV movements, and these movements were set to increase

significantly; she saw this as indicative of the danger coming. She asked the Planning Committee to consider whether this was a suitable site.

Chris Bruce made representation on behalf of ELCC. He advised that ELCC continued to support green energy ambitions, but noted the absence of a meaningful and comprehensive cumulative assessment of this proposal and the connected developments; as these other developments would not exist without the proposed Branxton Substation, ELCC felt they should be viewed as a single development. He advised that ELCC continued to object to the proposal as it stood, and asked how the Council understood 'net gain' for the people who lived in the East Lammermuir area. He noted that the site adjoined a special landscape area, and highlighted LDP Policy DC9, which protected special landscape areas from inappropriate development. He also pointed out that further new connections were being agreed for the Branxton Substation. He asked when the Planning Committee would look at the cumulative impact of the development and take a position on how much was enough, and asked whether the next iteration of the LDP would protect what remained of communities and ecosystems. He commented that the process for agreeing planning conditions saw the Community Council refused access to Planning Officers in advance of recommendations being made, and asked whether this could be addressed. He provided background to his proposed condition, including ongoing work with another developer with regards to construction traffic. The proposed condition read:

The developers, contractors, and sub-contractors should be required to form and support a comprehensive Community Traffic Liaison Group, including representatives from the residents' groups at Birnieknowes, Oldhamstocks Community Association, Dunglass and Bilsdean, as well as East Lammermuir Community Council, East Lammermuir Construction Traffic Group, Cockburnspath and Cove Community Council, East Lothian Council, BEAR Scotland, and any other development proposed to connect into the proposed Branxton Substation. That group should consider and adopt learning from the East Lammermuir Construction Traffic Group, and its spin-off Lorries in Our Lane group, which seek to establish baselines of good practice for construction traffic through real-time learning from existing construction programmes. No construction traffic relating to Branxton Substation development should be allowed to operate at anything less than these established baselines for good practice, proven in the field; further improvements are welcome.

Reason

To mitigate the inevitable impact on roads, residents, and the environment, of the 55-month construction programme of the proposed Branxton Substation.

Continuing, Mr Bruce advised that SPEN had made a presentation to the East Lammermuir Community Liaison Group in October about their Biodiversity Enhancement Plan. The Chair had noted that the group's vision for nature recovery in the area had not been an influence for the plans for the Branxton development, which was largely a timing issue, but the Local Place Plan had also not been taken into account. Mr Bruce reported that the SPEN representative had indicated there may be scope for developer support for community projects outwith the Branxton development boundary; while this was positive, Mr Bruce highlighted the usual process for working within red line boundaries as being unhelpful because nature did not observe such boundaries. Mr Bruce read ELCC's proposed condition relating to biodiversity:

Prior to commencement of transmission, the transmission owner, SPEN, must demonstrate that their finalised Biodiversity Enhancement Plan takes account of all surrounding proposed and consented energy development Biodiversity Enhancement Plans, to ensure coordination and synergies of objectives and proposals. Transmission owners and developers should be required to join and support the Biodiversity Community Liaison Group to facilitate this process.

Reason

To maximise the cumulative positive impact of all Biodiversity Enhancement Plans associated with the range of electricity infrastructure developments in East Lammermuir.

Mr Bruce summarised by asking the Planning Committee to reject the proposals, pending a full Cumulative Impact Assessment, or, failing that, to adopt ELCC's proposed conditions.

Responding to a question from the Convener, Mr Bruce said that no Councillors on the Planning Committee lived in the area and were affected each day. He said that it did not matter to residents whether applications were determined by the Council or the ECU, but at such scale, it was felt that a single assessment of that impact was required; if this required a referral to the Scottish Government at inquiry, this would go a long way to satisfying residents' sense that it had been fully thought through. The Convener agreed that there ought to be changes in the process to better consider the cumulative impact, and commented that the previous Landscape Capacity Study was not fit to deal with the proposals coming forward. He said that Councillors were having to deal with a situation where it felt like the whole of the countryside appeared to be open for electricity generation by private companies, and had to try to find a way to manage and control this.

Responding to a question from Councillor McMillan, Mr Dingwall advised that it would not be reasonable for Committee members to require the applicant to join a particular group, but did appreciate the need for liaison; he noted that the applicant regularly attended community liaison meetings. To take this into account, he suggested an amendment to Condition 20, as noted below.

Responding to a question from Councillor Collins, Mr Bruce reported that the Lorries in Our Lane meeting had been astounded to hear that there had been no discussion over the use of the A1 for the EGL1 development. He summarised that ELCC was keen that developers be required to talk to other developers working in the area, and also wanted them to involve ELCC in the transportation planning stages.

Responding to questions from the Convener, Mr Dingwall reiterated that it would be difficult to compel this applicant to work with other developers because the other developers may not be willing to work with the applicant. He reiterated the suggested amendment to Condition 20. The Convener acknowledged Mr Dingwall's confidence that the developer was likely to want to liaise, but said the community had had a difficult time over the past few years dealing with developer compliance. Mr Dingwall highlighted the role of the Planning Monitoring Officer required under Condition 27. He advised that Condition 20 was a pre-commencement condition, and he suggested the developer would have listened and could use their learning to add to their own Construction Traffic Plan.

Councillor McIntosh asked whether Conditions 9 or 10 could be strengthened to ensure biodiversity plans accounted for what other developers were doing. Mr Dingwall suggested that the end of the first paragraph under Condition 9 could add that the Habitat Management and Enhancement Plan (HMEP) should also consider other projects and try to improve things from a cumulative point of view. He advised that if Committee members were to approve the development, then final wording for this condition could be delegated for approval by himself, in consultation with the Convener and Councillor McIntosh.

Mr Bruce pointed out that only one of the various projects linking into the Branxton Substation already had full planning consent, so he felt there was opportunity to compel developers to work together. Mr Dingwall responded that he felt ELCC's contribution had improved Condition 20 and the future amendment to Condition 9, but his concern remained about putting such an obligation on an applicant when they had no control over the conduct of other developers.

The Convener noted that a representative of West Barns Community Council had been unable to attend the meeting, but advised that the Community Council wanted to note its sustained objection to the application.

Councillor Jardine, local member, felt that cumulative impact of developments and community benefits remained unresolved. She felt the commitment to biodiversity was commendable, but she expressed that there was an opportunity to lead by example for the wide range of renewable projects in the area. She felt that the developer was doing more than others in the area. She felt that contributions to workforce accommodation and community benefits relating to mitigating fuel poverty could leave a significant legacy. She commented on ELCC's thorough community engagement on their Local Place Plan, and felt that this provided a handbook for meaningful community benefits. She encouraged the Planning Committee to incorporate ELCC's recommended conditions to set a standard for future development.

Councillor Collins, local member, agreed that the conditions suggested by Mr Bruce should be included. She noted that Thurston Manor had been set up to accommodate the workforce building Torness Nuclear Power Station, and thought a similar arrangement might be needed in the future and could also mitigate housing pressures later. She supported communication between developers and community groups, and would support the application.

The Convener, also a local member, commented that the community felt neglected in the process of constant development of green energy infrastructure in the area. He drew comparison with housing applications, which would have to be within areas approved as part of the LDP; he felt that processes had to change and that the Planning Committee should write to the Scottish Government on this matter. He commented that East Lothian had contributed to renewable energy both onshore and offshore, that the landscape capacity and availability of agricultural land had to be carefully considered, and that communities had to feel part of the process. He agreed that further renewable infrastructure was still needed; he felt he had to support the application, but would want the additional conditions previously discussed to be added.

Councillor McIntosh pointed out that although language such as 'national project' had been used, these developments were by private companies; she felt that much of the dissatisfaction around the projects was because we should see energy as a public service and utility, and not a commodity to be speculated on. She had not been comforted by the responses regarding community benefits and wealth building, and felt the Planning Committee should be able to impose stronger conditions in this area. She noted that although such developments were enablers for future developments, they would also enable the decarbonisation of many homes. She would support the application, as it was vital to support offshore energy capacity and transmission, but felt unsatisfied by the policy situation. She encouraged communities to lobby the Scottish Government for greater strategic planning in this area. Although she recognised that workforce accommodation was not a planning consideration, she highlighted that minimisation of transport emissions was relevant to planning, and thought that developer ambition should be expected in this area. She would support the application, but with caveats.

Councillor McMillan supported the purpose of the development. He commented on the quality of the contributions at the meeting. He agreed that there was a need for greater strategic planning, and supported writing to the Scottish Government on this matter. He also acknowledged the various comments made on the planning process for such developments, and felt this should be considered under the next iteration of the LDP. He thought that the accommodation solution for construction at Torness may have been from a different time; he suggested that local recruitment could provide some solutions, and that housing workers within communities could be of greater benefit to the rural economy. He would support the application, and felt that Mr Bruce's suggestions provided a model to be followed in terms of communication, caring for the environment, and meeting the needs of the local community.

The Convener asked Mr Dingwall to suggest wording for conditions previously discussed. Mr Dingwall advised that the intention to write to the Scottish Government would be noted and dealt with outside of this planning permission. On an amendment to Condition 9, the wording had not yet been agreed, but would cover whether biodiversity enhancements could be

considered on a cumulative basis with other nearby developments; wording would be prepared and added to the end of the first paragraph, and would be shared with the Convener and Councillor McIntosh. Mr Dingwall suggested a wording for an additional part to Condition 20, noted below. These amendments to conditions were formally proposed by the Convener and seconded by Councillor Collins. ***Post-meeting note:** the finalised wording for Conditions 9 and 20 is recorded below.*

The Convener then moved to a roll call vote on the officer recommendation to grant consent, subject to the proposed amendments to Conditions 9 and 20. Planning Committee members unanimously supported the application, subject to these amendments.

Decision

Planning Committee agreed that Planning Permission be granted subject to the following conditions:

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

Reason:

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

- 2 The development hereby approved shall be undertaken in accordance with the Environmental Impact Assessment Report docketed to this planning permission, except where altered by the conditions below, or unless otherwise agreed in writing by the Planning Authority.

Reason:

To ensure the reported likely environmental impacts of the development are not exceeded and the specified mitigation measures are fully implemented.

- 3 Prior to the commencement of development, a detailed scheme of landscaping for the application site, which shall be based on the Outline Landscape Proposals drawings Figure 6.7, 6.7a, 6.7b, 6.7c and 6.7d (drawing nos. 233-SHRK-XX-XX-DR-LA-1000 Rev 03, 233-SHRK-XX-XX-DR-LA-1000 Rev 01, 233-SHRK-XX-XX-DR-LA-1000 Rev 01, 233-SHRK-XX-XX-DR-LA-1000 Rev 01 and 233-SHRK-XX-XX-DR-LA-1000 Rev 01 respectively) all contained within the EIA Report docketed to this planning permission, shall be submitted to and approved in writing by the Planning Authority. The scheme shall provide details of: the height and slopes of any mounding on or re-contouring of, the site; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. The scheme shall also address long term management of the approved planting and boundary treatments.

In accordance with the approved scheme, all planting, seeding or turfing 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 managed in accordance with that scheme. Any trees or plants which within a period of five 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 The development hereby approved shall be carried out in strict accordance with the 'Arboricultural Planning Statement Branxton Substation' Revision C report by RSK ADAS Ltd dated February 2024 docketed to this planning permission, unless otherwise agreed in writing with the Planning Authority.

Other than the trees shown to be removed in Appendix 4: Tree Protection Plan and listed in Appendix 7: Tree Works Schedule within the docketed 'Arboricultural Planning Statement

Branxton Substation' Revision C report, no other trees or hedgerows which are 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.

Reason:

To ensure the retention of trees which are an important landscape feature of the area.

- 5 No development shall take place on site until temporary protective fencing in accordance with Appendix 9: Example Tree Protection Barrier of the docketed 'Arboricultural Planning Statement Branxton Substation' Revision C report has been erected in the positions shown for it on the Tree Protection Plan drawings within Appendix 4: Tree Protection Plan of the docketed 'Arboricultural Planning Statement Branxton Substation' Revision C report.

The temporary protective fencing shall be fixed to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development.

All weather notices shall be erected on the temporary protective fencing with words such as "Construction exclusion zone - Keep out". Within the areas so fenced off the existing ground level shall neither be raised or lowered and no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored, no handling, discharge or spillage of any chemical substance, including cement washings, and no fires shall be lit thereon without the prior written approval of the Planning Authority. Planning of site operations shall take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees. Details of any trenches or services required in the fenced off areas shall be submitted to and approved by the Planning Authority prior to any such works being carried out and such trenches or services shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

To ensure the protection of trees within the application site in the interests of safeguarding the landscape character of the area.

- 6 No development shall take place on site until a person who has, through relevant education, training and experience, gained recognised qualifications and expertise in the field of trees in relation to construction, been employed by the developer to monitor the site works, including the installation of the temporary protective fencing as required by Condition 5 above. The arboriculturist employed shall be required to approve the temporary protective fencing and submit written confirmation and photographic evidence that this has been installed for the prior approval of the Planning Authority prior to the commencement of development.

The arboricultural consultant shall remain the main contact for all tree related matters or queries that arise on the development site. Arboricultural monitoring shall include the supervision and reporting (to include both written and photographic updates). The arboricultural consultant shall be responsible to come up with an appropriate solution to resolve any damage or loss to trees and hedgerows shown to be caused by the development, the details of which shall be included in ongoing site inspection reports to the Planning Authority which shall be submitted quarterly. The Arboricultural consultant shall inspect the remaining trees and hedgerows on completion of the development, updating the tree condition survey and tree management schedule where required.

Reason:

To ensure the retention and protection of trees which are an important feature of the area.

- 7 No development shall take place (including demolition, ground works, and vegetation clearance) until supplementary surveys for protected species (bats, otter, badger, and breeding birds), to be carried out by a suitably qualified person, have been submitted to and approved in writing by the Planning Authority. The results of the approved surveys shall be used to inform construction activities, and detail of any required mitigation proposals for protected species on the site as identified as being required as a result of the approved surveys shall be submitted to and approved by the Planning Authority prior to the commencement of development. The

detail shall include a timetable for the implementation of any required mitigation proposals. Development shall thereafter be carried out in accordance with the detail as so approved.

Reason:

To avoid or minimise disturbance of wildlife.

- 8 No development shall take place until a Species Mitigation and Management Plan, which shall include measures to mitigate and manage the effects of the proposed development on species including breeding birds, otter, bats and badger, has been submitted to and approved in writing by the Planning Authority.

The development shall thereafter be carried out in strict accordance with the approved Species Mitigation and Management Plan unless otherwise approved in writing by the Planning Authority.

Reason:

To avoid or minimise disturbance of wildlife.

- 9 No development shall take place until a Habitat Management and Enhancement Plan (HMEP) has been submitted to and approved by the Planning Authority, which shall include on-site and off-site measures as appropriate to restore and enhance habitats including broadleaved woodland, neutral grassland, lowland meadow, mixed scrub and native hedgerow. The HMEP shall also include a timetable for implementation of the measures identified within it. The HMEP shall be designed to maximise biodiversity enhancement, in combination with HMEP's for other nearby energy developments.

The development shall thereafter be carried out in accordance with the approved Habitat Management and Enhancement Plan unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the development results in the management and enhancement of biodiversity.

- 10 There shall be no commencement of development until the Planning Authority has approved in writing the terms of appointment by the applicant of an appropriately experienced and qualified Ecological Clerk of Works (ECoW). The terms of the appointment shall:

- o impose a duty to monitor compliance with the ecological mitigation measures described in the Environmental Impact Assessment Report docketed to this planning permission and the conditions imposed on this planning permission; and
- o detail the stages of the construction phase of the development when the ECoW shall be in post.

The ECoW shall be appointed on the approved terms unless otherwise agreed in writing by the Planning Authority.

Reason:

To avoid or minimise disturbance of wildlife.

- 11 Prior to the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Planning Authority. The CEMP shall identify potential noise and dust impacts that may arise during construction of the proposed development and specify any mitigation measures necessary to minimise any such impacts on sensitive receptors, and shall include hours for construction work.

With regards to noise the CEMP shall adopt "Best Practice Guidance" as recommended in BS 5228-1:2009+A1:2014 "Code of practice for noise and vibration control on construction and open sites, Part 1: Noise".

With regards to the control of dust the CEMP shall include details regarding practicable control measures for reducing visible dust emissions affecting properties beyond the site boundary.

Control measures to be considered are identified in Section 8 of the Institute of Air Quality Management Guidance on the assessment of dust from demolition and construction (2014).

The development shall thereafter be carried out in strict accordance with the approved CEMP 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.

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

1. (i) A Preliminary Investigation incorporating a Phase I Desk Study (including site reconnaissance, development of a conceptual model and an initial risk assessment); and

(ii) A Phase II Ground Investigation (only if the Desk Study has determined that further assessment is required), comprising the following:

- o A survey of the extent, scale and nature of contamination, and reporting on the appropriate risk assessment(s) carried out with regards to Human Health, the Water Environment and Gas Characteristic Situation as well as an updated conceptual model of the site;
- o An appraisal of the remediation methods available and proposal of the preferred option(s).

The Desk Study and Ground Investigation must be undertaken by suitably qualified, experienced, and competent persons and must be conducted in accordance with the relevant guidance and procedures.

If it is concluded by the Reporting that remediation of the site is not required, then Parts 2 and 3 of this Condition can be disregarded.

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

3. Following completion of the measures identified in the approved Remediation Statement, a Verification Report shall be submitted that demonstrates the effectiveness of the remediation carried out.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable.

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

Reason:

To ensure that the site is clear of contamination.

- 14 Prior to the commencement of development a Soil Management Plan (SMP) shall be submitted to and approved by the Planning Authority. The SMP shall include appropriate measures for soil handling and storage of soils during construction and detail of soil reinstatement. Development shall thereafter be carried out in accordance with the SMP so approved.

Reason:

In the interests of soil management.

- 15 No development shall take place on the application site until the applicant has undertaken and reported upon a Programme of Archaeological Work (Evaluation by Archaeological Trial Trench; Historic Building recording; topographical survey) 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:

In the interests of archaeological and natural heritage.

- 16 Notwithstanding that which is shown on the drawings docketed to this planning permission and prior to the commencement of the development, the detailed design and specification of the proposed left-in temporary construction access junction with the A1 trunk road shall be submitted to and approved in writing by the Planning Authority in consultation with Transport Scotland.

Thereafter, and prior to the commencement of development, the junction shall be constructed in accordance with the detailed design and specification as so approved, unless otherwise agreed in writing with the Planning Authority in consultation with Transport Scotland.

Reason:

To ensure that the standard of the left-in junction with the A1 trunk road complies with the current standards in the interests of road safety.

- 17 The temporary works hereby approved comprising of:

- * Temporary construction compounds and associated temporary access;
- * Temporary access (haul) road to facilitate construction traffic movements from/to the substation site including the access from the A1 trunk road;
- * Temporary access to substation site (separate from the proposed permanent access road);
- * Temporary works areas associated with the tower installation, cable installation and sealing end compound removal;
- * Temporary top soil storage areas; and
- * Temporary earthworks storage areas;

shall all be removed in their entirety from the application site and any removed hedgerows and other field boundaries and the land upon which the temporary works are formed shall all be reinstated to their former condition within one year of the completion of the development hereby approved or on completion of the installation of the underground cables approved by separate planning permission in principle 22/00852/PPM, whichever is the later, unless otherwise approved in writing by the Planning Authority.

Prior to the cessation of the use and the restoration of the land of the site, details for the reinstatement of the land shall be submitted to and approved in writing in advance by the Planning Authority, and thereafter, the reinstatement of the land shall accord with the details so approved.

The date of completion of the development hereby approved and the date of completion of the installation of the underground cables approved by separate planning permission in principle 22/00852/PPM shall be provided in writing to the Planning Authority within 2 weeks of completion of each of the developments.

Reason:

In order to ensure a timely restoration of the land on which the temporary works will be formed in the interests of the character and amenity of the area.

- 18 Prior to any use being made by construction traffic associated with the proposed development of the temporary slip road taken from the A1 trunk road and the length of public road that crosses the bridge over the East Coast Main Line and onto the C120 Birnieknowes road, the road safety improvements all as shown on docketed drawing nos. CT1372-2-11HD-DO-AECOEC-3098 Rev 1, CT1372-2-11HD-DO-AECOEC-3097 Rev 1 and CT1372-2-11HD-DO-AECOEC-3090 Rev 1 shall be formed and installed and thereafter shall remain in place through to completion of development.

Reason:

In the interests of road and rail safety.

- 19 Unless otherwise agreed in writing with the Planning Authority, the junctions of the temporary access (haul) road with the local road network shall be constructed and formed in accordance with that shown on docketed drawings nos. CT1372-2-11HD-DO-AECOEC-2007 Rev 0, CT1372-2-11HD-DO-AECOEC-2008 Rev 0, CT1372-2-11HD-DO-AECOEC-2009 Rev 0B and CT1372-2-11HD-DO-AECOEC-2020 Rev 0B.

Reason:

In the interests of road safety.

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

(i) detail for access from the A1 to the eastern part of the site, including a robust signage strategy and method of safely and physically controlling/preventing unauthorised access to construction only routes;

(ii) detail of any additional signing or temporary traffic control measures deemed necessary due to the size or length of construction loads being delivered, which shall be undertaken by a recognised Quality Assured traffic management consultant;

(iii) details of measures to reduce the number of construction vehicles;

(iv) details of and controls for access routes to and from the site for abnormal loads, large components and day-to-day deliveries/removals associated with the construction and decommissioning phases of the development;

(v) vehicle tracking of all turning movements onto the local road network, especially from the access route off the A1;

(vi) detailed swept path assessments of large component delivery routes and drawings detailing any required off-site mitigation works;

(vii) updated information on programme, construction tasks, vehicle types and trip generation;

(viii) frequencies and times of deliveries and arrangements for the removal of materials/plant from the site;

(ix) details of traffic management measures deemed necessary on the local and trunk road networks;

(x) details of temporary signage in the vicinity of the site warning of construction traffic;

(xi) arrangements for road maintenance and cleaning;

- (xii) detail of how building materials and waste will be safely stored and managed on site;
- (xiii) details of wheel washing facilities which must be provided and maintained in working order during the period of construction and/or decommissioning of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;
- (xiv) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds;
- (xv) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds;
- (xvi) a summary of the arrangements for road maintenance, dilapidation surveys and repairs during the construction programme;
- (xvii) details of measures to be undertaken to ensure the safety of vulnerable road users on the local road network within the vicinity of the development site and its associated temporary infrastructure, including a timetable for the implementation of those measures; and
- (xviii) details of a Traffic Signals Management Plan to include maintenance of the signals to be installed via an appropriate traffic management company;
- (xix) measures for regular liaison with East Lammermuir Community Council, local residents and other energy developers working within the local area, to inform them of traffic associated with the construction of the development.

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

Reason:

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

- 21 Prior to the commencement of the development hereby approved, a programme for monitoring the condition of and commitment to repair identified damage to the public roads to be used by construction traffic prior to, during and immediately following the completion of the development, shall be submitted to and approved in writing by the Planning Authority. The public roads to be monitored shall be the sections of the C120, C121, C124 and U220 as identified in Figure 12.1: Study Area within the Environmental Impact Assessment Report docketed to this planning permission and shall include the sections of the A1 trunk road. Thereafter the approved programme of monitoring and repairs shall be implemented.

Any remedial works required to those public roads shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant with general repairs undertaken on a regular basis and periodic resurfacing where necessary in accordance with details to be submitted to and approved by the Planning Authority. Any damage to the road surface as a direct result of the construction process of this development that is identified during the monitoring period which could result in a significant risk to road safety shall be repaired immediately.

The final remedial works shall be completed within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority.

Reason:

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

- 22 Prior to any use being made of the temporary construction access (haul) roads as hereby approved, the date of which shall be provided in writing to the Planning Authority, a Stage 3 Road Safety Audit - Post Opening shall be submitted to and approved by the Planning Authority.

12 months following approval of the Stage 3 Road Safety Audit a Stage 4 Road Safety Audit shall be submitted to and approved by the Planning Authority for all works that are to remain permanently in place.

All the Road Safety Audits shall be carried out in accordance with GG119 Road Safety Audit Rev 1.

Reason:

In the interests of road and vulnerable user safety.

- 23 Prior to commencement of development, a swept path assessment shall be submitted to and approved by the Planning Authority, which shall demonstrate that the proposed temporary construction access (haul) roads and permanent site access roads can be accessed as required by a 10m rigid vehicle and 16.5m articulated vehicle.

Reason: In the interests of road safety.

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

- (i) the proposed route of any temporary rerouting of Core Paths within the application site, the duration of the temporary rerouting, and any measures for its permanent diversion (including its new route) if required as a result of the proposed development; and
- (ii) a timetable for the implementation of any temporary or permanent diversions of the above Core Paths.

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

Reason:

To ensure continuity of the core path network in the interests of public access.

- 25 Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings, where feasible and appropriate in design terms, and new car charging points and infrastructure for them, where feasible and appropriate in design terms. The details shall include a timetable for implementation.

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

Reason:

To minimise the environmental impact of the development.

- 26 In the event the development hereby approved is no longer required for electricity transmission purposes and fails to be used for this purpose for a continuous period of 6 months then, unless otherwise approved in writing by the Planning Authority, it shall be deemed to have ceased to be required. If it is deemed to have ceased to be required, after the end of the said continuous 6 months period a decommissioning and site restoration plan (the 'Demolition and Restoration Scheme') shall be submitted to and approved in writing by the Planning Authority. The Demolition and Restoration Scheme shall include details of:

- i) The extent of substation and all associated infrastructure to be removed and details of site restoration;
- ii) Management and timing of works;
- iii) Environmental management provisions; and

iv) A traffic management plan to address any traffic issues during the decommissioning period.

The Demolition and Restoration Scheme shall be implemented in its entirety, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure that the application site is satisfactorily restored in the interests of the amenity of the area.

- 27 No development shall commence unless and until the Planning Authority has approved in writing the terms of appointment by the applicant (or their agent) of an independent and suitably qualified environmental consultant, as Planning Monitoring Officer ("PMO") to assist the Planning Authority in monitoring compliance with the terms of the planning permission and conditions attached to this consent.

The terms of appointment shall: (a) Impose a duty to monitor compliance with the terms of the planning permission and the conditions attached to it; (b) require to set out the frequency of PMO visits to site; (c) require the PMO to submit a monthly report to the Planning Authority summarising works undertaken on site; and (d) require the PMO to report to the Planning Authority any incidence(s) of noncompliance with the terms of the planning permission and conditions attached to it at the earliest practical opportunity.

The PMO shall be appointed on the approved terms throughout the period from commencement of development to completion of post construction restoration works.

Reason:

To enable the development to be suitably monitored to ensure compliance with the planning permission and the conditions attached to it.

3. PLANNING APPLICATION NO. 23/01333/PM: ERECTION OF 103 HOUSES, EIGHT FLATS AND ASSOCIATED WORKS, LAND TO THE NORTH OF CASTLEHILL, ELPHINSTONE

A report had been submitted in relation to Planning Application No. 23/01333/PM. Mr Dingwall presented the report, highlighting the salient points. The report recommendation was to grant consent.

Councillor McGinn, local member, raised an extensive list of concerns about the current Bellway development in Elphinstone, and requested that Planning Committee defer making a decision on planning applications 23/01333/PM and 24/00699/P until an explanation came forward as to why there had been so many issues. He felt it was difficult to separate this proposed Phase 2 from the Phase 1 development. He advised that he had been made aware of a significant number of concerns regarding flooding and water in the lower part of the phase where the SuDs ponds were sited, and about water flooding under houses at Waterloo Place. He reported that it had been challenging to try get Bellway to engage properly. He also raised issues whereby the sewage link to the Main Street had failed; sewage was being taken through Elphinstone to a temporary facility for disposal, which had caused real anxiety in the village. He said that the residents of Elphinstone deserved better treatment. He also raised issues with the SuDS ponds, and pointed out that there had been no period of significant rainfall since last winter to gauge whether flooding issues had been resolved. He also highlighted significant local concerns over the application for the path, and said residents sought answers as to why other options had been discounted. He wanted to defer making a decision on the two applications to give time for these concerns to be investigated, and felt that it was premature to consent Phase 2 when there were still so many outstanding issues from Phase 1.

The Convener indicated that he was aware of these concerns; he was happy to support the motion, and for a further report to come to the Planning Committee about the issues raised. He formally seconded the motion to continue applications 23/01333/PM and 24/00699/P.

Mr Dingwall advised that it was competent for the Planning Committee to grant, refuse, or to continue the applications if there was good planning reason to do so. He made Committee members aware that it would be possible for Bellway to appeal the applications on the grounds of non-determination, but advised that officers would communicate with Bellway and seek agreement for an extension to the time permitted to determine the applications. He pointed out that Bellway may not agree to a further extension, and advised that the Planning Committee may wish to take a view on who would submit the Council's statement if there were such an appeal. Carlo Grilli, Service Manager – Governance, supported Mr Dingwall's comments, and advised that objectors would be advised in future if or when the applications came back before the Planning Committee.

Councillor McGinn advised that Bellway had reached out to him that morning, as he had been vocal about the treatment of Elphinstone residents. He said he did not want to create conflict, but for Bellway to be better for the residents of Elphinstone.

Graham Drummond spoke against the application. He advised that he had not objected to the original application, but said this application would double the size of the new development. He described Phase 1 as having had a huge impact on Elphinstone, with Main Street having to be closed off. He said that drilling operations had failed miserably. He reported that a stream of tankers drove by his house three times each week, and there were significant problems with odours. He felt the issues seemed to be ongoing and there was no end in sight. He reported having made various representations to Scottish Water, Bellway, and the Council, but he felt that organisations were avoiding the issues. He said that Bellway would have cited unforeseen circumstances, but he pointed out that this did not provide solutions. He supported Councillor McGinn's suggestion to defer making a decision on the applications, and had been intending to suggest that Phase 2 be put on hold until a complete drainage system could be put in place. He described Bellway as having been atrocious, reported that they failed to respond to emails. He wanted to know how long he would have to put up with the issues with tankers. He said he also had concerns about the SuDS proposals for the scheme, as the back gardens of houses had been affected on Tranent Road and Waterloo Place last winter.

The Convener commented that Committee members were also concerned that the development was continuing without addressing the issues with drainage and surface water.

The Convener then moved to a roll call vote, and the Committee members unanimously voted in support of the motion to continue applications 23/01333/PM and 24/00699/P to the following meeting of the Planning Committee.

Mr Dingwall raised that, while he hoped that Bellway would work in a constructive manner, they could choose to appeal the applications on the grounds of non-determination. He invited Committee members to take a view on who would make the submission in respect of any such appeal; he suggested that this could come from himself as the Chief Planning Officer, or a report could be made to a future meeting of the Planning Committee.

The Convener proposed that such a report should come from the Chief Planning Officer, and this was seconded by Councillor Forrest. Members unanimously supported this proposal by roll call vote.

Decision

Planning Committee members agreed to continue application no. 23/01333/PM until the following meeting of the Planning Committee.

4. PLANNING APPLICATION NO. 24/00699/P: FORMATION OF PATHWAY AND INSTALLATION OF LIGHTING, WOODLAND AND AMENITY GRASS AREA TO THE WEST OF WATERLOO PLACE, MAIN STREET, ELPHINSTONE

Decision

Planning Committee members agreed to continue application no. 24/00699/P until the following meeting of the Planning Committee.

Signed

.....

Councillor Norman Hampshire
Convener of the Planning Committee

DRAFT

REPORT TO: Planning Committee
MEETING DATE: 3 December 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

3

Application No. **24/01092/P**
Proposal Installation of CCTV camera (Retrospective)
Location **East Gate
Hummel Road
Gullane
EH31 2BG**

Applicant Mr Simon McIntosh

RECOMMENDATION Granted Permission

REPORT OF HANDLING

PROPOSAL

The property to which this application relates to is a two-storey semi-detached house and its garden ground located within a predominantly residential area as defined by policy RCA1 of the adopted East Lothian Local Development Plan 2018. It is also within Gullane Conservation Area.

The property is bounded to the north, south and west by neighbouring residential properties and to the east by the public road of Hummel Road.

In May 2024, planning permission (Ref: 24/00114/P) was sought retrospectively for:

- (i) The installation of four ring CCTV camera lights, two within the south elevation, one within the east elevation and one within the north elevation of the house;
- (ii) The installation of six Astro Richmond lights, two within the south elevation and four within the east elevation of the house; and
- (iii) The installation of four Astro Dartmouth lights within the north elevation of the house.

The application was recommended for approval and was taken to a meeting of the Council's Planning Committee for determination. Members of the Planning Committee approved the application retrospectively, subject to a condition which refused planning permission for one of the cameras. The condition reads:

Planning permission is not hereby granted for the CCTV that has been installed above the rear access door on the south elevation of the house.

Reason: The CCTV installed above the rear access door on the south elevation of the house is harmful to the privacy and amenity of the neighbouring residential property of Dromore.

The minutes of the Planning Committee note that members suggested that the applicant move the camera on the south elevation westwards to remove concerns regarding possible overlooking of the windows within the east elevation of the neighbouring residential property to the west.

PROPOSAL

Planning permission is now sought retrospectively for the installation of a CCTV camera unit, that is positioned in the recess of the rear access doorway in the south elevation of the applicant's house, and specifically in the top west corner of that doorway. The CCTV camera is a 'ring spotlight cam plus' which features two spotlights and a camera. The camera unit is fixed to the wall and does not rotate.

The applicant has stated in their submission that:

- o The unit is fixed to the wall so can't be moved - the unit only points forward and not round corners;
- o The motion activated LED lights are less powerful;
- o The unit is smaller than previous unit;
- o It is the same manufacturer as the previous unit, so has the curtain function and will only activate if there is motion in the area its monitoring - i.e. on the applicant's property. What happens next door is not picked up or monitored;
- o The unit is fixed to the doorway reveal which is within the applicant's ownership.

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.

Policies 7 (Historic Assets and Places), 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 and Policies CH2 (Development Conservation Areas) and DP5 (Extension and Alterations to Existing Buildings) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Material to the determination of the application is Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 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.

REPRESENTATIONS

A total of nine written letters of objection have been received in relation to the application. The main grounds of objection can be summarised as follows:

- (i) This third application has not materially changed from the previous two applications and does not address the Councillors at Planning Committee who denied planning permission, stating that the camera should not be placed outside the Dromore bathroom window as it was harmful to the privacy and amenity of Dromore;
- (ii) The wall where the new camera has been affixed is the deeded property of Dromore and not East Gate;
- (iii) There have been four, 8 feet tall plotted trees placed outside the windows of Dromore and these trees continuously set off the existing illegal camera that was previously refused;
- (iv) Dromore has a right of servitude access through East Gate to where the camera is fixed and access is never unauthorised as the applicant claims;
- (v) The new camera is placed even closer to Dromore with a camera light that can be toggled on and off, if planning permission is secured this will present a constant nuisance to Dromore;
- (vi) The applicant has not provided any specifications for the camera, either visuals or audio components as to the range of the camera and what can be filmed or floodlit;
- (vii) This third application wastes over stretched Council time and resources;
- (viii) The camera has caused upset and stress to the neighbour who lives next door;
- (ix) It is completely unacceptable to install CCTV within close proximity of your neighbours windows and there are data protections laws in place of this reason;
- (x) Cameras outside bathroom windows where you may be exposed intimately is totally inhumane;
- (xi) Privacy in your own home setting is a human right and this camera infringes on that human right;
- (xii) This application sets a dangerous precedent for other applications;
- (xiii) The owner of Dromore may have elderly and disabled visitors and this new camera denies disabled access to the ground floor bathroom of Dromore due to the camera looking into the bathroom; and
- (xiv) The applicants have blatantly ignored the previous refusal by deliberately implementing loopholes within the planning system and is now a year that this camera has caused distressed to the neighbour.

The applicant has confirmed that the CCTV unit is fixed to a doorway reveal in the applicant's property, which is within the applicant's ownership. There is no evidence to suggest that the CCTV camera is affixed to a neighbouring property.

The matter of the recording of images and sound by CCTV cameras and how images captured by the cameras are used is controlled through Data Protection legislation and not through planning legislation. Therefore, as this matter is controlled by legislation other than planning, it is not a material planning consideration relevant to the determination of this planning application.

The matters of the applications causing upset to neighbours and that the applications wastes Council time and Council resources are not material considerations relevant to the determination of this planning application.

Issues relating to rights of access are a civil matter between the applicant's and the owner of the neighbouring residential property. This is not a material planning consideration in the determination of the application.

PLANNING ASSESSMENT

The CCTV camera is to be fixed within the recess on the west side of the rear doorway within the south elevation of the house. In this position, the CCTV camera unit due to its small size and discreet positioning does not harm the character and appearance of the house or the character and appearance of this part of the Gullane Conservation Area.

Within its position, the CCTV camera unit faces over the applicant's own garden ground and would not, due to the tall southern boundary fence of the applicant's garden, allow for harmful overlooking of any gardens of neighbouring residential properties.

Furthermore, due to the position of the CCTV camera unit, within the recess of the door on the south elevation of the house, it does not allow for harmful overlooking or loss of privacy to the windows in the east elevation of the adjoining house to the west.

Therefore, the CCTV camera unit does not harm the residential amenity of the occupants of the neighbouring house to the west or to any other neighbouring residential properties.

The existing CCTV camera that is positioned above the rear access doors within the south elevation of the house was previously refused planning permission (ref: 24/00114/P) as it was harmful to the privacy and amenity of the neighbouring house to the west. That camera is still in place and has not yet been removed. To ensure the residential amenity of the neighbouring house to the west is safeguarded, it would be prudent to impose a condition on any grant of planning permission for the new CCTV camera that requires the removal of that the existing camera within a period of 1 month of the date of any grant of planning permission. Subject to the removal of the existing camera, the privacy and amenity of the neighbouring house to the west would be safeguarded.

The **Council's Senior Environmental Health Officer** has not raised any objection to the application.

Subject to the imposition of that aforementioned planning control, the CCTV camera does not conflict with policies 7, 14 and 16 of NPF4 and policies CH2 and DP5 of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITION:

- 1 Within 1 month of the date of this decision notice the CCTV camera located above the rear access door in the south elevation of the house and which was refused by a condition of planning permission 24/00114/P shall be removed.

Reason:

To safeguard the residential amenity of the occupiers of the neighbouring residential property

REPORT TO: Planning Committee
MEETING DATE: 3 December 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

4

Application No. **24/00632/AMM**

Proposal Approval of matters specified in conditions (1a to f, 1h, 1i, 1k & 1p, 2(iii) and 7) of planning permission in principle 14/00903/PPM - Erection of 40 houses, 20 flats and associated works

Location **Land To South, East and West
Wallyford
East Lothian**

Applicant McTaggart Construction and Wheatley Homes East Limited

Per EMA Architecture + Design

RECOMMENDATION Consent Granted

REPORT OF HANDLING

Although this application is for the approval of matters specified in conditions of planning permission in principle 14/00903/PPM, it is required to be determined as a major development type application because the number of residential dwellings detailed is greater than 49. Accordingly, the application cannot be decided through the Council's Scheme of Delegation. It is therefore brought before the Planning Committee for a decision.

APPLICATION SITE

This application relates to some 1.3 hectares of undeveloped land located to the south and east of Wallyford, situated within the wider Wallyford expansion area which is allocated for development by Proposal (PROP) MH9: Land at Wallyford of the adopted East Lothian Local Development Plan 2018.

The site is to the south of the main distributor road of Masons Way. It is roughly square-shaped and slopes gradually from northeast to southwest. It is bounded to the south by an acoustic bund with the A1 trunk road beyond. It has a rough grass finish and has no trees or any other landscape features present on it. To the west is an area of land which the masterplan docketed to planning permission in principle (ref: 14/00903/AMM) identifies as

future allotments. To the east is a large completed residential development approved by approval of matters specified in conditions (ref: 21/00468 /AMM).

SITE HISTORY

On 30 November 2009 planning permission in principle (Ref: 09/00222/OUT) was granted for a mixed-use development on some 86 hectares of predominantly agricultural land to the east, south and southwest of Wallyford. The site included Wallyford Community Woodland, the public roads of Salters Road and Inchview Road, and land to the south of Fa'side Avenue South, to the south of the existing village. The land is the allocated housing site of Proposal MH9 of the adopted East Lothian Local Development Plan 2018.

Planning permission in principle (ref: 12/00924/PPM) was subsequently sought for the renewal of planning permission in principle (ref: 09/00222/OUT), as submitted to the Council on 26 November 2012. On 1 April 2014 the Council resolved to approve the application subject to the required Section 75 Agreement and planning permission in principle was duly granted with conditions on 14 November 2014 following the registration of that agreement.

Subsequent to this the applicant sought and was granted planning permission for the following variations to the conditions of planning permission in principle 12/00924/PPM:

- Variation of condition 2 of planning permission in principle (Ref: 12/00924/PPM) to allow for the development and occupation of residential units from both the western (A6094 - Salters Road) and northern (A199) ends of the site (Ref: 14/00913/PM);

- Variation of condition 5 of planning permission in principle (Ref: 12/00924/PPM) to allow for up to 90 units to be completed in Year 1, up to 150 units in Year 2, up to 150 units in Year 3 and up to 60 units in Year 8 (Ref: 14/00916/PM).

In September 2015 planning permission in principle (ref: 14/00903/PPM) was granted for amendments to planning permission in principle 12/00924/PPM, including an increase in number of residential units from 1050 up to a maximum of 1450, relocation and redesign of open space, development for residential purposes of areas previously proposed as open space and relocation and redesign of the proposed local centre.

The elements of the approved mixed-use development include residential development, community buildings including a new school and community facilities, office units, a restaurant, business units, general industrial units, storage and distributions units, trade counter units, a residential institution, a non-residential institution, hot food takeaways, playing fields, open space, allotments, landscaping and associated infrastructure provision.

Also in September 2015, Approval of matters specified in conditions of planning permission in principle 14/00903/PPM (ref: 15/00136/AMM) was granted for proposed infrastructure, access, landscaping and site development works including distributor road and access junctions onto the A199 and A6094, footpaths/cycleways, suds basins, acoustic bunds and development platforms.

In December 2020, planning permission in principle (ref: 15/00537/PPM) was granted for residential development with associated educational and community facilities and open space on the land known as Dolphingstone to the immediate south and east of the site the subject of planning permission in principle 14/00903/PPM. Through a condition attached to the grant of planning permission in principle 15/00537/PPM, the number of residential units on the combined sites the subject of planning permission in principle 14/00903/PPM

and 15/00537/PPM is limited to no more than 2050. A revised indicative masterplan was submitted and approved as a part of planning permission in principle 15/00537/PPM to show that the positions shown for the distributor road, SUDS ponds, school campus and local centre would be the same as that approved by planning permission in principle 14/00903/PPM.

Since the granting of planning permission in principle (ref: 14/00903/PPM) and planning permission in principle (ref: 15/00537/PPM) a number of detailed planning applications (16/00537/AMC, 17/00384/AMM, 17/00432/AMM, 18/01283/AMM, 19/00926/AMM, 21/00069/AMM, 21/00070/PM, 21/00219/AMC, 21/00468/AMM, 22/00009/AMM, 22/01374/AMC and 23/00498/AMM) have been granted for various schemes of development including housing, road infrastructure, landscaping, a Learning Campus and a Local Centre.

Development of the wider Wallyford site is well underway. To date, approval has been granted through subsequent applications for the erection of a total of some 1353 residential units on sites within the wider combined Wallyford and Dolphingstone sites with a number of those developments either completed or under construction.

PROPOSALS

Planning permission is now sought for approval of matters specified in conditions 1(a-f), 1(h), 1(i), 1(k), 1(p), 2(iii) and 7 of planning permission in principle 14/00903/PPM for the erection of 40 houses, 20 flats and associated works on the application site. The associated works include the formation of roads, footpaths and parking areas, the formation of small pockets of open space, the erection of boundary enclosures and hard and soft landscaping.

All of the 60 residential units proposed for the site would be operated as affordable housing.

The 40 houses to be erected on the site would be comprised of five different house types. Of those houses, 36 would be two-storey terraced/semi-detached and four would be semi-detached bungalows. Of the 36 terraced/semi-detached houses, 18 would contain two bedrooms, 10 would have three bedrooms and eight would have four bedrooms. Of the four semi-detached bungalows to be erected, two would have two bedrooms, with the other two having three bedrooms. The 20 flats to be erected would be contained within five two-storey flatted buildings. Of the 20 flats, eight would have one bedroom and 12 would have two bedrooms.

The principal vehicular access to the proposed 40 houses and 20 flats would be taken from a point formed on the south side of Masons Way to the north of the site. Footpath connections would also be provided into the site from Masons Way. Additional vehicular access would be taken from the existing access road of Laing Loan to the northeast along with additional footpath connections.

The submitted details also include for the internal access roads, footpaths, parking courts, boundary treatments, landscaping, and associated area of open space.

In addition to application drawings the following documents have also been submitted in support of the application:

- Consolidation of Abandoned Mine Workings Validation Report (Mason Evans, August 2017);
- Remediation Method Statement (Mason Evans, May 2024);
- Report on Radon Gas (Mason Evans, September 2024); and

- Preliminary Ecological Appraisal (Acorna Ecology Ltd, May 2024).

Subsequent to the registration of this application, further drawings have been submitted showing revisions to the site layout in response to comments received from the **Council's Roads Services and Landscape (Projects)**.

A letter of Historical Mineral Consolidation Works relating to the application site has also been submitted in response to comments received from the Coal Authority.

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 and 2 of NPF4, the contribution this development could make to addressing the climate and nature crises (Policy 1) or to make adjustments or incorporate features that reduce greenhouse gas emissions (Policy 2), is largely predetermined by the grant of planning permission in principle 14/00903/PPM.

Therefore, NPF4 Policies 3 (Biodiversity), 7 (Historic Assets and Places), 12 (Zero Waste), 13 (Sustainable Transport), 14 (Liveable Places), 15 (Local living and 20 min neighbourhoods), 16 (Quality Homes), 18 (Infrastructure First), 21 (Play, recreation and sport) and 22 (Flood Risk and Water Management) are relevant to the determination of the application.

Proposal MH9 (Land at Wallyford) and Policies HOU1 (Established Housing Land), HOU3 (Affordable Housing Quota), HOU4 (Affordable Housing Tenure Mix), DP1 (Landscape Character), DP2 (Design), DP3 (Housing Density), DP4 (Major Development Sites), DP8 (Design Standards for New Housing Areas), DP9 (Development Briefs), CH5 (Battlefields), NH13 (Noise), W3 (Waste Separation and Collection), OS3 (Minimum Open Space Standards for New General Needs Housing), OS4 (Play Space Provision in new General Needs Housing Development), NH10 (Sustainable Drainage Systems), NH11 (Flood Risk), DEL1 (Infrastructure and Facilities Provision), SEH2 (Low and Zero Carbon Generating Technologies), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the ELLDP are also relevant to the determination of the application.

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. Planning Advice Note 67: Housing Quality explains how Designing Streets 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.

Also material to the determination of the application is the approved masterplan for the site as approved by the grant of planning permission in principle 14/00903/PPM. The masterplan sets out the land uses expected for the allocated site and how the Council requires the site to be developed.

Also material to the determination of the application is the Council's Supplementary Planning Guidance 'Design Standards for New Housing Areas' which expands on policies that are set out in the ELLDP.

REPRESENTATIONS

No public objection to this application has been received.

COMMUNITY COUNCIL COMMENT

Wallyford Community Council has been consulted on the application, but no response has been received.

PLANNING ASSESSMENT

By the grants of planning permission in principle (ref: 14/00903/PPM) and planning permission in principle (ref: 15/00537/PPM) approval has been given for the principle of the erection of up to 2050 houses on the combined Wallyford and Dolphingstone sites following technical assessments which demonstrated that local and wider infrastructure, subject to financial contributions and conditions, can accommodate such level of development.

To date, approval has been granted for the erection of a total of 1353 residential units on those combined sites (ref: 16/00537/AMC, 17/00384/AMM, 17/00432/AMM, 18/01283/AMM, 18/01328/AMM, 19/00926/AMM, 21/00069/AMM, 21/00693/P, 21/00219/AMC, 21/00468/AMM, 22/00009/AMM and 23/00498/AMM). Therefore, as the cap of 2050 houses has not yet been reached within the combined Wallyford and Dolphingstone sites, there can be no objection in principle to the 40 houses and 20 flats now proposed on this particular part of the wider Wallyford site.

Consequently, in the determination of this application, the Council, as Planning Authority, can only concern itself with the siting, design and external appearance of the development, the landscaping of and means of access to the site and the means of any enclosure of the boundaries of the site. In this regard the detailed proposals have to be considered against relevant development plan policy, the approved masterplan of, and conditions attached to planning permission in principle (ref: 14/00903/PPM).

The proposed residential development would form an extension to, and would be a natural extension of, the south-eastern edge of Wallyford. The proposals would be seen in relation to completed new housing developments and those under construction on land at Wallyford. The proposed residential development would be sympathetic to and would not be out of keeping with the character of Wallyford or with other recent housing developments in the Wallyford area.

The proposed houses and flatted buildings, due to their positioning on the application site and by virtue of their height, size and scale, architectural design and finishes would satisfactorily integrate into their surroundings and would not appear as prominent or intrusive features, consistent with the principles of the Scottish Government Policy Statement entitled "Designing Streets". The other components of the proposed development involving the layout of roads, pathways and parking spaces would not be harmful to the character and appearance of the area and would also generally accord with those principles.

The details submitted for approval are for a scheme of development comprising a mix of semi-detached bungalows, two-storey semi-detached and terraced houses and two-storey flatted buildings. The layout reflects that of the wider Wallyford development which is generally characterised by detached, semi-detached and terraced houses mostly being two-storey. The range of house types and flatted buildings proposed would give a variation of architectural form to the development, which coupled with the orientation and layout of the buildings, would give a degree of variety of appearance to the development. The architecture of the proposed houses and flatted buildings is of a traditional pitched roof form. Render would be the predominant wall finish of the buildings, but it should be ensured more than one render colour is provided and more than one colour of roof tile to ensure the development is of a satisfactory appearance. A condition can be imposed on an approval of matters consent for the proposed development to address these matters of wall and roof finishes.

The proposed development would provide an attractive residential environment for future residents of it. The residential units are shown to be laid out in such a way that adheres to the normally accepted privacy and amenity criteria on overlooking and overshadowing, whilst affording future occupants an appropriate level of privacy and residential amenity. The proposed new houses and flatted buildings would be so sited, oriented and screened such as not to harm the privacy and amenity of existing or future neighbouring or nearby residential properties through overlooking or overshadowing.

The application site is capable of accommodating all of the houses and flats without being an overdevelopment of the site and without being incompatible with the density of existing housing development in the area.

Footpath links to the wider residential site are proposed that would allow for pedestrian and cycle access to the wider area and allow for good connectivity with the remainder of the Wallyford site.

In respect of landscape matters the applicant has taken into consideration the comments of the **Council's Senior Landscape Projects Officer** in the submission of revised drawings to incorporate enhanced landscape planting within the site which will benefit biodiversity. The provision, maintenance, and retention of a scheme of landscaping of the site can be made a condition of an approval of matters consent.

Subject to the above controls the Council's Senior Landscape Projects Officer raises no objection to the application.

The proposed scheme of landscaping would also serve to encourage habitat creation and strengthen nature, enhancing the biodiversity of the site.

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

Policy NH5 of the ELLDP generally presumes against new development that would have an unacceptable impact on the biodiversity of an area.

The **Council's Biodiversity Officer** offers no comment on the application. However, a condition can be attached to an approval of matters consent requiring the submission for approval of a Biodiversity Enhancement Plan. Subject to the imposition of that planning control the proposals would not conflict with NPF4 Policy 3 and Policy NH5 of the ELLDP.

The **Council's Senior Environmental Health Officer** has been consulted on the application and has responded no comment.

On these considerations of design, density, layout, amenity, landscaping, nature and biodiversity, the proposals are consistent with Policies 3, 14, 15 and 16 of NPF4 and with Policies DP1, DP2, DP3, DP4, NH5 and NH13 of the ELLDP, the Scottish Government Policy Statement entitled "Designing Streets", the Masterplan approved by planning permission 14/00903/PPM and the Council's Supplementary Planning Guidance on 'Design Standards for New Housing Areas'.

The masterplan docketed to planning permission in principle (Ref: 14/00903/PPM) indicates how areas of formal and informal open space, including two community sports pitches, could be located throughout the allocated site.

Policy OS3 (Minimum Open Space Standard for New General Needs Housing Development) of the adopted ELLDP 2018 requires that for developments of 20 and more dwellings the minimum requirement for on-site provision of open space is 60m² per dwelling. Policy OS4 (Play Space Provision in New General Needs Housing Development) requires that developments of 50 and more dwellings must provide a play area suitable for children aged 0 - 8.

The site that is the subject of this approval of matters application includes only small areas of land shown on the docketed masterplan as being the location for areas of open space. It does not show areas for play area provision or for sports pitch provision.

However, the site will in close proximity to playgrounds and sports pitches associated with the Learning Campus to the northeast and a Community Woodland to the northwest, all of which will provide opportunities for outdoor recreation for the residents of the wider Wallyford site including the future occupants of this site. Furthermore, the site is in close proximity to areas identified by the masterplan for planning permission in principle (Ref: 14/00903/PPM) as open space including for the provision of a play park.

Consequently, although the proposed development does not include play area provision or the provision of formal areas of open space consistent with Policies OS3 and OS4 of the ELLDP, this is consistent with the docketed masterplan attached to planning permission in principle (Ref: 14/00903/PPM). On this consideration the proposed development is consistent with Policies OS3 and OS4 and with the indicative masterplan docketed to planning permission in principle (Ref: 14/00903/PPM).

The **Council's Strategy, Policy and Development Manager** has been consulted on the application and has not raised any objection.

The principles of the means of accessing the wider Wallyford development are already decided by the grant of planning permission in principle (Ref: 14/00903/PPM). These include vehicular access to the proposed housing plots being taken from the distributor road of Masons Way.

The **Council's Road Services** have been consulted on the application and advise that the location and amount of parking within the site is acceptable and that the development can be safely accessed by cars and large vehicles. They recommend however that conditions be imposed on any approval of matters consent to ensure that:

- i) a Travel Information Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking is submitted to and approved by the Planning Authority prior to construction commencing. The Travel Information Pack will include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents;
- ii) a Quality Audit is submitted to and approved by the Planning Authority. This should detail the accessibility of the site for all modes of transport, including walking and the needs of users who are mobility impaired. An important element of the Quality Audit will be recommending signage to ensure that vehicular and active travel routes through the development are clear and legible;
- iii) prior to the commencement of development details of the provision of new car charging points and infrastructure for them are submitted to and approved in writing by the Planning Authority. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved; and
- iv) prior to the commencement of development a Construction Method Statement designed to minimise the impact of construction activity and the movements of construction traffic on the amenity of the area shall be submitted to and approved in writing in advance by the Planning Authority. The Construction Method Statement shall include any recommended mitigation measures for the control of noise, dust and construction traffic, including hours of construction works, routing of vehicles and delivery time restrictions, and a health and safety method statement and shall include provision for wheel washing facilities or alternative facilities to prevent deleterious materials being carried onto the public road on vehicle tyres. The Construction Method Statement shall also provide details of utility/service drainage connections, including what temporary measures shall be put in place to control surface water drainage during the construction phase.

With the imposition of conditions to cover these recommendations of Roads Services, the proposed development does not conflict with Policies T1 or T2 of the ELLDP.

Historic Environment Scotland (HES) have been consulted on this application and consider that the proposals have the potential to affect the Battle of Pinkie Battlefield Site. They note however that the principle of development within the application area has already been accepted and do not consider that the scale or nature of the proposed development raises issues of national interests. HES therefore raise no objection to the application.

On this consideration the proposals are consistent with Policy 7 of NPF4 and Policy CH5 of the ELLDP.

The **Council's Senior Environmental Compliance Officer** has reviewed the submitted Remediation Method Statement and is satisfied with the proposed remedial measures and validation procedures for the site. He advises that following completion of the measures identified in the Remediation Statement a Validation Report is required to be submitted for planning authority approval prior to the occupation of any part of the of the new development that demonstrates the effectiveness of the remediation carried out. He further advises that in the event that unexpected ground conditions are encountered at any time when carrying out the development, work on site shall cease and the issue shall be reported to the planning authority immediately. Any further Site Investigation and subsequent Risk Assessment required by the planning authority will be followed by the

submission of a Remediation Strategy and Verification Report confirming the satisfactory completion of any remedial works. If no unexpected ground conditions are encountered during the development works, then this should be confirmed to the planning authority prior to any use of the new development. These matters can form the subject of a condition of an approval of matters consent.

Subject to the above controls the **Council's Senior Environmental Compliance Officer** raises no objection to the proposals.

The Coal Authority were consulted on the application and initially objected to the proposals on grounds that it had not been demonstrated that the application site has been made safe and stable from a shallow mining viewpoint. Further to submission by applicants of a letter of Historical Mineral Consolidation Works relating to the site the Coal Authority has withdrawn such objection.

The Indicative Masterplan docketed to planning permission in principle 14/00903/PPM indicates how three sustainable urban drainage scheme (SUDS) detention basins could be formed within the wider Wallyford site to attenuate the flow of surface water run-off. Condition 27 of planning permission in principle 14/00903/PPM states that a SUDS scheme should be submitted for the written approval of the planning authority, in consultation with the Scottish Environment Protection Agency. The position of the three SUDS detention basins has already been approved by approval of matters 15/00136/AMM.

The **Council's Senior Engineer – Flooding** has been consulted on the application and has provided no response. A condition can be reasonably be attached to of an approval of matters consent requiring that a Scheme of Drainage and a Surface Water Management Plan for the site are submitted to and approved by the Planning Authority prior to commencement of any part of the development, and thereafter fully implemented in accordance with the details so approved unless otherwise agreed in writing with the Planning Authority.

Scottish Water as a consultee on the application advise that they have no objection to the proposals.

The **Council's Waste Services** have been consulted and have no comment other than to stipulate that plots 15-18, 38-41 and 28-31 should present containers on the main thoroughfare rather than in parking areas.

All of the 60 residential units proposed for the site would be operated as affordable housing. The mechanism of the provision within the residential development of the wider Wallyford site of 25% affordable housing units is already secured through the grant of planning permission in principle 14/00903/PPM. The 40 houses and 20 flats proposed for the application site form a part of the Affordable Housing schedule. The **Council's Housing Enabler (Strategy and Development)** advises that the affordable housing units proposed will be operated by Wheatley Homes East and that the mix of house/flat types, sizes and tenures proposed through this application is satisfactory to meet the current housing needs of the area. She therefore raises no objection to the application. In this regard the proposals are consistent with the indicative masterplan docketed to planning permission in principle (Ref: 14/00903/PPM) and with Policy 18 (Infrastructure first) of National Planning Framework 4 and Policy HOU3 (Affordable Housing Quota) of the adopted East Lothian Local Development Plan 2018.

The mechanism of a financial contribution towards additional educational provision has already been secured through the grant of planning permission in principle 14/00903/PPM,

as has the phasing of completions of the residential units to ensure sufficient education capacity can be provided for the pupil product of the development. The Council's Planning Obligations Officer has confirmed that, as an approval of matters specified in conditions of planning permission in principle 14/00903/PPM, there are no requirements for additional developer contributions associated with this application.

At its meeting on 27 August 2019, the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on 3 September 2019, the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on relevant applications for planning permission, including applications for the approval of matters specified in conditions of a planning permission in principle. Such a condition should be imposed on an approval of matters consent for this proposal.

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

RECOMMENDATION:

That approval of matters specified in conditions be granted subject to the following conditions:

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

Reason:

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

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

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

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

Reason:

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

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

houses shall conform to the details so approved.

Reason:

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

- 4 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. Notwithstanding that shown on the docketed site plan where a building is located on a corner of more than one street, it shall have enhanced gable(s) to ensure it has an active elevation to each street it faces;

Reason:

In the interests of ensuring active frontages and to enhance character and appearance of the area.

- 5 Prior to the occupation of the last residential unit hereby approved, the proposed access roads, parking spaces and footpaths shall have been constructed on site, in accordance with the docketed drawings. Those areas of land shall not thereafter be used for any other purpose than for accessing and for the parking of vehicles in connection with the residential use of the houses and shall not be adapted or used for other purposes without the prior written approval of the Planning Authority.

Reason:

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

- 6 Notwithstanding that shown on the drawings docketed to this approval of matters, the boundary enclosures shown on those drawings are not hereby approved. Instead, and prior to the commencement of development, revised details of all boundary enclosures to be erected on the application site, and the timescales for their provision, shall be submitted to and approved in advance by the Planning Authority.

Those details shall show the form and appearance of all boundary treatments, including those enclosing the rear gardens of the houses. The details shall also show all semi-private and defensible spaces in front of or to the side of the houses hereby approved and to the side of parking courtyards to be enclosed by walls/hedges/fences/ or railings to define areas of private space from public space. All semi-private and defensible spaces in front of or to the side of dwellings and to the side of parking courtyards shall be enclosed by walls/hedges/fences/ or railings to define areas of private space from public space.

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

Reason:

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

- 7 No development shall be commenced on site unless and until written evidence that an affordable housing agreement has been entered into for the provision as affordable housing of all of the 60 residential units hereby approved and has been submitted to and agreed by the Planning Authority.

Reason:

In order to ensure the development is operated as affordable housing and is therefore compliant with Policy HOU3 of the adopted East Lothian Local Development Plan 2018.

- 8 Prior to the commencement of development details of the bin storage facilities for the flatted buildings hereby approved shall be submitted to and approved in advance by the Planning Authority. Prior to the occupation of any of the flats the bin storage facilities shall have

been formed in accordance with the approved details and made available for use. Thereafter, the storage facilities shall be retained in use solely as bin storage areas.

Reason:

To ensure the provision of adequate bin storage in the interest of the residential amenity of the future occupants of the flats hereby approved and the visual amenity of the locality.

- 9 All planting, seeding or turfing comprised in the approved details of landscaping on the drawing titled 'Landscape Proposal (Sheet 1 of 3)' with drawing number 393.22.01 rev B, 'Landscape Proposal (Sheet 2 of 3)' with drawing number 393.22.02 rev B, 'Landscape Proposal (Sheet 3 of 3)' with drawing number 393.22.03 rev B shall be carried out in the first planting and seeding season following the occupation or completion of any part of the development hereby approved, whichever is the sooner. All planting shall be established and maintained in accordance with the details on the above drawings.

Any trees, hedges 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 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 landscaping shall be retained and maintained to accord with the details of the approved details of landscaping.

Reason

To ensure establishment of a landscape scheme that improves the amenity of the area.

- 10 To ensure that the site is clear of contamination, the following requirements shall be complied with:

Following completion of the measures identified in Remediation Statements produced for the site, a Validation Report should be submitted that demonstrates the effectiveness of the remediation carried out. It must be approved by the Planning Authority prior to the use of the new builds.

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

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

Reason

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

- 11 Prior to the commencement of development details shall be submitted to and approved by the Planning Authority of overlying subsoil/topsoil to be provided to the front and back gardens of the houses hereby approved on a plot by plot basis and on all soft landscaping areas to ensure the provision of a layer of subsoil/topsoil of at least 600 mm in thickness. Thereafter the subsoil/topsoil shall be provided in accordance with the details so approved unless otherwise agreed in writing by the Planning Authority.

Confirmatory testing for both subsoil and topsoil materials is to be included within the Remediation Strategies being produced for the development site, with validation of these results being included within subsequent Verification Reports.

Reason

To ensure the provision of a suitable growing medium for garden areas and other areas of soft landscaping.

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

Reason:

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

- 13 Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings, where feasible and appropriate in design terms, and new car charging points and infrastructure for them, where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason:

To minimise the environmental impact of the development.

- 14 Notwithstanding drawings docketed to this grant of planning permission, details of a Scheme of Drainage and a Surface Water Management Plan for the site shall be submitted to and approved by the Planning Authority prior to commencement of any part of the development hereby approved. The Scheme of Drainage and the Surface Water Management Plan shall thereafter be fully implemented in accordance with the details 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.

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

i) a Travel Information Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking shall be submitted to and approved by the Planning Authority prior to construction commencing. The Travel Information Pack will include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents;

ii) prior to commencement of development, a Quality Audit shall be submitted to and approved by the Planning Authority. This should detail the accessibility of the site for all modes of transport, including walking and the needs of users who are mobility impaired. An important element of the Quality Audit will be recommending signage to ensure that vehicular and active travel routes through the development are clear and legible; and

iii) prior to the commencement of development details of the provision of new car charging points and infrastructure for them are submitted to and approved in writing by the Planning Authority. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

The housing development shall thereafter be carried out in accordance with the details so approved unless otherwise agreed in writing with the Planning Authority.

Reason:

In the interests of road and pedestrian safety.

- 16 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 prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic (including routes to/from site) and shall include hours of construction work and routing of traffic. The Construction Method Statement shall also provide details of utility/service drainage connections.

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

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

Reason:

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

- 17 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. Such facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth and mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason:

In the interest of road safety.

REPORT TO: Planning Committee
MEETING DATE: 3 December 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Application No. **24/00730/P**
Proposal Change of levels in rear garden, formation raised hardstanding area and erection of fence (Part Retrospective)
Location **10 Suthren Yett
Prestonpans
EH32 9GL**

Applicant Mr J Morrice
Per Chris Rhodes Architect

RECOMMENDATION Grant Permission Retrospectively

REPORT OF HANDLING

PROPOSALS

The property to which this application relates is a two-storey, detached house and its garden located within a modern housing development in Prestonpans, and as such is located in a predominantly residential area.

The property is bounded to the north by the public road of Suthren Yett, to the east and west by neighbouring residential properties, and to the south by a public footpath.

In July 2020, planning permission (ref: 20/00605/P) was granted for the change of use of public open space to domestic garden ground and the erection of fencing to enclose this area. Planning permission 20/00605/P has been implemented.

In August 2021, an enforcement case (ref: 21/00247/COM) was opened to investigate an alleged breach of planning control in relation to a raised deck platform that had been constructed within the rear garden. It was concluded that the raised deck platform did not

constitute permitted development and a breach of planning control had occurred. However, the applicant undertook works to rectify this breach of planning control and the enforcement case was closed in November 2021.

In May 2024, a further enforcement case (ref: 24/00176/COM) was opened to investigate an alleged breach of planning control in relation to another raised platform that had been constructed in the applicant's rear garden. It was concluded that the raised platform did not constitute permitted development and a breach of planning control has occurred. However, rather than rectify the breach of planning control, the applicant has submitted this retrospective planning application for the works carried out.

Planning permission is therefore now sought retrospectively for alterations to the rear garden ground of the house, to re-grade and to create a raised, level area within it. Additionally, planning permission is also sought for the heightening of part of the existing fence that encloses the east boundary of the rear garden.

Prior to the re-grading of the garden being carried out it sloped gently upwards from the rear elevation of the house towards the rear boundary fence of the garden. As a result of the re-grading of the garden, a two-tier garden has been created. To create the higher-level component of the garden, a 0.9m high retaining wall has been erected across the width of the garden and a level platform formed between that retaining wall and the rear boundary fence of the garden. The raised platform measures some 0.75 metres in height when measured from the lower ground level of the applicant's rear garden.

Through the previous planning application (ref: 20/00605/P), permission was granted for the erection of fencing to enclose the area subject of the change of use. This included a 1.8-metre-tall fence, when measured from the applicant's rear garden, along the eastern boundary for some 2.9 metres.

It is proposed to now heighten a length of the existing 1.8m high fence that encloses the east boundary of the lower level of the rear garden to a height of some 2.1 metres. It is then proposed to increase the height of another length of the existing fence to some 2.55 metres in height for a further 2.5 metres. The proposed lengths of heightened fencing would be of timber construction and would match the existing fence in design and appearance.

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 East Lothian Local Development Plan 2018.

Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 are relevant to the determination of this application. Policy DP2 (Design) of the East Lothian Local Development Plan 2018 is relevant to the determination of this application.

REPRESENTATIONS

Two written objections have been received in relation to the application, both of which were from the same person. The main grounds of objection are:

- (i) The platform has been significantly brought forward from the previous breach of

planning control;

- (ii) The new platform has not taken previous requirements into consideration and the same outcome to remove the platform should apply;
- (iii) The platform clearly exceeds permitted development laws and the measurement of the walls and platform have not taken measurements from the lowest point of the ground;
- (iv) The height of the wall is incorrect and exceeds one metre in height;
- (v) The platform constitutes over 50% of the rear garden and exceeds the UK law threshold;
- (vi) The platform gives a view into the objector's property which is further enhanced by the trampoline positioned on the platform;
- (vii) The overlooking from the platform restricts the objector's use of their garden as well as overlooking into the windows of the objector's property;
- (viii) The proposed solution of a 2.5 metre fence is not acceptable in terms of structure and cosmetic appearance;
- (ix) The application states that the applicant was unaware planning permission was required despite previous enforcement for a platform, this shows disregard to the rules and the objector;
- (x) The architect has used measurements and drawings from a rear extension some years ago, which questions the legitimacy of the drawings and the amended drawings offer little to no change;
- (xi) Any fence construction should fall within the objector's expectations but would also still not give the objector privacy;
- (xii) The previous enforcement case should be revisited as it has a significant bearing on this case; and
- (xiii) In the amended drawing it states "line to show extent of existing rear garden slope (grass surface)", this is irrelevant and has no bearing on the justification of the platform height.

Subsequent to the registration of the application, the applicant's agent submitted amended drawings and confirmed that the measurements were correct.

An overlooking assessment has been undertaken and is detailed within this report of handling.

Whether or not the applicant was aware that planning permission was required for the works does not prevent the Council as Planning Authority from determining this planning application. The Town and Country Planning (Scotland) Act 1997 allows for the determination of applications for works that have already been carried out. Therefore, the Council as Planning Authority cannot decline to determine an application that has been submitted retrospectively.

PLANNING ASSESSMENT

All the works that have been carried out to re-grade the levels of the garden are contained within the rear garden of the applicant's house. Due to the positioning of the rear garden in relation to the applicant's house and to the neighbouring houses, the rear garden is not visible from the public road of Suthren Yett. Such works to level off and re-grade part of the rear garden and the erection of retaining walls are not harmful to the character and appearance of the house, the modern housing development of which it is a part, or to the character and appearance of the wider area.

The heightening of the existing eastern boundary fence would increase the height of the existing fence to some 2.55 metres at its tallest point. The heightening of the fence in the manner proposed would not harm the setting of the house or the character and

appearance of the area. By virtue of its physical form, height, and position, the heightened fencing would be appropriate to its place and well integrated into its surroundings. It would not, at either 2.1 metres or 2.55 metres in height, be so high to appear as a harmfully dominant, intrusive or incongruous feature and would not harm the setting of the house, the neighbouring house, or the character and appearance of the area. It would not be of such a height to have a harmfully overbearing effect on any neighbouring properties.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties, it is the practice of the Council, as a planning authority, to apply the general rule of a 9 metres separation distance between new development and the garden boundaries of neighbouring residential properties, and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

The altered ground levels of the applicant's rear garden allow anyone standing on the levelled off higher platform of the rear garden to look into the adjacent neighbouring garden to the east and allow limited views onto windows in the ground floor of the neighbouring house to the east. However, if the boundary fence enclosing the east boundary of the applicant's rear garden is heightened to 2.1 and 2.55 metres in accordance with the drawings, then this would be sufficient to prevent harmful overlooking of the neighbouring property to the east from the re-graded garden. Therefore, the heightened fence would mitigate overlooking from any parts of the applicant's rear garden within 9 metres of it. Therefore, provided the fences are heightened within one month of the grant of any grant of planning permission which can be made a condition of any grant of planning permission, the works to re-grade the garden would not allow for harmful overlooking of the neighbouring property to the east.

Due to the boundary treatments and ground levels of the neighbouring property to the west, the altered ground level of the applicant's rear garden does not allow for any harmful overlooking of this neighbouring residential property.

Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice by P.J. Littlefair gives guidance on the impact of a proposed development on the daylight and sunlight received by neighbouring properties.

Application of the sunlight test demonstrates that there would be a small increase in overshadowing of the rear garden of 11 Suthren Yett from the heightened fence. However, the increase in overshadowing would not be for such a length of time or for such an extent that would harmfully impact on the residential amenity of the neighbouring residential property to the east. Therefore, owing to its size, form and positioning, the proposed heightening of the existing fence would not give rise to a harmful loss of sunlight or daylight to any neighbouring residential properties.

The proposals are consistent with Policies 14 and 16 of NPF4 and Policy DP2 of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITION:

- 1 Within one month of the date of this decision notice the fence enclosing the east boundary of the rear garden shall be heightened in accordance with the details shown on the docketed drawings. Thereafter, the fencing as so approved shall be retained in situ and

maintained in that position and at that height unless otherwise approved in writing by the Planning Authority.

Reason:

To prevent harmful overlooking of the neighbouring house and garden to the east in the interests of safeguarding the privacy and amenity of that neighbouring property.