



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

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

1

Committee Members Present:

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

Other Councillors Present:

None

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Ms E Taylor, Team Manager – Planning Delivery
Mr S Robertson, Assistant Planner
Mr D Taylor, Planner
Mr C Grilli, Service Manager – Governance
Ms F Haque, Solicitor
Ms P Grey, Communications Adviser

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 2: Mr H Harper and Mr M Lindsay
Item 3: Mr S McIntosh, Ms A Adams, and Dr S Bruce
Item 4: Mr K Scott and Ms F Drysdale
Item 5: Mr J Morrice and Mr M Chapman

Apologies:

Councillor N Gilbert

Declarations of Interest:

Item 5: Keith Dingwall, due to being a friend of the objector.
Item 5: Councillor Yorkston, due to his contact with the objector in relation to this application.

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, 3 SEPTEMBER 2024

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

b. PLANNING COMMITTEE, 5 NOVEMBER 2024

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

2. UPDATE ON CONTINUED PLANNING APPLICATION NO. 23/01333/PM (ERECTION OF 103 HOUSES, EIGHT FLATS AND ASSOCIATED WORKS, LAND TO THE NORTH OF CASTLEHILL, ELPHINSTONE) AND CONTINUED 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)

This item was heard following the decision of Planning Committee on 5 November 2024 to continue planning applications 23/01333/PM and 24/00699/P to the following meeting to allow time for concerns about the Bellway housing development at Elphinstone to be investigated.

Keith Dingwall, Service Manager – Planning, provided a verbal update on the status of the two applications. He reported that a meeting had been held between Council officers, Scottish Water, and Bellway to discuss the concerns raised about the Bellway development in Elphinstone. Since this time, there had been further communication between the parties, and Mr Dingwall reported that Bellway was working with the Council to try to resolve issues. It was hoped that the applications would be reported back to the Planning Committee on the meeting of 14 January 2025. Mr Dingwall also advised that the case officer had requested that Bellway agree to extend the determination period to 15 January, but they had not yet responded; if this was not agreed, then it would be possible for Bellway to submit a non-determination appeal to Scottish ministers.

A representative of Bellway, Henry Harper, responded to questions from Committee members, and confirmed that tankers continued to transport sewage for disposal further up the site on Mondays, Wednesdays, and Fridays.

Councillor McGinn thanked those who had attended meetings about the housing development situation, and agreed that work was progressing. He advised that a residents' group still had concerns, and Councillor McGinn said he would take these concerns forward so that Bellway would be better in Elphinstone in the future. He gave reassurance that he was mindful of his role within the Planning Committee while undertaking this work. He highlighted that

communication with Elphinstone's residents must improve; although work must press on, it must do so in a manner that did not cause disruption to their lives.

Responding to a question from Councillor Cassini, Mr Dingwall explained the process followed should a developer decide to submit a non-determination appeal to the DPEA. He explained that the determination date had been extended to the day after the November meeting of the Planning Committee, but as the matter had been continued, a further extension had been sought by Ms Ritchie. Mr Dingwall noted that discussions with Bellway had been fairly positive, but he still wanted to make Committee members aware of the possibility that Bellway could submit a non-determination appeal.

Decision

Planning Committee agreed to note the verbal update.

3. PLANNING APPLICATION NO. 24/01092/P: INSTALLATION OF CCTV CAMERA (RETROSPECTIVE), EAST GATE, HUMMEL ROAD, GULLANE

A report had been submitted in relation to Planning Application No. 24/01092/P. Scott Robertson, Assistant Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Committee members. Mr Robertson advised that the camera which Committee members had been concerned about looking in the neighbours' bathroom was now facing away from the window. The camera's specification stated that it had a 140-degree range of view, so it would be impossible to look behind the wall. He confirmed that the camera specification had been submitted, including the range of view and lights.

Councillors Findlay and Hampshire asked questions about the period of time to remove the CCTV camera located above the rear access door on the south elevation of the house, which was refused by a condition of planning permission 24/00114/P. Mr Dingwall advised that a balanced judgement should be taken, and recommended that one month following the issue of the decision notice was probably the shortest period within which removal could be required.

Arlene Adams spoke to her application. She asserted that this application followed recommendations made by Committee members when they had heard application 24/00114/P; the camera in question was now a fixed camera, making it impossible to see into the neighbouring property or windows. She described further features of the camera, and pointed out that privacy would no longer be an issue or reason for refusal. She also pointed out that the unit was the same Ring camera as used by a neighbour, which had received planning permission, but pointed out that the position of her neighbour's camera allowed the camera to look into three of Ms Adams' and Mr McIntosh's windows to the rear of their property; thus, a common-sense approach had been taken and full-height window blinds had been installed for privacy. Ms Adams explained that this area of the property was vulnerable and had to be protected, particularly in light of a break in at a neighbouring property. She reported two instances of men entering the garden in the area where the camera was located while they were on holiday, under the instruction of their neighbour. She advised that her lawyer had communicated the legal position to the Council to correct her neighbour's false allegation that she had 24/7 access to the East Gate property. Ms Adams advised that the camera had unintrusive low-level LED lighting, which was not triggered by the movement of trees. She felt that the camera was also required as protection from false allegations being made by their neighbour. As they had followed the instructions from the previous meetings, she asserted that there was no reason the application should be refused.

Responding to a question from Councillor Findlay, Ms Adams reassured Committee members that the old camera would be removed as soon as an electrician could attend, and certainly within one month.

Dr Bruce spoke against the application. She discussed the impact the situation had had on her life, health, and ability to live privately, following publication in the national media of the refusal of planning permission for the camera outside her bathroom window and the applicant's subsequent refusal to remove the camera. She felt the two subsequent applications to place a camera outside her bathroom window were not materially different from the camera which was refused by condition. She pointed out that there was no guarantee of final placement, and that the Ring cameras installed could not have their viewing angles policed. She also pointed out that the cameras would be subject to upgrades, with increased floodlight capacity, audio components, and filming range. Dr Bruce stated that the proposed position was on her wall and within her legal boundary, and she had provided a digital title deed survey to prove this; thus, the camera, if approved, would only be required to be removed in the future. Dr Bruce said she could not comprehend how a camera could be approved which sat on her property's wall, even closer to her bathroom window than the existing camera, when Committee members had previously decided that no camera should be placed outside the bathroom. She reported that the room could not be used since the camera had been placed there 14 months previously. She was also concerned that she and her property had been named in the most recent applications, and said that false accusations had been made. She highlighted disputes with her neighbours which had led to police telling the applicants only to communicate through Dr Bruce's solicitor or property manager. She reported that Police Scotland had advised her to block all areas where neighbours could see inside her house, but that the applicants had placed a camera higher than those screens; she asserted that it was unreasonable for her to have to block all of her light to facilitate the cameras. She highlighted the nine objections to the camera outside the bathroom, and felt the applicants had exploited planning loopholes to keep the camera in place following refusal of planning permission for this camera. Dr Bruce advised that the applicants' false claim of unauthorised access had been redacted by the Council, as the matter in question had been a case of licensed professionals enacting her legal deed of servitude access, accessible only through the East Gate property; thus, she felt there was no justification for a camera on this basis. Dr Bruce said she could not be held responsible for anyone who may have entered the applicant's property following installation of their gate. She also disputed the applicants' statement about placement of her own CCTV cameras. Dr Bruce said she respected the right of the applicants to place CCTV cameras on their property, but pointed out that their actions had not shown respect for the decision of the Planning Committee or her own right to privacy and amenity. She maintained her objection to the camera on her wall, now even closer to her bathroom window than the camera which had still not been removed.

Councillor Findlay acknowledged that it was not the job of the Planning Committee to resolve differences between the property owners, and they could not consider to whom the wall belonged. When he had suggested refusal of the first camera, it had been because it could look into the bathroom of the neighbouring property, but, having visited the site, he felt the replacement camera satisfied the objections raised at the previous meeting. He still had concerns that the camera could be changed, but if it was changed, the neighbour could make Planning Enforcement aware. He hoped that the applicants would take less than a month to remove the first camera.

Responding to one of Councillor Findlay's points, Mr Dingwall agreed that land ownership was a private and civil matter to a degree, however, the Planning Authority had to be satisfied that declarations made on the application were correct. He advised that the case officer had viewed the title deeds and had been satisfied.

Councillor McMillan asked about the course of action should the camera be updated. Mr Dingwall noted that an existing camera could become redundant; a new camera which was

the same in every specification would not require a fresh planning application, but a materially different camera would require a new planning permission.

Councillor Allan asked about recourse to the applicant should the existing camera not be removed within one month. Mr Dingwall gave an account as to why enforcement action had not been appropriate in this instance, because a new planning application had been made for another camera in this area soon after the first permission. This had been withdrawn by the applicant to avoid being heard at Planning Committee while they were on holiday, but they had resubmitted soon after. This resubmitted application could be processed quickly and a condition could be added to require the existing camera to be removed in a timely manner; if after this time, the applicant did not comply, then a range of formal enforcement powers would be available, such as serving a breach of condition notice, but it was hoped that this would not be necessary. Mr Dingwall advised that Planning Enforcement would work with someone who had breached planning control, but prosecution could be sought as a final power available if someone failed to comply.

Councillor McLeod felt that it had been clear on the site visit that the camera had been placed on a wall which belonged to the applicant, and this had been one of the reasons he was willing to support the officer recommendation.

Following questions from Councillor Findlay about features of a possible new camera which would be considered materially different, Mr Dingwall agreed that a change in audio capacity would weigh in favour of a new planning application being required. He suggested that it would be possible to impose a second condition that planning permission be granted solely for the CCTV camera shown in the drawings docketed to this planning permission. This additional condition was proposed by Councillor Findlay and seconded by Councillor McMillan.

The Convener then moved to a roll call vote on the officer recommendation to grant consent, with the addition of the condition proposed by Councillor Findlay. Members unanimously voted in support of the officer recommendation and the additional condition.

Decision

Planning Committee members agreed to grant the application, subject to the following conditions:

- 1 Within one 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.

- 2 Planning permission is granted solely for the CCTV camera that is shown in the drawings docketed to this planning permission

Reason:

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

4. **PLANNING APPLICATION NO. 24/00632/AMM: 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, LAND TO SOUTH, EAST AND WEST WALLYFORD**

A report had been submitted in relation to Planning Application No. 24/00632/AMM. David Taylor, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Mr Taylor responded to questions from Councillors McGinn and McIntosh. Mr Taylor advised that the main surface water and drainage strategy for the wider site had been approved by the planning permission in principle, and a condition required that the arrangements for this specific site would have to tie in with the wider development. Regarding amenity space, he pointed to the community woodland, the sports pitches, and sports pavilion. He confirmed that the playparks had been approved for the wider site, but the delivery was still under discussion.

Responding to questions from Councillor McIntosh, Mr Dingwall explained that infrastructure was tied to completion of the last unit because it was not reasonable to require roads to be completely finished when construction traffic would continue to use them regularly. Councillor McIntosh asked whether the condition could be reworded so that footpaths were required to be completed earlier. Mr Dingwall said that this could be considered, and Councillor McIntosh could be included in such discussions. He noted that Road Services may not be happy for some paths and roads to be adopted at different times, but said the matter could be taken offline.

Officers responded to further questions from Councillor McLeod and the Convener. Mr Dingwall advised that a recently approved planning application would not be counted towards the 2050 houses of the planning permission in principle site; this disappointing decision from Scottish ministers had been for a separate planning permission. Mr Taylor advised that 1407 houses had so far been approved; this application would bring the number over 1500 houses, so there would still be more than 500 houses in the permission in principle site.

Councillor McGinn expressed that it would be extremely important for all services to be in place, such as connections to sewers, and wanted this question to be clarified by developers. He commented that the affordable housing was much needed in the area and would be welcomed by families.

Councillor McMillan welcomed the applications, and particularly Conditions 15-17, asking for travel information and requiring the developer to look at safe access. He hoped the developer would cooperate with the Council and pay attention to the needs of residents in terms of access to infrastructure and amenity space.

Councillor McLeod agreed with Councillor McGinn's comments regarding connection to services, following lessons learned in Elphinstone. He welcomed the mix of properties, and looked forward to the development coming forward quickly.

The Convener welcomed the application, and commented that work was moving forward quickly within the overall site. He felt the development looked to be well laid out. He noted that East Lothian's growth was putting significant pressure on the Council's budget, and said it was becoming unaffordable to allow continued development; however, he welcomed this application coming forward.

The Convener moved to a roll call vote, and Committee members unanimously voted in support of the officer recommendation to grant consent.

Decision

Planning Committee granted approval of matters specified in conditions, 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.

Sederunt: Mr Dingwall and Councillor Yorkston left the meeting.

5. PLANNING APPLICATION NO. 24/00730/P: CHANGE OF LEVELS IN REAR GARDEN, FORMATION RAISED HARDSTANDING AREA AND ERECTION OF FENCE (PART RETROSPECTIVE), 10 SUTHREN YETT, PRESTONPANS

A report had been submitted in relation to Planning Application No. 24/00730/P. Mr Robertson presented the report, highlighting the salient points. The report recommendation was to grant consent.

Responding to a question from Councillor Findlay, Mr Robertson advised that the height of the fence had been assessed against Local Development Plan Policy D2, and would not, in the view of officers, have an overbearing effect on neighbouring properties; this assessment had also taken in the extension to the applicant's house.

Jonathan Morrice spoke to his application. He explained that he had been upgrading his garden for use by his children. Following complaints from his neighbour, they had agreed to raise the fence height, and Mr Morrice had instructed his architect to apply for planning permission. He noted that heightening the fence would stop his son's ball being kicked into his neighbour's garden. He felt that issues with his neighbour had become personal, and he was keen for the matter now to be dealt with through official channels. He reported that his neighbour would not answer the door for further discussion on the matter. Mr Morrice did not wish for his neighbour to feel as though his garden was being overlooked, and thought his neighbour had wanted the fence at the proposed height.

Mark Chapman spoke against the application. He explained that he had been working when the applicant had tried to speak with him, and reported that Councillor Yorkston had advised that he did not engage with the applicant regarding this planning application. Mr Chapman gave an account of other conversations with the applicant, and said no reason had been given for the platform having been brought forward significantly. He also raised issue with the method used to measure the walls surrounding the platform, and felt the height should be measured from the lowest point immediately from the platform. He pointed out that the platform had been rebuilt with permanent materials, and thus the applicant's household could see into several of Mr Chapman's rooms. He advised that he had not been formally consulted on the solution of erecting a fence at a height of 2.5 metres, and questioned why a fence at this height was a privacy solution. He reported that two changes had already been made to the existing fence without his consent, and said that any proposed alterations would have to fall in line with his household's expectations.

Councillor McLeod spoke about a similar situation with one of his neighbours. He could sympathise with the point of view of both the applicant and objector, and agreed with the officer recommendation. He suggested that it might also have been possible to use plastic hedging for privacy.

Councillor Hampshire described what he had seen on the site visit, and felt that the fence would provide privacy for both the applicant and neighbour when the higher garden area was in use. As he found this solution acceptable, he would support the officer recommendation.

The Convener then moved to a roll call vote, and Committee members unanimously voted in support of the officer recommendation to grant consent.

Decision

Planning Committee members granted planning permission, subject to the following 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.

Signed

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Councillor Norman Hampshire
Convener of the Planning Committee

DRAFT

REPORT TO: Planning Committee

MEETING DATE: 14 January 2025

BY: Chief Planning Officer

SUBJECT: Further Report of Handling on Planning Application no. 23/01333/PM – Erection of 103 houses, eight flats and associated works and on Planning Application no. 24/00699/PM – Formation of pathway and installation of lighting, both Elphinstone, East Lothian

2 & 3

1 PURPOSE

- 1.1 At their meeting on 5 November 2024, Planning Committee considered the following two planning applications:
- a) 23/01333/PM – Erection of 103 houses, eight flats and associated works at land to the north of Castlehill, Elphinstone; and
 - b) 24/00699/PM – Formation of pathway and installation of lighting at Woodland and Amenity Grass Area to the West of Waterloo Place, Main Street, Elphinstone.
- 1.2 Both applications were submitted by Bellway Homes (Scotland East) (shortened to Bellway for the purposes of this Report). Bellway are already developing housing in Elphinstone, and the proposals would form a second phase of development.
- 1.3 Planning Committee decided that both applications should be continued to allow for further investigation of ongoing concerns relating to the first phase of the Bellway development at Elphinstone. These issues relate to sewerage works, road works, surface water runoff from the development site, and interrelated issues. In relation to planning application 24/00699/P, Committee members asked that officers investigate and report back on whether any alternative path locations had been considered by Bellway. Planning Committee members also wanted Bellway to consider how they could better communicate with Elphinstone residents.
- 1.4 This further report sets out the applicant’s response to these matters and makes recommendations to the Planning Committee.

2 RECOMMENDATIONS

2.1 It is recommended that planning permission 23/01333/PM be granted subject to:

a. The conditions set out in the Report of Handling contained in Appendix A - Report of Handling for application 23/01333/PM reported to the Planning Committee on 5 November 2024, and the following two additional conditions:

25. Prior to commencement of development of any of the residential units hereby approved details, which shall include a timetable for completion, of any temporary or permanent foul drainage systems shall be submitted to and approved by the Planning Authority in consultation with Scottish Water. Development shall thereafter be carried out in full accordance with the details and timetable so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the provision of adequate drainage for the development.

26. Prior to the commencement of development details of methods of liaison with the community shall be submitted to and approved by the Planning Authority. The submitted details shall include a timetable for implementation. Such methods of liaison will continue as approved until completion of the development hereby, approved unless otherwise approved by the Planning Authority.

Reason:

To help ensure the residential amenity of the existing community is protected during the course of development.

and

b. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:

(i) a financial contribution to the Council of £1,148,062 towards the provision of additional primary school accommodation within the catchment;

(ii) the provision of 28 affordable housing units within the application site;

(iii) a financial contribution to the Council of £69,375 towards sports and changing provision within Elphinstone;

(iv) a financial contribution to the Council of £21,848.96 for transport improvements to Old Craighall Junction, Salters Road Interchange, Bankton Interchange, Musselburgh town centre improvements, Tranent town centre improvements and rail network improvements;

and

- c. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient primary school capacity within the catchment, a lack of provision of affordable housing, a lack of sports infrastructure improvements and a lack of roads and transport infrastructure contrary to, as applicable, Policy 18 of NPF4, Policies DEL1, HOU3, HOU4 and Proposals T9, T10, T11, T15, T17, T21, T27, T28, ED4,CF1 and TT11 of the adopted East Lothian Local Development Plan 2018 and its adopted supplementary guidance: Developer Contributions Framework.

As per the Adopted Supplementary Guidance: Developer Contributions Framework, all Strategic Transportation and Sports Provision Contributions will be increased in line with indexation from Q1 2019 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment and the primary school education contribution will be increased from Q4 2023 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment.

- 2.2 It is also recommended that planning permission 24/00699/P be granted subject to the conditions set out in the Report of Handling contained in Appendix B - Report of Handling Report of Handling for application 24/00699/P reported to the Planning Committee on 5 November 2024.

3 BACKGROUND

- 3.1 Reports were submitted to the Planning Committee on 5 November 2024 recommending that planning permission be granted for the developments proposed in planning applications 23/01333/PM and 24/00699/P, subject to conditions and, in the case of planning application 23/01333/PM the prior conclusion of a legal agreement. These applications relate to proposed housing site TT11 (Elphinstone West), which is allocated for residential development by the adopted East Lothian Local Development Plan 2018. Part of the allocated site is currently being developed for 90 residential units and associated works, those works having been granted planning permission (Ref: 21/01608/PM) in 2022. The approved development is well underway on site, with a number of residential units now occupied. The development is being carried out by Bellway Homes Ltd. who are the applicants for these current applications.

- 3.2 At their meeting on 5 November 2024, Councillor McGinn raised a motion that Planning Committee defer making a decision on planning applications 23/01333/PM and 24/00699/P to allow time for concerns associated with current development taking place on the site, to be investigated and a report on these issues being brought back to the Planning Committee for consideration. The motion to continue the two applications was unanimously supported by Planning Committee.
- 3.3 The issues which Members wanted investigated are summarised below and are discussed in more detail in the following sections of this report:

Relating to the housing site and the development currently underway:

- * Surface Water runoff from development site and interrelated issues:
 - Major flooding last year at Tranent Road, where water overtopped from the site and flooded property;
 - Other potential flooding from the SUDS basin and the temporary retention basins on the site, and potential water seepage out of the site to properties in Waterloo Place, specifically from the retention basins currently on site; and
 - Road flooding last year at Buxley Road and Cinderhall Place – potentially water displacement from the new build
- * Sewerage works and associated Road Works:
 - Mains sewage works connection/drainage outfall and Bellway being unable to secure that connection to date, general sewage management and transportation issues including noise from tankers and how these issues can be resolved;
 - Unbearable stench of sewage at the top end of the village reported to Councillor McGinn on Monday 4th November; and
 - Road works on Elphinstone Main Street and the holes that were dug 4 or 5 months ago to try to resolve the mains connection issues – the major build has now been backfilled, holes filled in without a solution being met – that’s a temporary measure that will have to be re-visited by Bellway.

Relating to the proposal to form a path contained in application 24/0699/P:

- * Explain if other options have been investigated and if so why they have been discounted or why they won’t work.

General:

- * How a communication plan can be put in place by Bellway so that residents can get their concerns addressed, for example by Bellway setting up a dedicated community liaison person.

- 3.4 Following the Planning Committee's decision to continue the applications, officers of the Council's Planning Service met with the applicant to outline the issues that the Planning Committee raised. A meeting was then held on 13 November 2024, which was attended by a number of Bellway employees, their consultants, members of the Scottish Water Development Operations team and officers of the Council's Planning, Building Standards, Road Services, Protective Services, and Flooding and Structures Services. Attendees discussed these issues in more detail and a further meeting with Bellway representatives was held on 22 November.
- 3.5 The applicant (Bellway) then prepared a Report on Issues which seeks to address the concerns raised by the Council's Planning Committee. That Report on Issues has since been revised and the latest version 'Applicant's Report on Issues Version 2' is contained within Appendix C of this Report. In their Report on Issues, the applicant states:
- "Bellway Homes is committed to working closely with East Lothian Council to resolve the identified issues before the applications are reconsidered by the Planning Committee. As such, this report outlines the concerns raised by Elected Members and key stakeholders, explains how Bellway Homes plans to address these issues, and provides a timeline for their resolution."
- 3.6 The remainder of this report considers the detailed issues summarised in paragraph 3.3 above.

Surface Water runoff from development site and interrelated issues

- 3.7 At the Planning Committee meeting of 5 November 2024, Councillor McGinn set out a number of flooding and surface water management issues which have caused concern and disruption within the community since development commenced on the site in 2022. These issues include flooding to Tranent Road, issues with water management on the site and potential impacts to neighbouring properties, and road flooding at Buxley Road and Cinderhall Place.
- 3.8 The **Council's Team Manager – Flooding & Structures Infrastructure** has confirmed that road flooding has taken place on Buxley Road/Cinderhall Place due to water in the cundy/surface water system on Buxley Road backing up in a manhole and going down some minor pipework, popping up at a BT manhole and out onto Cinderhall Place. He advises that there has been flooding to the road and some garden flooding as a result of this, but no flooding to buildings. He does not advise that this has been specifically related to the development taking place, and Bellway state that, to date, there has been no evidence to suggest that their works have contributed to this flooding issue. They state that CCTV inspections of the existing drainage system indicate that it is generally in poor condition. They add that should it be determined at a later date that any such flooding is being caused by the development, they are committed to working closely with the **Council's Flooding Team** to resolve the issue.

- 3.9 In response to flooding issues on Tranent Road, Bellway state in their report that in late 2022, they experienced prolonged heavy rainfall over a 48-hour period, which caused the surface water catchment lagoon and small bunds they had constructed on their site to fail, flooding properties on Tranent Road. Bellway state that upon being notified of this issue, they took immediate action by arranging for tankers to remove the excess surface water and that they worked closely with local residents to minimise property damage. The Council's Team Manager – Flooding & Structures Infrastructure concurs that runoff from the development site overtopped the site onto Tranent Road causing flooding to property in late 2022/early 2023. He also advises that there have been issues with Tranent Road gully flooding caused by a cundy which comes from the site, which Council drains connect into. He advises that when it is full, the Council's drains back up, however, this is likely to be less of an issue going forward once the permanent surface water management measures are completed on the development site and less water will be entering the cundy.
- 3.10 Bellway state that in response to the flooding which took place to properties in Tranent Road, they implemented improvements to the site's surface water management, including forming temporary water retention lagoons on their site and installing emergency pumps, to prevent a recurrence taking place. They state, to date, they are unaware of any further flooding issues. On 16 December 2024, Bellway confirmed to the Planning Service that the surface water outfall for the development is now complete and connected to the Scottish Water network, which means the SUDS basin is now connected to the Scottish Water network. The SUDS basin is designed to effectively manage storm events and therefore now that it is connected to Scottish Water's network, the temporary water retention lagoons located to the northeast of the development site will be redundant and can be drained and backfilled. Bellway also confirmed on 16 December 2024 that work started on that date on the temporary water retention lagoons being drained and backfilled.
- 3.11 These temporary water retention lagoons have, as Councillor McGinn pointed out at the Planning Committee of 5 November 2024, caused concern to neighbouring residents who have expressed a view that they have caused waterlogging in their gardens and surrounding land. Bellway maintain that any waterlogging of garden areas at Waterloo Place in late 2023 and early 2024 was not caused by any failure in the surface water management on the development site, which they consider is robust. They state that this has been verified through porosity testing of the ground on the site, which confirms that the soil along the eastern boundary is clay, making it unsuitable for ground seepage, and have added their porosity testing and trial pits results within their Report on Issues, Version 2. Nevertheless, Bellway state that they hope the removal of these temporary settlement lagoons will help alleviate the concerns of the residents of Waterloo Place.
- 3.12 The Council's Team Manager – Flooding & Structures Infrastructure confirms that although he has found no evidence that the temporary retention basins have caused waterlogging of the gardens of Waterloo

Place, any potential occurrences of such waterlogging should be mitigated when the permanent connection to the Scottish Water network is made and the settlement basins removed. Furthermore, the surface water management proposals forming part of planning application 23/01333/PM include the formation of a swale within the landscaped area to be formed on the northeast side of the site, which would connect into the already approved SUDS basin on this eastern side of the development site. The Council's Team Manager – Flooding & Structures Infrastructure is supportive of this additional surface water management measure. Bellway have advised they intend to form this feature at an early stage of the development if planning permission is granted for application 23/01333/PM, unless any need arises for a temporary swale to be formed to manage the surface water on the site prior to a grant of planning permission, in which case they would form a temporary swale which would be permitted development, and, as such, would not require a planning application to be submitted for it.

- 3.13 Surface water management and drainage details for the proposed development the subject of current planning application (23/01333/PM) have been submitted as part of that application, and those details have been revised during the course of the application following consultation with the Council's Team Manager – Flooding & Structures Infrastructure. The revisions include a Drainage Assessment and Strategy Report being submitted, proposals for surface water management during the construction phase of the proposed development, details of a swale to be formed within the proposed landscaped edge at the eastern end of the site, and revisions to allow for wider drainage pipes.
- 3.14 The Council's Team Manager – Flooding & Structures Infrastructure confirms that he is satisfied with the proposals on flood risk and drainage matters provided in the revised details that have been submitted. He therefore raises no objections to the proposals on flood risk grounds. He advises that it would be prudent for a condition to be imposed on any grant of planning permission to ensure that fuller, detailed surface water management proposals are included within a Construction Management Plan to be submitted prior to the commencement of development on the site for the consideration and approval of the Planning Authority. Such a condition (recommended condition no. 7) is recommended in the original Report on Handling for planning application 23/01333/PM (Appendix A). Subject to that condition being imposed, the Council's Team Manager – Flooding & Structures Infrastructure is satisfied that the applicant is taking appropriate measures to manage surface water on the site.

Sewerage Works and Associated Road Works

- 3.15 At Planning Committee on 5 November 2024, Councillor McGinn highlighted local concerns regarding Bellway's issues connecting to the public sewer network and the impact that lack of connection to the network has had on the community in relation to ongoing road works, odour issues, and noise nuisance; some of this is due to the use of tankers to deal with sewage disposal for the houses that have been occupied on the part of the

site currently being developed, and which are not yet fully connected to the public sewer network.

- 3.16 In their Report on Issues, Bellway set out the background to the issues they have encountered with connecting to the public sewer network. They advise that in July 2024, the road at Main Street was excavated to commence the installation of the foul and surface water sewers by directional drilling. The works were, at that time, projected to take seven weeks to complete. Bellway advise in their report that the driving of the surface water sewer was successful (and have since confirmed that work is now completed and fully connected between the surface water sewer and the SUDS network in the development site). However, in relation to the foul sewer connection, they explain that upon commencing work on the foul sewer, their contractor encountered technical difficulties with the rig and camera equipment, necessitating the ordering of a new drill head from Europe. Once these issues were resolved, they then encountered unforeseen challenges with hard rock near the excavation pit by the school. Attempts to drive from the opposite pit led to the discovery of soft material, which prevented the contractor from maintaining the required drive position.
- 3.17 Road closures had to be extended due to the delay in completing these works. The **Council's Road Services** advised Bellway that a further extension to the Temporary Traffic Regulation Order (TTRO) in place would be granted up to and including 2 November 2024, subject to conditions being met, which included providing an alternative plan should Bellway fail to complete the work by the extension date of 2 November. Bellway were advised that a Remembrance Day parade was scheduled for 10 November 2024. As a result, a decision was made to temporarily halt the works without completing the connection, allowing the road to be reopened in time for the Remembrance Day parade in the village, and the decision made that the remaining works would be carried out at a later date. Bellway estimate that these remaining works to connect to the public foul sewer connection will take six weeks to complete.
- 3.18 The Council's Road Services, at the meeting held on 13 November 2024, advised Bellway that a road closure of four weeks or longer during the school term would cause significant inconvenience to travel to the primary school, including deliveries of school meals. Consequently, Bellway considered their only viable option would be to propose completion of the foul sewer connection work during the school summer holidays in July and August 2025, when a road closure can again take place.
- 3.19 However, in the further meeting that was held on 22 November 2024, Councillor McGinn advised Bellway that community representation made to him expressed a preference for the prompt resumption and completion of the sewer installation, in order to bring an end to the ongoing tanker visits as soon as possible. It was agreed that Bellway would develop a proposal outlining the traffic management plan, programme of works, and other relevant details that would be shared with the Council's Roads Service to assess the feasibility of a further road closure during term time,

in order to expedite the completion of the works. Bellway have now submitted proposals to the Council's Road Service to undertake a series of trial pits within the public road to establish the ground conditions prior to applying for a road closure. The Council's Road Services advise that this work on trial pits is scheduled to commence on 9 February for two weeks, which partially ties in with the school holiday period. Road Services advise a road closure is not required for this work, as it is feasible to work within temporary traffic signals. Following the ground investigation works and assessment of the data collected, Bellway will then be able to finalise strategy and timescales for installing the foul outfall. The Council's Road Services advise, subject to suitable outcome of the investigatory work, it may be possible to recommence the drilling work in April to coincide with the school Easter holidays (Friday 4th – Monday 21st April). They advise this will allow the set-up of a road closure over the same extent as was previously in place at the later end of the previous work, and the duration of the work would be agreed with the Council's Road Services prior to the start date of the works.

- 3.20 In the meantime, and in order to be able to cease using tankers for foul water disposal until a permanent connection to the public sewer is made, Bellway are proposing to install a temporary pumping station on the site of their current development, and details of this proposal are contained within their Report on Issues, Version 2. Bellway advise the temporary pumping station has been designed to comply with the relevant Scottish Water specifications, including the required distances from existing boundaries to the wet well, as well as to the emergency storage in the event of an electrical failure. Bellway confirm that they submitted this design, along with the pump volume rates to Scottish Water on 14 November 2024, to seek to confirm to them that the local network will not be subjected to any additional pressure. Bellway have since provided to the Planning Service the written response they received from Scottish Water on 27 November 2024. This response confirms that Scottish Water have no objections to the proposed temporary pumping station.
- 3.21 The Council's Planning Service have advised Bellway that the temporary pumping station detailed in their Report on Issues Version 2 is development which is permitted under the provisions of Class 14 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, and as such a planning application is not required for it.
- 3.22 Bellway have confirmed that the temporary pumping station is expected to be operational by the end of January 2025 and that it will remain in operation until a permanent foul connection has been made, at which point the temporary pumping station and any associated equipment will be decommissioned and removed from the site.
- 3.23 The **Council's Protective Services** advise that, in their assessment of similar temporary pumping stations which have been operational in similar situations throughout East Lothian, they have not encountered harmful noise impacts and they therefore consider there should be no significant

impacts upon residential amenity due to noise arising from the normal operation of the proposed temporary pumping station provided the pumps are maintained in good working order.

- 3.24 In terms of odour impacts arising from the normal operation of the temporary pumping station and associated sewage infrastructure on the development site, the Council's Protective Services advise there should be no significant impacts on residential amenity if the temporary pumping station is managed well in terms of monitoring, identifying, and addressing any pump failures timeously. The Council's Protective Services advise the effectiveness of the pumping station could be impacted if residents on the development place inappropriate materials into the drainage network which could result in the pumps becoming choked with rag waste and fail. If this occurs, then foul waste will back up and residents will encounter issues with waste backing up and failing to drain effectively. In such circumstances, collection chambers could also overflow and impact upon existing neighbours of the development. Furthermore, if waste then becomes septic, then foul odours can become an issue for both residents on the site and the wider community if the septic waste then vents via manholes on the main road. The Council's Protective Services advise that Bellway will need to ensure there is an adequate and effective system in place to monitor, identify and address any pump failures timeously, and in response, Bellway have confirmed to the Planning Service that there will be a telemetry system within the pump to notify if the pumps seize or fail. If necessary, a vactor unit will be used to unclog the pumps if this occurs, and for general maintenance when required.
- 3.25 In their consultation response on planning application 21/01608/PM, Scottish Water did not raise any objections to that proposed housing development, noting that it is the responsibility of the developer to make separate application to Scottish Water for permission to connect to the public waste water and water networks, and therefore this is not a matter that is typically controlled by the Planning Authority in the use of conditions on a grant of planning permission. Scottish Water were again consulted on current planning application 23/01333/PM, and again they have raised no objection and have provided comments relevant to servicing the proposed development which have been forwarded to the applicant for their information. Notwithstanding that it is the responsibility of the developer to make separate application to Scottish Water for permission to connect to the public waste water and water networks, and to ensure such connection is made in accordance with any relevant legislation, in the particular circumstances of this case where connection to the public waste water and water networks has proven difficult to achieve – resulting in houses being occupied without a full connection to the public system having been made and the associated impact that tanker visits to the site have had on residents – it would be prudent to ensure that such a situation does not occur again in the case of the current application (23/01333/PM) for further residential development on the site. It is therefore recommended to the Planning Committee, as a further recommendation to the conditions already recommended in the original Report of Handling, that a further condition be imposed to ensure that:

Prior to the commencement of development of any of the residential units the subject of planning application 23/01333/PM, details of any temporary or permanent foul drainage system will be submitted to and approved by the Planning Authority, following consultation with Scottish Water, and any scheme approved shall be installed in accordance with that approval prior to the occupation of any of the residential units the subject of the application.

Odour and Noise Issues

- 3.26 Councillor McGinn also advised Planning Committee on 5 November 2024 that he had received phone calls from residents the day before the Planning Committee meeting reporting a stench of sewage in the village. In response to this comment, Bellway advised that they carried out a CCTV inspection of the existing Scottish Water sewer on Main Street on 11 November 2024, and this identified two blockages near to the primary school. These blockages nearly obstructed the entire pipe, causing effluent to remain stagnant within the system whilst gradually dissipating, and this is likely to have contributed to the odour issues. In response, Bellway instructed a contractor to carry out jetting and cleaning of this section of the sewer network to clear the blockages. Bellway confirm that this was carried out on 14 November, and it is expected that this will effectively resolve the odour issue reported to Councillor McGinn.
- 3.27 Bellway advise that although tanker visits to the site will cease once their temporary pumping station is installed and operational, in order to minimise noise impacts on existing residents, in the meantime they have installed mobile acoustic barriers around the area where the tanker accesses the sewer. The location and specifications for these temporary acoustic barriers are detailed on a plan contained within Bellway's Report on Issues Version 2.
- 3.28 The Council's Protective Services advise they welcome any efforts by Bellway to minimise any disturbance from the tanker operations. They advise the proposed barriers will provide some attenuation to noise but will not eliminate this completely, so some impact upon amenity will remain as long as tanker operations continue. However, the Council's Protective Services advise that as tanker operations are anticipated to cease upon commissioning of the pumping station, they are satisfied that impacts upon amenity in the meantime are acceptable, but would caution that if commissioning of the pumping station and cessation of tanker operations is not carried out timeously, then a statutory nuisance due to noise associated with tanker operations could occur.

Path Proposal

- 3.29 In relation to planning application 24/00699/P, Councillor McGinn asked that further information be provided on whether any other options for offsite paths had been looked at and, if they had, why they had been discounted.
- 3.30 In response to this, Bellway state in their Report on Issues that they investigated the delivery of an offsite active route through the farmland to the north of the development site, linking to the B6414 to Tranent, in line with point 7 of the Council's adopted development brief associated with

this site. They also investigated an alternative footpath to the one proposed in planning application 24/00699/P, to connect the residential development site to MacFarlane Court, to the south of Waterloo Place, instead of through Waterloo Place.

- 3.31 On the potential delivery of an offsite active travel route through the farmland to the north of the development site, Bellway advise they made two visits to that landowner's property to discuss the possibility of entering into an agreement to form a path to link the development proposed through planning application 23/01333/PM to the B6414, and followed these visits up with an email sent to the landowner on 11 October 2024 requesting a written response from him. Although Bellway didn't receive a written response from the landowner, they advise that the landowner verbally confirmed their unwillingness to form an active travel route through their field for the reasons that this field is sprayed periodically with pesticides and farm machinery operates in it, both of which could cause interference with the general public. The Planning Service have separately emailed the landowner and have requested a written response, but at the time of writing of this further report no response has been received to the Planning Service's email.
- 3.32 On the potential to form a path link from the site of planning application 23/01333/PM to MacFarlane Court instead of Waterloo Place, Bellway state they ruled this option out early in the design process due to the significant number of mature trees that would need to be removed to make way for a path. Bellway state that another reason they did not pursue a proposal to form a path link from their site to MacFarlane Court was because such a route is not included within the development brief for the site and discussions with Council officials during the planning process emphasised the importance of aligning with the brief and minimising the environmental impact on the woodland. Furthermore, Bellway add the homes at MacFarlane Court are situated closer to the existing adopted footpath, whereas properties at Waterloo Place have front gardens providing greater separation from the proposed path.
- 3.33 For the reasons outlined above, Bellway advise they instead pursued a proposal to connect their proposed residential development to Waterloo Place, as this follows the route detailed in the Council's adopted development brief and mitigates potential impacts on residents' privacy and road safety, while also minimising disturbance to the surrounding woodland and its biodiversity. This route has been designed to be three metres wide, hard surfaced, lit narrowing to meet the existing two metres footpath at Waterloo Place, and has been designed to minimise tree removal.
- 3.34 The **Council's Policy and Projects Principal Planner** has advised the Council's development brief for Elphinstone was prepared with input from NatureScot, particularly in connection with: landscaping around sites and therefore their visual impact in the wider landscape; paths and connectivity around sites and; the planning of green spaces within sites and how these could link with green networks in the immediate area. The Principal

Planner advises when Elphinstone was visited, it was clear that there were desired lines around the allocated site of TT11 from people using paths. In particular, there was a north south walking route through the woodland strip to the east of the site which was accessed from the war memorial area to the south, and linked to the northern edge of the site. He advises it is a longstanding planning objective (connectivity) that new housing developments should be integrated with existing communities by way of path links, allowing new residents to achieve safe connections to existing commercial and community facilities and existing residents to also be able to access the new housing areas and share its open spaces and facilities. He advises that this required a connection to the east to the rest of the village from the woodland path, and links across the field to the north and through to Waterloo Place were proposed. He advises a link was proposed to Waterloo Place to tie in with existing green space and path, and to minimise tree loss. He advises a link to MacFarlane Court would have meant more tree loss across a wider section of woodland.

Communication

3.35 In their Report on Issues Version 2, Bellway acknowledge the importance of providing a consistent point of contact for the Elphinstone community during works. To ensure this, they advise they have appointed a dedicated Community Liaison Officer within their division, who will handle all queries and direct them to the appropriate team members for response, and they have set up a dedicated email address which residents can contact them on. They advise this has already been used by several residents. Bellway advise they are aware that Councillors have raised concerns regarding delays in responses, and state they are taking steps to improve this. They advise that they plan to distribute a newsletter to the residents of Elphinstone, providing an update on the progress of their works, outlining the anticipated timescales for upcoming activities (such as the resumption of drainage works on Main Street), and introducing their Community Liaison Officer. Bellway advise their newsletter will be issued quarterly, or more frequently as needed, via Royal Mail, and that they will issue a digital copy of any correspondence to the Tranent & Elphinstone Community Council and the local Councillors to ensure all key members of the community remain informed of works that may impact them. Bellway have also confirmed a commitment to joining a working group with key community members in Elphinstone to foster open communication throughout the duration of the works. On this latter point, Members should note that a meeting of the working group, including a representative from Bellway, was held in December 2024.

3.36 In order to ensure that such proposed community liaison activity takes place, it is recommended to Planning Committee, as a further recommended condition to those conditions already recommended in the original Report on Handling on planning application 23/01333/PM, that a further condition be imposed to ensure that:

Prior to the commencement of development methods of liaison with the community will be submitted to and approved by the Planning Authority and such methods of liaison will continue as approved unless otherwise approved by the Planning Authority.

Conclusion

- 3.37 This Further Report sets out the applicant's response to concerns raised at the Planning Committee meeting of 5 November 2024 and, where relevant, proposed solutions to the issues raised along with comments from relevant Council Services. There have been no objections raised from the relevant Council Services to the measures proposed in the applicant's Report on Issues.

4 POLICY IMPLICATIONS

- 4.1 None.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None.
6.2 Personnel – None.
6.3 Other – None.

7 BACKGROUND PAPERS

- 7.1 None.

Appendices:

Appendix A – Report of Handling for application 23/01333/PM reported to the Planning Committee on 5 November 2024

Appendix B – Report of Handling for application 24/00699/P reported to the Planning Committee on 5 November 2024

Appendix C – The applicant's Report on Issues, Version 2, for 24/01333/PM and 24/00699/P, dated November 2024

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DATE	24 December 2024



REPORT TO: Planning Committee
MEETING DATE: 5 November 2024
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

Application No. **23/01333/PM**
 Proposal Erection of 103 houses, eight flats and associated works
 Location **Land to the North of Castlehill
 Elphinstone
 East Lothian**

Applicant The Technical Department Bellway Homes Scotland East

RECOMMENDATION Consent Granted

REPORT OF HANDLING

BACKGROUND

As the area of the application site is greater than 2 hectares and also the proposal is for more than 49 residential units, the development proposed in this application is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, defined as a major development and thus it cannot be decided through the Council's Scheme of Delegation. The application is therefore brought before the Planning Committee for a decision.

As a statutory requirement for major development proposals the residential development of this site was the subject of a Proposal of Application Notice (Ref: 23/00005//PAN) and thus of community consultation prior to this application for planning permission being made to the Council.

As an outcome of that and as a statutory requirement for dealing with major development type applications a pre-application consultation (PAC) report is submitted with this application. The report advises that two public consultation events were held, the first in Elphinstone Community Centre on 7 June 2023 and the second in the Elphinstone Miners Welfare Club on 6 July 2023. A consultation website was also set up and was available for viewing and providing feedback for a total of seven weeks between 7 June and 28 July 2023. The PAC report informs that it is estimated that some 15 people attended the first public consultation event, with the same amount (15) attending the second event. For the first public consultation event, a total of 12 responses were received. Four were submitted

online via the project website, with eight hand-written feedback forms returned in-person at the first event. For the second public consultation event a total of eight responses were received, six submitted online via the project website, and two hand-written feedback forms. The PAC report also informs that some 80 people viewed the website during the seven weeks, 56 of whom visited when the initial consultation material was displayed, with 24 users visiting when the updated material (shown at the second consultation event) was displayed.

The PAC report advises that overall, the majority of respondents to the public consultation process expressed a general lack of support for the proposed development although some positive feedback was received – particularly regarding the affordable housing being provided as part of the development, the design of the proposed houses and the proposed open space. Concerns raised generally related to pressures on existing local amenities / infrastructure as a result of additional housing and residents, the height of the proposed houses, loss of agricultural land and greenbelt land, as well as concerns over pathways being formed over private land between the proposed development and Waterloo Place.

The PAC report outlines amendments which were made to the proposals as a result of comments received in community consultation including setting built development back from the eastern boundary of the site and removing a path link shown across private land linking with Waterloo Place.

Notwithstanding these amendments, the development for which planning permission is now sought is of the same character as that which was the subject of the community engagement undertaken through the statutory pre-application consultation.

APPLICATION SITE

The application relates to some 10 hectares of former farmland, the southern part of which is currently being developed as a housing development, located immediately to the west of the village of Elphinstone. It is bounded to the north by farmland, to the east by a woodland strip which currently forms the western edge of the village of Elphinstone and beyond that by the residential properties along the western side of Elphinstone. It is bounded to the south partly by a small public park and by the residential properties of Lynhaven and Marchwood Court and partly by the B6414 classified public road of Main Street beyond which lies Elphinstone Primary School and Community Centre, residential properties and an equestrian paddock. It is bounded to the west by a track which is designated a core path (route no. 458) and as a Right of Way (Elphinstone west end to Fa'side) and beyond that by the Elphinstone Football Ground, the residential property of Towerhill and further farmland.

The topography of the site is gently undulating and generally slopes uphill from the southeast to the north and northwest. The land continues to rise uphill to the north of the site. The site is most visible in the main approaches to Elphinstone from the west and the north and from the North Elphinstone to Fa'side Right of Way (Core Path 163) to the north of the site.

The western part of the site is within an area identified by The Coal Authority as being a Coal Mining Development High Risk Area. The eastern part of the site is within an area identified by The Coal Authority as being a Coal Mining Development Low Risk Area. The land of the application site is also within a wider area defined by the Macaulay Capability for Agriculture (LCA) classification system as being prime agricultural land.

The application site is allocated for housing development by Proposal TT11 (Elphinstone West) of the adopted East Lothian Local Development Plan 2018 (ELLDP).

RELEVANT PLANNING HISTORY

On 15 April 2021, following the conclusion of a Section 75 Agreement, detailed planning permission (reference 16/00970/PM) was granted for the erection on the southern part of this same application site of 76 houses, four flats and associated works. That development was never implemented.

On 5 May 2023, following the conclusion of a Section 75 Agreement, detailed planning permission (reference 21/01608/PM) was granted for the erection of 86 houses and four flats as an alternative development to the one promoted through planning application 16/00970/PM, and one resulting in a total of 90 residential units rather than the 80 residential units granted by the grant of planning permission 16/00970/PM. The development approved by planning permission 21/01608/PM is well underway on site with a number of residential units now occupied. The development is being carried out by Bellway Homes Ltd. who are the applicants for this current application.

A separate planning application (reference 24/00699/P) has been submitted by Bellway Homes Ltd. for the formation of a footpath connection from the site of this current application, through the woodland strip and an area of grassed amenity space immediately to the east of the site of this current application and connecting into the existing residential cul-de-sac of Waterloo Place. That planning application is being considered separately from the application the subject of this report.

PROPOSAL

Planning permission is now sought through this current application for the erection on the northernmost part of the application site of 103 houses, eight flats and associated works. The associated works include planting of woodland strips, the provision of open space and the provision of equipped play space within the site. The proposals all relate to the northern half of the site (an area of some 5.3 hectares). The southern half of the site is the land being developed for the erection of the 86 houses and four flats approved under planning permission 21/01608/PM.

Since the registration of the application, a number of non-material amendments have been made to the proposals resulting in the submission of revised site layout and landscaping plans, road and footpath layouts and amendments to house types and designs. These revisions include changes to the road layout to reduce the amount of access roads requiring to be formed, an increase in the amount of open space proposed within the site, the introduction of a proposed equipped play area, revisions to the layout and orientation of house plots, revisions to house types proposed resulting in a decrease in the number of detached units being proposed; changes to boundary treatments, revisions to landscaping and drainage and flood prevention measures and details of air source heat pumps proposed.

The proposed development site layout plan shows how the proposed 103 houses and eight flats would be accommodated on the site along with associated access roads, parking areas, landscaping, open space, paths and equipped play provision. The houses would comprise of a mix of 39 detached, 20 semi-detached and 44 terraced houses. The houses would all be two-storey. The eight flats would be 'cottage style' flats consisting of four flats each within two, two-storey flatted buildings.

In terms of size, of the proposed 103 houses 36 would contain four bedrooms, 59 would contain three bedrooms and eight would contain two bedrooms. All of the four flats would contain two bedrooms.

Two of the semi-detached houses, 18 of the terraced houses, and the eight flats would be affordable housing units. The remaining 83 houses would be private houses for sale. The private houses would comprise of ten different house types. All of the house types proposed would be a similar, or the same design, as those currently being developed on the southern half of the overall site.

Vehicular, pedestrian and cycle access to the 111 dwellings would be formed as a continuation of the roads and paths on the southern part of the site which is currently being developed. No additional vehicular accesses to existing public roads outwith the overall site would be formed. Additional pedestrian and cycle accesses would be formed to connect the site to the land to the east and the west of it. The access road serving the 111 dwellings would form a loop around the residential properties which would connect into the access roads serving the southern half of the site. Residential properties would be located around the outer and inner sides of the loop road and would abut the residential properties of the southern half of the site and the northern, western and eastern edges of the site would be developed as open space, woodland strips and as a recreational pathway. Smaller areas of open space would be formed between residential properties including a long narrow strip running south to north in roughly the centre of the site to create an open vista to the north and an area towards the western end of the site which would include an equipped play trail. Footpaths would be formed throughout the site and these would connect to the core path at the western boundary of the site and to the existing woodland strip to the east of the site as well as forming a looped recreational path around the northern part of the site and linking into the footpath provision on the southern part of the site which in turn leads to Main Street.

The application is also supported by a number of detailed drawings and reports including a Planning Statement and Statement of Community Benefit, a Design and Access Statement, a Tree Survey and Arboricultural Impact Assessment, a Transport Assessment, a Noise Assessment, an Archaeological Report and Site Investigation Reports, some of which have been updated or revised since registration of the application. Further reports submitted since the registration of the application include Ecology, Biodiversity Enhancement and Bat Reports, an Energy Statement, a Plant Schedule Specification and Maintenance Plan, a Woodland Tree Survey, Drainage Reports, and a Mineshaft Investigation Report.

ENVIRONMENTAL IMPACT ASSESSMENT

Under the provisions of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 the proposed development falls within the category of a Schedule 2 Development, being one that may require the submission of an Environmental Impact Assessment (EIA). Schedule 3 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 sets out the selection criteria for screening whether a Schedule 2 development requires an EIA. On 14 September 2023, the Council issued a formal screening opinion to the applicant with the conclusion that the proposed development is not likely to have a significant effect on the environment such that consideration of environmental information is required before any grant of planning permission and therefore it is the opinion of East Lothian Council as Planning Authority that there is no requirement for the development the subject of this application to be the subject of an EIA.

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 (ELLDP) 2018 together with its adopted supplementary guidance.

Relevant NPF4 Policies are Policies 1 (Tackling the climate and nature crisis), 2 (Climate Mitigation and adaptation), 3 (Biodiversity), 4 (Natural places), 5 (Soils), 6 (Forestry, woodland and trees), 7 (Historic Assets and Places), 9 (Brownfield, vacant and derelict land and empty buildings), 12 (Zero waste), 13 (Sustainable Transport), 14 (Design, quality and place), 15 (Local living and 20 minute neighbourhoods), 16 (Quality Homes), 18 (Infrastructure First), 20 (Blue and green infrastructure), 21 (Play, recreation and sport), 22 (Flood Risk and Water Management), 24 (Digital infrastructure) and 31 (Culture and creativity).

Relevant ELLDP Proposals are PROP TT11: Elphinstone West, PROP T9: Safeguarding of Land for Station Car Parks – Musselburgh, Longniddry, Drem, PROP T10: Safeguarding of Land for Platform lengthening – Musselburgh, Prestonpans, Longniddry, Drem and Dunbar, PROP T15: Old Craighall Junction Improvements, PROP T17: A1 Interchange Improvements (Salters Road, Dolphinstone Interchange, Bankton Interchange and Gladsmuir), PROP T21: Musselburgh Urban Traffic Control System, PROP T27: Tranent Town Centre One-Way System, PROP T28: Junction Improvements at Elphinstone Road and Edinburgh Road, PROP CF1: Provision of New Sports Pitches and Changing Accommodation and PROP ED4: Tranent Cluster Education Proposals,

Relevant ELLDP Policies are DP1: Landscape Character, DP2: Design, DP3: Housing Density, DP4: Major Development Sites, DP8: Design Standards for New Housing Areas, DP9: Development Briefs, HOU3: Affordable Housing Quota, HOU4: Affordable Housing Tenure Mix, OS3: Minimum Open Space Standard for New General Needs Housing Development, OS4: Play Space Provision in New General Needs Housing Development, CH4: Scheduled Monuments and Archaeological Sites, RCA1: Residential Character and Amenity, DCN2: Provision for Broadband Connectivity in New Development, W3: Waste Separation and Collection, NH5: Biodiversity and Geodiversity Interests, including Nationally Protected Species, NH7: Protecting Soils, NH8: Trees and Development, NH10: Sustainable Drainage Systems, NH11: Flood Risk, NH12: Air Quality, NH13: Noise, T1: Development Location and Accessibility, T2: General Traffic Impacts, T4: Active Travel Routes and Core Paths as part of the Green Network Strategy, T31: Electric Car & Bus Charging Points, T32: Transport Infrastructure Delivery Fund, SEH1: Sustainable Energy and Heat, SEH2: Low and Zero Carbon Generating Technologies and DEL1: Infrastructure and Facilities Provision.

Further material considerations are Scottish Government Policy Statement: Designing Streets and Planning Advice Note 67: Housing Quality. They provide an overview of creating places, with street design as a key consideration. They advise on the detail of how to approach the creation of well-designed streets and describe the processes which should be followed in order to achieve the best outcomes. Planning Advice Note 67 explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area. The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality

of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials. The development should reflect its setting, reflecting local forms of building and materials. The aim should be to have houses looking different without detracting from any sense of unity and coherence for the development or the wider neighbourhood.

Also material is East Lothian Council's approved Developer Contributions Framework Supplementary Guidance (SG) and the approved Supplementary Planning Guidance (SPG) on:

- (i) 'Design Standards for New Housing Areas'. The SPG expands on policies that are set out in the adopted ELLDP. It seeks to raise awareness of the unique characteristics and attributes of East Lothian, how these can be used positively to create new places both small scale and large, and the technical aspects of design that are required to deliver great new places;
- (ii) 'Affordable Housing'. The SPG supplements relevant LDP policies in relation to the delivery of affordable housing;
- (iii) 'Sustainable Drainage Systems (SuDS)'. The SPG supplements relevant LDP policies regarding SuDS and flood risk management and links with wider Council policies, strategies and priorities; and

Also material to the determination of the application is the non-statutory Development Brief (TT11 Elphinstone West, Tranent) which was adopted by the Council on 30 October 2018.

REPRESENTATIONS

Material to the determination of the application are the written representations received to it. There have been four written representations received to this application, all of which raise objections to the proposed development. Copies of the written representations are contained in a shared electronic folder to which all Members of the Committee have access.

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

- * The application should be refused until such time as East Lothian Local Development Plan 2 has been completed and approved by the Council to allow for it to be ascertained that Elphinstone can sustain such an increase in houses and residents and to allow for detailed information to be available on whether the additional 111 homes indicated in this application are appropriate, essential and offer any economic, social or cultural benefit to the village and its residents. East Lothian Council has a duty of care to its existing residents and also to retain and maintain its smaller villages;
- * The existing development taking place on the site increases the number of homes in Elphinstone by one third, which is already extremely high for a village of this size in such a short period of time. Approval of this additional application would see an increase of the village by more than two thirds which would more than double the population and be completely out of context to the setting of this small rural village;
- * Residential development should be concentrated at Blindwells and Wallyford to avoid over developing a small village like Elphinstone;
- * Elphinstone is a small rural village, with a limited capacity primary school, a Miners Institute and no other amenities, such as shops or leisure facilities and requires travel by

car to reach any of these in the neighbouring towns;

* There is no mention of working with suppliers and ELC on public transport, shops, infrastructure and healthcare to support a development of this size;

* There has been no attempt to integrate the development within the village in terms of house type. Elphinstone comprises at least 50% bungalow homes and there are bungalows in the approved or the proposed development for the site;

* Proposed houses would be built on platform foundations. This will cut out natural light and remove privacy to neighbouring residential properties;

* This, and other developments nearby, are putting unbearable pressure on all local services including GP services in Tranent which are under extreme pressure already;

* When the original proposal for 86 homes on this site went to public consultation, the developer at that time did not mention that there might be a Phase 2 on this site;

* This would lead to an increase in traffic, traffic congestion and traffic pollution;

* The ideas and suggestions made by residents at the public consultation have not been taken up by the applicant;

* The developer claims there is no flood risk associated with this site but the site clearly cannot cope with current levels of rainfall and groundwater. Flooding issues are ongoing on the site, concerns that existing gardens at Waterloo Place are experiencing waterlogging as a result of the existing development of the site and concerns that there is also a flood risk to the gardens of the houses in the wider residential area and that these concerns have not been adequately addressed in the plans;

* There is no demand for the houses currently being erected under phase 1 so these additional units are not required. There are new houses going up in every town and village throughout the district;

* The proposals have little reference and alignment to the guiding principles of NPF4. ELC should be using NPF4 as best practice and as a pathway to sensible, realistic residential developments;

* The density of housing is too high, the development shows more houses than the area was set aside for in the LDP;

* Concerns that a path may be proposed between the proposed development and Waterloo Place;

* Impact of / lack of solution to long term air and noise pollution during the build phase including from construction traffic;

* The proposals completely disregard comments from ELC's Main Issues Report;

* The current building work on the site has resulted in the displacement of crows from Tower Hill to the woods behind MacFarlane Court. These crows have been attacking and damaging property and cars causing considerable damage;

* Concerns that the proposed development would have a harmful impact on wildlife on the site including badgers, deer, buzzard, bats, hedgehogs and partridge;

Representations made also comment on aspects of the current development taking place on the site including concerns about the conduct of the developer in relation to their work on the approved development underway on the site, to the standard of their public consultations and to their approach to the erection of unauthorised advertisement hoardings at the existing site. These concerns are not material to the consideration of this current application. Where they relate to alleged unauthorised development or non-compliance with existing planning controls they can be investigated by the Council's Planning Enforcement Officer.

Comments on the demand or otherwise for the houses currently being erected on the site are not material to the determination of this application.

Matters of construction management, including on the routing of construction traffic and air quality management measures can be dealt with through planning controls on a grant of planning permission and can otherwise be investigated by colleagues in Protective Services and Road Services using legislation other than planning legislation.

Matters regarding damage to property and possessions by the possible displacement of crows from current development on the site are not matters that can be controlled through planning legislation.

The public consultation which took place at the time of the original planning application for this site was carried out by a different potential developer and related only to the development being proposed at that time. Public consultations carried out in respect of this current proposal have been carried out in accordance with the statutory planning requirements relating to the carrying out of public consultations for major development proposals and the applicant has submitted a report advising on that consultation and how they have taken on board comments made during that process, as set out earlier in this planning assessment report.

The purpose of the Council's Main Issues Report was to inform the preparation of the Council's Local Development Plan. It is therefore not of particular relevance to individual planning applications.

COMMUNITY COUNCIL COMMENTS

Tranent and Elphinstone Community Council have been consulted on the application. They comment that they feel that there should be particular scrutiny over this proposal to ensure that the needs and thoughts of local residents are at the forefront of any decision making. They are concerned that this either did not happen with the first phase or it was ignored by the Developer.

The Community Council point out that Elphinstone is a small village and they state that they are concerned that it risks being overwhelmed by a Developer with no interest in existing residents genuine concerns and a Local Authority caught up in the need for additional housing. They consider this can easily be rectified by choosing to refuse this application and ask the developer to concentrate on Blindwells and Wallyford land opportunities which can easily absorb the excess housing.

The Community Council reiterates concerns raised in representations regarding pressure on local infrastructure and Council resources from a development of this size, the lack of information on working with suppliers and ELC on improving public transport, shops, infrastructure and healthcare to support a development of this size, the increase in the number of car trips as a result of this development and the impact of that on the village

and also through West Tranent, the perceived lack of reference and alignment to NPF4, the density of development and the overall number of houses now proposed for this site, the impact the proposed development would have on the natural light and privacy enjoyed by existing residents, the proposed properties not being in keeping with the predominantly low rise housing in Elphinstone, the flooding / water logging concerns, the plans detailing a path between the proposed development and Waterloo Place, the perceived lack of compliance with the Council's Main Issues Report, the perceived lack of uptake on suggestions put forward by residents at public consultations, the impact on residents from air and noise pollution and from traffic impacts during the build phase, the perceived conduct of the developer during phase 1 works, the impact of displaced crows on existing residents and the potential impacts on existing wildlife using the site.

Tranent and Elphinstone Community Council advise they do not support this application and they state that they feel there are other land areas already identified, with better transport links from the A1, that do not come through already congested (at peak times) roads and would not completely overwhelm a small community whom have been ignored to date.

PLANNING ASSESSEMENT

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

The development is proposed on land allocated for housing under PROP TT11 of the ELLDP. Policy 16 of NPF4 supports the principle of housing on land already allocated for that use. The principle of housing is therefore supported on this site.

Proposal TT11 of the ELLDP allocates the whole of the allocated site for a residential development of circa 80 homes. However, the development proposed in this application would result in 111 residential units being built on the northern half of the overall allocated site. 90 residential units have already been approved and are being built on the southern part of the overall site so overall, if planning permission is to be granted for this application, there would be a total of 201 homes on a site allocated for circa 80 homes.

In consultation on the planning application for the 90 homes on the southern part of the site (reference 21/01608/PM), which have since been approved, the **Council's Policy and Projects Manager** stated that accepting higher overall housing numbers is, if there is no impediment on other grounds such as educational or road capacity, supported as an efficient use of land. He added that this however must be consistent with achieving good design, including the requirements of the design brief.

The Council's Policy and Projects Manager has again been consulted on this current application and in the consideration of this proposal has advised he objects to the principle of the proposed development on the grounds that he considers it contrary to PROP TT11 of the ELLDP due to the overall number of dwellings proposed and due to concerns over infrastructure capacity. He states that whilst it is recognised that the unit numbers specified in PROP TT11 are approximate (circa.) and that there is some flexibility for layouts to slightly exceed this figure, he states that this must not come at the expense of infrastructure capacity and overall good design and place-making principles. He states that he recognises that, had the site been developed out fully for no more than 80 dwellings, the density would be much lower than is desirable and not reflective of the character of existing residential areas of Elphinstone however he considers that it is not a

requirement that the whole site is developed solely for housing and instead other potential uses for the remainder of the site, options that would for example contribute towards biodiversity enhancement and open space provision, could be considered. He does not however state which potential uses he considers would contribute more towards biodiversity enhancement and open space provision than the residential use proposed would. In terms of his concerns over infrastructure capacity he states that the proposed development cannot be supported as it could prejudice the development of other allocated sites in relation to health care and education infrastructure capacity. He does not however provide any evidence to support this statement.

Notwithstanding the objections detailed above the Council's Policy and Projects Manager also states in his response that the proposed site layout plan demonstrates that the site could be physically capable of accommodating a greater number of dwellings than the allocation. However, he goes on to say that the site being physically capable of accommodating the proposed development cannot be seen in isolation, nor can it be seen simply as the best use of the land as an important resource. He is concerned that the significant increase in housing units above the allocation figure means that the site would have much more limited potential to actively contribute towards the climate and nature crises.

In terms of more detailed design considerations, the Policy and Projects Manager, having initially raised a number of concerns over the details of the proposed development, has subsequently commented on the design changes made by the applicant since registration of the application. Whilst still objecting to the principle of the proposed development, the Policy and Projects Manager welcomes revisions made to the layout of dwellings along the northern boundary of the site which he considers have resulted in much greater variety than previously, which would improve the overall character of the development. He also welcomes efforts to redesign parking areas to better conceal parked vehicles and welcomes the reduction in the number of detached dwellings across the site to less than 50% of the total (previously 56%), with semi-detached and terraced units now having higher proportions of the total although he expresses disappointment that all of the dwellings are proposed to be two storey with no single or one and a half storey properties proposed. He also notes improvements in pedestrian connections, green space and landscaping within the site which he states could be beneficial both from a visual impact and for biodiversity net gain.

The Policy and Projects Manager also welcomes the proposal (which is submitted through separate planning application 24/00699/P) to form a footpath connection between the new development and the existing residential areas to the east. He comments that although the Development Brief specified more than one connection, it is accepted that there are land ownership issues outwith the applicant's control, and that this proposal may be the only viable option for a footpath connection.

In relation to the Policy and Projects Managers objection to the significant increase in housing units above the allocation figure quoted in PROP TT11 of the ELLDP it is relevant to note that some other allocated sites of the ELLDP have seen planning permissions granted for a higher number of housing units than their site allocation and some have seen planning permissions granted for a smaller number of housing units than their site allocation. The provision of a larger number of housing units compared to an approximate capacity stated in the ELLDP does not in itself amount to a conflict with the development plan.

It is thereafter necessary to consider the design and layout of the proposal against relevant development plan policies, the development brief for the site and other material considerations to ascertain whether the site can accommodate the proposed number of

units and to consider the impact the proposals would have on amenity and on the climate emergency and nature crises. The impact of the proposal on infrastructure and facilities will then be considered.

The adopted Development Brief for the site sets out guiding principles, and indicative design, to be followed, where possible. These include (1) taking site access from the B6414 and providing a shared use path between the B6414 and the application site, a gateway landscaped edge and ensuring built form should not be overly dominant in terms of scale or impact on the wider village character and should reflect the nearby built form; (2) providing a well-designed and well-landscaped SUDS to create an appropriate landscape edge ; (3) enabling pedestrian and cycling connectivity through the site to adjoining land; (4) ensuring a high quality landscape edge of minimum 8 metres wide is provided along the northern boundary incorporating the existing hedgerow, path provision, including connecting to the existing core path which runs along the western edge of the site, and specimen tree planting to create appropriate shelter and setting for the development; (5) open space in the form of semi-natural open parkland offering key views towards the Forth coastline and the Lammermuirs and keeping development off the high ground on the northwest corner of the site; (6) creating a surfaced path connection between the site and the adjoining community to ensure good connections; and (7) creating a shared use path to connect the site to the B6414 as a key active travel route to Tranent.

Some of the guiding principles of the Development Brief, such as taking site access from the B6414, creating a gateway landscaped edge and the formation of a landscaped SUDS basin on the eastern edge of the site have already been achieved through the approval of the 90 unit development the subject of planning permission 21/01068/PM.

The application, as originally submitted, did not include any proposals to connect the proposed development to the B6414 or to the existing community of Elphinstone at the northeastern edge of the overall site as set out in the guiding principles of the Development Brief. Since registration of the application the applicant has investigated the possibilities of creating a surfaced path connection between the site and the adjoining community as set out in guiding principle (6) of the Development Brief and of creating a shared use path to connect the site to the B6414 as a key active travel route to Tranent as set out in guiding principle (7) of the Development Brief.

Guiding principle (7) of the Development Brief indicates that such shared use path should be formed through the farmland immediately to the north of the application site and should run eastwards to connect to the B6414. The applicant has provided written confirmation to the Planning Authority which demonstrates that they have met with, and written to, the owner of the farmland to the north of the application site to discuss the possibility of forming a path across the edge of the farmland which would connect the northern edge of the proposed development with the B6414. The applicant has advised the Planning Authority that the verbal response they have received from that land owner is that he would not wish to enter into an agreement with the applicant to allow for a footpath to be formed through his field for the reason that he operates a working farm and the spraying of the fields periodically with pesticides and the operation of farm machinery would cause interference with the use of such a path by pedestrians. The applicant therefore considers they are unable to provide this off-site path connection on land outwith their control. Instead, they have submitted a separate planning application (reference 24/00699/P) to form a shared use path to connect the site of the proposed development with the existing community of Elphinstone via the woodland strip and the amenity grassed open space and connection into the cul-de-sac of Waterloo Place and beyond to the B6414. Therefore, notwithstanding that a shared use path through the farmland to the north of the site is not proposed through this application or any other associated application, subject to the applicant's separate

planning application to form a shared use path from the site to the B6414 via Waterloo Place being approved and its delivery being secured, the Development Brief's aim of connecting the proposed development to the existing community and beyond and to allow active travel opportunities would still be achieved.

Otherwise, the development proposed through this current application would, with its permeable street pattern, links to the core path to the west of the site, road and pedestrian/cycle accesses, new and retained landscaped edges and other landscaping and open spaces, be a distinctive yet attractive urban expansion of Elphinstone respecting the guiding principles of the adopted Development Brief. The overall layout of the proposed development is very similar to that approved by the grant of planning permission 21/01608/PM for the southern half of the overall site. In response to Planning Officer comments and consultation responses the applicant has revised the house type mix to include a greater mix of semi-detached and terraced homes and fewer detached homes to take better due regard to the existing built form of the settlement and neighbouring residential developments.

The proposed development would be of a pattern and density not out of keeping with patterns and densities of housing and other development in Elphinstone, including that already approved for the southern half of this overall site. The architecture of the proposed houses and flats is of a traditional pitched roof form and a relatively traditional design overall and the materials proposed are generally traditional in appearance including two different roofing colours and three different render colours to match the finishing colours and materials being used on the southern part of the site. A condition can be imposed on the grant of planning permission for the proposed development to ensure that the finishing colours and mix of colours to be used respect the character and appearance of the village including that of the development underway on the southern part of the site.

The proposed housing development would provide an attractive residential environment. The houses and flats 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 the future occupants of the houses and flats an appropriate level of privacy and residential amenity.

The proposed new houses and flats would be so sited, oriented and screened such as not to harm the privacy and amenity of existing neighbouring or nearby residential properties through overlooking or overshadowing and in this respect would not conflict with Policy RCA1 of the ELLDP.

Policy 15 of NPF4 seeks to encourage, promote and facilitate the creation of connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options. Policy 16 of NPF4 encourages, promotes and facilitates the delivery of more high quality, affordable and sustainable homes, in the right locations, providing choice across tenures that meet the diverse housing needs of people and communities. It requires development proposals that include 50 or more homes to be accompanied by a Statement of Community Benefit which should explain the contribution of the proposed development to meeting local housing requirements, including affordable homes, providing or enhancing local infrastructure, facilities and services; and improving the residential amenity of the surrounding area. As is required by Policy 16 of NPF4, the application is accompanied by a Statement of Community Benefit which sets out the community benefits the applicant considers this proposal will bring. These include the delivery of a wide range and mix of houses (private and affordable) which will contribute to meeting local housing requirements, contributing towards the extension of the village primary school through developer contributions and providing support to the primary

school roll, improvements to the transportation infrastructure through developer contributions, the provision of additional open space, woodland planting and footpath links to the benefit of residents in the new development and the wider community and the implementation of planting proposals for the purposes of habitat creation to the benefit and enhancement of biodiversity credentials.

Elphinstone is a village that has a primary school, community centre, public house and a small shop, as well as sport, recreation and play facilities, all of which are within a reasonable distance of the application site. Where relevant and necessary, developer contributions can be secured through a Section 75 Agreement to contribute towards the provision of necessary infrastructure requirements such as education, sporting or transport improvements and provisions. A wide range of employment, shopping, health and social care, education and other community facilities are available 2 miles away in Tranent which is accessible via public transport. In addition, and as referred to in the applicant's Planning Statement and in their Statement of Community Benefit contained within their Planning Statement, a range and mix of house types and tenures are proposed, including affordable and sustainable homes, improved areas of public open space and equipped play areas will be provided to benefit both the development proposed and the existing community and improved connectivity and linkages will be established in association with the provision of new and improvement of existing public paths. In all of these considerations, the proposals are consistent with Policies 15 and 16 of NPF4.

The **Council's Strategy, Policy & Development Manager (Amenity Services)**, has been consulted on the application and has commented on open space and play provision considerations. On a more general comment she advises she is supportive of the proposal to extend the new woodlands/shelter belt areas on the western and eastern boundaries of the site as this will enhance the site for nature and people and provide shelter.

In relation to open space provision Policy OS3 of the ELLDP sets out the minimum requirement for on-site provision of open space which is 60m² per dwelling. This will consist of provision of formal and informal open space as well as space for equipped play areas in accordance with Policy OS4. The applicant has provided details that demonstrate that, not including the woodland strips, the open space provision would amount to some 109.6m² per dwelling which exceeds the 60m² per dwelling required by Policy OS3. Furthermore, in response to the consultation response received from the Council's Strategy, Policy & Development Manager (Amenity Services), the applicant has removed or re-positioned tree planting proposals within two large areas of open space, one on the eastern end of the site and one on the western end, to better allow these areas to be used as multi-functional open spaces for recreational uses such as informal ball games. The areas of open space shown to be provided would provide sufficient, usable areas of open space for informal recreation for the proposed development, consistent with Policy OS3 of the ELLDP.

It is proposed to provide an area of equipped play provision on site. The play park is proposed to be sited towards the western end of the site and would be surrounded on all sides by residential properties thereby ensuring passive surveillance. The site layout indicatively shows how the equipped play park could be laid out as a 'play trail' containing a number of items of play equipment however no final details of the play equipment, any other associated items such as bins, benches, enclosures or ground surfaces have been submitted with the application. The Council's Strategy, Policy & Development Manager (Amenity Services) advises there requires to be suitable play provision for this site, as set out in LDP Policy OS4: specifically a play area suitable for children aged 0-8. She advises that as set out in the Council's recently approved Play Sufficiency Assessment recommendations, she would also require that new play areas are suitable for a range of abilities including disabilities, and this includes suitable play equipment and surfacing to

facilitate a range of ages and abilities. She advises that a condition should be imposed if planning permission is to be granted to ensure that full details of the play area proposed, including play equipment and surfacing and details on how the equipped play area will be appropriately inspected, managed and maintained by the developer going forward are submitted to and approved by the Planning Authority. She further advises that natural play opportunities are also encouraged and can be incorporated into the landscaping element of the play area. Such a condition can be imposed on a grant of planning permission. Subject to this control the proposed play provision is consistent with Policy OS4 of the ELLDP.

On these open space and play provision considerations, the proposals are also consistent with Policy 21 of NPF4 which seeks to encourage, promote and facilitate spaces and opportunities for play, recreation and sport.

The **Council's Biodiversity Officer** having considered the Ecology Report, the Biodiversity Enhancement Plan and the Bat Survey Report submitted with this application is satisfied that sufficient assessment of any potential significant habitats and protected species within and surrounding the site has taken place and that appropriate measures to protect biodiversity, deliver positive biodiversity enhancements and to strengthen nature networks are proposed by the applicant. The proposals include for the planting of native species rich hedgerow and tree planting, including berry bearing and strongly scented trees to attract certain species, meadow planting to create species-rich grassland, leaving grass unmown around the base of the northernmost hedge to provide cover for species, the installation of 6 bat roost boxes within the ridges of 6 of the proposed houses on the eastern and western edges of the development, and the installation of garden fencing which is raised to a minimum height of 130mm above ground level to allow for freedom of movement of wildlife. The Council's Biodiversity Officer is satisfied that the proposals will not affect any significant habitats or protected species and welcomes the biodiversity measures proposed by the applicant. She raises no objections to the proposals. Conditions can be imposed to ensure that the biodiversity enhancement measures detailed in the application are implemented on site. Subject to such control being imposed the proposals, in respect of these nature and biodiversity considerations, are consistent with Policies 1, 3 and 4 of NPF4 and with Policy NH5 of the ELLDP.

In respect of landscape matters the existing mature tree cover which bounds much of the eastern boundary of the site would, in part, soften and serve to integrate the proposed development into its landscape setting, breaking up the massing of the proposed development whilst gently introducing an additional extent of urban development on to this western edge of Elphinstone. The setting of the proposed development would be further enhanced by the applicant's proposals to plant a 20 metres wide woodland strip along all of the western boundary of the site, a 10 metres wide woodland strip along the eastern boundary of the application site, both of which would tie into the woodland strips approved for the southern half of the overall site and in the case of the eastern woodland which would tie into the existing woodland strip along this edge and other areas of landscaping throughout the site including retention of the northern boundary hedging and the provision of further tree planting as well as other landscaping along this prominent northern edge and throughout the development.

The applicant has taken into consideration a number of comments of the Landscape Projects Officer in the submission of revised drawings to incorporate enhanced landscape planting within the site, including additional tree planting to the northern boundary and hedge planting to read and side garden fences that face north along the northern boundary, revisions to hedgerow mixes, the introduction of large species trees and the repositioning of trees or substitution of them with different species where concerns had been raised by the Landscape Projects Office that they were too large for their spaces.

The Landscape Projects Officer does not object to the proposed development and makes a number of recommendations for conditions to be imposed relating to matters such as the protection of existing trees during the course of development, the implementation of the proposed landscaping and the ongoing maintenance of landscaping within the site. Where relevant, these matters can be made conditions of a grant of planning permission.

On the above landscape and tree protection considerations, the proposed development is consistent with Policy 6 of NPF4, which aims to protect and expand forests, woodland and trees and with Policies 20 of NPF4 and policies DP1 and NH8 of the ELLDP.

Policy 7 of NPF4 seeks to protect and enhance historic environment assets and states that "Where there is potential for non-designated buried archaeological remains to exist below a site, developers will provide an evaluation of the archaeological resource at an early stage so that planning authorities can assess impacts". An Archaeological Evaluation Data Structure Report has been submitted with this application. The Report presents the results of an archaeological evaluation which was undertaken on the site in December 2022. The archaeological evaluation found the site had undergone extensive agricultural improvement with field drains encountered in every trench. A mineral extraction pit and curving linear were encountered during the works. The Report author states the pit is likely post-medieval, while the ditch remains undated. It extended into the area of the mining works and is unlikely to survive to any great extent. The **Council's Heritage Officer**, having considered the Archaeological Evaluation Data Structure Report, has advised he is content that the area to which this application relates was evaluated archaeologically in January 2023 and that there is no requirement for any further archaeological work associated with the current application. He therefore confirms he has no comments to make on this application in relation to the Historic Environment. The proposals comply with Policy 7 of NPF4 and with Policy CH4 of the ELLDP.

The land of the application site is defined by the Macaulay Capability for Agriculture (LCA) classification system as being Land Capable of Supporting Arable Agriculture Class 3:1, that being prime agricultural land capable of producing a moderate range of crops. Policy 5 of NPF4 and Policy NH7 of ELLDP both provide significant protection for valued soils including prime agricultural land. Policy NH7 of the ELLDP states that development on prime agricultural land will not be permitted unless in the particular circumstances listed in the Policy. One of those circumstances is if it is to implement a proposal of the plan. As the land of this application site is allocated for residential development in the ELLDP the proposal does not conflict with Policy NH7 of the ELLDP which already accepts the loss of this area of prime agricultural land to housing development. Policy 5 of NPF4 also sets out circumstances where development proposals on prime agricultural land will be supported and although housing development is not listed as one of those circumstances, Policy 16 of NPF4 supports development proposals for new homes on land allocated in LDPs. The Scottish Government's Transitional Arrangements for NPF4 states that "It is important to bear in mind NPF4 must be read and applied as a whole. The intent of each of the 33 policies is set out in NPF4 and can be used to guide decision making. Conflicts between policies are to be expected. Factors for and against development will be weighed up in the balance of planning judgement". In the circumstances of this application where it is a development proposal for new homes on land allocated for housing in the ELLDP, the proposal complies with Policy NH7 of the ELLDP and, although not falling within the types of acceptable development listed in Policy 5, it does not conflict with NPF4 when read as a whole.

The **Council's Access Officer** commented on the application as originally submitted and at that time expressed concern over the lack of paths provision. Since then the applicant has submitted a separate planning application to form a path connecting the proposed

development to the B6414 via Waterloo Place as set out in the adopted Development Brief for the site, has explored path provision through the farmland to the north of the site and has demonstrated the difficulties in delivering this and has improved path provision within the site including along the northern edge where revisions have been made to create a meandering path through a landscaped edge. These revisions are in line with the recommendations made in the Council's Access Officers consultation response. He has offered no further comment on the proposals.

The **Council's Road Services** have considered the details of the application and raise no objection to the proposed development, being satisfied that it could be accessed safely and would not lead to a road or pedestrian safety hazard. They raise no objection to the principles of layout of the proposed development, to the 111 units proposed being accessed via the approved development currently under way on the southern part of the overall site which takes its access from the B6414 classified public road of Main Street, of parking provision or of the likely impacts of additional traffic generation on the existing road network.

In terms of paths provision, the Council's Road Services note the Development Brief requirements to connect the proposed development to the adjoining community to ensure good connections and to provide an active travel route to Tranent. The proposal does not include the provision of the two separate paths listed in the Development Brief but the Council's Road Services are content that the path connection promoted through separate planning application 24/00699/P will allow for connection to the adjoining community to ensure good connections and will allow for connection to the B6414 via Waterloo Place. They are content that subject to the separately proposed path provision being completed prior to the occupation of any dwelling the subject of this application, along with other path provision proposed through this application, sufficient connectivity to the existing village and to the core path network and sufficient active travel routes will be provided.

The Council's Road Services Officer advises that every property within the site would be less than a 400 metre walk from the nearest bus stop, those being the bus stops provided in the approved development on the southern half of the site, and therefore additional bus stops are not required for this now proposed development on the northern half of the site.

The Council's Road Services further recommend a number of transportation requirements which can be met through the imposition of conditions on a grant of planning permission for the proposed development. These include submission and approval by the Planning Authority of details of a Travel Information Pack to be distributed to new residents, a Construction Method Statement, wheel washing facilities to be implemented during construction, the carrying out of a dilapidation survey during the course of construction to ensure maintenance of the condition of the B6414 public road along the extents of the 20mph limit, implementation of proposed electric vehicle charging proposals and ensuring that private driveways are at least 3.3 metres in width.

With the imposition of conditions to cover these recommendations of Road Services, the proposed development does not conflict with Policy 13 of NPF4 or with Policies T1, T2, T4 or T31 of the ELLDP and is consistent with Policy 15 of NPF4 which seeks to encourage, promote and facilitate the creation of connected and compact neighbourhoods where people can meet the majority of their daily needs within a reasonable distance of their home, preferably by walking, wheeling or cycling or using sustainable transport options.

Swept path analysis drawings submitted by the applicant as part of this application demonstrate that large vehicles, including waste servicing vehicles could satisfactorily negotiate the proposed development providing convenient access for the collection of waste and bin stances have been added to the development proposals to allow for safe

and convenient access for bin collections. The **Council's Waste Services Manager** has confirmed that he has no objections to the proposals and that the general collection and management of waste and recycling from the proposed development will be operated by the Council's Waste Services. A condition can be imposed if planning permission is to be granted to require bin storage facilities to be formed and made available for use prior to the occupation of the flatted units of the proposed development. In all of this the proposal complies with Policy 12 of NPF4 in respect of sustainable waste management and with Policy W3 of the ELLDP.

In all of this the proposal would be an appropriate residential development of the site and whilst it would bring further change to the western edge of Elphinstone it would be well designed and integrated into its landscape and settlement setting.

The site is capable of accommodating all of the proposed development including vehicular and pedestrian access and amenity space without being an overdevelopment of it. The pattern and density of the proposed development would not be at odds with the existing patterns and densities of housing and other development within the village of Elphinstone, including that of the development approved and currently being constructed on the southern part of this site. In all of this, the proposals are consistent with Scottish Government Policy Statement: Designing Streets and Planning Advice Note 67: Housing Quality, Policies 9, 14, 15 and 16 of NPF4, Policies DP2, DP3, DP4, DP8, DP9 of the ELLDP and with the Council's approved 'Design Standards for New Housing Areas' SPG and the Council's adopted Development Brief for the site.

The **Council's Protective Services Manager** has been consulted on the application and the **Council's Environmental Health Officer** has responded to advise he has no objection to the proposed development, being satisfied that occupants of the proposed development would enjoy sufficient amenity and the proposals would not result in harm to the amenity of any neighbouring land use. He recommends that conditions be imposed if planning permission is to be granted to ensure that a Construction Method Statement be submitted to and approved by the Planning Authority prior to the commencement of any development on the site to ensure that measures will be taken by the developer to minimise impacts on residential properties due to noise and dust during the course of the development and furthermore that a condition be imposed to ensure that noise associated with the operation of the Air Source Heat Pumps(ASHPs) proposed to be installed at the affordable housing units, including cumulative impacts of a number of ASHPs operating simultaneously, shall not exceed Noise Rating curve NR20 at any octave band frequency between the hours of 2300-0700 and Noise Rating curve NR25 at any octave band frequency between the hours of 0700-2300 when measured from neighbouring residential properties. Subject to the imposition of these conditions the proposals are compliant with Policies NH12 and NH13 of the ELLDP.

In relation to considerations of contaminated land issues, the **Council's Senior Environmental Compliance Officer** advises that although a Site Investigation Report (for the wider site area) has been submitted with this application, the reporting in it is now 6 years old and as such doesn't reflect the current ground conditions on the site. He advises that having looked at the gas monitoring data obtained from the boreholes previously drilled in the application area, there are elevated carbon dioxide levels shown (albeit below the 5% threshold). Given this monitoring was carried out a while ago, it would be prudent to carry additional monitoring thereby allowing for an updated gas risk assessment to be submitted. In addition, the Senior Environmental Compliance Officer advises that it is acknowledged (as per the Phase 1 Remediation Method Statement) that parts of the new development site fall within a radon affected area (10 to <30% of homes have the potential to be above the action level). This means that full radon protection measures will have to be installed for these specific plots. Finally he notes that it is suggested in the Mineshaft

Investigation Report that consideration should be given to removal of any localised ash (colliery spoil) within the garden areas, and he assumes this would entail upfilling of these areas with imported, inert material. Therefore, with regards to all of the above the Council's Senior Environmental Compliance Officer recommends that an updated gas risk assessment report be submitted to confirm the existing gas regime on the site, that a Remediation Statement be submitted detailing all the measures necessary (including radon protection measures, removal of ash material and importation of clean soil and potential gas protection measures) and listing the validation procedures to be followed and that a Verification Report be submitted and approved to confirm the satisfactory completion of the remedial works (prior to the occupation of the residential units). These requirements can be secured through a condition attached to a grant of planning permission for the proposed development.

The Council's Protective Services Manager has no further comments on the proposed development.

As parts of the site are within a Coal Mining Development High Risk Area, the Coal Authority has been consulted on the application. The Coal Authority initially objected to the application on the grounds that the supporting Site Investigation Report submitted failed to address the implications posed by the recorded on-site mine shaft (ref 339670-004) to the proposed detailed scheme of development. In response to that objection the applicant submitted a Mineshaft Investigation Report which details the exact location and nature of the mine shaft, how it is currently filled and proposals for the treatment of the mine shaft by means of drilling and grouting of the shaft column and its subsequent capping at rockhead with a reinforced concrete cap. It also reiterates that shallow workings present beneath the proposed development will also require remedial treatment (drilling and grouting). The Coal Authority, having considered the applicant's Mineshaft Investigation Report, subsequently withdrew their objection to the application subject to the imposition of conditions on any permission granted to secure the undertaking of remedial works in respect of the recorded mine shaft and shallow coal mining workings. Since then, revisions made to the site layout have altered where elements of the proposed development are in relation to the recorded mine shaft and therefore the Coal Authority were consulted on these revisions. They have noted that the shaft will now be accommodated within an area of public open space (which will also contain the equipped play area serving the development) rather than within the garden to Plot 221 as previously proposed. The Coal Authority advise that given the level of public accessibility over the shaft positions, they remain of the opinion that the feature should be appropriately treated, including by means of the installation of an appropriate designed and constructed reinforced concrete cap. As such, they consider that the comments and recommendations for conditions and notes, set out in their earlier response (of 6 March 2024) remain valid and relevant to the decision making process. They add that whilst they appreciate that the centre point of recorded mine shaft 339670-004 will be present in an area of public open space, due to its diameter (3.75m) and the need for any reinforced cap installed to typically measure twice the diameter of the shaft, it would appear that there exists the potential for the shaft cap and its associated zone of influence to extend across the public open space boundary into the revised rear garden to Plot 221. As such, on the basis of the available information, they recommend that further conditions be imposed if planning permission is to be granted to remove Permitted Development rights for the erection of any extensions or curtilage buildings in the vicinity of the mine shaft at Plot 221. The recommended conditions of The Coal Authority can be imposed on a grant of planning permission for the proposed development. Other advisory notes provided by the Coal Authority which are the responsibility of the developer to adhere to have been forwarded to the application for their information and attention.

The Council's Strategy, Policy & Development Manager (Amenity Services) notes

that the Coal Authority are content with the mineshaft being within an area of open space subject to it being appropriately treated, including by means of the installation of an appropriate designed and constructed reinforced concrete cap. She confirms she would be satisfied with the play area located over the mineshaft provided it meets these requirements set out by the Coal Authority.

Scottish Water have been consulted on the proposals. They raise no objection and have provided comments relevant to servicing the proposed development which have been forwarded to the applicant for their information. It is the responsibility of the developer to make separate application to Scottish Water for permission to connect to the public waste water and water networks.

The Scottish Environment Protection Agency (SEPA) have been consulted on the application and they have confirmed they have no objection to the application on the grounds of flood risk. They have advised that a small portion of the site on the western boundary is shown to be at risk of surface water flooding based on the SEPA Future Flood maps however they are satisfied that the proposals do not involve any buildings in this area. SEPA otherwise advise that they consider water quantity aspects of surface water flooding to be under the remit of local authorities and they consider that the **Councils Flood Management Team** are likely to have greater local knowledge of the site and therefore may be better placed to provide more detailed advice in this aspect.

The applicant advises that the Sustainable Urban Drainage System (SUDS) basin already approved for the overall site has been designed to accommodate the development now proposed and as such there is no further SUDS basin proposed within this current application. However other drainage details have been submitted with this application and these details have been revised during the course of the application following consultation with the **Council's Team Manager for Structures, Flooding & Street Lighting** and the **Council's Landscape Officer**. The revisions include a Drainage Assessment and Strategy Report being submitted, proposals for surface water management during the construction phase of the proposed development, details of a swale to be formed within the proposed landscaped edge at the eastern end of the site and revisions to allow for wider drainage pipes.

The Council's Team Manager for Structures, Flooding & Street Lighting confirms that he is now satisfied with the revised proposals and clarifications on flood risk and drainage matters provided in revised details submitted. He therefore raises no objections to the proposals on flood risk grounds. He advises that it would be prudent for a condition to be imposed on any grant of planning permission to ensure that fuller, detailed surface water management proposals are included within a Construction Management Plan to be submitted prior to the commencement of development on the site for the consideration and approval of the Planning Authority. This matter can be secured through a condition on a grant of planning permission. The proposals are therefore consistent with Policy 22 of NPF4 and Policies NH10 and NH11 of ELLDP and with the Council's SPG on 'Sustainable Drainage Systems (SuDS)'.

Policy 24 of NPF4 and Policy DCN2 of the ELLDP support the delivery of digital infrastructure. Policy DCN2 of the ELLDP requires that development proposals of 5 or more homes, shall as part of the development make provision for deliverable opportunities for digital infrastructure to the proposed new homes or business premises as relevant, particularly provision for ducting and fibre or wiring for broadband connectivity. The applicant has confirmed that their proposals are to have BT Openreach, Hyperoptic and Virgin Media broadband provision to the development, with every property having connection at habitation. On this matter of provision of digital infrastructure the proposals comply with Policy 24 of NPF4 and Policy DCN2 of the ELLDP.

Policy 31 of NPF4 states that "development proposals that involve a significant change to existing, or the creation of new, public open spaces will make provision for public art. Public art proposals which reflect diversity, culture and creativity will be supported". The proposals the subject of this application include for the creation of new, public open spaces and it would therefore be appropriate for artwork to be incorporated either as an integral part of the overall design or as a related commission. Were planning permission to be granted for the proposed development then the artwork(s) could be secured through the imposition of a planning condition. Subject to this planning control being imposed, the proposed development is consistent with Policy 31 of NPF4.

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. This application is supported by a 'Statement on Energy' which sets out the measures to be taken to reduce the carbon emissions from the building and from the completed development which are designed to ensure compliance with the CO2 requirements of the Scottish Building Standards, and to meet the 15% reduction in carbon emissions from Low and Zero Carbon Generating Technologies (LZCGT) as required by ELLDP. The Report sets out that roof mounted photovoltaic panels will be installed on each dwelling and air source heat pumps will be used on the affordable dwellings. This will ensure that both the private and affordable homes meet Bronze Active standard under Section 7 (Sustainability) of the building standards. In addition, the affordable dwellings will be designed to achieve Aspect Silver Level 1 & 2 in accordance with minimum funding requirements for affordable housing in Scotland.

In respect of electric vehicle charging provision, the 'Statement on Energy' confirms that all properties will be provided with a 7kW Type 2 socketed or tethered outlet charger. A separate site layout drawing submitted with the application demonstrates that all 111 residential units, whether they have in curtilage parking or off-curtilage parking, will be provided with such charging provision. In addition to this private charging provision permission has already been granted, through the approval of planning permission 21/01608/PM, for the installation of a Public Destination charger to be provided within the communal parking court in the south west corner of the southern part of the overall site. The **Council's Road Services** have confirmed that they are satisfied with the electric vehicle charging measures proposed. Subject to a condition being imposed on a grant of planning permission for this proposed development to ensure that the proposed actions to be taken to reduce the carbon emissions from the building and from the completed development, including the proposals for Electric Vehicle Charging Provision are implemented on site, the proposals, on these climate change considerations, comply with Policies 1 and 2 of NPF4 and with Policies SEH1 and SEH2 of the ELLDP.

Consideration must then be given to the potential impact of the proposed development on the infrastructure of the area. Policy 18 of NPF4 requires development to take into account the capacity and any additional needs for community services and facilities, as part of the infrastructure first approach. This reflects Policy DEL1 of the ELLDP, which stipulates that new housing will only be permitted where appropriate provision for infrastructure, required as a consequence of the development, is made. Proposal TT11 of the ELLDP stipulates that any development on the site is subject to the mitigation of any development related impacts, including on a proportionate basis for any cumulative impacts with other proposals including on the transport network, on education and community facilities, and on air quality as appropriate.

The **East Lothian Council Health and Social Care Partnership (ELHSCP)** have been consulted on the application and they have advised that they object to the proposals on the basis that the increase in registrations at Tranent Medical Practice that might be expected from the development (they estimate circa 300 new patients) has not been consulted on and will put considerable pressure on the Practice and its services, with no matching increase in the available budget to meet increased need. They advise that General Practice is under considerable pressure across East Lothian with increasing demand as the population ages and long-standing difficulties in recruitment. They state that unplanned for increases in practice registration, such as this development will bring, risks destabilising primary care. In addition, they advise that any increase in demand for community health and social care services arising from the proposed development will put these services under pressure, when they are already overstretched.

In response to these comments, the Planning Case Officer sought clarification from ELHSCP on whether or not Tranent Medical Practice has capacity to expand, both in terms of physical capacity and of staffing capacity. ELHSCP did not respond directly to that query but have instead advised that a number of their properties need to be upgraded or replaced. However, they add that Scottish Government has confirmed there is no capital funding for NHS facilities for at least the next two years and the level of funding beyond that is unknown. They state that each new planning application approval in East Lothian will add to the pressures they are experiencing and the ELHSCP does not have a capital funding mechanism to address premises capacity at present. Despite this they confirm that they are not seeking to request developer contributions for this planning application stating “I appreciate that developer contributions are also not the answer at this point in time as they would now be insufficient to generate the capital funding we require”. It is also relevant to note that the pre-amble to Proposal PROP HSC2: Health Care Facilities Proposals of the ELLDP states that “Nearly all GP practices in the county are run by GPs as independent contractors and developer contributions for expansion of existing premises will not be sought”.

It is clear from the responses provided by ELHSCP that there are significant pressures on health and social care services and while the concerns about the effects of unplanned demand are acknowledged, this is not a matter that it is possible to resolve through the planning system in general or this application in particular. The site of this application is allocated for residential development and the ELHSCP will have taken the allocation of this site for circa 80 residential units into account in planning for health care at the time of its allocation in the ELLDP. The number of residential units now proposed for the site is significantly above the site allocation however it should be noted that there are further allocated housing sites in the Tranent cluster that have not been the subject of planning applications for residential development yet and would require to be accommodated within primary care facilities within Tranent. These include Lammermoor Terrace, Tranent (circa 120 residential units) and Bankpark Grove, Tranent (circa 80 residential units).

PROP CF1: Provision of New Sports Pitches and Changing Accommodation of the ELLDP requires development proposals for 5 or more homes to make provision for the delivery of new sports pitches and changing accommodation in the relevant contribution zone as set out in Appendix 1 of the Plan and in the Supplementary Guidance: Developer Contributions Framework. The new facilities to be provided, and the sites within which they are to be delivered are identified in Part A of PROP CF1 and include at the site of PROP TT11 provision for turning and parking areas for the existing playing field and contribution towards refurbishment of the existing changing pavilion located at the playing field.

Developers contributions towards refurbishment of the existing changing pavilion at the Elphinstone playing field, along with provision for turning and parking areas to serve the existing playing field, including electric vehicle charging provision and footpath provision

to allow for safe and convenient access to the playing fields, have already been approved and secured through the conditions imposed on and the legal agreement associated with planning permission 21/01068/PM for the southern part of the site covered by PROP TT11. A timetable for the provision of the parking and turning facility has been secured by way of a condition on the grant of that planning permission.

The **Council's Planning Obligations Officer** in consultation with the **Council's Amenity Service** advises that this current proposal for an additional 111 residential units would generate a requirement for additional sport provision within Elphinstone and therefore advises that a Sporting Provision Contribution of £69,375 (£625 per residential unit) indexed linked from Q1 2019 until date of payment using the BCIS All-in Tender Price Index is required for this proposal.

The required payment of a financial contribution of a total of £69,375 towards sport provision within Elphinstone be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicants confirm in writing that they are willing to enter into such an agreement.

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

The **Council's Planning Obligations Officer** in consultation with the **Council's Road Services** advises that the contributions required for each transport intervention are as detailed below:

- *Improvements to Old Craighall Junction (PROP T15): £338.55
- * Improvements to Salters Road Interchange (PROP T17): £1,320.90
- * Improvements to Bankton Interchange (PROP 17): £5,172.60
- * Musselburgh Town Centre improvements (PROP T21): £2,201.31
- * Tranent Town Centre Improvements (PROP T27 and T28): £11,283.15
- * Rail Network Improvements (PROP T9 and T10): £1,712.73

The total contribution required for transportation improvements resulting from cumulative impacts of the development is therefore £21,848.96.

The total developer contributions towards the transportation interventions of £21,848.96 (indexed linked from Q1 2019) can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicants have confirmed in writing that they are willing to enter into such an agreement.

The **Council's School Estate Planning Officer** informs that the application site is located within the school catchment areas of Elphinstone Primary School and Ross High School, Tranent. There is a nursery unit contained within Elphinstone Primary School that serves the locality. The Council's School Estate Planning Officer does not advise, as the **Council's Policy and Projects Manager** has stated in his response, that the proposal would prejudice education infrastructure capacity. Instead, he advises that Ross High School can accommodate the additional pupils generated from this proposed

development, without the requirement for further secondary educational contributions. However, Elphinstone Primary school currently only has three classrooms and one nursery room. This means that all classes are of a composite nature with a maximum of 25 pupils that can be accommodated in each classroom. The Elphinstone Primary school roll projections show that without the development proposed through this application the school is required to be expanded by one classroom by 2034 to accommodate the children generated by the already approved development at Phase 1 Elphinstone (planning permission 21/01604/PM). With the proposed additional 111 units in Phase 2 within the catchment the school would be required to be permanently expanded sooner (ready for 2027) and by a further classroom and the nursery provision increased. The school would require 5 classrooms in total and an enlarged nursery facility to accommodate the additional pupils generated from the proposed development. Thus, the School Estate Planning Officer would object to the application on the grounds of lack of permanent capacity at Elphinstone Primary school unless the applicant makes a financial contribution to the Council of £1,148,062 towards the provision of additional primary school accommodation within the catchment.

The required payment of a financial contribution of a total of £1,148,062 towards the provision of additional educational accommodation can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the payment of the required contribution towards educational accommodation, the proposal is consistent with Policy 18 of NPF4 and Policy ED1 of the ELLDP, which stipulates that new housing will only be permitted where appropriate provision for infrastructure required as a consequence of the development is made. This will include funding necessary school capacity. The applicants confirm in writing that they are willing to enter into such an agreement.

The Council's School Estate Planning Officer further recommends that a condition be imposed if planning permission is to be granted requiring that annual housing completions on the site be controlled over a period of at least three years with habitations beginning in 2025/26. Such a condition can be imposed if planning permission is to be granted. This will ensure that sufficient education capacity can be provided for the pupil product of the development.

The **Council's Strategy and Development Team** advises that in accordance with the Council's Affordable Housing Policy, 25% of the proposed 111 residential units require to be affordable housing units. The affordable housing component of the proposed housing development is 28 units. The Strategy and Development Team advises that the mix, size and location of the 28 affordable units to be provided on the site is acceptable. The affordable housing is sufficiently integrated into the overall development. The Strategy and Development Team recommend that the application is approved and that communication continues with East Lothian Council's Strategy and Development Team Housing Enabler. The terms for the provision of this affordable housing requirement can be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the Council securing the affordable housing requirement, which the applicant is willing to do, the proposal would be consistent with Policy 16 of NPF4 in respect of affordable housing provision and Policies HOU3 and HOU4 of the ELLDP and the Council's adopted SPG on Affordable Housing.

In summary, although the number of units proposed is significantly higher than the pro rata number that would be expected on this part of the site, the site is physically capable of

accommodating the proposed development including vehicular and pedestrian access and amenity space without such development being an overdevelopment of the site and without significant impact on the global climate and nature crises. A grant of planning permission for the proposed development in the context of the site being part of housing allocation PROP TT11 of the East Lothian Local Development Plan, and in that its impacts in respect of amenity and technical considerations are acceptable in themselves, or can be mitigated through the appropriate use of planning conditions and necessary developer contributions, would not be inconsistent with National Planning Framework 4, with the relevant policies of the East Lothian Local Development Plan 2018 or with its adopted supplementary guidance.

In conclusion, and subject to the prior conclusion of a legal agreement and the imposition of the recommended conditions, the proposed development accords 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.

RECOMMENDATION

It is recommended that planning permission be granted subject to:

1. The undernoted conditions.

2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:

(i) a financial contribution to the Council of £1,148,062 towards the provision of additional primary school accommodation within the catchment;

(ii) the provision of 28 affordable housing units within the application site;

(iii) a financial contribution to the Council of £69,375 towards sports and changing provision within Elphinstone;

(iv) a financial contribution to the Council of £21,848.96 for transport improvements to Old Craighall Junction, Salters Road Interchange, Bankton Interchange, Musselburgh town centre improvements, Tranent town centre improvements and rail network improvements;

3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient primary school capacity within the catchment, a lack of provision of affordable housing, a lack of sports infrastructure improvements and a lack of roads and transport infrastructure contrary to, as applicable, Policy 18 of NPF4, Policies DEL1, HOU3, HOU4 and Proposals T9, T10, T11, T15, T17, T21, T27, T28, ED4,CF1 and TT11 of the adopted East Lothian Local Development Plan 2018 and its adopted supplementary guidance: Developer Contributions Framework.

As per the Adopted Supplementary Guidance: Developer Contributions Framework, all Strategic Transportation and Sports Provision Contributions will be increased in line with indexation from Q1 2019 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors

until due date of payment and the primary school education contribution will be increased from Q4 2023 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment .

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 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 Unless otherwise approved in writing by the Planning Authority:

(a) Housing completions on the application site in any one year (with a year being defined as being from 1st April to 31st March the following year) shall not cumulatively exceed the following completion rates, unless otherwise approved in writing by the Planning Authority:

Year 2025/26 - 30 residential units

Year 2026/27 - 40 residential units

Year 2027/28 - 41 residential units

(b) If fewer than the specified number of residential units is completed in any one year then those shall be completed instead at Year 2028/29 or beyond and not added to the subsequent year.

Reason:

To ensure that the completion rate of residential development within the application site accords with the provision of education capacity.

- 4 Prior to the commencement of development a delivery schedule and phasing plans that establishes the phasing and timing programme for the proposed development shall be submitted to and approved in advance by the Planning Authority. It shall include the phasing and timing for the provision of footpaths/cycleways and external works such as offsite path links. These path links shall include:

(i) One hard-surfaced, lit (street lighting) path connection from the west boundary of the site to connect to the core path to the west of the site;

(ii) One hard-surfaced, lit (street lighting) path connection from the east boundary of the site to connect into the existing footpath network to the east of the site;

It must also include for public road links, including paths, to the development approved on the southern part of the application site, drainage infrastructure, landscaping and open space. The details to be submitted shall also include construction phasing plans.

The phasing of the development of the site shall be carried out in strict accordance with the phasing plan so approved, unless otherwise approved in writing in advance by the Planning Authority.

Reason:

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

- 5 A Travel Information Pack shall be submitted to and approved by the Planning Authority prior to the occupation of any of the residential units hereby approved. The Travel Information Pack shall have particular regard to provision for walking, cycling and public transport access to and within the site, shall include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents.

Reason:

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

- 6 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. Unless otherwise approved in writing by the Planning Authority, driveways shall be at least 3.3 metres in width.

Those areas of land shall not thereafter be used for any other purpose than for accessing and for the parking of vehicles and for pedestrian movement in connection with the residential use of the houses and flats 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 pedestrian provision in the interests of road and pedestrian safety.

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

The Construction Method Statement shall also include details of wheel washing or alternative facilities to be provided, and that these facilities shall be maintained in working order during the period of operation of the site. All vehicles must use the wheel washing 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 of the development hereby approved.

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.

- 8 Prior to the commencement of development, a programme for monitoring the condition of the B6414 public road in Elphinstone along the extents of the 20mph limit of that road, prior to, during the period of construction and immediately following the completion of the development hereby approved, shall be submitted to and approved in writing by the Planning Authority. The programme for monitoring shall include details of the inspection schedule and of measures to be implemented by the developer for repairs for damage to the road surface that could represent a significant road safety risk. Thereafter the approved programme of monitoring shall be implemented. Any non-emergency remedial works shown by the monitoring as arising from the construction of the development shall be undertaken by the applicant within 3 months of the completion of the final monitoring undertaken, unless an alternative means of securing the works is approved in writing by the Planning Authority.

Reason:

To ensure that damage to the adjoining road network resulting from the construction of the residential development is rectified.

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

- 10 The actions to be taken to reduce the carbon emissions from the building and the provisions for private electric vehicle charging all as detailed in the 'Elphinstone Phase 2 Statement on Energy' and on drawing titled 'EV Layout' with drawing number ELPH/DL/002 docketed to this planning permission shall be fully implemented on site prior to the occupation of the last residential unit hereby approved and thereafter shall be retained unless otherwise approved in writing by the Planning Authority.

Reason:

To minimise the environmental impact of the development.

- 11 Prior to their erection, details, including their size, form, position, appearance and colour(s), of all substations and gas governors to serve the development hereby approved shall be submitted to and approved in advance in writing by the Planning Authority, and thereafter any substations and gas governors shall accord with the details so approved.

Reason:

To enable the Planning Authority to control the positioning, appearance, form, finishes and colour of the substations and gas governors to be used to achieve a development of good quality and appearance in the interest of the visual amenity of the area.

- 12 Unless otherwise agreed in writing by the Planning Authority no residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority.

The details shall include a timetable for the provision of the artwork.

The artwork shall thereafter be provided in accordance with the details so approved.

Reason:

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

- 13 A timetable for the provision of all boundary treatments for the gardens of the houses and flats hereby approved shall be submitted to and approved in advance by the Planning Authority and development shall thereafter be carried out in full accordance with the timetable so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the satisfactory provision of the boundary enclosures in the interest of safeguarding the privacy and amenity of future residents of the development and residential properties nearby and to ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 14 Prior to the commencement of development, an updated Gas Risk Assessment shall be submitted to and approved by the Planning Authority. Where risks are identified, a detailed Remediation Statement shall be submitted to and approved by the Planning Authority to demonstrate the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks. The Statement shall detail all works to be undertaken, proposed remediation objectives and remediation criteria as well as details of the procedures to be followed for the verification of the remedial work. 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. The detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels. The Remediation Statement as approved shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. Following completion of the measures identified in the approved Remediation Statement, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Statement.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning Authority. At this stage, further investigations may have to be carried out to determine if any additional remedial measures are required.

If no unexpected ground conditions are encountered during the development works, this shall be confirmed to the Planning Authority in writing prior to occupation of the residential development hereby approved.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of any of the residential units.

- 15 Noise associated with the operation of the air source heat pumps hereby approved, including cumulative impacts of a number of air source heat pumps operating simultaneously, shall not exceed Noise Rating curve NR20 at any octave band frequency between the hours of 2300-0700 and Noise Rating curve NR25 at any octave band frequency between the hours of 0700-2300 within any residential property. All measurements to be made with windows open at least 50mm.

Reason:

To safeguard the amenity of the occupants of nearby residential properties.

- 16 No development shall take place on site until temporary protective fencing in accordance

with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in 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. The position of this fencing must be as indicated on the drawing 'Figure 3.4 Tree Protection Plan' on p 33 of the Tree Survey and Arboricultural Impact Assessment by Caledon Tree Surveys dated April 2024, shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees and hedgerows and approved in writing by the Planning Authority.

All weather notices shall be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- _ No vehicular or plant access
- _ No raising or lowering of the existing ground level
- _ No mechanical digging or scraping
- _ No storage of temporary buildings, plant, equipment, materials or soil
- _ No hand digging
- _ No lighting of fires
- _ No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations 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.

Reason

In order to form Construction Exclusion Zones around retained trees and hedgerows and protect retained trees and hedgerows from damage.

- 17 No development shall take place on site until a person who, through relevant education, training and experience, has gained recognised qualifications and expertise in the field of trees in relation to construction, has been employed by the developer to monitor any works within the root protection area or canopy spread of trees on or adjacent to the application site. Arboricultural monitoring shall including the supervision and reporting to the Planning Authority on the installation of the required tree protection fencing and any development within the root protection area of trees shown to be retained and protected in strict compliance with docketed and stamp approved report titled : Tree Survey & Arboricultural Impact Assessment, dated April 2024 and drawing titled: 'Figure 3.4 Tree Protection Plan' on p 33 of the Tree Survey and Arboricultural Impact Assessment by Caledon Tree Surveys dated April 2024. All tree work shall be approved in writing by the Planning Authority before work is carried out.

Reason:

To ensure the retention and maintenance of the trees adjacent to the site which are an important landscape feature of the area.

- 18 Unless otherwise approved in writing by the Planning Authority, all planting, seeding or turfing comprised in the approved details of landscaping on the drawings titled 'Landscape Proposals (Sheet 1 of 6)' with drawing number 231.29.01C, 'Landscape Proposals (Sheet 2 of 6)' with drawing number 231.29.02C, 'Landscape Proposals (Sheet 3 of 6)' with drawing number 231.29.03C, 'Landscape Proposals (Sheet 4 of 6)' with drawing number 231.29.04C, 'Landscape Proposals (Sheet 5 of 6)' with drawing number 231.29.05C, 'Landscape Proposals (Sheet 6 of 6)' with drawing number 231.29.06C 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 and as detailed in the 'Plant Schedule, Specification & Maintenance' document Revision B dated 22 October 2024. This includes maintenance of garden hedges at 1m in height and maintenance of the northern boundary hedgerow at 1.5m in height. 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 landscape shall be retained and maintained to accord with the details of the approved details of landscaping.

Reason

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

- 19 Unless otherwise approved by the Planning Authority all of the open space and communal landscape as detailed in the docketed and stamped approved landscaping and landscape maintenance drawings and in the 'Plant Schedule, Specification & Maintenance' document Revision B dated 22 October 2024 shall be retained and maintained as such by a Factor or a Residents Association in accordance with details to be submitted to and approved by the Planning Authority prior to the occupation of any residential units hereby approved. Such landscape maintenance shall include all hedges to front gardens being adopted and maintained by a Factor or a Residents Association.

Reason:

To ensure the retention and maintenance of landscaping and open space on the site in the interest of amenity.

- 20 Prior to the occupation of any of the residential units hereby approved, details of the play equipment to be provided within the equipped play area, surfacing materials and any enclosure of the play area along with details of any bins and benches to be installed shall be submitted to and approved by the Planning Authority. Such details shall include details of play equipment suitable for a range of abilities including disabilities, and this shall include suitable play equipment and surfacing to facilitate a range of ages and abilities. A timetable for the provision of all of the play equipment and associated play surfacing, bin, bench and any enclosure of the play area to be provided on the site and details of how the equipped play area is to be managed and maintained are to be submitted to and approved in advance by the Planning Authority and the play area shall thereafter be installed, surfaced, enclosed, managed and maintained in accordance with the details so approved and shall be used for such purposes at all times thereafter unless approved by the Planning Authority..

Reason:

To ensure the satisfactory provision of adequate and suitable play provision and the future maintenance of it within the development.

- 21 Prior to the occupation of any of the flats hereby approved bin storage facilities shall have been formed and made available for use. Thereafter, the storage facilities shall be retained in use 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.

- 22 All of the remedial treatment works to address land instability arising from shallow coal mining legacy as identified in the Mineshaft Investigation Report (February 2024) docketed to this planning permission shall be carried out on site in accordance with the terms of that Report prior to the commencement of any other development on the site. On completion of the remedial works and prior to the occupation of any residential unit, a signed statement or declaration prepared by a suitably qualified person confirming that the site has been made safe and stable for the development hereby approved and confirming the completion of the remedial works and any mitigatory measures necessary to address the risks posed

by past coal mining activity shall be submitted to and approved in writing by the Planning Authority and any mitigation works identified shall thereafter be fully implemented as so approved.

Reason:

To ensure that the site is clear of coal mining features and hazards prior to the occupation of any of the buildings.

- 23 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 or by any other statutory instrument amending, revoking or re-enacting the 1992 Order, no development other than that hereby approved, or approved in compliance with any of the other conditions of this planning permission, shall take place within plot no.221 as detailed in the development layout docketed to this planning permission without the prior permission of the Planning Authority.

Reason:

Due to the potential presence of coal mining features and hazards within the vicinity of the property.

- 24 Each bat ridge roost box detailed on the Ecology Layout with drawing no ELPH2/DL/004 docketed to this planning permission shall be installed prior to the occupation of each house to which they are to be installed and shall thereafter be retained unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure biodiversity provision and retention.



REPORT TO: Planning Committee
MEETING DATE: 5 November 2024
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

Note: This application has been called off the Scheme of Delegation List by Councillor McGinn for the following reasons: This application has caused concern and anxiety within the village of Elphinstone amongst residents and the wider community. I believe the application requires a wider discussion at planning committee and respectfully request that this application is brought for discussion at the earliest opportunity.

Application No. **24/00699/P**

Proposal Formation of pathway and installation of lighting

Location **Woodland and Amenity Grass Area to the West of Waterloo Place
Main Street
Elphinstone
East Lothian**

Applicant Bellway Homes Ltd (Scotland East)

RECOMMENDATION Consent Granted

REPORT OF HANDLING

PROPOSAL

This application relates to an area of grassed, amenity open space and an area of woodland which are located on the northwest edge of the existing village of Elphinstone between the cul-de-sac of Waterloo Place and the allocated housing site of PROP TT11:Elphinstone West as allocated by the adopted East Lothian Local Development Plan 2018 (ELLDP). The site, by being located in the existing village, is within an area defined by Policy RCA1 of the ELLDP as being a predominantly residential area. The land of the application site is within an area identified by The Coal Authority as being a Coal Mining Development Low Risk Area

Planning permission is sought for the formation of a footpath with associated lighting to connect the land of allocated housing site of PROP TT11 to the existing footpath network of Waterloo Place. A separate planning application (reference 23/01333/PM) has been submitted by the same applicant for the erection of 103 houses, eight flats and associated works on the allocated housing site of PROP TT11. That associated planning application is pending consideration and has not yet been determined.

The proposed footpath would run in a northeast direction from the site of PROP T11, through a strip of woodland then on through an area of grassed amenity space before connecting into the existing footpath network of Waterloo Place. The proposed footpath

would be 3 metres in width along the majority of its length but would taper to a width of two metres at its north eastern end where the existing footpath it would connect into is around two metres wide. The proposed footpath would be constructed to an adoptable standard with an asphalt surface and three street lighting poles. A number of trees are indicated to be removed from the woodland strip to facilitate construction of the path.

The woodland strip and area of grassed amenity space are in Council ownership and are currently maintained by the Council. The existing footpaths of Waterloo Place are in private ownership but are adopted by the Council and maintained by the Council.

The application is supported by detailed drawings and reports including a Tree Survey, an Ecology Survey and an Outdoor Lighting Report. Since the registration of the application, non-material amendments have been made to the proposals resulting in a slight adjustment to the alignment of the path in order to avoid the root protection areas of some trees and therefore resulting in the loss of fewer trees from the woodland strip and grassed amenity space.

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).

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural Places), 6 (Forestry, woodland and trees), 13 (Sustainable Transport) 14 (Design, quality and place), 15 (Local living and 20 minute neighbourhoods), 18 (Infrastructure first) and 22 (Flood risk and water management) of NPF4 and Policies DP1 (Landscape Character), DP2 (Design) DP9 (Development Briefs), RCA1 (Residential Character and Amenity), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH8 (Trees and Development), T1 (Development Location and Accessibility), T2 (General Traffic Impacts), NH11 (Flood Risk), DEL1 (Infrastructure and Facilities Provision) and Proposal TT11 (Elphinstone West) of ELLDP are relevant to the determination of the application.

Also material to the determination of the application is the non-statutory Development Brief (TT11 Elphinstone West, Tranent) which was adopted by the Council on 30 October 2018.

REPRESENTATIONS

Material to the determination of the application are the written representations received to it. There have been 23 written representations received to this application, all of which raise objections to the proposed development.

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

- * At no stage have residents been notified of this proposal;
- * This is not public land, this land is privately owned;
- * The applicant has no access rights over the path between 2 and 3 Waterloo Place;
- * A more sensible proposal would be a pathway through ELC/Housing Association land on MacFarlane Court, where a paved roadway already exists and where there would be better access to the bus stop and shop facilities in the village and less impact on trees;

- * The removal of trees would have a significant negative impact on local biodiversity and air quality;
- * Security risks and increased noise pollution to existing residents as a result of the increased foot traffic through Waterloo Place;
- * The proposal would alter the character of the Waterloo Place neighbourhood where there has been a deeply rooted commitment to preserving the unique safe and quiet environment for more than forty years;
- * The proposed lighting will intrude on numbers 2 and 3 Waterloo Place whilst causing light pollution and disturbance to the general environment and wildlife;
- * The proposed path will not be the required width for active travel;
- * There are already an adequate number of pathways around the new housing area and this path would have little added benefit to accessing local amenities for the new residents;
- * The proposed path is on already waterlogged ground which will surely aggravate the issue of waterlogging around the site behind Waterloo Place;
- * The applicant had previously assured residents that the pathway depicted on the plans was merely an “artist’s impression” and would be removed;
- * This proposal could lead to a substantial loss of property values to the residents;

Neighbour notification, in accordance with statutory requirements, and advertisement of the application in the local press was carried out at the point of registration of the application. The applicant has certified in the planning application forms that they have notified all relevant owners of land within the application site. Access rights are a legal matter but there is nothing in this proposal or in the representations made to it to suggest that there are no access rights over the adopted paths of Waterloo Place or over the land of this application site. The matters raised by objectors regarding loss of property value is not a material consideration in the determination of a planning application.

COMMUNITY COUNCIL

Tranent and Elphinstone Community Council object to the application. They make a number of statements in their consultation response that appear to be unsubstantiated or lacking in evidence to support them. They state that residents had previously been assured by East Lothian Council (ELC) staff, Bellway and Elected Members that there would not be a path formed through this land. They have not provided details or any evidence to substantiate that statement. They also state that ELC did not contact residents of Waterloo Place to inform or seek permission about the intention of Bellway to adopt or buy this land. There is no evidence to suggest that Bellway would be seeking to adopt or buy this land and it is therefore unclear what ELC would be making contact with residents on. The Community Council state they “are losing faith in ELCs ability to control large developers and their bullying and manipulative behaviour” but it is not clear what is meant by that statement or what alleged bullying or manipulative behaviour they consider is taking place.

The Community Council otherwise object on the grounds that this route leads into a quiet cul-de-sac with no amenities or public transport, there are other areas which should have been considered instead, on impacts on biodiversity, loss of trees, lead to additional littering by dogs and humans, light pollution from street lights causing disturbance to residents and wildlife, the path does not meet the width requirements required to be an Active Travel path, there are already enough paths around the new housing area and concerns the path could aggravate waterlogging in this area.

PLANNING ASSESSMENT

This proposal has been submitted in association with an application for residential development on the adjoining allocated housing site of PROP TT11. The adopted Development Brief for the site of PROP TT11 sets out guiding principles and indicative

design, to be followed, where possible. Amongst the principles listed in the Development Brief are enabling pedestrian and cycling connectivity through the site to adjoining land and creating a surfaced path connection between the housing site and the adjoining community to ensure good connections. The adopted Development Brief includes a map of the site which is annotated to indicate that such a path should be formed between the housing site and Waterloo Place, in the same position as is proposed through this application. The principle of the proposal therefore complies with Policy DP9 and PROP TT1 of the ELLDP and with the adopted Development Brief accompanying PROP T11. However, as this footpath is only required to be formed in association with the adjoining site being developed for residential development, and without such residential development taking place there would be nowhere for the footpath to connect to at its western end, a condition should be imposed on any grant of planning permission for this application that the footpath is not formed unless and until planning permission for the residential development the subject of planning permission 23/01333/PM has also been granted. This would preserve the landscape character of the area and prevent unnecessary development taking place.

With regards to Policies 1, 2 and 13 of NPF 4, the proposed development would provide a path that would connect the existing village with the allocated extension to the village, connecting the community by improving permeability and promoting the use of sustainable transport through walking and cycling and by increasing access to public transport and active travel routes. The provision of this path would also seek to reduce the reliance of car use within this local area and thus in these respects the proposal complies with Policies 1, 2, 13, 14 and 15 of NPF 4.

In its form, finishes and by connecting into the existing footpath network of Waterloo Place, and that proposed in the new housing development to be formed to the west, the proposed path and its lighting columns would be seen in relation to very similar paths and lighting and would be viewed in the context of adjoining residential developments. The proposed path would not appear harmfully intrusive or incongruous in its setting and would not be harmful to the character and appearance of the area. Although it would bring increased pedestrian and cyclist activity to the current cul-de-sac of Waterloo Place the nature and level of such activity would be consistent with that found in a residential area and would not be harmful to the privacy and amenity of residents of that cul-de-sac or any other neighbouring residential property or land use. In these respects, the proposals comply with Policies DP2 and RCA1 of the ELLDP.

The **Council's Environmental Health Officer** has been consulted on the application and has raised no concerns on matters of noise nuisance or air quality. He raises no objections to the proposals but recommends that a condition be imposed on any grant of planning permission to ensure that the design and construction of the lighting proposed for the path does not exceed criteria set out in Scottish Government Guidance for 'low district brightness areas' such as rural, small village, or relatively dark urban locations. Such a control can be imposed as a condition on a grant of planning permission to ensure that the lighting proposed is suitable for its location and does not harmfully impact on the amenity of neighbouring residential properties. Subject to such control the proposals would be not conflict with Policy RCA1 of the ELLDP in terms of light pollution.

The **Council's Road Services** have been consulted on the application and advise they have no objection to the proposal, being satisfied the pathway could be accessed safely and that it would not result in a road or pedestrian safety hazard. They raise no concerns that it could not be used for active travel purposes. They recommend conditions be imposed on any grant of planning permission to ensure that the gradient of the path should not be steeper than 5% at any point and that a 1metre wide level mown grass edge to both sides of the path be maintained to ensure that grass or other vegetation does not obstruct

the path for users of it. A condition can be imposed to ensure that the gradient of the path is not steeper than 5% at any point along its length. The matter of maintenance of the grass and woodland vegetation on either side of the path has been discussed with the applicant. As the applicant does not own the land on either side of the path they have advised they would struggle to maintain this land, which is currently maintained by the Council. The Council's Strategy, Policy & Development Manager of Sport, Countryside & Leisure, who oversee the maintenance of the open space and woodland to which this application relates, advise they would not be in a position to fund any additional maintenance which may be required which should be the responsibility of the developer. Therefore, the Council's Road Services in consultation with the Council's Policy & Development Manager of Sport, Countryside & Leisure have established the long-term maintenance costs of the maintenance works which would be required to be carried out as a consequence of the proposed development. They have established that these maintenance costs would come to a sum of £13,255 for regular maintenance over a 15-year period. These costs can be met through a developer contribution in line with Policy 18 of NPF4 and Policy DEL1 of the ELLDP.

The required developer contributions towards the path maintenance works can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicants confirm in writing that they are willing to make the required developer contributions of £13,255 towards the path maintenance works and have advised their preference is to make the payment up front rather than entering into a Section 75 Agreement. The Council's Planning Obligations Officer is content with this approach as an alternative appropriate agreement provided the payment is made in full to the Council via a bank transfer prior to planning permission being issued.

With the imposition of the aforementioned condition and subject to the conclusion of an appropriate agreement to secure the developer contributions towards the maintenance costs listed above, the proposed development does not conflict with Policies 13 and 18 of NPF4 or with Policies T1, T2, or DEL1 of the ELLDP.

The **Council's Access Officer** has raised no objection to this proposal.

The **Council's Team Manager for Structures, Flooding & Street Lighting** advises that SEPA's Flood Hazard Mapping indicates that the site is not at risk from a flood event with a return period of 1 in 200 years, plus climate change. That is the 0.5% annual risk of a flood occurring in any one year, with an allowance for climate change. He advises that the Flood Hazard Mapping has been developed to provide a strategic national overview of flood risk in Scotland and whilst all reasonable effort has been made to ensure that the flood map is accurate for its intended purpose, no warranty is given by SEPA on this. Although the site is not at risk of flooding within SEPA's maps, the Council's Team Manager for Structures, Flooding & Street Lighting advises that residents have in the past noted that this area is at points waterlogged/wet. Likewise, there has been flooding overtopping from the allocated residential development site, affecting properties at Tranent Road (South of the site) in the past (this is slightly downstream of this section). He advises that generally, the installation of a small path is unlikely to have any significant impact on flood risk in the area. In this instance however, he notes there is the removal of trees and installation of a downslope path, in a reportedly already waterlogged area, and there is a property immediately downstream of the proposed path (2 Waterloo Place). He therefore recommends that in the particular circumstances of this case it would be prudent to ensure that drainage details for the proposed pathway, including details of any mitigation measures to ensure that the path will not lead to an increase in surface water runoff, be submitted and approved prior to the commencement of development of the path. Such a

condition can be imposed on a grant of planning permission for the proposed development. With the imposition of this conditional control the proposed development does not conflict with Policy 22 of NPF4 or with Policy NH11 of the ELLDP.

The route of the proposed path has been designed to minimise as far as possible the removal of trees within the woodland strip and to minimise the impact on the grassed area of amenity space by being routed closely to the outer edges of that space rather than through the middle of it. This will ensure that the grassed amenity space can still be used for informal play purposes.

The **Council's Strategy, Policy & Development Manager of Sport, Countryside & Leisure**, who oversees the maintenance of the open space and woodland to which this application relates, has raised no objections to the proposal to form a path through the grassed amenity space and woodland subject to the additional maintenance costs being met by the applicant as detailed earlier in this report, and subject to compensatory tree planting, alongside other suitable biodiversity compensation such as wildflower / pollinator planting being carried out within the site. She otherwise advises the Council's Tree Officer and Biodiversity Officer should be consulted for commentary of the specific proposal for the proposed path through the woodland including any conditions they consider necessary.

The **Council's Tree Officer** has advised he has no objection to the proposal and raises no objection to the felling of the trees identified as being necessary to remove to form the pathway. He recommends that (i) the work to remove the trees which require to be felled be carried out by a suitably qualified and insured contractor at the expense of the applicant and that details of the contractor and timings of work are notified to the Council's Tree Officer prior to any works commencing, (ii) that Category 'U' trees within the application site identified in the Tree Survey be removed at the same time as the main tree works in the interests of good tree management and (iii) that suitable temporary fencing to protect the trees which are to be retained is agreed in advance by the Council's Tree Officer prior to development commencing on site. These are matters which can be imposed as conditions on a grant of planning permission.

The **Council's Biodiversity Officer** notes that the applicant's Tree Survey states that the woodland to which this application relates holds 'high ecological value' and that it concludes that an Arboreal Management Plan is recommended. The Council's Biodiversity Officer concurs that an Arboreal Management plan would be beneficial to ensure that the ongoing management of this parcel of land is continued to be managed for biodiversity and nature but she does not recommend that such a Management Plan be carried out by the applicant. As the Council own the land the woodland area to which this application relates it would be a matter for the Biodiversity Officer to discuss and consider with the Council's Strategy, Policy & Development Manager of Sport, Countryside & Leisure and the Council's Tree Officer.

The Council's Biodiversity Officer notes that Policy 6 (c) of NPF4 states that "Development proposals involving woodland removal will only be supported where they will achieve significant and clearly defined additional public benefits in accordance with relevant Scottish Government policy on woodland removal". She adds that there would also be an expectation that, if trees were to be removed, that there would be a supplementary planting plan submitted that would follow Policy 3 of NPF4 (c) "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."

The Council's Biodiversity Officer advises that the 'Proposed Woodland Path Survey

Report: Elphinstone Development Site, East Lothian (Blackhill Ecology Ltd, 2024)' submitted with this application states that the woodland does not show any records of European Protected Species such as bats. Notwithstanding this finding, the Council's Biodiversity Officer recommends the applicant considers a precautionary approach being taken and that they consider the installation of a bat box as part of their measures to benefit biodiversity. The applicant is proposing to install bat boxes within some of the houses in their adjoining residential development and the Council's Biodiversity Officer is content with this approach.

The Council's Biodiversity Officer recommends that a condition be imposed to ensure adherence to restrictions to work being carried out in bird breeding season and this is a matter which can be imposed on a grant of planning permission. Subject to this condition being imposed and subject to appropriate biodiversity enhancement measures being secured for the site, a matter which can also reasonably be secured through the imposition of a condition on a grant of planning permission, on these biodiversity considerations the proposals comply with Policies 3 and 4 of NPF4 and Policy NH5 of the ELLDP.

The tree survey submitted with this application identifies the condition of the trees within this area of the woodland together with their root protection areas and identifies trees which would require to be removed as a result of the proposed development.

The **Council's Landscape Project Officer**, in her initial consultation response to this application, advised that although she would not generally support the loss of trees she appreciates that this path is important to improve access between the site and active travel routes and public transport. She has therefore given consideration to the need to provide a path but with minimum tree loss and with a view to provide mitigating planting that could improve diversity of the woodland. In her initial consultation response the Council's Landscape Project Officer noted that the route of the path would result in the removal of 15 trees in total. Three of those trees being category U trees that require to be removed for arboricultural reasons. The rest being seven B category and five C category trees. The proposals plan originally submitted with the application indicated the retention of two of the category B trees, numbered 3569 and E1. However the proposals significantly encroached within their root protection areas and therefore it was unlikely that they could have been successfully retained. The Council's Landscape Projects Officer, having assessed the Tree Survey and detailed drawings made some recommendations to minimise tree loss by slightly re-aligning the path and lighting route through the woodland strip and amenity space. The detailed drawings and Tree Survey have been revised by the applicant with this slight re-alignment of the path and lighting route and having considered the revised details submitted the Council's Landscape Project Officer has advised the revisions have helped to reduce tree loss. Three B Category trees (3572, 3573 and E1) have now been shown to be retained and this is supported by the Landscape Projects Officer. Now a total of 13 trees, some of which are being felled for arboricultural reasons (U category trees) rather than as a direct result of the development, would be felled.

As no mitigating planting has been proposed, the Council's Landscape Projects Officer supports the submission of a replacement planting plan that includes for replacement trees on a two for one basis to both mitigate for the tree loss and provide biodiversity enhancement. She advises there appears to be space within the woodland and open space to the south side of the path for new tree planting. The proposals should include for a mix of tree species to include native species of a mix of sizes, large, medium, small and shrub species to provide diversity within this area of the woodland. The proposals should include for the management and maintenance of the new planting for the first ten years to establishment by the applicant. The Council's Landscape Project Officer also recommends that conditions to secure tree retention and protection (protective fencing) conditions be imposed on a grant of planning permission. The applicant has confirmed that they are

agreeable to all of the Landscape Project Officer's recommendations. Subject to these landscaping and tree protection measures being secured through the imposition of conditions on a grant of planning permission, mitigation will be secured for the tree loss and biodiversity enhancement will be provided. On these counts the proposals do not conflict with Policies 3, 4 or 6 of NPF4 or with Policies DP1 or NH8 of the ELLDP.

CONCLUSION

In conclusion, the proposals are considered to be overall in accordance with the provisions of the stated relevant Development Plan policies and with the non-statutory Development Brief (TT11 Elphinstone West, Tranent) which was adopted by the Council on 30 October 2018 and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

The decision to grant planning permission is subject to the undernoted conditions and the satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other agreement, design to secure from the applicant a financial contribution to the Council of £13,255 for the long-term maintenance of the footpath verges.

In accordance with the Council's policy on time limits for completion of planning agreements the decision also is that in the event of a Section 75 Agreement or some other appropriate agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of footpath maintenance provision which could impact on the safety of footpath users contrary to, as applicable, Policies 13 and 18 of NPF4 and Policies T1, T2, or DEL1 of the ELLDP

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 tree removal shall take place and the pathway and lighting hereby approved shall not be formed unless and until the residential development the subject of planning application 23/01333/PM is granted planning permission.

Reason:

To safeguard the landscape character of the area.

- 3 Unless otherwise approved in writing by the Planning Authority, the gradient of the path shall not be steeper than 5% at any point along its length.

Reason:

To ensure accessibility of the path for different users.

- 4 The design and construction of the footpath lighting hereby approved shall take account of the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. In particular, the footpath lighting hereby approved shall at all times comply with the following criteria:

Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

To prevent lighting from spilling onto neighbouring land, in the interests of safeguarding the amenity of nearby residential properties and the character and appearance of the area.

- 5 Details of measures to control surface water drainage, including details of any mitigation measures to ensure that the path will not lead to an increase in surface water runoff, and a timetable for the installation of any surface water drainage/mitigation measures shall be submitted to and approved by the Planning Authority prior to the commencement of development of the path. The surface water control measures and any mitigation measures approved shall thereafter be fully implemented in accordance with the timetable and other details as approved by the Planning Authority.

Reason:

In the interest of flood prevention, environmental protection and the long term amenity of the area.

- 6 Only the trees marked for removal on the 'Off Site Path' drawing numbered L(0)010 rev E and tree numbered 3578 shall be felled.

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved by ELC Tree Officer and confirmed in writing by the Planning Authority. The fencing must be fixed in 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. The position of this fencing must be set one metre beyond the edge of the path, to both the north and south sides and must tie into the existing fencing to the woodlands and adjacent properties to provide fully enclosed construction exclusion zones. It must be approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- _ No vehicular or plant access
- _ No raising or lowering of the existing ground level
- _ No mechanical digging or scraping
- _ No storage of temporary buildings, plant, equipment, materials or soil
- _ No hand digging
- _ No lighting of fires
- _ No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

Reason

In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage.

- 7 No development or tree removal shall take place on site until a person who, through relevant education, training and experience, has gained recognised qualifications and expertise in the field of trees in relation to construction, has been employed by the developer to monitor any works in close proximity of trees on the site including the work to remove the trees which require to be felled and the installation of the tree protection fencing and construction of the footpath and lighting route. The works to install the footpath shall include for the installation of root protection barriers at the footpath edges. Details of the contractor employed and timings of work shall be notified to the Planning Authority prior to any works commencing.

Reason:

To ensure the retention and maintenance of the trees on the site which are an important

landscape feature of the area.

- 8 No development shall take place until there has been submitted to and approved in writing in advance by the Planning Authority a scheme of landscaping for the site. The scheme shall provide details of the replacement tree and shrub planting and other suitable biodiversity compensation measures such as wildflower / pollinator planting to be carried out within the site. It should include tree and shrub sizes, species, habitat, siting, planting distances, a programme of planting and a ten year management plan for establishment. Non-thorn shrub species should be located adjacent to pedestrian areas. The scheme shall include indications of all existing trees and hedgerows on the land, details of any to be retained, and measures for their protection in the course of development.

All planting comprised in the approved details of landscaping shall be carried out in the first planting season following the completion of the development hereby approved. All planting shall be established and maintained in accordance with the details on the approved 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 by the applicant in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

Reason:

In order to ensure the implementation of a landscaping scheme to provide compensatory tree planting, to enhance the appearance of the development in the interests of the amenity of the area and in the interests of biodiversity enhancements.

- 9 No development shall be undertaken between the 1st March and 31st August in any calendar year unless a detailed check of the site for active birds' nests has been undertaken and written confirmation has been submitted to and approved by the Planning Authority.

Reason:

In the interests of nature conservation.



23/01333/PM & 24/00699/P

Applicant's Report on Issues

Prepared by Bellway Homes Ltd (Scotland East)
November 2024
Version 2

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1. Background

This report has been prepared to address the concerns raised by the East Lothian Council Planning Committee on 5th November 2024 regarding the ongoing works by Bellway Homes under planning application 21/01608/PM, which pertains to the first phase of residential development at Main Street, Elphinstone. These concerns led the Planning Committee to propose the continuation of applications 23/01333/PM and 24/00699/P, which relate to the second phase of residential development and associated works, and an offsite footpath, respectively.

Following the Planning Committee meeting, Bellway Homes met with East Lothian Council on 6th November 2024 to discuss the issues that must be addressed before these applications are reported back to the Planning Committee. Subsequent correspondence was received outlining the specific items requiring a response. Bellway Homes then attended a further meeting with the Council on 13th November 2024, where representatives from the Development Control, Environmental Health, Roads, Flooding, and Building Standards teams were present to raise any concerns within their respective areas of responsibility. Members of the Scottish Water Development Operations team also attended this meeting.

Bellway Homes is committed to working closely with East Lothian Council to resolve the identified issues before the applications are reconsidered by the Planning Committee. As such, this report outlines the concerns raised by elected members and key stakeholders, explains how Bellway Homes plans to address these issues, and provides a timeline for their resolution.

2. Sewerage Works on Main Street, Elphinstone

2.1 Foul Sewer Connection Issues & Proposed Resolution

In July 2024, the road at Main Street was excavated to commence the installation of the foul and surface water sewers by directional drilling. The works were originally projected to take 7 weeks to complete. The driving of the surface water sewer was successful and should be fully connected to the SUDS network in the development site by mid to late December 2024. However, upon commencing work on the foul sewer, the contractor encountered technical difficulties with the rig and camera equipment, necessitating the ordering of a new drill head from Europe. Once these issues were resolved, the team encountered unforeseen challenges with hard rock

near the excavation pit by the school. Attempts to drive the drill from the opposite pit led to the discovery of soft material, which prevented the contractor from maintaining the required drive position.

The road closures were therefore extended due to the delay in completing these works. East Lothian Council advised Bellway that a further extension to the Temporary Traffic Regulation Order (TTRO) would be granted up to and including the 2nd of November subject to conditions being met, which included providing an alternative plan should Bellway fail to complete the work by the extension date (2nd November). Bellway were advised that a Remembrance Day parade was scheduled for the 10th of November. It became apparent that the works could not be completed, and the road reinstated by this deadline. As a result, a decision was made to temporarily halt the works without completing the connection, allowing the road to be reopened in time for the parade. It was understood that the remaining works would be carried out at a later date. It is estimated that they will take 6 weeks to complete.

During the meeting on the 13th of November, the Roads Department at East Lothian Council advised that a road closure of this duration would not be approved for during school term time. Consequently, the only viable option would be to complete the works during the school summer holidays in July and August 2025.

A further meeting was held on 22nd November between East Lothian Council and Bellway, during which Councillor Colin McGinn represented the Elphinstone community. He expressed the community's preference for the prompt resumption and completion of the sewer installation. It was agreed that Bellway would develop a proposal outlining the traffic management plan, programme of works, and other relevant details that would be shared with the ELC Roads team to assess the feasibility of a further road closure during term time, in order to expedite the completion of the works.

In the meantime, to avoid the need for ongoing tanker visits until the permanent connection is made, a proposal for a temporary pumping station on the development site has been prepared and included in this report as Appendix A (24247-SK-01-Temporary WWPS). The temporary pumping station outlined in this proposal has been designed to comply with the relevant Scottish Water specifications, including the required distances from existing boundaries to the wet well, as well as to the emergency storage in the event of an electrical failure. This design, along with the pump volume rates, was submitted to Scottish Water on 14th November 2024, to confirm that the local network will not be subjected to any additional pressure. On 27th November, Scottish Water confirmed that they have no objections to the proposal.

East Lothian Council Development Control have also confirmed that the temporary pumping station qualifies as permitted development, meaning that planning permission is not required to proceed with these works.

This temporary measure is expected to be operational by the end of January 2025 and will proceed regardless of whether the road closure during school term time is approved by East Lothian Council to minimise any further disruption to neighbours in the interim. The temporary pumping station and associated equipment will be decommissioned and removed from site once the permanent foul connection has been made on Main Street.

2.2 Odour

Odour complaints have been reported to the East Lothian Council Environmental Health department, and it is believed these may be linked to the tanker visits. However, following a CCTV inspection of the existing Scottish Water sewer on Main Street, carried out by Bellway on 11th November, two blockages were identified near the primary school. These blockages nearly obstructed the entire pipe, causing effluent to remain stagnant within the system whilst gradually dissipating. This is likely contributing to the odour issues reported.

In response, Bellway instructed a contractor to carry out jetting and cleaning of this section of the sewer network to clear the blockages. This was carried out on the 14th of November, and the contractor has confirmed that the system is now running clear. It is expected that this will effectively resolve the odour issue.

2.3 Noise

Tanker visits to site will cease once the temporary pumping station is installed and operational. Until then, mobile acoustic barriers have been installed around the area where the tanker accesses the sewer. The location and specifications for the temporary acoustic barriers are detailed on a plan and appended to this report (Appendix B - ELPH_DL_020 - Temporary Manhole Access & Acoustic Protection Measures). This measure is intended to mitigate the impact of the tanker noise on the neighbouring properties immediately adjacent to the development.

3. Flooding

In late 2022, following a period of prolonged heavy rainfall over a 48-hour period, the surface water catchment lagoon and small bunds constructed on the development site failed, impacting properties on Tranent Road. Upon being notified of the issue, Bellway took immediate action by arranging for tankers to remove the excess surface water and worked closely with local residents to avoid property damage.

In response to this event, improvements to the site's surface water management have been implemented, including the installation of three temporary settlement lagoons on the eastern boundary and the installation of emergency pumps, to prevent a recurrence. To date, no further flooding issues have been reported. As mentioned earlier in this report, the surface water outfall for the development is scheduled to be connected to the Scottish Water network by mid to late December 2024. Once completed, the SUDS basin is designed to effectively manage such storm events.

After this connection is made, the temporary settlement ponds will be redundant and can be drained and backfilled. This work will commence in December 2024. While Bellway has maintained that the alleged waterlogging of neighbouring garden areas in late 2023 and early 2024 was not caused by any failure in the surface water management on the development site, it is hoped that the removal of these temporary ponds will help to alleviate the concerns of the residents of Waterloo Place.

Bellway maintain that the surface water management on the housing site is robust and has not been the cause of any waterlogging of garden areas within neighbouring properties. This has been verified through porosity testing of the ground on site, which confirms that the soil along the eastern boundary is clay, making it unsuitable for ground seepage. (Appendix D - Porosity Testing & Trial Pits).

During the meeting on 13th November, Bellway proposed to install the permanent swale at the northeastern boundary of the phase 2 development (Appendix C - SWMP_EP2_001 Rev A) immediately after planning permission is granted for the application under 23/01333/PM. However, if the need was to arise for a temporary swale to manage the surface water on the site prior to the grant of planning permission, East Lothian Council Development Control has confirmed that this would fall within permitted development and therefore can be installed

as and when required. Additionally, a surface water management plan will be prepared by Bellway and approved by East Lothian Council prior to the commencement of development, in accordance with Condition 7 of application 23/01333/PM. This condition requires the submission of a Construction Method Statement, which will outline temporary measures for managing surface water drainage during the construction phase.

Committee members had raised concerns that flooding in 2023 at Buxley Road and Cinderhall Place were potentially caused by water displacement from the development site. However, to date, there has been no evidence to support this claim. CCTV inspections of the existing drainage system indicate that it is generally in poor condition. Should it be determined at a later date that the flooding was caused by the development, Bellway are committed to working closely with the East Lothian Council Flooding team to resolve the issue.

4. Offsite Path

Bellway has taken steps to facilitate the delivery of an offsite active travel route through the farmland to the north of the development site, linking to the B6414 to Tranent, in line with point 7 of the development brief, PROP TT11. Two visits were made to the landowner's property to discuss the possibility of entering into an agreement to incorporate the path as part of the phase 2 works, with a follow-up email sent after the final visit on 11th October. On both occasions, the landowner verbally confirmed their unwillingness to engage in discussions regarding this proposal, citing concerns that the field is part of a working farm where pesticides are periodically sprayed, and farm machinery operates, both of which could pose safety issues for the general public. Despite requests for a formal written response, no further communication has been received. Following the meeting on 13th November, East Lothian Council Development Control attempted to contact the landowner via email. At the time of writing this report, no response has been received.

Bellway stated during this meeting that they felt it would be inappropriate for them to contact the landowner again directly.

The proposed route outlined in application 24/00699/P, which passes through the woodland plantation to the east of the development site and connects to the existing adopted path network at Waterloo Place, complies with point 6 of the development brief. This route has been designed to be 3 meters wide, hard surfaced, and lit, narrowing to meet the existing 2-meter footpath to the east. Bellway has worked closely with relevant consultees at East Lothian Council to

prepare a proposal that minimises the impact on the surrounding woodland and the existing grass amenity space at Waterloo Place.

The land on which this new section of path would be constructed is owned and maintained by East Lothian Council. While the planning boundary does extend to include a section of adopted footpath that is owned by number 3 Waterloo Place, it is important to note that this adopted path already exists. The boundary includes this section of land to facilitate a seamless connection with the existing path network.

An alternative proposal for a footpath connecting to McFarlane Court was investigated, however, was ruled out due to the longer route requiring an increased number of trees to be felled compared with the proposal to Waterloo Place. This alternative route is also not included within the design brief for the site. Discussions with ELC during the planning process emphasised the importance of aligning with the design brief and minimising the environmental impact on the woodland.

Furthermore, the homes at McFarlane Court are situated closer to the existing adopted footpath, whereas properties at Waterloo Place have front gardens providing greater separation from the proposed path. As a result, the proposed route to Waterloo Place was considered more advantageous, as it mitigates potential impacts on residents' privacy and road safety, while also minimising disturbance to the surrounding woodland and its biodiversity.

5. Communication Plan

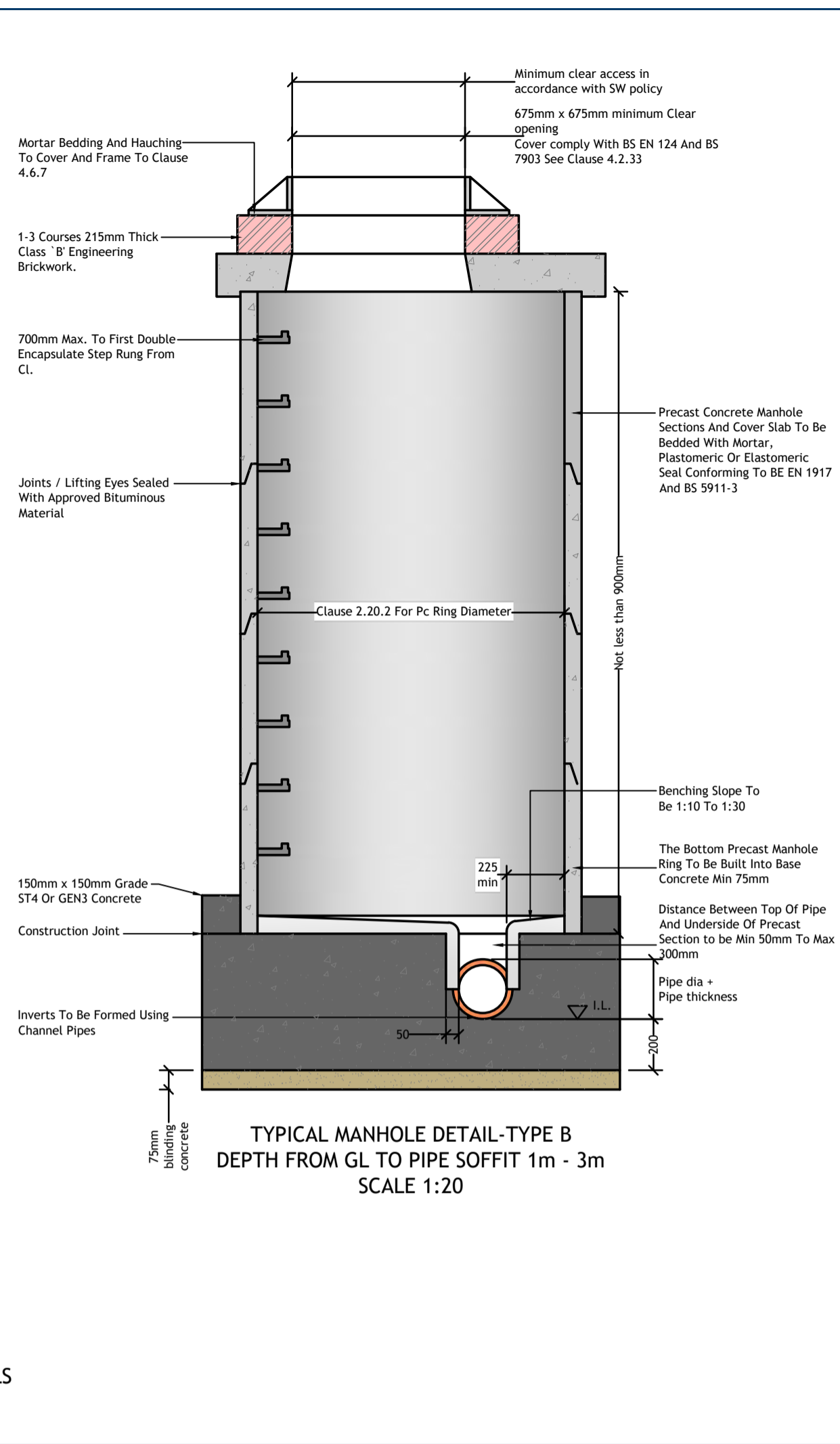
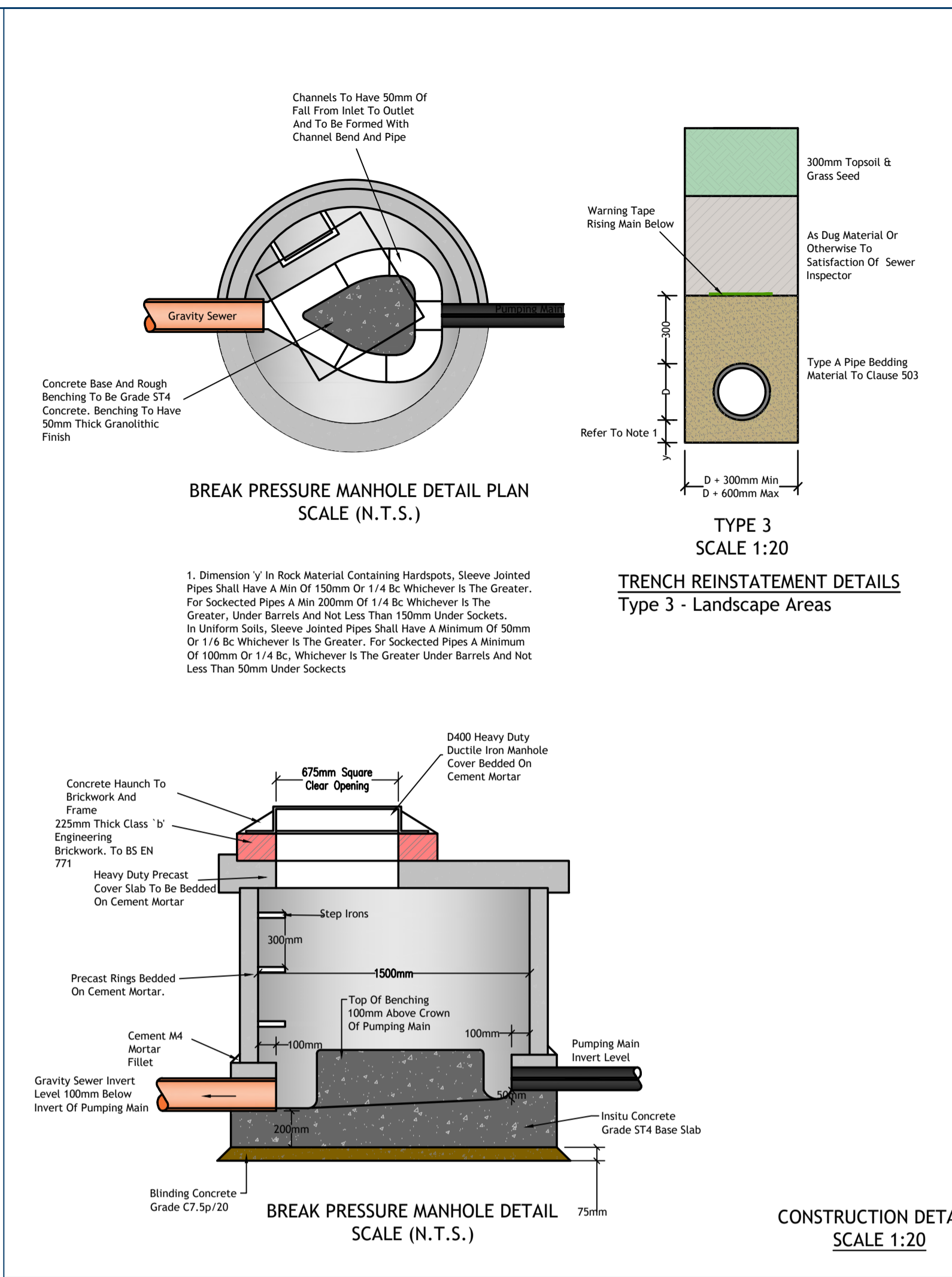
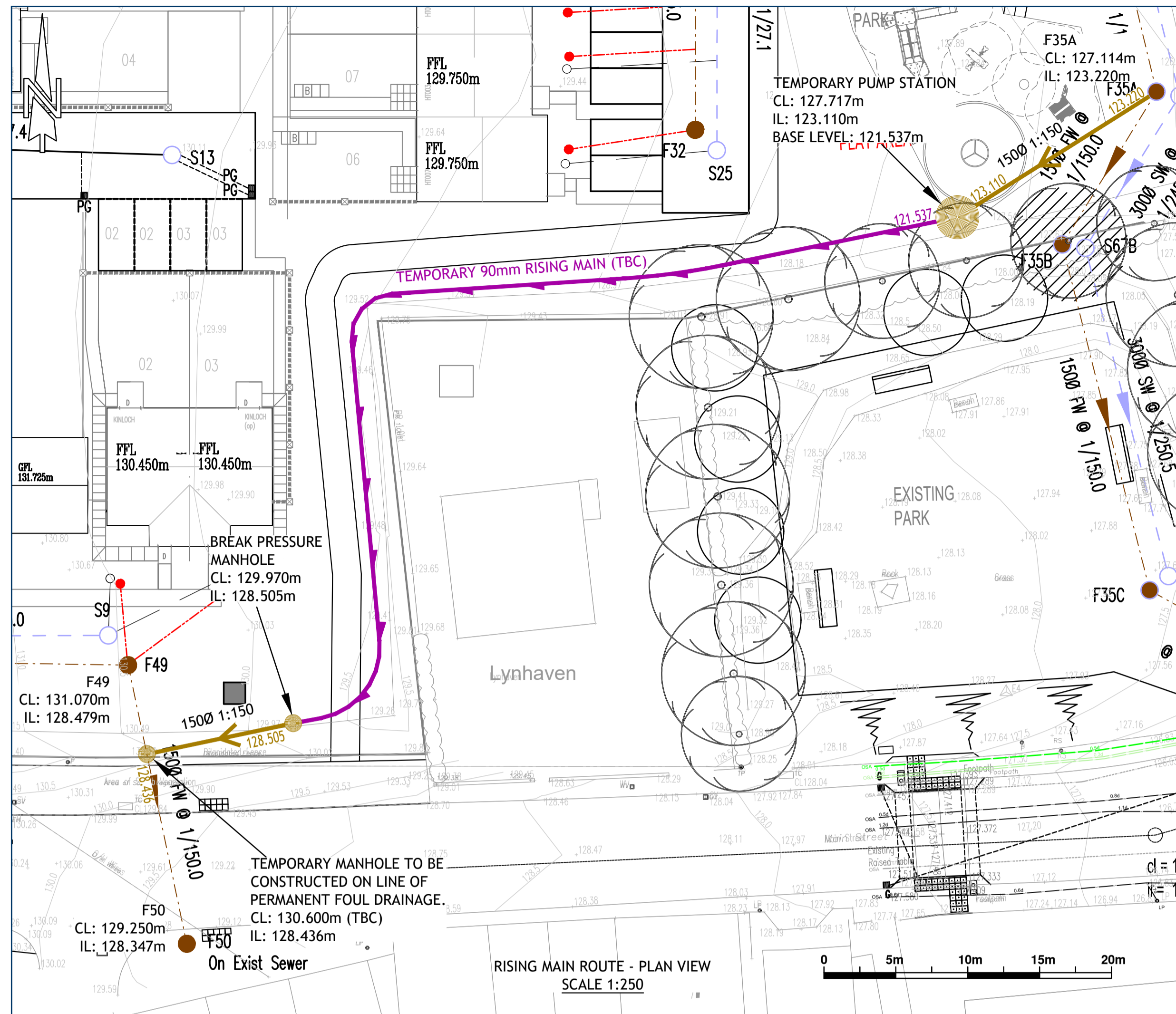
Bellway recognises the importance of providing a consistent point of contact for the Elphinstone community during the course of our works. To ensure this, we have appointed our divisional Customer Experience Coordinator, as the dedicated Community Liaison Officer for Elphinstone. They will handle all queries and direct them to the appropriate team members for response. They can be reached by contacting elphinstone@bellway.co.uk, a dedicated mailbox that has been established and already used by several residents. We encourage the community to continue to use this channel to raise any questions or share details of any local initiatives they would like us to support. We are aware that both members of the Planning Committee and East Lothian Council have raised concerns regarding delays in responses, and we are taking steps to improve this.

As discussed at the meeting on 13th November, we plan to distribute a newsletter to the residents of Elphinstone, providing an update on the progress of our works,

outlining the anticipated timescales for upcoming activities (such as the resumption of drainage works on Main Street), and introducing our Community Liaison Officer. This newsletter will be issued quarterly, or more frequently, as needed, via Royal Mail. We will issue a digital copy of any correspondence to the Tranent & Elphinstone Community Council and the local Councillors to ensure all key members of the community remain informed of works going on that may impact them.

During the meeting on Friday 22nd November, Councillor McGinn suggested that Bellway also participate in a working group with key community members in Elphinstone to foster open communication throughout the duration of the works. Bellway confirmed our commitment to joining the working group and hopes that it will help to establish a more positive and collaborative relationship with the community.

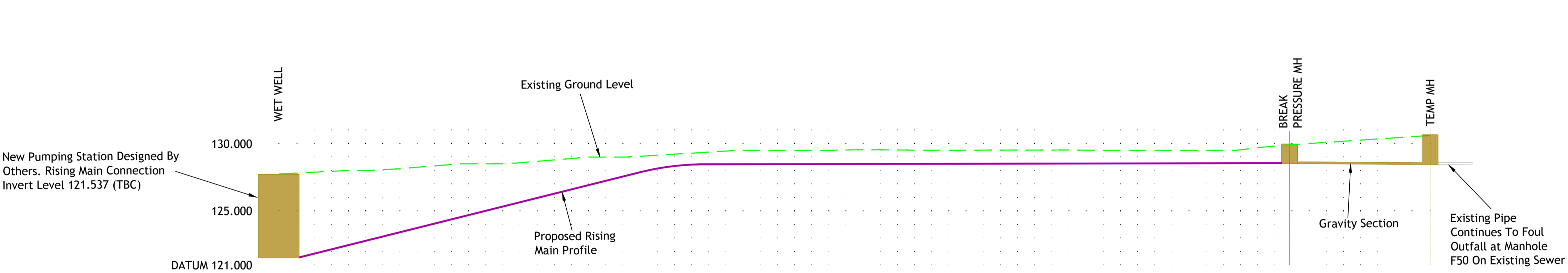
Appendix A (Temporary WWPS)



- Copyright of this document is reserved by Dougall Baillie Associates Ltd.
DO NOT scale from this drawing
- Notes:
- EXCAVATIONS IN LOCATIONS WHERE SERVICES MAY BE ENCOUNTERED SHALL BE CARRIED OUT IN ACCORDANCE WITH HS647 'AVOIDING DANGER FROM UNDERGROUND SERVICES'.
 - TRENCHES SHALL BE EXCAVATED SO THAT THE EFFECTIVE WIDTH IS MAINTAINED WITHIN ANY LIMIT IMPOSED BY THE DESIGN OF THE PIPELINES. THE SIDES OF EXCAVATIONS SHALL BE ADEQUATELY SUPPORTED AT ALL TIMES AND, EXCEPT WHERE DESCRIBED IN OR PERMITTED UNDER THE CONTRACT, SHALL NOT BE BATTERED.
 - BEDDING FOR PIPES SHALL BE CONSTRUCTED BY SPREADING AND COMPACTING GRANULAR BEDDING MATERIAL OVER THE FULL WIDTH OF THE PIPE TRENCH. AFTER THE PIPES HAVE BEEN LAID, ADDITIONAL GRANULAR MATERIAL SHALL, IF REQUIRED, BE PLACED AND COMPACTED EQUALLY ON EACH SIDE OF THE PIPES AND, WHERE PRACTICABLE, THIS SHALL BE DONE IN SEQUENCE WITH THE REMOVAL OF THE TRENCH SUPPORTS.
 - THE LINE AND LEVEL OF ANY PIPELINE SHALL NOT DEVIATE FROM THE LINE AND LEVEL SHOWN ON THE DRAWINGS, OR AGREED VARIATION, BY MORE THAN 20mm AND ANY COMBINATIONS OF SUCH DEVIATIONS SHALL NOT CREATE A REVERSE GRADIENT.
 - PIPE JOINTING SURFACES AND COMPONENTS SHALL BE KEPT CLEAN AND FREE FROM EXTRANEOUS MATTER UNTIL THE JOINTS HAVE BEEN MADE OR ASSEMBLED.
 - WHERE PE PIPES ARE USED, A FULLY WELDED SYSTEM SHALL BE USED. USE OF MECHANICAL OR ELECTROFUSION JOINTS SHALL BE CONFIRMED BY THE ENGINEER.
 - SITE FUSION JOINTING IN POLYETHYLENE PRESSURE PIPELINES SHALL BE UNDERTAKEN IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF WIS-4-32-08 AND BE MADE IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.
 - RISING MAINS SHALL BE TESTED AFTER THEY ARE JOINTED AND BEFORE ANY CONCRETING OR BACKFILLING IS COMMENCED, OTHER THAN SUCH AS MAY BE NECESSARY FOR STRUCTURAL STABILITY WHILST UNDER TEST.
 - THE ENTIRE PIPELINE SHALL BE PRESSURE TESTED IN ACCORDANCE WITH BS EN 805 OR IGN 4-01-03.

TOTAL EMERGENCY STORAGE WITHIN WET WELL BELOW LOWEST DISCONNECTING CHAMBER INVERT LEVEL (126.05 ASSUMED)

WET WELL STORAGE VOLUME = 3.14 x RADIUS² x HEIGHT
 = 3.14 x 1.5² x (126.05-121.537)
 = 31.901m³ - 1.5m³ (ALLOWANCE FOR PUMP SETTS)
 = **30.401m³**



CHAINAGE	0.000	10.000	20.000	30.000	40.000	50.000	60.000	70.000	74.825	85.228
EGL LEVEL	127.747	128.222	128.758	129.257	129.500	129.508	129.509	129.500	129.970	130.600
RISING MAIN INVERT LEVEL	121.537	123.642	126.142	128.356	128.435	129.455	129.476	129.496	128.505	128.436
RISING MAIN VERTICAL ALIGNMENT		G= 23.8% 1: 4.2					G= 0.200% 1: 500			10.403
PIPE MATERIAL	90mm HDPE PIPE (TBC)									Dia 150 Circular uPVC 1 in 150

RISING MAIN

RISING MAIN ROUTE - VERTICAL PROFILES SCALE 1:200

LEGEND

- DENOTES PROPOSED TEMPORARY GRAVITY SEWER
- DENOTES PROPOSED TEMPORARY RISING MAIN
- DENOTES PROPOSED TEMPORARY MANHOLE

Rev.	Revision details:	By:	Checked:
		Date:	Date:

Client: **ADVANCE CONSTRUCTION SCOTLAND LTD**

Project: **ELPHINSTONE**

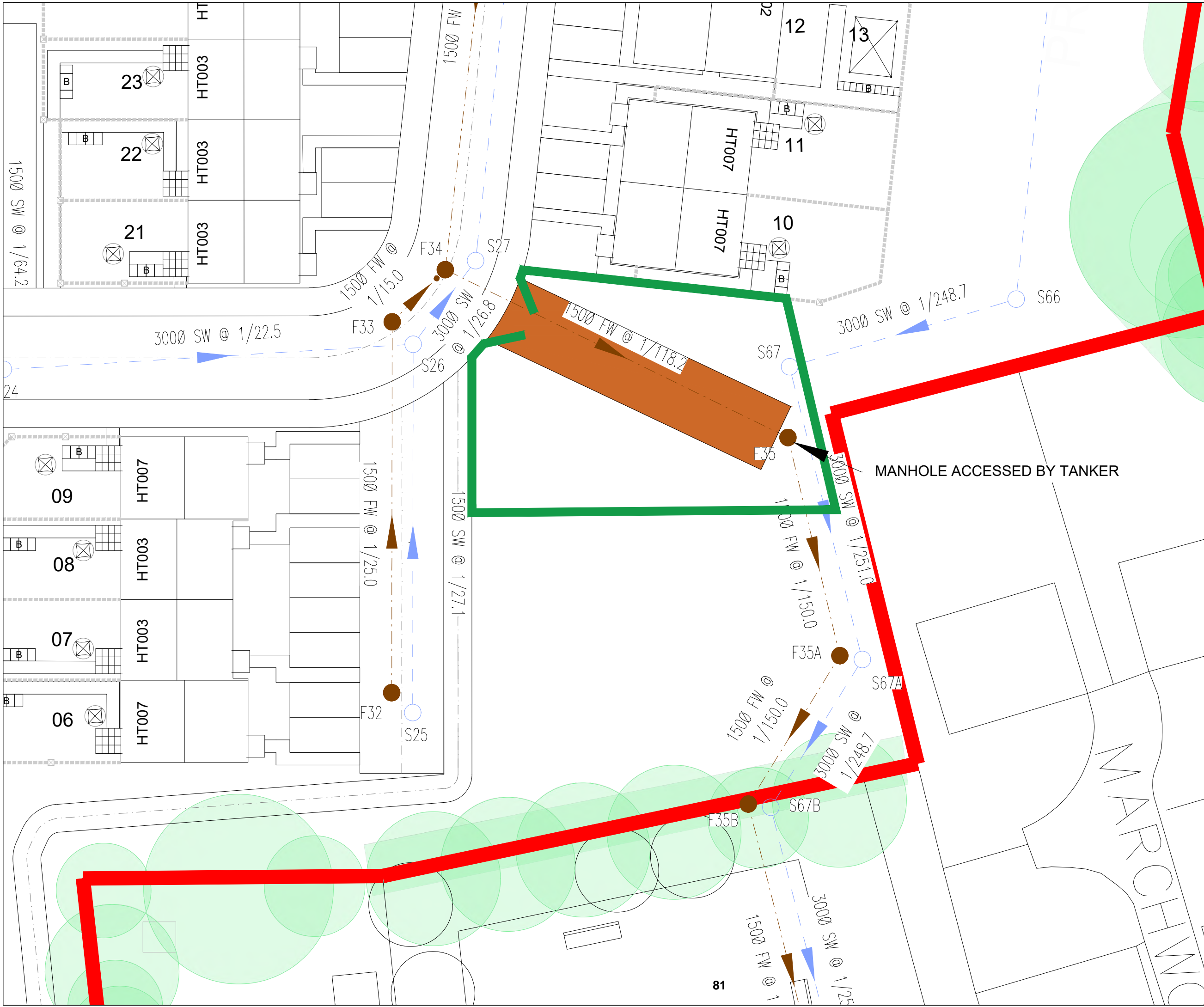
Drawing Title: **TEMPORARY WWPS**

Drawn: S.McD.	Checked: S.M.
Date: 29.10.24	Date: 29.10.24
Scale: VARIES @A1	Dwg. No: 24247-SK-01
Dwg Status: CONSTRUCTION	Phase: COLOUR

Dougall Baillie Associates
 3 Glenfield Road, Kelvin
 East Kilbride G75 0RA
 t: 01355 266480
 f: 01355 221991
 e: enquiries@dougallbaillie.com
 w: www.dougallbaillie.com

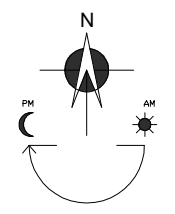
DBA
 civil, structural, transportation, water management

Appendix B (Temporary Manhole Access & Acoustic Protection Measures)



LEGEND:

- ECHO BARRIER ACOUSTIC PANELS FIXED TO HERAS FENCING AS PER MANUFACTURERS GUIDANCE
- TEMPORARY ACCESS TRACK TO MANHOLE



AMENDMENTS:

Issue:	Date:	Description:



SCOTLAND WEST
 Bothwell House
 Hamilton Business Park
 Caird Street
 Hamilton
 ML3 0QA
 Tel: 01698 477440

SCOTLAND EAST
 6 Almondvale Business Park
 Almondvale Way
 Livingston
 West Lothian
 EH54 6GA
 Tel: 01506 594420

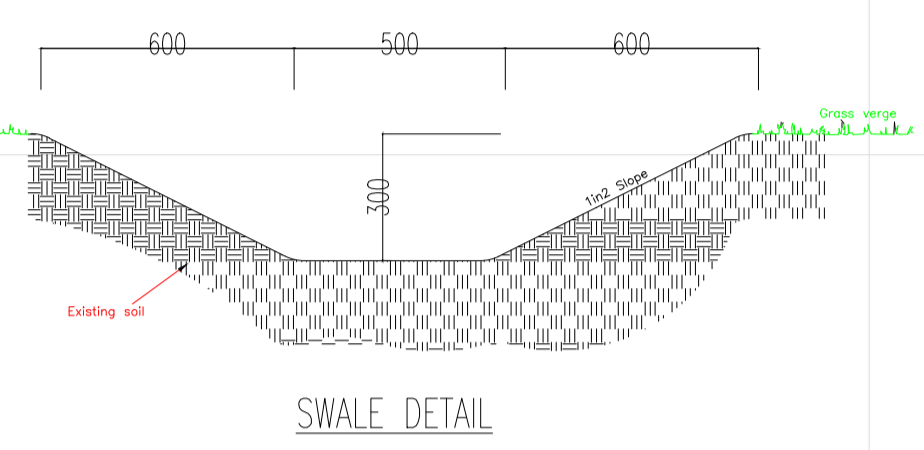
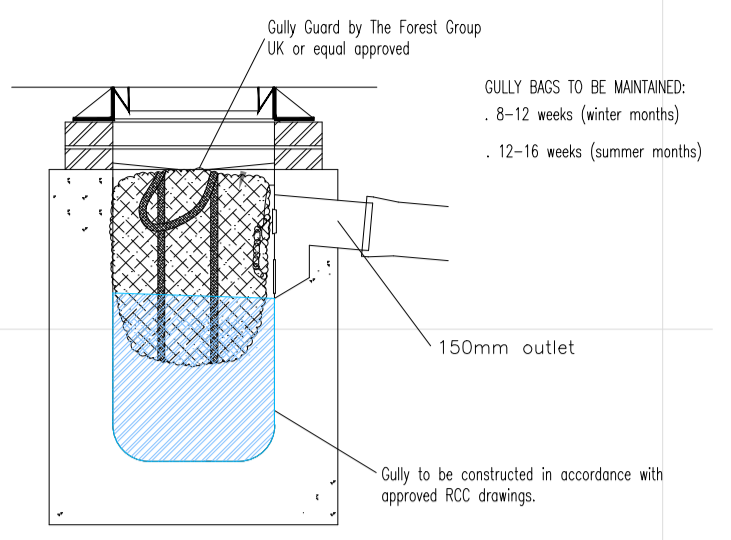
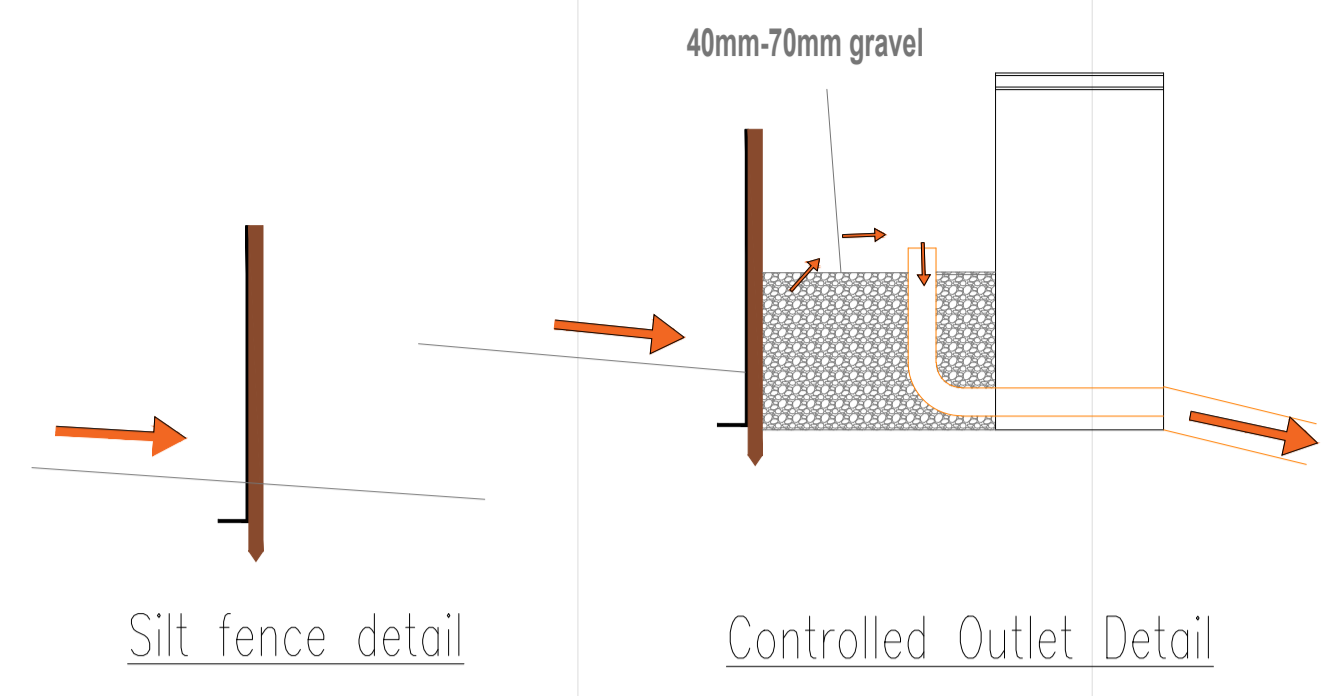
Project:
**RESIDENTIAL DEVELOPMENT
 ELPHINSTONE
 EAST LOTHIAN**

Drawing:
**TEMPORARY MANHOLE
 ACCESS & ACOUSTIC
 PROTECTION MEASURES**

Scale: NTS@A3	Date: NOV '24	Drawn: KH
Drawing No. ELPH_DL_020	Rev. -	

MARCHING

Appendix C (Surface Water Management Plan)



- LEGEND:**
- SETTLEMENT LAGOON
 - 1.5m TOP SOIL BUND (SWMP)
 - MAIN DIRECTION OF PRE-DEVELOPMENT FLOW
 - PROPOSED PUMP TO DISCHARGE CLEAN SURFACE WATER FROM MONITORING POINT
 - CONTROLLED OUTLET TO SURFACE WATER DISCONNECTING MANHOLE
 - GULLY OUTLET WITH GULLY BAG INSTALLED
 - SWALE
 - CUT OFF DRAIN @ PLOTS 222-225
 - A FALL FROM THE BOUNDARY TOWARDS THE SWALE



AMENDMENTS:

Issue	Date	Description
A	08/10/24	SWALE DETAIL CHANGED TO A 225MM PERMANENT PIPE & FALL AWAY FROM EXISTING PROPERTIES

Bellway

Bellway Homes Limited

SCOTLAND WEST Bothwell House Hamilton Business Park Card Street Hamilton ML3 0QA Tel: 01698 47440	SCOTLAND EAST 6 Almondvale Business Park Almondvale Way Livingston West Lothian E154 5GA Tel: 01508 594420
---	--

Project:

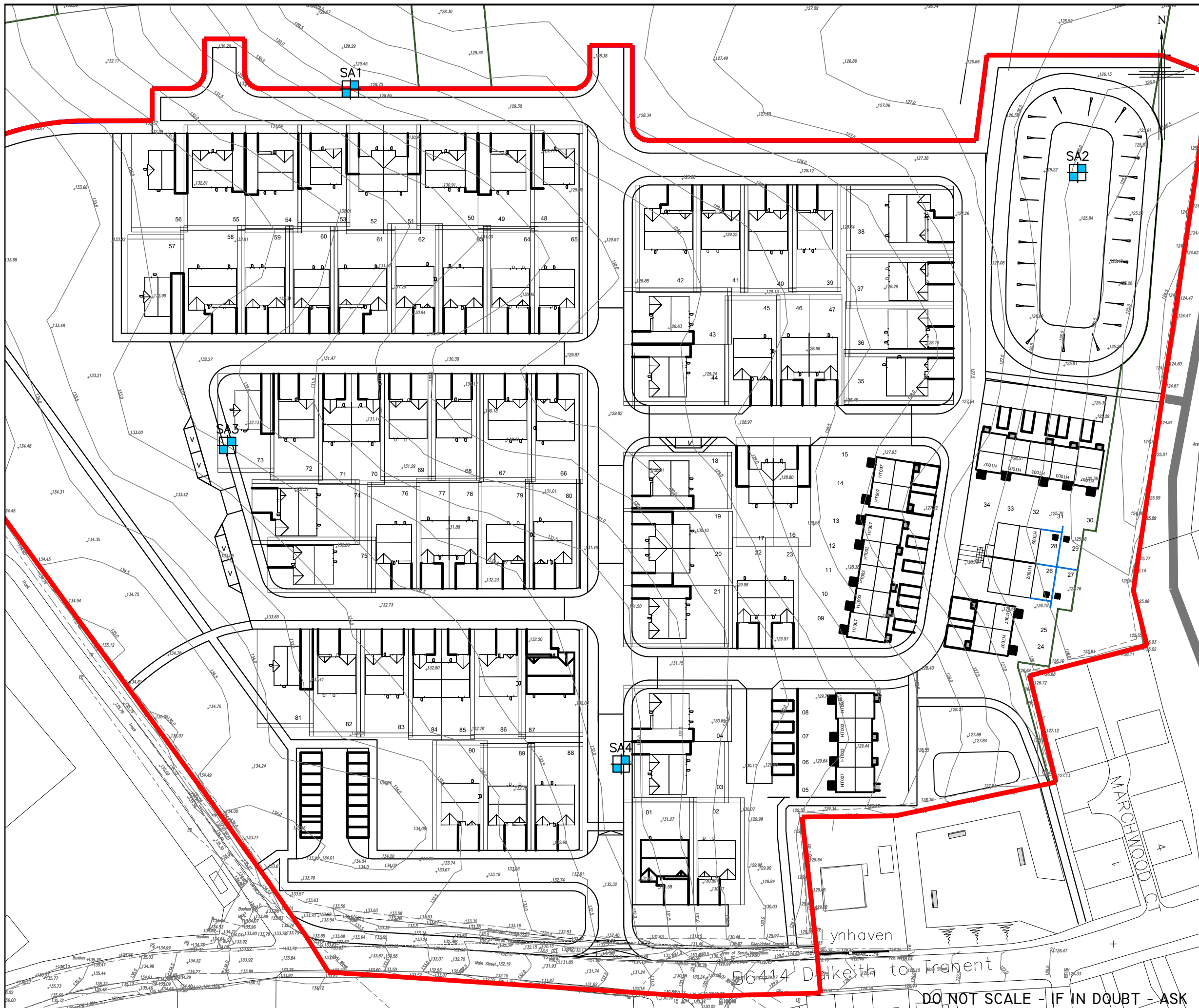
ELPHINSTONE PHASE 2

Drawing:

SURFACE WATER MANAGEMENT PLAN

Scale: NTS	Date: 08/10/24	Drawn: EM
Drawing No. SWMP_EP2_001 (Rev_A)		Rev. A

Appendix D (Porosity Testing & Trial Pits)



NOTES

SA PROPOSED LOCATION OF INFILTRATION TEST IN WEATHERED ROCK (4)

I.D.	EASTING	NORTHING
SA1	339371.800	670464.470
SA2	339543.030	670444.910
SA3	339342.900	670380.690
SA4	339435.550	670305.700

Revision Date By

DAVID R. MURRAY and ASSOCIATES



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 Tel. 0131 334 0765, Fax. 0131 316 4540
 E-Mail drme@davidmurray.co.uk
 10 Eyre Place, Edinburgh EH3 5EP
 Tel. 0131 556 5155, Fax. 0131 556 9147
 E-Mail drme@davidmurray.co.uk
 20 Viewfield Terrace, Dunfermline, KY12 7HZ
 Tel. 01383 726075, Fax. 01383 730605
 E-Mail drmd@davidmurray.co.uk

Client
 BELLWAY HOMES EAST SCOTLAND

Project
 PROPOSED DEVELOPMENT
 MAIN STREET, ELPHINSTONE

Title
 INFILTRATION INVESTIGATION LAYOUT

Scale	Drawn SR	Date 30/06/2022	Drawing No.	Rev.
	Chkd	Date	EI2493/0101	.1
	Appd	Date		

DO NOT SCALE - IF IN DOUBT - ASK



SKF Ltd, Constablewood Estate, Brisbane Glen, Largs
 TEL: 01475 672409 or 07795 493892 FAX: 01475 672409

TRIAL PIT NO. SA01

Contract: **E12493 ELPHINSTONE**

Contract No: **6937**

Status: **FINAL**

Client: **DAVID R MURRAY & ASSOCIATES**

Pit Dimensions: **2.20x0.45**

Co-ordinates **E**

Date: **14/07/2022**

Equipment: **JCB 3CX**

N

Description of Strata	Legend	Depth	Level	Sampling	SPT Blows U Blows Hand Vane	Pipe
Ground Surface						
MADE GROUND: Topsoil / stubble.	[Cross-hatch pattern]	0.40				
Firm orange mottled brown very sandy gravelly CLAY. Gravel fine to coarse and angular to sub rounded. Occasional cobbles.	[Vertical line pattern]	1.40				
Stiff dark grey and reddish brown very sandy gravelly CLAY with occasional cobbles. Gravel fine to coarse and angular to sub rounded.	[Vertical line pattern]	2.30				
Recovered as grey sandy fine to coarse angular gravel of MUDSTONE. Presumed bedrock.	[Horizontal line pattern]	3.30				

Water Strikes Strike: DRY Flow:	Details Casing: Final Depth: 3.30	SYMBOLS KEY
Stability: Stable Shoring: None Backfilling: Backfilled on completion Notes: SOAKAWAY TEST CARRIED OUT		B - BULK NR - NO RECOVERY U - UNDISTURBED * - ESTIMATED DENSITY D - SMALL DISTURBED J - JAR V - VIAL W - WATER
Logged by: AH	Checked by: SKF	ALL DIMENSIONS ARE IN METRES



SKF Ltd, Constablewood Estate, Brisbane Glen, Largs
 TEL: 01475 672409 or 07795 493892 FAX: 01475 672409

TRIAL PIT NO. SA02

Contract: **E12493 ELPHINSTONE**

Contract No: **6937**

Status: **FINAL**

Client: **DAVID R MURRAY & ASSOCIATES**

Pit Dimensions: **2.20x0.45**

Co-ordinates **E**

Date: **14/07/2022**

Equipment: **JCB 3CX**

N

Description of Strata	Legend	Depth	Level	Sampling	SPT Blows U Blows Hand Vane	Pipe
Ground Surface						
MADE GROUND: Topsoil / stubble.		0.35				
Firm to stiff orange mottled brown sandy gravelly CLAY. Gravel fine to coarse and angular to sub rounded. Occasional cobbles.		1.05				
Stiff dark brown sandy gravelly CLAY with occasional cobbles. Gravel fine to coarse and angular to sub rounded.		2.40				
Recovered as grey and purple grey sandy fine to coarse angular gravel of MUDSTONE. Presumed bedrock.		2.90				

Water Strikes	Details	SYMBOLS KEY
Strike: _____ Flow: _____	Casing: _____ Final Depth: 2.90	B - BULK U - UNDISTURBED D - SMALL DISTURBED J - JAR V - VIAL W - WATER NR - NO RECOVERY * - ESTIMATED DENSITY ALL DIMENSIONS ARE IN METRES
Stability: Stable Shoring: None Backfilling: Backfilled on completion Notes: SOAKAWAY TEST CARRIED OUT		
Logged by: AH	Checked by: SKF	



SKF Ltd, Constablewood Estate, Brisbane Glen, Largs
 TEL: 01475 672409 or 07795 493892 FAX: 01475 672409

TRIAL PIT NO. SA03

Contract: **E12493 ELPHINSTONE**

Contract No: **6937**

Status: **FINAL**

Client: **DAVID R MURRAY & ASSOCIATES**

Pit Dimensions: **2.50x0.45**

Co-ordinates **E**

Date: **14/07/2022**

Equipment: **JCB 3CX**

N

Description of Strata	Legend	Depth	Level	Sampling	SPT Blows U Blows Hand Vane	Pipe
Ground Surface						
MADE GROUND: Topsoil / stubble.		0.35				
Firm to stiff brown mottled grey and orange sandy gravelly CLAY. Gravel fine to coarse and angular to sub rounded. Occasional cobbles.		1.10				
Stiff becoming very stiff dark grey and reddish grey sandy gravelly CLAY with occasional cobbles. Gravel fine to coarse and angular to sub rounded.		2.30				
Recovered as yellow sandy fine to coarse angular gravel of SANDSTONE. Presumed bedrock.		2.50				

Water Strikes	Details	SYMBOLS KEY
Strike: 2.30 Flow: seepage	Casing: Final Depth: 2.50	B - BULK U - UNDISTURBED D - SMALL DISTURBED J - JAR V - VIAL W - WATER NR - NO RECOVERY * - ESTIMATED DENSITY
Stability: Stable Shoring: None Backfilling: Backfilled on completion Notes: SOAKAWAY TEST CARRIED OUT		
Logged by: AH	Checked by: SKF	ALL DIMENSIONS ARE IN METRES



SKF Ltd, Constablewood Estate, Brisbane Glen, Largs
 TEL: 01475 672409 or 07795 493892 FAX: 01475 672409

TRIAL PIT NO. SA04

Contract: **E12493 ELPHINSTONE**

Contract No: **6937**

Status: **FINAL**

Client: **DAVID R MURRAY & ASSOCIATES**

Pit Dimensions: **2.30x0.45**

Co-ordinates **E**

Date: **14/07/2022**

Equipment: **JCB 3CX**

N

Description of Strata	Legend	Depth	Level	Sampling	SPT Blows U Blows Hand Vane	Pipe
Ground Surface						
MADE GROUND: Topsoil / stubble.	[Cross-hatch pattern]	0.40				
Firm to stiff brown mottled grey and orange sandy gravelly CLAY. Gravel fine to coarse and angular to sub rounded. Occasional cobbles.	[Vertical line pattern]	1.70				
Recovered as yellow sandy fine to coarse angular gravel of SANDSTONE. Presumed bedrock.	[Dotted pattern]	2.20				

Water Strikes	Details	SYMBOLS KEY
Strike: Dry Flow:	Casing: Final Depth: 2.20	B - BULK NR - NO RECOVERY U - UNDISTURBED * - ESTIMATED DENSITY D - SMALL DISTURBED J - JAR V - VIAL W - WATER ALL DIMENSIONS ARE IN METRES
Stability: Stable		
Shoring: None		
Backfilling: Backfilled on completion		
Notes: SOAKAWAY TEST CARRIED OUT		
Logged by: AH	Checked by: SKF	

RESULTS OF SOAKAGE TEST



TEST PIT NO.	SA01
---------------------	-------------

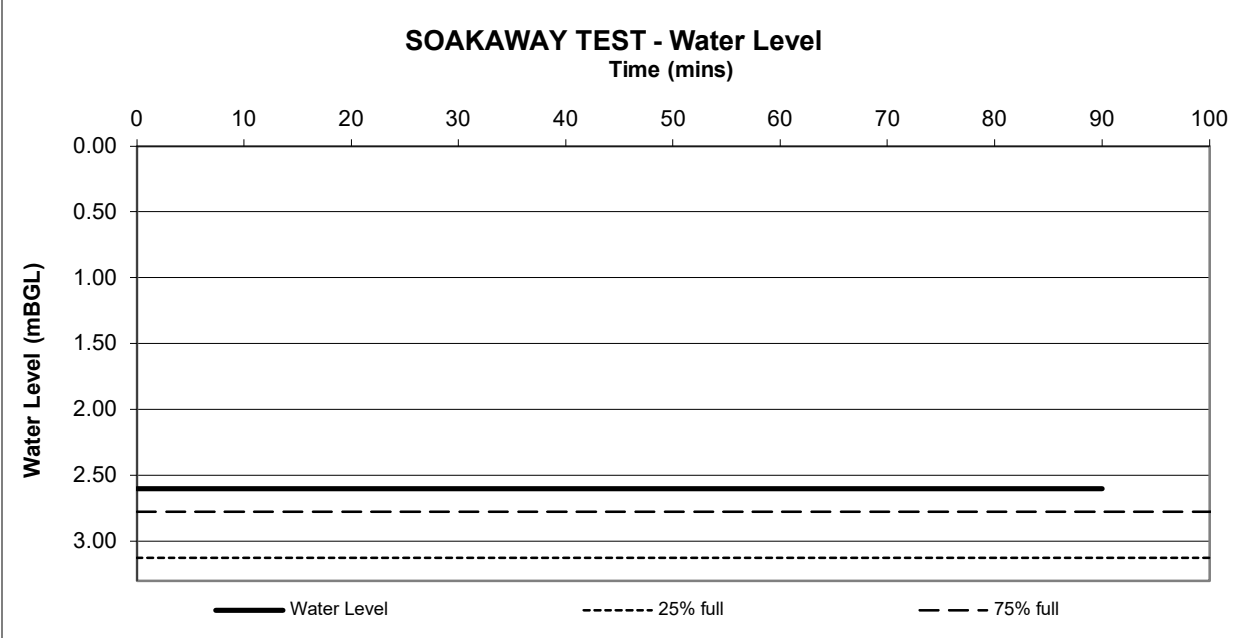
Contract Name: E12493 ELPHINSTONE
 Contract No.: 6937
 Date: 14/07/2022
 Weather: DRY & SUNNY SPELLS
 Time to fill pit: 2 MINS
 Ground Level (mAOD)
 Dimensions (m) From graph (seconds)
 Length: 2.20 tp75-25 =
 Width: 0.45
 Depth: 3.30

Time (mins)	Water Level (mBGL)	Water Level (mAOD)
0.00	2.60	
1.00	2.60	
2.00	2.60	
3.00	2.60	
4.00	2.60	
5.00	2.60	
15.00	2.60	
30.00	2.60	
45.00	2.60	
60.00	2.60	
90.00	2.60	

Using formula $f = \frac{V_{p75-25}}{a_{p50} \times t_{p75-25}}$ from BRE Digest 365

f = soil infiltration rate
 Vp75-25 = volume of outflow between 75% and 25% eff. depth
 ap50 = mean surface area (pit sides to 50% eff. depth + base)
 tp75-25 = time for outflow between 75% and 25% eff. depth

INFILTRATION RATE (m/s) f = N/A





RESULTS OF SOAKAGE TEST

TEST PIT NO.	SA02
---------------------	-------------

Contract Name: E12493 ELPHINSTONE
Contract No.: 6937
Date: 14/07/2022
Weather: DRY & SUNNY SPELLS
Time to fill pit: 2 MINS
Ground Level (mAOD)
Dimensions (m) From graph (seconds)
Length: 2.20 tp75-25 =
Width: 0.45
Depth: 2.90

Using formula $f = \frac{V_{p75-25}}{a_{p50} \times t_{p75-25}}$ from BRE Digest 365

f = soil infiltration rate

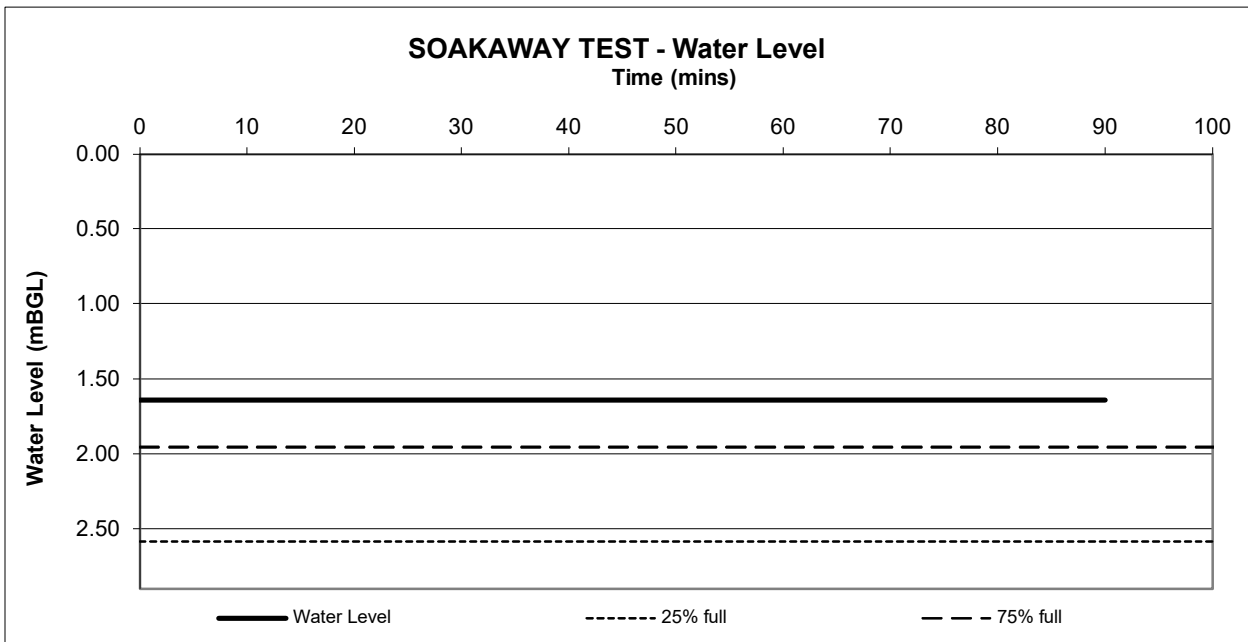
Vp75-25 = volume of outflow between 75% and 25% eff. depth

ap50 = mean surface area (pit sides to 50% eff. depth + base)

tp75-25 = time for outflow between 75% and 25% eff. depth

Time (mins)	Water Level (mBGL)	Water Level (mAOD)
0.00	1.64	
1.00	1.64	
2.00	1.64	
3.00	1.64	
4.00	1.64	
5.00	1.64	
15.00	1.64	
30.00	1.64	
55.00	1.64	
65.00	1.64	
90.00	1.64	

INFILTRATION RATE (m/s) f = N/A



RESULTS OF SOAKAGE TEST



TEST PIT NO.	SA03
---------------------	-------------

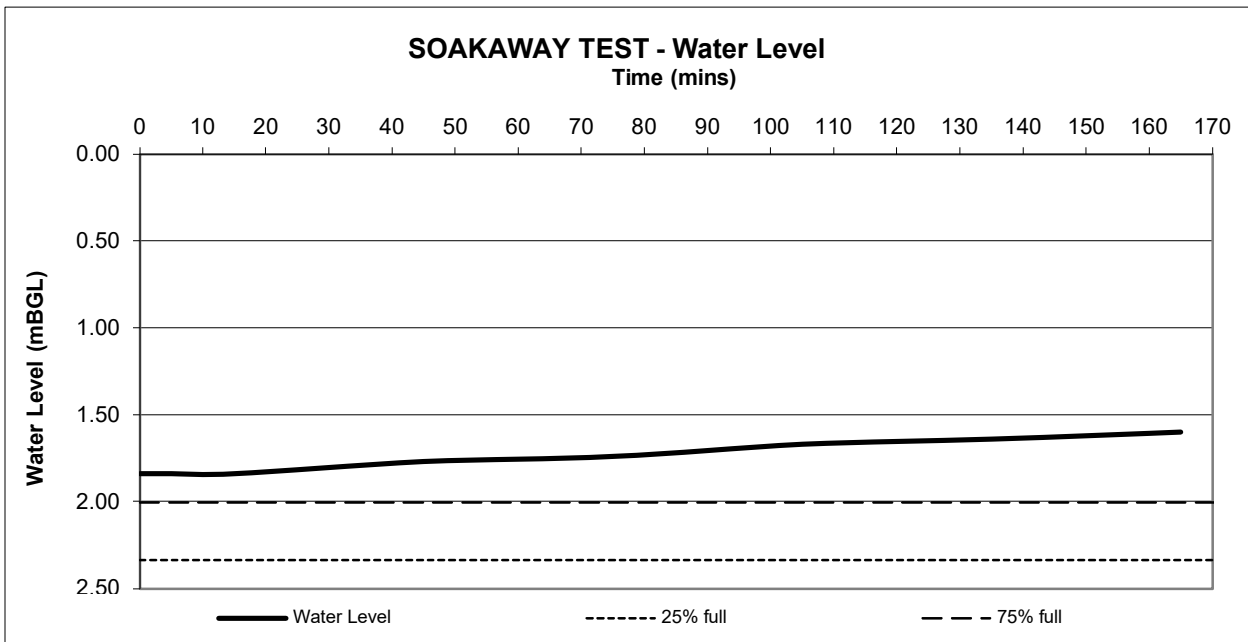
Contract Name: E12493 ELPHINSTONE
 Contract No.: 6937
 Date: 14/07/2022
 Weather: DRY & SUNNY SPELLS
 Time to fill pit: 2 MINS
 Ground Level (mAOD)
 Dimensions (m) From graph (seconds)
 Length: 2.50 tp75-25 =
 Width: 0.45
 Depth: 2.50

Time (mins)	Water Level (mBGL)	Water Level (mAOD)
0.00	1.84	
1.00	1.84	
2.00	1.84	
3.00	1.84	
4.00	1.84	
5.00	1.84	
15.00	1.84	
45.00	1.77	
75.00	1.74	
105.00	1.67	
135.00	1.64	
165.00	1.60	

Using formula $f = \frac{V_{p75-25}}{a_{p50} \times t_{p75-25}}$ from BRE Digest 365

f = soil infiltration rate
 Vp75-25 = volume of outflow between 75% and 25% eff. depth
 ap50 = mean surface area (pit sides to 50% eff. depth + base)
 tp75-25 = time for outflow between 75% and 25% eff. depth

INFILTRATION RATE (m/s) f = N/A



RESULTS OF SOAKAGE TEST



TEST PIT NO. SA04

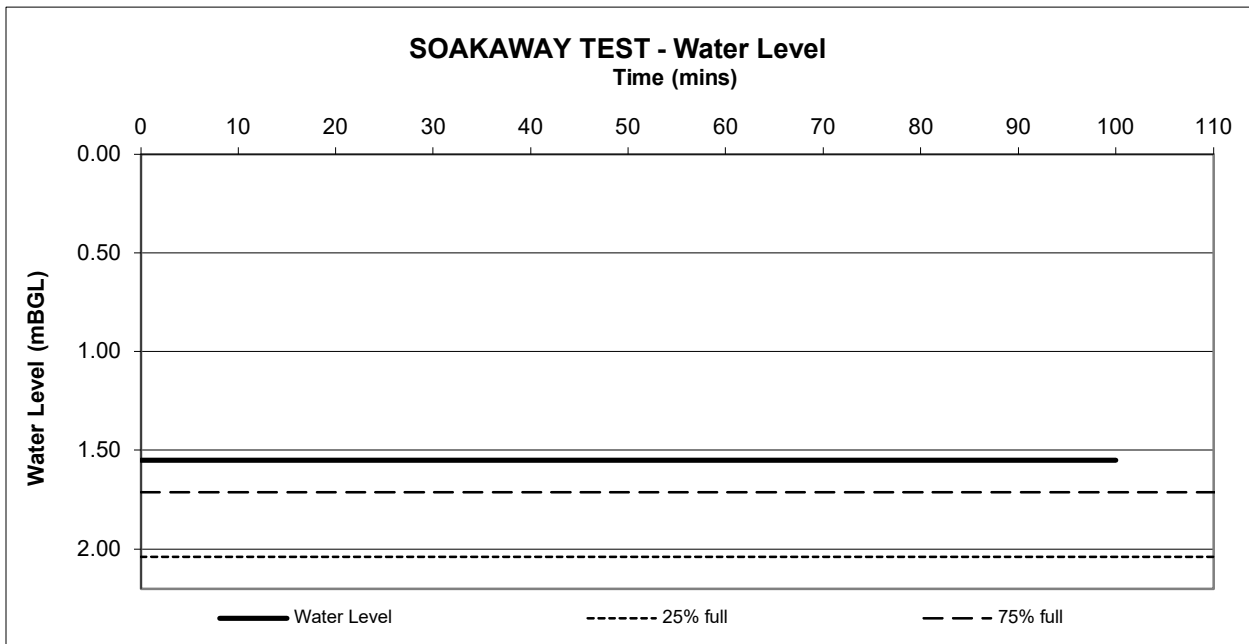
Contract Name: E12493 ELPHINSTONE
 Contract No.: 6937
 Date: 14/07/2022
 Weather: DRY & SUNNY SPELLS
 Time to fill pit: 2 MINS
 Ground Level (mAOD)
 Dimensions (m) From graph (seconds)
 Length: 2.30 tp75-25 =
 Width: 0.45
 Depth: 2.20

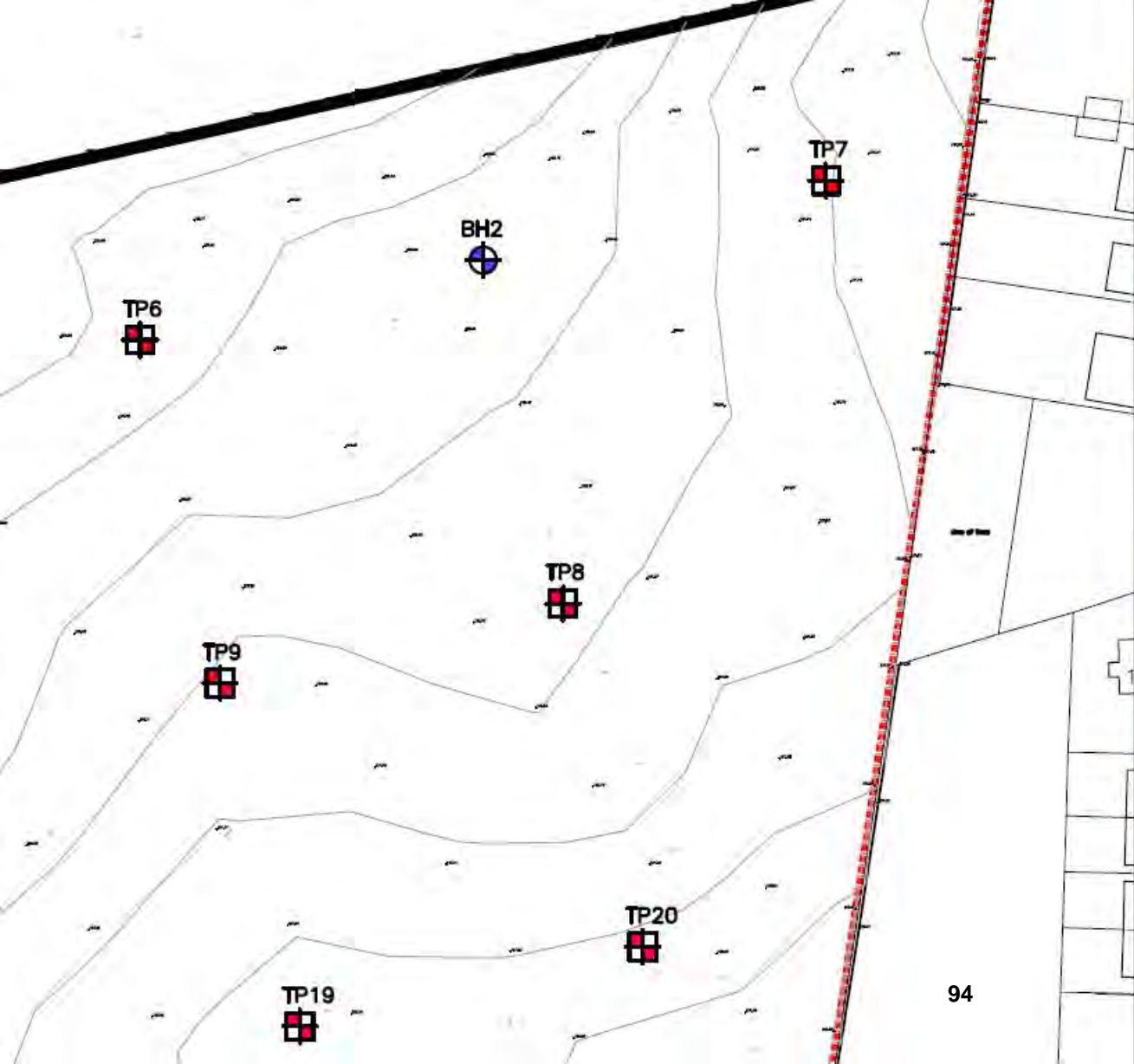
Time (mins)	Water Level (mBGL)	Water Level (mAOD)
0.00	1.55	
1.00	1.55	
2.00	1.55	
3.00	1.55	
4.00	1.55	
5.00	1.55	
15.00	1.55	
30.00	1.55	
50.00	1.55	
60.00	1.55	
85.00	1.55	
100.00	1.55	

Using formula $f = \frac{V_{p75-25}}{a_{p50} \times t_{p75-25}}$ from BRE Digest 365

f = soil infiltration rate
 Vp75-25 = volume of outflow between 75% and 25% eff. depth
 ap50 = mean surface area (pit sides to 50% eff. depth + base)
 tp75-25 = time for outflow between 75% and 25% eff. depth

INFILTRATION RATE (m/s) f = N/A





BH1



**DENOTES APPROXIMATE LOCATION OF
TERRIER BOREHOLES (NO.8)
ALL BOREHOLES TO BE INSTALLED
WITH GAS MONITORING STANDPIPES**

TP1



**DENOTES APPROXIMATE LOCATION OF
TRIAL PITS (NO.30)**



**APPROXIMATE LOCATION OF
MINESHAFT DENOTED BY COAL
AUTHORITY**



**APPROXIMATE EXTENT OF AREA
WHERE CIRIA CHARACTERISTIC
SITUATION 2 GAS PROTECTION
MEASURES ARE REQUIRED**



**APPROXIMATE EXTENT OF AREA
WHERE RADON PROTECTION
MEASURES ARE REQUIRED**

Contract: **MAIN ST, ELPHINSTONE**

Contract No: 3047

Status: FINAL

 Client: **DAVID R MURRAY & ASSOCIATES**




PB Dimensions: 2.20 X 0.60

Co-ordinates E

Date: 09/04/2018

Equipment: JCB 3CX

N

Description of Strata	Legend	Depth	Level	Sampling	SPT Blows U Blows Hand Vane	Pipe
Ground Surface						
MADE GROUND: Topsoil / crops.		0.20		DJ 0.20		
Stiff brown slightly mottled grey sandy gravelly CLAY. Gravel fine to coarse and angular to sub rounded. Occasional cobbles.		1.60		DJB 0.50 DJB 1.00		
Recovered as light brown and orange brown sandy fine to coarse angular gravel of SANDSTONE. Presumed bedrock.		2.90		B 2.50		

Water strikes	Details	SYMBOLS KEY
Strike: 2.80 Flow: Slow	Casing: Final Depth: 2.90	B - BULK U - UNDISTURBED D - SMALL DISTURBED J - JAR V - VIAL W - WATER NR - NO RECOVERY * - ESTIMATED DENSITY
Stability: Stable		
Shoring: None		
Backfilling: Backfilled on completion		
Notes:		
Logged by: EM	Checked by: SKF	ALL DIMENSIONS ARE IN METRES

REPORT TO: Planning Committee
MEETING DATE: 14 January 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

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***Note:** This application has been called off the Scheme of Delegation List by Councillor Allan for the following reasons: This application raises issues around the development of a building that may be of interest due to its location and potential use, and I feel this would benefit from a Planning Committee discussion.*

Application No. **24/00629/P**

Proposal Alterations and change of use of building to form holiday let and associated works

Location **Vacant Building Adjacent to 2nd and 3rd Green of Kilspindie Golf Course
Aberlady
East Lothian**

Applicant Wemyss & March Estate

Per APT Planning & Development

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSAL

This application relates to a vacant stone building located immediately adjacent to the Kilspindie Golf Course and which sits directly on the coastal wall within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. The site bounds the Firth of Forth Special Protection Area and Firth of Forth Ramsar area which lie immediately to the north and extends within the Aberlady Bay Nature Reserve. The building is also located within the North Berwick to Seton Sands Coast Special Landscape Area with the building

also being located within two areas of constrained coast, the application building being located within the Seton Sands, Longniddry bents, Gosford constrained coast and the area of land to the immediate north of the building (where it is proposed the building be extended) within the Aberlady constrained coast. The building is not listed as being of special architectural or historic importance and is not located within a conservation area.

Through this application planning permission is sought for the alterations and change of use of the existing vacant stone building with pan-tiled clad roof, last in use as a bird watchers hide, to a holiday let for overnight stays. The building is proposed to be extended to the north with the formation of a cantilevered balcony which would extend into the area defined as the Aberlady constrained coast.

A Design and Access Statement has been submitted in support of the application which states that: "The proposal explores the restoration and conversion of the old bird hide at Kilspindie into seasonal holiday let accommodation. The bird hide itself is a small stone built single room structure with a red clay pan-tiled roof. The building sits directly on the coastal wall which has evidence of modern repairs and restabilising. The shelter has been historically restored and used by bird watchers as a hide due to the narrow slot window running along the north wall where you get a view of Aberlady Bay. The building is now in a state of disrepair and in great need of attention. The dramatic coastal setting creates a particularly special opportunity to create a very unique holiday let within this tiny structure, which can really connect its guest with the surrounding context. There is currently no vehicular access road to the site and it is most easily reached on foot along the headland from Kilspindie Golf Club. However it can be accessed via golf buggy. The property is orientated on a largely North - South orientation, therefore whilst the rear of the proposal maximises views across the Firth of Forth it is primarily North facing. There is scope to create a cantilevered balcony to the rear of the property which will benefit more from the late evening sun. Whilst there are no surrounding properties, the building is bounded to the south by Kilspindie Golf Course and to the north is a public beach, therefore privacy and overlooking will need to be carefully considered with the design of the scheme. The hide is located at the edge of the small cliff above an existing sea wall, which has been reinforced with concrete. The building should be fully converted to create a modern and unique experience for its guests. The connection with the surrounding landscape is key and inspiration should be taken from the buildings former use and the dramatic setting. The coastal elevation should be opened up to allow views and access to an external space, possibly a cantilevered balcony. Guests will arrive to the site from the east, where they will park in the overflow car park at Kilspindie Clubhouse. From here they will walk on foot or travel via golf buggy along the existing grass access track to the Hideaway. Given the sites sensitive location in Special Landscape Area 26, our proposal strives to maintain as much of the buildings original fabric as possible. Whilst the existing structure is uninhabitable, and in a deteriorating condition, the building has a distinct charm which we feel is important to maintain. We are proposing minimal intervention to the exterior of the property, with all existing openings being reused where possible. Where new openings are to be created or altered, we are proposing this be done in a contemporary manner, clearly distinguishing old from new. We believe that the proposed scheme will not have an adverse impact on the setting and feel that it would be an improvement on the current structure which is

progressively deteriorating. We are proposing that access to the property is to remain as existing, with the main way of accessing the property being on foot around the headland to the north of the golf course. To maximise views to the north across the Firth of Forth we have proposed dropping the sill of the existing slot window and replacing it with sliding doors onto a cantilevered balcony. As overlooking from the golf course is a consideration we are proposing that part of the existing entrance opening is infilled to create a narrow and dramatic entrance that retains the properties sense of privacy. A very simple and natural palette of materials have been selected that compliment the existing materials, in addition to being robust to withstand the elements from the North Sea. The accommodation will operate seasonally, closing over the winter months. We are proposing that four, ground mounted solar PV panels are installed to the east of the property. The visual impact of these will be minimised by mounting the panels in 'Landscape' format. A light protective netting will also be required to protect the panels from being damaged by golf balls. The battery bank for the PV and potable batteries will be housed in a weatherproof enclosure on a concrete plinth against the south west façade of the building. There is no means of collecting waste from the property and therefore it will need to be taken to Kilspindie Clubhouse elsewhere for disposal. Adequate storage for the collection and sorting of waste and recycling will be incorporated into the design to help assist with its disposal.

In conclusion, we believe the proposal offers a sensitive and subtle refurbishment of the existing building that will help to enhance this section of coastline. The sustainable and minimalist approach being taken retains much of the original buildings fabric and charm. The lean-to housing the renewable energy batteries and inverters has been designed to minimise the impact on the existing structure, re-purposing the excavated stone from the existing hideaway where possible."

Also submitted in support of the application is an 'Update Report: Ecological Appraisal of redevelopment proposals on the Old Bird Hide, Kilspindie Golf Course, Aberlady, East Lothian July 2024' along with a previous 'Ecological Appraisal of redevelopment proposals on the Old Bird Hide, Kilspindie Golf Course, Aberlady, East Lothian, June 2021'.

DEVELOPMENT PLAN

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

The development plan is the approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 13th February 2023 and the adopted East Lothian Local Development Plan 2018.

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural Places), 9 (Brownfield, vacant and derelict land and empty buildings), 10 (Coastal Development), 13 (Sustainable Transport), 22 (Flood risk and water management) 23 (Health and Safety), 29 (Rural Development) and 30 (Tourism) of NPF4 and Policies DC1 (Rural Diversification), DC6 (Development in Coastal Areas), DC9 (Special Landscape Areas), DP1 (Landscape Character), DP2 (Design), DP5 (Extensions and alterations to Existing

Buildings), NH1 (Protection of Internationally Designated Sites (RAMSAR)), NH3 (Protection of Local Sites and Areas), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH11 (Flood Risk), (T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also material to the determination of the application is supplementary Planning Guidance (SPG) on 'Countryside and Coast' adopted by the Council on 29 October 2019 and 'Special Landscape Areas' adopted by the Council on 30 October 2019. The SPG expands on policies DC1 and DC9 that are set out in the East Lothian Local Development Plan 2018 and it provides policy guidance on development within areas designated as countryside and within Special Landscape Areas.

REPRESENTATIONS

A total of 56 letters of written representation have been received to the application. Of these representations, 54 object to the application. The remaining two representations make comment on the application.

The main grounds of objection are summarised as:

- i) Environmental damage and impact on flora, fauna, wildlife, birds and natural habitat through noise increased movement to and from building during construction works;
- ii) Environmental impact on flora, fauna, wildlife, birds and natural habitat through noise, light pollution, increased movement to and from building by guests and services when in use as a holiday let;
- iii) Increased risk with the potential for oil and diesel spillage in a protected wildlife environment during the construction programme and heightening risk to human waste spillage into a protected area; Introduction of foul water drainage for sewage water, shower water, dishwater etc potential to pollute the surrounding area and no doubt the run off will be discharged into the Firth of Forth;
- iv) Incompatible with golf course - Kilspindie Golf is a world renowned historic golf course; no sense in creating holiday accommodation on a golf course with no access other than over the golf course; access would cause increased activity across the golf course and possibly danger from golf balls; use of building as a holiday let would impact significantly on users of the golf course with the potential for noise from these residents both when in situ and when moving to and from building; great concern for the safety of the occupiers of the property which is situated in front of and very slightly to the right of the third tee. Golf balls played from this tee are travelling at their maximum velocity as they pass the building and anyone unexpectedly exiting its front door at the same time as a ball is hit would be at risk of serious injury. Further, wayward shots aimed at the second green, especially when hit into a strong westerly wind, regularly strike, land near or fly over the bird hide; It would be extremely detrimental to the golf course should the solution be to remove the teeing areas or even the green. This is a historic golf course and it has no opportunity to move holes due to the very close proximity of Craigiellaw Golf Course with which it shares some of its perimeters; there does not appear to have been any consideration given in the application to the health and

safety implications of the change in use of the building to a holiday let; months of disruption through noise, movement and activity would impact golfers and visiting parties from around the world during building and construction; the proposed commercial building in such a well-established golf course could damage the reputation of the golf course irreparably; no practical reason for people to stay there it is clearly a money making project and would have a detrimental effect on one of the world's most beautiful and historical golf courses; having a holiday let in the middle of a golf course would be very disruptive and almost impossible for a healthy functioning club to deal with; to put accommodation in the boundaries of the golf course raises health and safety issues to any potential occupants one only has to look at the changes made at the 9th hole to protect a property that isn't even in the boundaries of the course, objector foresees similar issues if this goes ahead;

v) Location and access - the building is wholly unsuitable for a holiday let; The 'track' that's expected to provide access for construction and potential renters barely exists. It's a partial, disjointed and uneven line through the grass that's barely wide enough for one person's feet. The only real route to the hut is over the golf course, which would be impractical and dangerous for all concerned; Access via the beach will entail clambering up to the development over steep ground which is partially washed away in bad weather and in addition access via the beach will disturb wildlife both birds and seals;

vi) Health and Safety - In the event of an emergency services incident, for example a fire or injury access will be hazardous and treacherous to Fire Service and Ambulance at any time but especially in hours of darkness; In this regard an objector states the reliance on burning wood (for cooking and heating) in an area that gets tinder dry in the summer and has no access for emergency services such as fire engines would also be very dangerous; Why would anyone even consider designing a building to be used as a living space almost directly in front of a golf course teeing ground? The front door positioning means that visitors will be stepping straight out into the direct line of golf shots from the third tees, these are drives which can be moving at over 100mph with a hard object, which can cause serious injury or even death. These tees are not even shown on the plans; The application includes a lot of photographs but none that show the juxtaposition of the third tee and the hide; There are no windows on either the hide's south or east elevations so occupants will have to exit the building before they can see whether or not golfers are on the tee and by that time it may well be too late;

vii) Solar panels separate from the development will be an ugly addition to the pristine views and environment;

viii) Impact relating to the disturbance of the flora and fauna both in the short and long term. This is a significant issue in times where the Council has been very vociferous in its apparent concerns for the local environment in declaring a climate emergency in recent times;

ix) Area indicated for guests to park in the overflow car park of the Golf Club is currently closed at 6pm to stop people parking there overnight i.e. camper vans etc so there is a security risk if this car park would require to be open for residents;

x) Objector disagrees that this adds to the area e.g. eco, tourism, etc., as mentioned in the application, in fact objector believes that this really destroys the uniqueness of the area and coastline - the very reason people (locals and visitors alike) visit the area (not just the golf course). A real concern is the management of the property and the expected disruption to the tranquillity of the area;

xi) This proposed building would have a hugely detrimental impact on an

otherwise pristine stretch of the east Lothian coastline, with associated effect on local wildlife. These would be both direct with the effect of a more developed building and indirect in terms of feeding/breeding patterns. These effects would be enhanced by the increase in traffic and other activities in the immediate area, the adjacent golf course would also suffer negative impact;

xii) Objectors allege that the fact that the planning application was made with no prior consultation with the golf club suggest contempt for the golf course and its members;

xiii) Contrary to Policy DC6 - Aberlady point is designated as Constrained Coast (Map 4). ELDP states that new coastal development should be generally avoided in "generally undeveloped areas". Objector states that the Aberlady Point Constrained Coast is not intensively developed and has qualities of remoteness. This is despite the proximity of the golf course and its intensive management. The development of a tourist let is not dependent on it requiring a coastal location, no matter how desirable it may be, therefore it does not meet Policy DC6;

xiv) Contrary to Policy DC9 - Policy DC9 states that any development must accord with special landscape area guidance, including not harming coastal character or qualities of an area unless public benefits outweigh harm. Objector states it is impossible to see any public benefits of this private holiday let that could outweigh its negative impacts;

xv) The siting of a holiday let here is clearly inappropriate, insensitive and harmful to the natural setting and landscape character of this historically undeveloped, uninhabited, public and protected coastal margin. Objector alleges it would be the first inhabited building of any kind on the water's edge, not just of Aberlady Bay but the entire stretch between Seton Sands and North Berwick. It would represent a negative intrusion and private zone of exclusion on the open coastal margin of Aberlady Bay for the first time, setting an alarming precedent;

xvi) Light Pollution - The proposal plans to install internal and external lighting. Being an undeveloped stretch of coastline, objector alleges that this area is traditionally a dark area with no light pollution emitted between Kilspindie and Green Craig on the 2km coastal stretch. The updated ecological appraisal acknowledges that "there will inevitably be some light escaping from the building." (p.13.Table 4). The recommended mitigation measures include black-out blinds and "dark sky rules" but enforcing or policing these rules will be unlikely given the location of the site. Indeed, 2.22 of the Scottish Government's document 'Short term lets: planning guidance for hosts and operators document on holiday-lets' (2021) states: "the high turnover of guests in short-term lets requires new people to learn and observe proper behaviours and increases the chance of some people wilfully or negligently failing to behave appropriately." Therefore, the mitigation measures are not secure and there is significant likelihood of light emission, especially onto the beach and the bay, through the proposed large windows on the north of the building. Light would also escape from the glazed entrance door. External lights, even if pointing downward or shielded, would inevitably illuminate the exterior of the building, becoming an obvious and jarring light source on this characteristically dark coast; Objector states it would seem rather optimistic to assume overnight visitors would always abide by advice to keep light levels down so there is a significant risk to night-time darkness;

xvii) Biodiversity and Natural Environment - The Updated Ecological Appraisal states that seals "likely" haul out 250-300m away from the hide on the sandbank across the channel. Objector states that this is indeed true but the statement omits

the fact that seals have long been recorded to haul out directly on the beach below the bird hide and on the rocks less than 50 metres away, including during pupping. The impacts from unprecedented building works noise - especially the rock excavation needed for the foul water treatment tank - on seals and other wildlife therefore cannot be said to be "highly unlikely". Rather, the development poses significant potential and unknown adverse risk which must be seriously considered. Of course, the area is often passed by golfers and walkers during the day and evening. But it is not disturbed at night and not by continuous occupancy at this site. This proposal creates an additional and unnecessary pressure, particularly with a balcony, lights, noise, wood smoke, and external cooking, in a natural and wild environment;

xviii) Flooding - Objector alleges that on a severe north easterly gale the property is entirely overtopped with waves and could well be a danger for guests staying there.

COMMUNITY COUNCIL

None.

PLANNING ASSESSMENT

The proposed scheme of development is for the alteration and change of use of the existing vacant former bird hide building to a holiday let.

It is proposed that the existing building be altered to facilitate its change of use from a bird watchers hide to a holiday let for overnight accommodation. The alterations proposed comprise of:

- i) The formation of a cantilevered balcony on the north elevation of the building;
- ii) The formation of a new opening on the north elevation and the installation of a three panel, triple glazed alu-clad sliding door to enable access from the building onto the balcony;
- iii) New insulated timber roof with pantiles to match existing;
- iv) Ground to be regarded to allow for creation of level threshold and to provide access to plant store;
- v) Installation of a flue for a log burning stove within the north facing roof slope;
- vi) Installation of a high level triple glazed alu-clad slot window within the north elevation;
- vii) Erection of a timber clad weatherproof enclosure with stone ends and pantile roof on concrete plinth for PV batteries and associated plant on the west elevation;
- viii) Siting of 4 ground mounted solar PV panels (measuring some 6.95 metres long, some 0.9 metres in height and some 0.64 metres in depth) with wooden posts with fence wire supporting nylon protective net pegged at ground level;

It is stated that that access to the building would remain as existing, with the main way of accessing the property being on foot around the headland to the north of the golf course.

The application site is located within the countryside of East Lothian as defined by

Policy DC1 of the ELLDP. Policy 29 of NPF4 states that development proposals that contribute to the viability, sustainability and diversity of rural communities and the local rural economy will be supported, though proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area. Policy 30 of NPF4 supports development proposals for new or extended tourist facilities or accommodation, including caravan and camping sites, in locations identified in the LDP.

Policy DC1 of the ELLDP 2018 states that development in the countryside, including changes of use will be supported in principle where it is for:

- a) agriculture, horticulture, forestry, infrastructure or countryside recreation; or
- b) other businesses that have an operational requirement for a countryside location, including tourism and leisure uses.

The supporting text of this Policy states that new businesses may also seek to establish in East Lothian's countryside and coast, including tourism uses that could diversify the local economy.

The use of the application building as a holiday let for overnight accommodation is a tourism and leisure use. Whilst such holiday letting accommodation use could be accommodated within an urban area, this type of holiday letting accommodation would serve to provide accommodation for tourists wishing to benefit from a stay in the East Lothian countryside. The proposed holiday let would be within easy reach of popular East Lothian attractions and towns. The use of the building as a holiday let for overnight accommodation use, would not in principle be contrary to Policies 29 or 30 of NPF4 and Policy DC1 of the ELDP.

However, Policy 30 of NPF4 also states that 'a) Development proposals for new or extended tourist facilities or accommodation, including caravan and camping sites, in locations identified in the LDP, will be supported.' In this regard the application site is not identified or allocated in the ELDP for tourist accommodation. The application building and site are located within a wider area identified as constrained coast within the countryside and within a special landscape area within the ELDP.

Also relevant to this specific application are Policy 30 of NPF4 parts 'b) proposals for tourism related development will take into account: (i) the contribution made to the local economy; (ii) compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors; (v) accessibility for disabled people; (vi) measures taken to minimise carbon emissions; (vii) opportunities to provide access to the natural environment; 'e) development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in; (i) An unacceptable impact on local amenity or the character of a neighbourhood or area.

With regards to the contribution made to the local economy, the **Council's Economic Development Service Manager** has been consulted on the application and advises he supports the proposal for the change of use of the building to a

short term holiday let as such the proposal would in principle be consistent with Policy 30 Of NPF4 part (b) (i). The proposal would also provide access for guests to stay in the natural environment by being located within the constrained coast and countryside and as such the proposal would in principle be consistent with Policy 30 of NPF4 part (b) (vii).

However, the proposed holiday let in terms of Policy 30 of NPF4 must also be assessed in terms of part (b) (ii) compatibility with the surrounding area and part (e) (i) impact on the amenity/character of the area. Given the buildings location the surrounding area includes 2 active golf courses, a special landscape area, and protected sites of nature importance including the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA and Aberlady Bay Nature Reserve which all contribute to attracting tourists to the area.

Additionally, Policy DC1 of the ELDP also states that proposals must also satisfy the terms of Policy NH1 and other relevant plan policies including Policy DC6.

Policy NH1 states that development proposals unconnected to the conservation management of a Natura 2000 or Ramsar site, that are assessed by the competent authority as likely to have a significant effect on the integrity of a Natura 2000 or Ramsar site (including proposals outwith the boundary of the designated site) will be subject to Appropriate Assessment. Applicants for such development must provide any information requested by the competent authority to enable it to carry out the Appropriate Assessment, including any project specific information and masterplan. Where the Appropriate Assessment cannot rule out adverse effects upon the integrity of a Natura 2000 or Ramsar site, the proposal will only be permitted where: a) there are imperative reasons of over-riding public interest and there are no alternative solutions; and b) compensatory measures are provided to ensure that the overall coherence of the Natura 2000 network is protected. Candidate Natura 2000 sites will be treated as if they were already designated.

Policy DC6 states that development proposals in the coastal area will be assessed against the relevant qualities of the coastal area in addition to all other relevant Plan policies. Where it is proposed on the:

- o Developed Coast it will be supported in principle if it complies with other relevant Plan policies;
- o Constrained Coast it will only be supported if it requires a coastal location;
- o Unspoiled Coast it will only be supported if there is an established need for the development and a specific need for that particular coastal location.

Coastal developments are likely to be subject to Habitats Regulation Appraisal (unless these are directly related to the management of the nature conservation interests of the Natura 2000 sites). Where a development proposal has a likely significant effect on a Natura 2000 or a Ramsar site either alone or in combination with other plans or projects then proposals must be accompanied by project specific information to inform an Appropriate Assessment. This will allow the competent authority to complete an Appropriate Assessment to determine if there are any adverse effects on the integrity of a Natura 2000 or Ramsar site. The siting and design of new development must respect the qualities of the particular coastal location.

Given the application building's location immediately adjacent to the internationally important sites, NatureScot as statutory body, has been consulted on the application and provided an initial consultation response stating that the proposal could affect internationally important natural heritage interests and as such NatureScot provided a holding objection to the proposal until further information be provided by the applicant/agent.

NatureScot stated in their response that this proposal is likely to have a significant effect on wintering and roosting birds in the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA. Consequently, East Lothian Council, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interests. This assessment should include an appraisal of the following: The effect of the construction and operation of the development in relation to disturbance of qualifying species, to ensure that no significant disturbance of these species occurs, and the integrity of the sites are maintained.

One of the conservation objectives for both the Firth of Forth SPA and the Outer Firth of Forth and St Andrew's Bay Complex SPA is to avoid significant disturbance to qualifying species. On the basis of the information provided within the original Ecological Appraisal (June 2021) current Ecological Appraisal (July 2024), and supporting design and construction information, NatureScot consider that there is insufficient site-specific information to tell us enough about the importance of this particular stretch of the coast for the qualifying species - for example in relation to roosts - to conclude that there is no adverse effects on site integrity.

NatureScot advised that this area is likely to be used by SPA qualifiers, such as Eiders who may be susceptible to disturbance during breeding and moult, (mid-April - mid September), with particular sensitivity in July and August, when construction would usually occur to reduce effects on overwintering birds. Breeding and overwintering birds may also be disturbed during the occupation and servicing of the property, particularly with the addition of the balcony to the property. NatureScot therefore stated they need to see additional survey data to be able to advice ELC competently.

The Firth of Forth SPA is also notified as a Site of Special Scientific Interest (SSSI) at this location - located c.4m from the development. Any issues raised in relation to this designation will be fully addressed as part of the consideration of the respective European sites.

In addition to consulting NatureScot, under the Habitat Regulations, East Lothian Council as competent authority must consider whether any planning application will have a 'likely significant effect' on a European site. The competent authority, with advice from NatureScot (NS), will only provide planning permission when an application can be shown to have no adverse effects on a European site's integrity through Habitats Regulations Appraisal (HRA).

The Habitats Regulations Appraisal (HRA) needs to consider all European sites that may be affected by a project. The proposed scheme of development is directly

adjacent to the Firth of Forth SPA and Ramsar site and as such there is potential connectivity between this proposed development and the Firth of Forth SPA and Ramsar site and therefore HRA is required.

This proposal is not connected with the conservation management of any European site, and therefore must be subject to HRA. NatureScot have provided advice on whether they consider the proposal to have a likely significant effect on the qualifying interests for each of the sites, which informs the screening. Where a likely significant effect cannot be ruled out for a European site, an Appropriate Assessment is required. In this case there is clear connectivity of this proposal with a European site where likely significant effects (LSE) have been identified and as such this proposal must therefore be subject to appropriate assessment.

The required Appropriate Assessment has been undertaken by the **Council's Biodiversity Officer** as part of the determination process of this application. The outcome of the Appropriate Assessment is that potential likely significant effects on the features designated as part of the Firth of Forth SPA and Ramsar site, have been assessed with consideration of the potential risks associated with disturbance to waterfowl and seabirds (through visual and noise impacts). The HRA test is whether the project will have an adverse effect on the integrity of any International/European site in the light of the conservation objectives for the qualifying interest features detailed within this Appropriate Assessment. In conclusion, the Council's Biodiversity Officer advises that even with the securing of mitigation measures provided by the applicant to be in place, the proposed scheme of development is considered to have risk of undermining the conservation objectives and/or having an adverse effect on the integrity of the designated site identified. Therefore, the Council's Biodiversity Officer advises that this application cannot be supported on biodiversity grounds and would be contrary to Policies 3 and 4 of NPF4 and Policy NH1 of the ELDP.

Both NatureScot's initial consultation response advising of their holding objection and the Council's Biodiversity Officer's Appropriate Assessment advising that this application cannot be supported on biodiversity grounds were forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised and attempt to demonstrate that the proposed scheme of development could be undertaken without having likely significant effects on the features designated as part of the Firth of Forth SPA and Ramsar site.

While during the determination period, the agent submitted a letter in attempt to address various matters raised by various consultees in their consultation responses; this letter provided minimal information in response to the matters raised by both NatureScot and the Council's Biodiversity Officer.

Both NatureScot and the Council's Biodiversity Officer were re-consulted on the application and the agents letter forwarded to them. NatureScot provided a further consultation response which stated that while this development is small scale, its localised impact on the specific SPA features during construction or operation may not be, especially given the robust protection SPAs receive. Accordingly, NatureScot state that their advice remains unchanged, and they maintain their

holding objection to the application.

Similarly, the Council's Biodiversity Officer has also provided a further consultation response which states that there is no additional information provided within this document (the agent's letter) that goes towards addressing the concerns previously raised in the Appropriate Assessment with respect to the negative impact of the application on the Firth of Forth Special Protection Area. Therefore, the Council's Biodiversity Officer advises that her previous position remains unchanged, as it has not been demonstrated that the proposed scheme of development could be undertaken without harm to the protected site and as such this application cannot be supported on biodiversity grounds, and would be contrary to Policies 3 and 4 of NPF4 and Policy NH1 of the ELDP.

While the application site is located within the countryside as defined by Policy DC1 of the ELDP, it is also located within a coastal area which is defined as constrained coast.

Policy DC6 of the ELDP states that development proposal in the coastal area will be assessed against the relevant qualities of the coastal area in addition to all other relevant Plan policies. Where development is proposed on the constrained coast it will only be supported if it requires a coastal location. The siting and design of new development must respect the qualities of the particular coastal location.

The proposed scheme of development is for alterations to the existing former bird hut building to form a holiday let. A holiday let by its nature does not require a coastal location; while it may be attractive it is not a requirement or necessity, and there are many holiday lets both within East Lothian and beyond that operate successfully without being located on the coast.

In determining whether a proposal requires a coastal location, paragraph 1.27 of the Countryside and Coast Supplementary Planning Guidance (SPG) states that 'it is for the applicant to justify to the planning authority clearly why a coastal location is required. The planning authority will consider only the requirement that the proposal has for a coastal location. This would normally mean a functional relationship between land and sea. The Council will therefore not consider the desire of the applicant to find a location for a proposal that could be located elsewhere but the site they have chosen (or that is available) is in the Constrained Coast. The Council will also not normally consider that a proposal has to be on the Constrained Coast because it is the only land the applicant owns. A clear link between the proposed use and the coast or sea is required. The Council will therefore not normally take into account: that the land is the only or most suitable land for the proposed use that the applicant owns or controls unless that use has a relationship with the sea or coast; the desire to make an economic return on land the applicant owns; the desire to provide a particular facility of a general sort, even if there are no other available sites; the desirability of the proposal having a view of the sea where the requirement is for an attractive view rather than the need to see the sea as such - for example a dolphin-watching facility or bird-watching hide would require a sea view, where a residential care home or café would not.'

In this case for the change of use of the former bird hide building to a holiday let,

the applicant/agent has not provided any justification as to why a coastal location is required for the proposed holiday let, other than saying it is the building's unique location which makes it attractive as a holiday let. As such, given that a holiday let by its nature does not require either a coastal location or sea view only that it would be a desirable quality, it is considered that the proposal is contrary to Policy DC6 of the ELDP.

Given the application building is located within the North Berwick to Seton Sands Special Landscape Area (SLA), the **Council's Landscape Officer** has been consulted on the application. The Council's Landscape Officer provided an initial consultation response advising that guidelines for development have been included within the Statement of Importance for the SLA to ensure retention of the special qualities and features of the SLA.

The Council's Landscape Officer advises that there are three guidelines that appear to be of most relevance to this application:

'G. Any proposed development must not harm the sense of naturalness and wildness qualities of the area.

H. Any proposed development must not detrimentally impact on bird habitats. Birdlife is important to the area and development or management that harms it is unlikely to be approved because of SPA status of much of the area.

I. Any proposed development must not harm the night-time darkness of those areas of the coast that are currently darker; Gosford Bay to Craigielaw and Gullane Bents to Broad Sands.'

The Council's Landscape Officer advises that the proposal to introduce large windows on the northern elevation of the building opening onto an external balcony will introduce activity, busyness, and light into the area. Although only a small development within a wider area, it will impact on the naturalness and wildness qualities of the area. People will be coming and going to stay in the property but also to clean and manage the property between stays. NatureScot have concerns that the proposal is likely to have a significant effect on wintering and roosting birds in the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA. The proposal will introduce a light source where there is currently none in an area identified as being a darker area of coast. Accordingly, the Council's Landscape Officer advises the proposal does not accord with the three Guidelines for Development within the SLA as noted above and therefore is contrary to Policy DC9 of the ELDP.

The initial consultation response from the Council's Landscape Officer was forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised. During the determination period the agent submitted a letter in attempt to address various matters raised including those of the Council's Landscape Officer and the Council's Landscape Officer was reconsulted and provided a further consultation response. The Council's Landscape Officer's further consultation response stated that while she agrees with the applicant's statement that the building is a very small property and that it is already present. However, it is currently a bird hide which by its very nature aims to be an inconspicuous building with no lighting. The proposal will introduce an additional light source into this area. This area has been specifically identified

as a darker area within the wider Special Landscape Area. Guideline for Development I within the Statement of Importance for the North Berwick to Seton Sands Special Landscape Area states that, "Any proposed development must not harm the night-time darkness of those areas of the coast that are currently darker; Gosford Bay to Craigielaw and Gullane Bents to Broad Sands".

The Council's Landscape Officer advises that the applicant has not addressed the requirement for a coastal location for development within the constrained coast and as such her initial consultation response remains and the application is contrary to Policy DC9 of the ELDP.

The existing building is a small stone building with clay pantiled roof with minimal openings consisting of a narrow long opening with timber shutter on the north elevation, which affords a viewing area of the birds and wildlife within the Aberlady Bay Nature Reserve and within the protected area to the north and a double timber sliding door and opening within the south elevation. There are no openings within the west or east elevations. The building currently has no electricity or lighting. The building is long established in its countryside coastal location and is part of the character and appearance of the area. The building is currently in a dilapidated state of repair and has been historically used as an informal bird watchers' hide where ornithologists can sit unobserved and without disturbing the birds or wildlife which frequent the Aberlady Bay Nature Reserve and protected area to the north. Given the building's location on the sea wall and immediately adjacent to the golf course, with no formal means of access to it and no means of lighting, during the hours of darkness and overnight the building is not used.

It is proposed that the building be altered to facilitate its use as a holiday let for overnight accommodation. As such, it is proposed that the building would become a destination accommodation for guests to reside in, which would result in a considerable intensification of use of the building 24hrs a day. To facilitate the proposed change of use of the building it is proposed that internal alterations be undertaken, which by their nature do not require planning permission, to create a holiday let unit which would consist of a shower room and a room which would serve as a studio type bedroom/living room/kitchen.

The proposed external alterations to the building to facilitate the proposed change of use to a holiday let primarily consist of alterations to the north elevation of the building facing onto the Aberlady Bay Nature Reserve and protected area to the north. It is proposed that the existing narrow long opening with timber shutter on the north elevation be enlarged to form a new door opening which would contain a new three-panel, triple-glazed alu-clad sliding door. It is proposed that this new triple-glazed door would enable access to a new cantilevered balcony which is proposed to be formed along the entire length of the north elevation of the building facing onto Aberlady Bay Nature Reserve and the protected area to the north. It is also proposed that a high-level triple-glazed alu-clad window be formed within the north elevation to serve the proposed shower room. It is proposed that the existing double timber sliding door within the south elevation be removed and the opening be enclosed with a new triple glazed alu-clad entrance door. It is proposed that a small extension be added to the west elevation of the building in the form of an enclosure with a mono pitch pantile roof with the west elevation of the extension

clad in timber and the north and south elevations finished in stone. It is also proposed that a flue be installed in the north facing roof slope of the building which is to serve a wood burning stove, which would be installed within the building.

The proposed alterations to the building itself are fairly minor in scale and are generally in keeping with the character and scale of the existing building such that they would be consistent with Policy DP5 of the ELDP. However, the proposed alterations together with the proposed change of use of the building to a holiday let would result in an intensification of use of the building both during the day and overnight, within the hours of darkness, and an intensification of movement both to and from the building by not only guests but also cleaning/maintenance staff, etc. It is proposed that the building would be provided with electricity which is to be provided by four ground-mounted solar PV panels and PV batteries. As such, the proposed holiday let would have internal lighting, which, given the proposed three-pane, triple-glazed sliding door and new high-level window proposed within the north elevation (which would serve the living area and shower room respectively) and the proposed glazed entrance door on the north elevation (which would serve the living area), light pollution would be omitted from the building both to the north onto Aberlady Bay and the protected area and to the south onto Kilspindie Golf Course. While the proposed formation of the new cantilevered balcony along the entire length of the north elevation of the building would provide a new external useable area to the north of the building overlooking the Aberlady Bay and the protected area.

These matters were raised with the agent who responded, stating, 'The building is already present on this stretch of coastline. It is a very small property. The only real additional visual impact would be in the evening when there may be negligible light spill from the property. This would be a pin-prick in the wider landscape of the Special Landscape Area with many other light and visual impact sources in close proximity (both Kilspindie and Craigiellaw clubhouse being immediate examples as well as the substantial detached houses at Craigiellaw). The applicant will incorporate low-intensity lighting both in terms of brightness, positioning and direction to ensure minimal light spillage. It would add to the attraction of the property whilst also reducing what limited visual impact there may be. However, the property is so small that this will not be a major concern. The lighting system will be low wattage supplied by a 12v battery system. There will be no external lights on the beach side of the property.' With regards to the impact of the proposed balcony the agent stated, 'The accommodation will only ever be occupied by a maximum of two people. The potential disturbance would be no greater than having windows that open out onto the north elevation. The customer guide would request due care and attention in terms of loud music, etc. but in reality this would not be a problem to a wider area that already experiences considerable noise, activity and visual changes through the golf course and walkers/dog walkers over a much wider area. Proportionately, this would be a tiny area that would/may experience very occasional noise impacts, and these would be over an extremely limited area.'

The provision of the proposed external balcony on the north elevation of the building along with the proposed three-pane-glazed sliding doors which would provide access to it, together with the proposed intensification and use of the building for overnight accommodation, would result in a completely different

relationship of the existing unlit bird hide building to Aberlady Bay, the Protected Area, the SLA, and the constrained coast, as would the proposed glazed door within the south elevation. Such that the cumulative impact of the proposed impact of the proposed alternations to the building together with the proposed change of use and intensification of use of the building would not accord with the guidelines for development within the SLA and as such the proposal is contrary to Policy 30 of NPF4 part (b) (ii) and (e) (i), Policy DC9 of the ELDP. There is no public benefit of the development which would outweigh the adverse impacts of it.

The proposed siting of four ground-mounted solar PV panels (measuring some 6.95 metres long, some 0.9 metres in height, and some 0.64 metres in depth) with wooden posts with fence wire supporting nylon protective net pegged at ground level to the east of the building would be visually prominent in the immediate locality of this part of the constrained coast and protected landscape area and from the Kilspindie Golf Course. With the exception of the existing historical bird hide building, there is no built form of development immediately adjacent to this area of constrained coastline, and as such, they would be an incongruous feature not in keeping with the special landscape character of the area; as such they would be contrary to Policy DC9 of the ELDP.

Given the building sits directly on the coastal wall, the Scottish Environment Protection Agency (SEPA) have been consulted on the application. SEPA provided an initial consultation response advising that the building is located immediately adjacent to an area at risk of flooding from the sea based on the SEPA Future Flood Maps. SEPA state that the development proposal is to convert an existing structure that currently serves as a bird hide building into holiday accommodation which they consider would increase the land use vulnerability in this case from Water Compatible to Most Vulnerable, if the development was granted consent and completed. In their initial consultation response, SEPA advised that the information supplied with the planning application was insufficient to allow them to determine the potential impacts in relation to flood risk and as such requested that further topographical data be provided by the applicant/agent to confirm the current and proposed floor level of the structure in an attempt to address the matter of flooding. As such, SEPA advised that their initial consultation response was a holding objection unless it can be demonstrated by the applicant/agent that the proposed scheme of development, including the proposed change of use of the building, could be undertaken without increasing the vulnerability of the building to flooding. SEPA's initial consultation response stated that if the planning authority was not minded to request this information, or the applicant does not provide it, then SEPA's representation should be considered as an objection.

SEPA's initial consultation response was forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised and attempt to demonstrate that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

While during the determination period the agent submitted a letter in attempt to address various matters raised by various consultees in their consultation responses, this letter provided no information in response to the matters raised by

SEPA and their holding objection, and as such did not make any attempt to provide additional information or demonstrate that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

SEPA was re-consulted on the application and the agent's letter forwarded to them. SEPA provided a further consultation response stating that they cannot see any details in the agent's submission which relate to SEPA's requirements issued under their initial consultation response. Consequently, SEPA advised their response remains unchanged, and an objection to the application as it has not been demonstrated that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

The **Council's Flooding Protection Officer** advises that the main risk to the proposed development is coastal flood risk. While he does not oppose the application on the grounds of flood risk, he recommends that as access and egress to the development may also be affected by flood waters, should approval be given, the applicant signs up to receive flood warnings from SEPA. Likewise, emergency responders would require access to and from the property in case of emergency. It would also be advisable for the applicant to develop an evacuation plan for the building during times of flood warning.

The proposed scheme of development including the proposed change of use of the building from a bird watchers' hide to a holiday let providing overnight tourist accommodation would increase the flooding vulnerability of the building. It has not been demonstrated by the applicant/agent that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding, as such, the proposed scheme of development is contrary to Policy 22 of NPF4 and NH11 of the ELDP. Additionally, it has not been demonstrated that occupiers of the proposed holiday let would not be at risk from safety hazards in the form of flooding, contrary to Policy 23 of NPF4.

It is stated in the submitted Design and Access Statement that 'there is currently no vehicular access road to the building and it is most easily reached on foot along the headland from Kilspindie Golf Club. However, it can be accessed via golf buggy.' While it is indicated on the submitted drawings that a 'track' exists, there is no formal path or right of way providing access to the building; access by foot is either over the Kilspindie Golf Course or via the beach and headland. During the determination period of the application, clarification was sought from the agent as to how guests, including disabled guests, would access the proposed holiday let building.

During the determination period, the agent submitted a letter in attempt to address various matters raised and consultation responses. This letter stated that with regards to parking and access 'guests will check in at Craighielaw Golf Club, they will then be taken by golf buggy to the property. The 'chauffeur' will be a member of the Craighielaw golf team and well versed in ensuring appropriate access across two active golf courses. The straight-line distance is approximately 500m. There will be no option to retain or permanently park a golf buggy at the accommodation - purely a drop-off and collect service (and therefore very infrequent). Assuming they have arrived by car (train and bus is an option), cars can either be left at

Craigielaw Golf Club or if they want to move their car to a closer spot, the overflow car park at Kilspindie Golf Club is closer to the accommodation. The additional vehicle will not cause any capacity issues at either location. It is possible that the accommodation will not be suitable for disabled customers. Its unique location and small size will mean it is not suitable for those with limited mobility or with children and/or pets.'

As such it is proposed that guests on check in and check out would be driven by golf buggy over two active golf courses (Craigielaw and Kilspindie), with guests' own vehicles being required to be parked some distance from the proposed holiday let building either within the car park at Craigielaw Golf Club to the south or within the overflow car park at Kilspindie Golf Club to the east both which are approximately 500 metres away. While during the duration of their stay guests wishing to leave or return to the building would be required to make their own way on foot to and from the building which would either require walking over two active golf courses, should they head towards Craigielaw Golf Course or across Kilspindie Golf Course, or along the beach headland should they head to the east towards Kilspindie Golf Club to access Aberlady or Gullane or bus stops in the village. There would be no vehicular access provided to the building for any vehicles including guests, servicing of the holiday let (cleaning/maintenance), all of which would require to traverse the active golf courses. There would also be no vehicular access for emergency service vehicles directly to the building. It has also been noted and raised with the agent that the application site the subject of this application does not include either Craigielaw Golf Club or its car park rather the application site includes part of the overflow car park at Kilspindie Golf Club and an area of land from it to the application building detailed as a 'track'. This matter was raised with the agent during the determination period.

With there being no direct vehicular access or formal pedestrian access to the building, the agent has stated that 'it is possible that the proposed holiday let will not be suitable for disabled guests' contrary to Policy 30 of NP4 4 part (b) (v) accessibility for disabled people.

Given the building's location, the only way of accessing it is either over two active golf courses or via the headland to the east or over Kilspindie Golf Course. Related to this is Policy 23 of NPF4 the policy intent of which is to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing. Given the building requires to be accessed over active golf courses, there would be an intensification of movements to and from the building over the golf courses which would present a safety hazard, increasing the risk of people (non-golfers) being hit by golf balls. This is quite different to members of the public who may choose to informally walk on the golf course or headland with the proposal promoting a specific holiday let accommodation as a destination which will generate increased pedestrian movement at this specific location and in the immediate area. Additionally, with the building being located immediately adjacent to Kilspindie Golf Course, the 3rd tee and 2nd green in particular, with the main entrance to the proposed holiday let being directly onto the golf course, the proposal would present an increased safety hazard of guests being struck by wayward golf balls. As such, it is considered that the proposed holiday let, given its

location, would increase the safety hazard of the immediately adjacent active golf courses by generating additional movements, contrary to Policy 23 of NPF4.

The **Council's Road Services** have been consulted on the application and advise that as noted on the location plan, guests will arrive to the site from the East, where they will park in the overflow car park at Kilspindie Clubhouse. From here they will walk on foot or travel via golf buggy along the existing grass access track to the "Hideaway". Road Services state that this is the only location drawing submitted Drg. 22092 FE(02) rev 01, indicating the intended route to the facility. Road Services state during the determination process they queried the suitability of the existing foot path to access the proposed development, the path was uneven, of varying widths, overgrown in areas, the route left the golf course onto the beach and returned to the golf course due to the location of the 2nd tee. Road Services state that this route would not accommodate a golf buggy and would be hazardous to navigate in poor light conditions; as such, the proposed route is unsuitable to service this facility without further modifications. Road Services advise that after receiving a revised method statement describing how the facility will be operated and maintained, additional access provision was proposed via Craighielaw Golf Clubhouse. However, no further drawings indicating the proposed access track routes and track details from Craighielaw and Kilspindie to accommodate pedestrian, golf buggy and emergency 'blue' light service access to the proposed facility have been submitted and as such without it having been demonstrated that the proposed holiday let is capable of being accessed conveniently and safely on foot, by cycle, by public transport or by private vehicle, Road Services cannot support the proposed scheme of development. As such, the proposal is contrary to Policy T1 of the ELDP.

Scottish Water as a consultee on the application raise no objection to it.

In conclusion, the proposed scheme of development is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the proposed scheme of development is not in accordance with the Development Plan.

REASONS FOR REFUSAL:

- 1 It has not been demonstrated that the proposed scheme of development could be undertaken without undermining the conservation objectives and/or having an adverse effect on the integrity of the designated Firth of Forth SPA (also a Site of Special Scientific Interest (SSSI)) and the Outer Firth of Forth and St Andrew's Bay Complex SPA contrary to Policies 3 and 4 of NPF4 and Policies NH1 and DC1 of the ELDP.
- 2 The proposed scheme of development would not accord with the guidelines for development within the Special Landscape Area and as such the proposal is contrary to Policy 30 of NPF4 part (b) (ii) and (e) (i), and Policies DC1, DC6 and DC9 of the ELDP.
- 3 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding as such the proposed scheme of development is contrary to Policy 22 of NPF4 and NH11 of the ELDP.
- 4 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the safety hazard to guests from flooding and having to traverse active golf courses contrary to Policy 23 of NPF4.

- 5 The proposed scheme of development would not be located on a site capable of being conveniently and safely accessed on foot, by cycle, by public transport or by private vehicle contrary to Policy T1 of the ELDP.

REPORT TO: Planning Committee
MEETING DATE: 14 January 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

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***Note:** This application has been called off the Scheme of Delegation List by Councillor McIntosh for the following reasons: Due to questions raised by East Lothian Council's Access Officer regarding this application, I think the case would benefit from a discussion at Committee.*

Application No. **24/00828/P**

Proposal Change of use of agricultural land to dog walking facility, formation of vehicular access, erection of 2 field shelters, lighting, fencing and associated works

Location **Land to the South of Meadowmill Cottages
Tranent
East Lothian**

Applicant Ms Margaret Firth

Per Brian Currie RIBA ARIAS Chartered Architect

RECOMMENDATION Consent Granted

REPORT OF HANDLING

PROPOSAL

This application relates to an area of unmanaged agricultural land at Meadowmill and an outbuilding located on the area of land, which are located within the countryside as defined by Policy DC1 and a designated countryside around town area as defined by Policy DC8 of the adopted East Lothian Local Development Plan 2018. The application site is also located within a defined Coal Authority Development High Risk Area and within the wider Prestonpans Battlefield site area. The area of land is positioned immediately to the south of the residential properties of Meadowmill Cottages and a number of buildings which are in

commercial use. The application site measures some 0.50 hectares in area.

Through this application planning permission is sought for the change of use of agricultural land and associated outbuilding for use as a dog walking facility.

The site would be accessed via a private access road from the public road to the north of the site and the submitted drawings indicate an area of parking for eight vehicles and associated turning space within the western section of the application site. It is indicated that the eastern area of the site would be subdivided into three separate dog walking fields which would be separated and enclosed by 1.8-metre-high deer fencing. It is proposed that two 2.5-metre-high earth mounds would be formed within the northern most of the three proposed dog walking fields, with a further 2.5-metre-high earth mound proposed to be formed within each of the remaining two proposed dog walking fields. It is proposed that a timber shelter would be erected in each of the three dog walking fields.

The application site currently contains a brick outbuilding and it is proposed that this existing building would be used as part of the dog walking facility as a bin store within the proposed car parking and turning area.

The revised Supporting Statement submitted with the application informs that "the proposed dog walking facility would provide a safe and secure enclosed dog walking facility to visiting members of the public. The former vacant/waste agricultural land will offer a private space that will be booked in advance for exclusive use. The dog park(s) will cater for new dog owners and puppies, sensitive or nervous dogs or dogs that have poor recall and cannot be let off lead safely. Users of the dog park(s) will be able to relax in the knowledge that their dog is in a safe place and able to run free within an enclosed space without being disturbed (or disturbing others). Disturbance from dog barking or owners recall/whistle would be no different than the present situation with frequent dog walking already taking place along the field to the south of the application site. There will be three separate dog parks fenced off with a 1.8m high timber slatted fence. The area will be secure and safe. Low-level bollard lighting will illuminate pathways from parking to the dog parks. There will be three small sheds for shelter in each park, each with a fresh water supply. There will be at least one responsible adult per park and each of the dog parks will house one-to-three dogs maximum (a maximum of nine dogs per session). Dog waste will be collected by the users and disposed of in the bins provided. Bins will subsequently be presented for collection at the roadside. All payments and bookings will be done online via a website. Booking is 50-minute slots with a 10-minute gap either side to avoid crossover for up to four dogs. A member of staff will be available at all times the dog park is in use to deal with queries from first-time users, emergencies, booking issues, and customers who have turned up at the wrong time, for example. Opening hours will be 8am-9pm Monday to Saturday April to September and 8am-7pm September to March. There will be parking available for eight cars, with a secured gate on entry with a code, given at time of booking. LED pole-mounted lighting will be controlled by PIR proximity sensors".

DEVELOPMENT PLAN

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

The development plan is the approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 13th February 2023 and the adopted East Lothian Local Development Plan 2018.

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 5 (Soils), 7 (Historic Assets and Places), 22 (Flood risk and water management) and 29 (Rural Development) of NPF4 and Policies DC1 (Rural Diversification), DC8 (Countryside Around Towns), CH5 (Battlefields), DP1 (Landscape Character), DP2 (Design), NH7 (Protecting Soils), NH11 (Flood Risk), NH13 (Noise), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also material to the determination of the application is supplementary Planning Guidance (SPG) on 'Countryside and Coast' adopted by the Council on 29 October 2019. The SPG expands on policies DC1 and DC8 that are set out in the East Lothian Local Development Plan 2018 and it provides policy guidance on development within areas designated as Countryside Around Towns Areas.

REPRESENTATIONS

A total of 16 letters of written representation (from nine people) have been received to the application. Eleven representations (from six people) object to the proposal, including one submitted on behalf of the Meadowmill Residents Association, five representations (from three people) support the proposals.

The main grounds of objection can be summarised as:

- i) Safety - the street of Meadowmill has been designated as a safe cycle and walking route for the people of Blindwells to travel to the train station. It is also a safe walking and cycle route for the children of Blindwells and Meadowmill to travel to school. Any increase in business in this area will attract more traffic too. As a resident objector states they have witnessed a noticeable amount of people walking on the street and fears that increased traffic will be a safety concern;
- ii) Noise and light pollution - the area of Meadowmill is quiet and peaceful. The neighbours value this. The proposed plan includes lighting which objector fears will not only disturb the peaceful nature of the area but also have an adverse effect on local insect and wildlife populations;
- iii) With dogs, bring noise and unwanted smell and vermin. Objector concerned that this will be expanded to include kennels etc;
- iv) In terms of similar ventures in the locality objector states they are aware they are often situated in industrial estates or deep in countryside far away from residential dwellings;
- v) Increased traffic generation in and out, congestion and impact on pedestrian and road safety;
- vi) Poo bin kerbside - where will it be, nobody wants that outside their house

with smells, flies, health risk;

vii) Long operating hours and light pollution;

viii) Noise - dogs barking, vehicle noise, general people noise;

ix) Devaluation of property and increased insurance premiums potential increase in crime with strangers behind houses;

x) It is agricultural land not commercial land. Objector states it was Green Belt land when they bought their house;

xi) Not suitable for a residential street, no consideration has been given to existing residents who should not have this inflicted upon them;

xii) Impact on mental health;

xiii) Operating hours of April to September for 3 Fields with up to 12 dogs is 144 dogs a day which is 864 dogs a week and potential total of 26,208 dogs over the period; Operating hours of September to March is 120 dogs per day, 720 dogs per week, and potential total of 15,720 dogs over the period which averages a potential total of 3,494 dogs a month;

xiv) The applicant stated that "Disturbance from dog barking or owners' recall/whistle would be no different than the present situation with frequent dog walking already taking place along the field to the south of the application site." South of the application site is further from the homes, objector states they have never seen dogs walking south of the application site, however if there are, this could only be maybe one or two dogs a day not 144;

xv) The noise disturbance, and waste sitting out on a roadside waiting to be collected with no specifics as to how long this would be available for is not acceptable in a residential area;

xvi) There is nowhere in the planning application about toilet facilities therefore I'm unsure as to how "A member of staff will be available at all times the dog park is in use to deal with queries from first-time users, emergencies, booking issues and customers who have turned up at the wrong time for example." Unless they are not on site and will be travelling to deal with issues, again further increasing the noise and traffic;

xvii) It is not in keeping with the agricultural or horticultural nature of the previous business;

xviii) Impact on Listed buildings and/or conservation areas;

xix) Impact of increased activity.

The application site is not located within the Green Belt but as stated above is within an area designated as Countryside Around Towns.

The application site is not located within a Conservation Area. There are no listed buildings located on the application site or immediately adjacent to it.

Matters raised regarding the devaluation of property or increase in insurance premiums are not material considerations in the determination of a planning application.

Matters raised relating to crime are Police matters and are not material considerations in the determination of a planning application.

The main grounds of support can be summarised as:

- i) No concerns regarding proposed use of this land for dog walking facility, supporter thinks this will be very helpful for dog owners, some of whom are not mobile enough to take their dogs walks and run arounds and with parking being off street supporter states that this will definitely not affect them in any way and they are happy to support this;
- ii) No objections to the new dog walking area, in fact supporter states they'd welcome this as they themselves are unable to walk their dogs and to think they could let them off lead in safety with no worries about other dogs or traffic.;
- iii) Supporter states no concerns about more cars as there will be a car park for patrons;
- iv) Supporter states they think it is a great idea as the land is lying in bad condition and it will be a nice change from the current eye sore it is. Supporter states they think it will be a great asset to the local community.

COMMUNITY COUNCIL

None

PLANNING ASSESSMENT

The application site is currently an area of unmanaged agricultural land located at Meadowmill within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. The area of land is positioned immediately to the south of the residential properties of Meadowmill Cottages and a number of buildings which are in commercial use. The application site measures some 0.50 hectares in area.

Policy DC1 of the ELLDP 2018 states that development in the countryside, including changes of use will be supported in principle where it is for:

- a) agriculture, horticulture, forestry, infrastructure or countryside recreation; or
- b) other businesses that have an operational requirement for a countryside location, including tourism and leisure uses.

The application site is also within an area designated as Countryside Around Towns by Policy DC8 of the ELLDP. Policy DC8 states that development that would harm the objectives of the specific Countryside Around Town area, as defined in supplementary planning guidance, will not be permitted. New development within areas designated as Countryside Around Towns will be supported in principle where:

- i) It is required to implement part of the green network strategy as defined by that strategy;
 - ii) It is required for community use;
 - iii) It is required for rural business, tourism or leisure related use;
 - iv) It is essential infrastructure that has a clear operational requirement for that particular location and there is no other suitable site available; or
- Any new development must not harm the landscape setting of the countryside location and must be of a scale, size and form that would not harm the objectives for the countryside around towns designation.

The provision of a dog walking facility is a leisure use that requires an area of land large enough to facilitate that use. Such an area of land is unlikely to be found within an existing settlement and therefore requires a countryside location being a rural business. Therefore, as this use is a business use that has an operational requirement for this countryside location the principle of the use is not contrary to Policy 29 of NPF4 or Policies DC1 and DC8 of the ELLDP.

The proposed dog walking facility would not result in the loss of a significant area of prime agricultural land. Furthermore, if this planning application was granted, it could, at a later date, be reversed and the land easily returned to agricultural use given there is minimal new development proposed. As such, the proposal is not contrary to Policy 5 of NPF4 and NH7 of the ELLDP.

The site would be enclosed and sectioned into three dog walking fields by 1.8-metre-high square mesh (50 x 50) deer fencing. The application site would be accessed from the existing Meadowmill road to the north via a new private access road which would have a security gate positioned on it to control access and security. This would provide access to a crushed stone parking and turning area for eight vehicles with the existing brick outbuilding on the site being retained as a bin/equipment store. Four floodlights are proposed to be erected within the car parking area. Whin dust paths would provide access into and within the three proposed dog walking fields along with low-level solar-powered bollard lights also to be installed.

The fencing and gates are of a form, size and scale that are reflective of the landscape setting of this countryside location. Therefore, they are not inappropriate for their countryside setting and do not harm the character of the landscape of the area. As such the proposal is consistent with Policies DC8, DP1 and DP2 of the ELLDP.

The **Council's Road Services** as a consultee on the application state that on site discussions between Road Services Officers and the applicant's team and subsequent submission of a revised site access drawing (DGW/PAPP400), confirm that a suitable visibility splay can be provided from the proposed site access to ensure visibility of pedestrians on the existing footway and road users on Meadowmill Cottages. Road Services also advise that an appropriate level of parking and manoeuvring space is proposed on the site for the likely demand in the applicant's operation statement. As such, Road Services advise they have no objection to the application, subject to conditions being attached to any grant of planning permission to secure the required access, surfacing, parking and a construction method statement. These matters can be controlled through conditions of a grant of planning permission. As such the proposal is consistent with Policies T1 and T2 of the ELLDP.

The application site is located to the immediate south of the residential properties of Meadowmill Cottages and their associated private rear gardens and a number of buildings which are in commercial use. The rear elevation of the closest residential property of no. 9 Meadowmill Cottages, immediately to the north, is some 20 metres from the rear garden boundary which abuts the application site

and proposed northern most of the three dog walking fields.

During the determination process of the application clarification was sought from the agent as to the maximum number of dogs proposed within each of the three proposed dog walking fields. A revised operational statement was submitted by the agent which states that 'each of the dog parks will house one-to-three dogs maximum (a maximum of nine dogs per session).' The operational statement also advises that the proposed opening hours would be 8am-9pm (13 hrs) Monday to Saturday, April-September and 8am-7pm (11hrs) September to March. Booking would be 50-minute slots with a 10-minute gap either side to avoid crossover.

As such given the proposed maximum of nine dogs per session and the proposed hours of operation between April to September, there could be a maximum of 117 dogs per day being exercised within the proposed dog walking fields, and between September and March there could be a maximum of 99 dogs per day being exercised within the proposed dog walking fields together with associated vehicle movements and owners. In assessing the application, the Council must consider the 'worst case scenario'.

In this regard, the **Council's Environmental Health Officer**, as a consultee on the application, has advised he has concerns given the location of the site in close proximity to residential properties regarding noise arising from dogs barking and with dog owners shouting recall instructions on site impacting upon the amenity of nearby residential properties, particularly in the evenings and at weekends when neighbours may be enjoying the use of external amenity areas within their own properties. The Council's Environmental Health Officer advises that the severity of any noise impact upon amenity will ultimately depend upon the behaviour/characteristics of the individual dogs using the facility. Noise at any given time on any given day may vary and levels will be subjective. Therefore, as with previous applications for dog walking/boarding developments, effective management of the facility, combined with compliance with the undernoted recommended conditions, should minimise any loss of amenity.

As such, the Council's Environmental Health Officer recommends a temporary grant of planning permission for a period of 1 year from the date of commencement of the dog walking facility to allow any complaints that may arise due to noise to be monitored and assessed. Furthermore, it is recommended that conditions are imposed on any grant of planning permission to control the hours of operation, number of dogs on site at any one time and the requirement for the submission and implementation of a noise management plan to minimise the impacts of noise from dog barking arising from the use of the site be imposed upon any grant of planning permission.

Additionally, the Council's Environmental Health Officer also advises that he also has concerns that light spill from the proposed floodlighting may have an impact on the occupiers of the nearby residential properties as such he recommends that a condition be attached to any grant of planning permission to control the light trespass and hours of operation of the floodlights. These matters could all be controlled through conditions of a grant of planning permission.

The Coal Authority have been consulted on the application and advise that they can confirm that the application site falls within the defined Development High Risk Area. The Coal Authority's information indicates that the site lies in an area where historic unrecorded coal mining activity is likely to have taken place at shallow depth. Voids and broken ground associated with such workings can pose a risk of ground instability and may give rise to the emission of mine gases. The Coal Authority advise that their general approach in cases where development is proposed within the Development High Risk Area is to recommend that the applicant obtains coal mining information for the application site and submits a Coal Mining Risk Assessment to support the planning application. However, in this instance the Coal Authority note that the proposal primarily relates to the change of use of land to a dog walking facility. Whilst structures/works are proposed on site in order facilitate the new use, it does not appear that these will require substantial foundations or earthworks. On this basis, the Coal Authority state they do not consider that requiring a Coal Mining Risk Assessment would be proportionate to the scale and nature of the development proposed in this particular case, and as such, the Coal Authority advise they do not object to this planning application, However, the Coal Authority recommend that an Informative Note be attached to any grant of planning permission.

Historic Environment Scotland (HES) have been consulted on the application given its location with the Prestonpans Battlefield area. HES advise that the proposal is relatively small in scale and low in height, located in an area which lies to the rear of existing properties and bounded by extensive tree growth. The street lighting proposals are restricted to four single-column units in a proposed car park area, with additional lighting in the form of low-level bollard lighting. Although located about 350m from the Battle of Prestonpans Viewpoint, the proposed development should not appear prominent and would not restrict views across the battlefield. Accordingly, HES state that their view is that the proposals do not raise historic environment issues of national significance and therefore they do not object to the proposal. As such the proposal is not contrary to Policy 7 of NPF4 and CH5 of the ELLDP.

The **Council's Flood Protection Technician**, as a consultee on the application, advises that in terms of information concerning flood risk to this site, he states that SEPA's Flood Hazard Mapping indicates that the site is at risk in sections from a flood event with a return period of one in 200 years, plus climate change. That is the 0.5% annual risk of a flood occurring in any one year, with an allowance for climate change. However, given that this is a small-scale development that is unlikely to have a significant effect on the storage capacity of the functional flood plain or affect local flooding problems. As such, the Council's Flood Protection Technician raises no objection to the application on the grounds of flood risk. As such the proposal is not contrary to Policy 22 of NPF4 and NH11 of the ELLDP.

The **Council's Biodiversity Officer**, as a consultee on the application, states that the habitat of the application site is on visual inspection a mixed scrub and grassland habitat. Therefore, it would be expected in relation to NPF 4, Policy 3, that consideration has been made to conserve, restore and enhance biodiversity on the application site. The Council's Biodiversity Officer states that supplementary planting should be provided, which could include, native scrub planting or hedge

planting within the application site to result in a 'net gain' approach to the biodiversity of the site. The Council's Biodiversity Officer notes that the application does indicate that areas of the site will be reseeded with a 'wildflower seed mix' (DWG/PAPP101B) and she advises that provenance of seeds should be provided and that any meadow will require a level of management so an appropriately worded statement of management to ensure the longevity of the meadow planting should also be provided. Accordingly, the Council's Biodiversity Officer advises she raises no objection to the application subject to a condition be attached to any grant of planning permission to secure appropriate hedge and wildflower meadow planting and management of such. This matter can be controlled through a condition of a grant of planning permission. With such conditions attached to any grant of planning permission the proposal would not be contrary to Policy 3 of NPF4.

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. Such a condition should be imposed on a grant of planning permission for this proposed development. Subject to the imposition of this condition, the proposed development does not conflict with Policies 1 or 2 of NPF4.

In conclusion, on the above considerations and subject to the aforementioned conditions, the proposed scheme of development is considered to be in accordance with the provision of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITIONS:

- 1 The use of the dog walking facility hereby approved shall be for a temporary period of one year from the date of the commencement of the first operation of the dog walking facility, to allow any complaints that may arise due to noise to be monitored and assessed.

Within 1 month of the commencement of operation of the dog walking facility the applicant/operator of the dog walking facility shall notify the Council as Planning Authority of the date the dog walking facility hereby approved commenced.

Reason:

In order to protect the amenity of nearby residential properties.

- 2 The dog walking facility hereby approved shall only be used between the hours of 8am-9pm Monday to Saturday April to September and 8am-7pm September to March. The dog walking facility shall not be operated at any other time.

Reason:

In order to protect the amenity of nearby residential properties.

- 3 Prior to the commencement of development the applicant shall submit a Noise Management Plan that outlines the measures to be taken to minimise the impacts of noise from dog barking arising from the use of the proposed dog walking area.

Reason:

In order to protect the amenity of nearby residential properties.

- 4 The total number of dogs permitted within the dog walking facility hereby approved at any one time, including dogs housed in other temporary accommodation such as a vehicle or shelter, shall be limited to a maximum of 9 dogs.

Reason:

In order to protect the amenity of nearby residential properties.

- 5 The design and construction of any artificial lighting hereby approved shall ensure that Light Trespass (onto windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

In order to protect the amenity of nearby residential properties.

- 6 Prior to commencement of use of the dog walking facility hereby approved details of:
- a) The required dropped kerb crossing of the footway;
 - b) The first 6m of the access road to be hard-formed;
 - c) Gates to open into the property and set back by at least 6 metres from the junction;
 - d) The gradient of the access road shall be a maximum of 10% and water run-off must be directed away from the road and footway.

shall be submitted to and approved by the Planning Authority.

Reason:

In the interest of pedestrian and road safety.

- 7 Prior to the commencement of use of the dog walking facility hereby approved the access junction, access road, onsite parking, turning area and entrance gate shall be provided and made available for use, as shown in docketed drawing nos. DGW/PAPP 101D 'Proposed Site Layout' and DGW/PAPP 400 'Proposed Access Vehicle + Pedestrian' and thereafter the access junction, access road, onsite parking, turning area and entrance gate shall be retained for such use, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the provision of an acceptable standard of access and onsite parking in the interests of road safety.

- 8 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.

- 9 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. These measures shall include details of hedge and wildflower meadow planting and be accompanied with a management statement of these. The measures as so approved shall be implemented prior to any use being made of the dog walking facility 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.

- 10 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 advance 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.

- 11 In the event that the dog walking facility hereby approved fails to operate as such 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 the dog walking facility, including, fencing, gates, shelters, lighting, earth mounds, access road, parking and turning areas shall all be dismantled and removed from the site by the operator by no later than the date occurring 6 months after the end of the said continuous 6 months period, and the ground fully reinstated to the specification and approval of the Planning Authority.

Reason:

To prevent a redundant dog walking facility and associated fencing, gates, shelters, lighting, earth mounds, access road, parking and turning areas remaining on the application site, in the interests of the landscape amenity of the area.

REPORT TO: Planning Committee
MEETING DATE: 14 January 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

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Note: This application has been called off the Scheme of Delegation List by Councillor Allan for the following reason: Given the neighbour's objection, I believe this would warrant a discussion at Planning Committee.

Application No. **24/00963/P**
Proposal Extension to house and erection of walls, fencing, and gates
Location **29 Muirfield Park
Gullane
East Lothian
EH31 2DY**

Applicant Mr Daniel McNally
Per Mills + McCullough Architects

RECOMMENDATION Granted Permission

REPORT OF HANDLING

The property to which this application relates to is a one and a half storey, detached house with associated garden ground. The property is located within a predominantly residential area, as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018 ('ELLDP 2018').

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

PLANNING HISTORY

No relevant planning history is available for this site.

PROPOSAL

Planning permission is sought for the replacement of the existing single storey flat roofed carport and garage component that is attached to the side (west) elevation of the house with a one and a half storey extension and the erection of walls, fencing and gates to enclose the front and side boundaries of the front garden of the applicant's house.

The proposed extension to be attached to the side (west) elevation of the house would have a partially pitched roof akin to a mansard style roof. It would extend west by some 18 metres, and it would have a width of some 9.9 metres. The extension would be some 3.1m in height from ground level to its eaves and some 5.95m in height from ground level to its tallest point.

The front (south) elevation of the extension would feature one glazed entrance door on the ground floor level which would be recessed by some 1m and two glazed window openings on the first-floor level which would be recessed from the front (south) elevation roof slope of the proposed extension by some 2m.

A set of bi-fold doors (a total 4nos doors) would be contained on the ground floor level of the rear (north) elevation and four windows would be contained on the first-floor level of the rear (north) elevation of the proposed extension. The side (east) elevation would feature one glazed opening on the first floor level. No glazed openings are proposed on the side (west) elevation. The side (west) roof slope would contain some 10x skylights. The flat roof component would contain a total of four skylights, the largest skylight would consist of 4x glazed panels.

A component of the side extension is proposed to project out from the line of the rear (north) elevation of the existing house by some 1.4 metres. It would be some 6m in length and would in part attach to the rear (north) elevation of the existing house. It would have a flat roof and would be some 3.8m in height inclusive of its under build. This projecting component would contain 4x glazed openings on its rear (north) elevation and 1x glazed opening on each of its side (east and west) elevations.

The extension would be finished predominantly in an 'off white' wet dash render to match the existing house. The ground floor level of the front (south) elevation would be partially clad in grey stained timber. The roof would be clad in grey concrete tiles. Windows and doors would be of PPC construction and would be finished in grey.

A total of 8x solar panels would be affixed onto the western side of the flat roof of the proposed extension. Each solar panel would be some 1.1m by 1.1m in size. The solar panels would be directed southward and would in part sit some 0.2m from the flat roof.

It is proposed to erect a combination of walling and fencing along part of the southern boundary of the application site. The wall would be some 0.7 - 0.9m in height (depending on levels) and the fencing that would atop the wall would be some 0.8m in height, with a total combined height of 1.5 - 1.7m in height, depending on site levels. Vehicular and pedestrian access gates would also be provided for

along this boundary at some 1.6m in height. Additionally, it is proposed to erect fencing which ranges from 1.5 to 1.7m in height from ground level to enclose the east and west boundaries of the front garden of the applicant's house.

The boundary wall would be finished with render and the fencing and gates would be of timber construction and would be close-boarded.

Subsequent to the registration of this application, several amendments have been made to drawings which included: i. the removal of raised decked areas from proposals; ii. Alterations to the dimensions of the 2x windows on the first floor of the front (south) elevation and iii. The reduction in height of the fencing and gates proposed forward of the principal elevation. The application description has therefore been amended accordingly to reflect the removal of raised decked areas.

The applicant has advised that should any decking be implemented in the future; it will accord with Class 3D of the Town and Country Planning (General Permitted Development (Scotland) Order 1992 (as amended) and therefore constitute as permitted development as noted on the application drawings.

In addition to the above noted proposals, submitted drawings make reference to:

- i. Alterations to the existing house inclusive of the installation of windows, doors and roof lights;
- ii. Removal of timber cladding and rendering of existing dwelling;
- iii. Demolition works;
- iv. The formation of hardstanding within the front curtilage; and
- v. The installation of raised decked areas.

These proposed works are permitted development and do not require planning permission. As such, these works do not form part of this planning application.

DEVELOPMENT PLAN

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

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

Policies 1 (Tackling the Climate and nature Crises), 2 (Climate Mitigation and Adaptation), 6 (Forestry, Woodland and Trees), 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 and Policies DP2 (Design) and DP5 (Extension and Alterations to Existing Buildings), T2 (General Transport Impact) and NH8 (Trees and Development) of the adopted ELLDP 2018 are relevant to the determination of the application.

REPRESENTATIONS

A total of five objections have been received in respect of this application for planning permission.

A summary of the main grounds of objections received are detailed below:

- i. The boundaries as indicated on dwg. (00)_100 and (00)_200 are incorrect.
- ii. The proposed roofing comprises dark grey concrete tiles compared with the existing red clay pantiles, incorrectly referenced on Drwg No. (00) _100 as 'Concrete Tile - Terracotta'.
- iii. Drawings (00) _200 shows drainage on the side (west) elevation discharging onto a neighbouring garage not under the ownership of the applicant.
- iv. The proposed development is not appropriate in terms of scale and design and would be detrimental to the neighbourhood.
- v. Proposals would create linked detached houses which represents the over development of this plot.
- vi. The proposed development will have a significant impact on visual amenity.
- vii. The proposed gates and fencing on the frontage of the house would be out of character with adjacent properties and the streetscape.
- viii. Proposed fencing in excess of 1m would hinder sightlines and may cause pedestrian safety issues during access and egress.
- ix. The proposed development will impact on the use of the adjacent garage storeroom which will now be adjacent to a habitable room, rather than a garage.
- x. The patio area would have a significant impact on privacy.
- xi. Through the demolition of the existing west boundary wall, this would leave the neighbouring property exposed to construction work which would create privacy concerns.
- xii. Proposals include for the removal of one tree within the south-eastern corner of the site which in the objector's opinion is unnecessary and reduces amenity.
- xiii. The height of the proposed side (west) gable wall is higher than the existing boundary wall and this would have a greater detrimental impact on visual amenity.
- xiv. The proposed extension would cast a shadow over neighbouring garden ground.
- xv. The row of 7x velux windows on the side (west) roof slope would be within close proximity to neighbouring properties and if these windows were openable, they could cause noise nuisance.
- xvi. The construction would have a significant impact on the privacy and quiet enjoyment of neighbouring properties.
- xvii. Objectors would find it unacceptable for any form of development (temporary or otherwise) to be sited or beyond the site boundary, whether above, below or on ground level and that any work adjacent to neighbouring buildings ensures the long-term integrity and watertightness of neighbouring structures.
- xviii. The current first floor proposal is excessive, aesthetically poor and not in keeping with the existing house, or other properties in Muirfield Park.
- xix. The proposed flat roof extension is not in keeping with the predominant architecture of the area, which is pitched roofs.
- xx. There are too many northwest facing windows, and they are too close to houses, invading privacy.
- xxi. The application should be refused and an amended design submitted.
- xxii. The overall height of the extension denies neighbouring properties light; and,
- xxiii. The proposed ground works are too close to mature trees in neighbouring

properties.

Several objectors do however note that they support the proposed modernisation of the property and thought that plans to extend the existing house in principle were reasonable. One objector recommended a change to the extension to include a pitched roof with a dormer.

Points not considered as material considerations in the determination of this application will be addressed below. The remaining points raised will be addressed within the main body of this report.

The applicant's agent has confirmed that the land within the redline boundary falls within the applicant's full ownership and reflects their title deeds. The applicant's agent has further advised that the entire development proposed, inclusive of drainage provision and discharge, construction works etc. will not exceed the site boundaries to either the north, east or west.

Drg No. (00)_100 depicts the house as existing. The roof of the existing house is clad in a mixture of concrete roof tiles and pantiles in a terracotta colour. This drawing description therefore makes a slight error, though not material.

The demolition of any existing boundary walls on-site would constitute as permitted development. As such the planning authority does not have control over the reinstatement of a wall in this particular location. The requirement for building sites, or other sites under construction to be fenced off during construction is legislated for under separate legislation. It would not therefore be for the Planning Authority to enforce the installation of a replacement boundary enclosure during construction.

Concerns over noise would be legislated for under separate legislation. Should events of unacceptable noise occur, they should be reported to East Lothian Council's Environmental Health Team via EHTS@eastlothian.gov.uk.

PLANNING ASSESSMENT

The north side of Muirfield Park is generally characterised by detached villas of various styles and orientations, set within generous curtilages with their front gardens enclosed with predominantly hedges or low boundary enclosures. The application site (no. 29) is, however, partly adjoined with the neighbouring property to the west (no. 28) via a mutual boundary wall. Many of these villas have been altered or extended over the years and subsequently have window and door openings that vary in shape, proportion and colour as well as dormers and extensions that vary in shape, proportion and style as well.

In general, houses along Muirfield Park are finished in an 'off-white' render and have either brick detailing or timber or upvc panel detail finishes. In terms of roof coverings, most houses along Muirfield Park have pantile roofs, though there are a number of properties within the surrounding area that have either slate roofs, or a combination of both pantile and either slate or concrete tile roofs.

The proposed extension is proposed to be attached to the side (west) elevation and part of the rear (north) elevation of the house and would, given its position, be visible from the public road of Muirfield Park to the south. Whilst the footprint of this proposed extension is larger than the footprint of other extensions within the immediate area, the proposed extension would replace part of the existing house, garage, external walls and canopied areas which would be demolished to make way for proposals, if approved.

In terms of the partially pitched first floor level, this would provide additional living accommodation without the need for the applicant to lose additional garden ground by extending further outwith the realms of the footprint of the existing house. The architectural style of the roof proposed integrates the pitched roof style prevalent within the area with a flat component which is reflective of the built form of the existing extended component of the house as well as the adjacent extension at no. 28 and other ancillary buildings within the immediate streetscape which have flat roofs.

Whilst the pitched roof component reduces the overall massing of the proposed extension, the flat roof component ensures that the roof height of the extension is lower than that of the existing house. The extension as proposed would not appear as an overly dominant or overbearing addition to the streetscape of Muirfield Park. Rather and by virtue of the scale, size and proportions of the proposed extension, it would be a subservient addition to the existing house.

Whilst the proposed extension differs somewhat to the architectural style prominent within the surrounding area in terms the overall design inclusive of materials proposed, the proposed extension would be designed with some features which would reference the design of the existing house and other properties within the surrounding area such as the use of render and timber cladding for detailing. The proposed extension would also make reference to the built form of the application site as existing by incorporating a recessed entrance door with a canopy above. Materials such as the grey concrete tile roof coverings and window openings on the front (south) elevation would be somewhat different to the predominant architectural style prevalent within the immediate area of Muirfield Park, however there are examples of differing roof types and coverings and window shapes and proportions along Muirfield Park and other surrounding streets.

There are a number of skylights proposed on the side (west) roof slope of the proposed extension and whilst the proposed number is of a greater number than neighbouring properties, these are positioned on a secondary elevation and are therefore set back from the principal elevation of the house. In their positioning therefore they would only be visible in short duration glimpsed views from the public road. Although the proposed extension introduces a slightly different architectural style into the streetscape, it does make reference existing features of the area, it would not therefore appear as an alien or incongruous addition to the existing house or the wider streetscape.

The proposed extension would fit comfortably within its setting and would not therefore constitute as either the overdevelopment of the applicant's house or garden ground. Nor would the proposed extension result in the creation of linked

detached houses between nos. 28 and 29, given the houses already form as linked detached houses via the mutual boundary wall.

Overall, by virtue of the design, size, form, proportion and scale of the proposed extension, it would be a subservient and complementary addition to the house and would not therefore be harmful to the character and appearance of the existing house or to the surrounding area.

Owing to the size, form, and positioning of the proposed extension, it would not give rise to the harmful loss of sunlight or daylight or cause any unacceptable levels of overshadowing to any neighbouring residential 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 Planning Authority to apply the general rule of a nine-metre separation distance between the windows of a proposed new development and the garden boundaries of neighbouring residential properties and an 18-metre separation distance between directly facing windows of the proposed new development and the windows of existing neighbouring residential properties.

In respect of glazed openings on the front (south) elevation of the proposed extension, these would front onto some 12 metres of the applicant's front curtilage and beyond onto the public road and footpath of Muirfield Park which is some fifteen metres in width. Glazed openings on the front (south) elevation of the proposed extension would not therefore result in any overlooking or privacy concerns.

The formation of glazed openings on the rear (north) elevation of the main component of the proposed extension would face onto the applicant's rear curtilage which is some nine metres at its widest point. The glazed openings located on the ground floor and first floor levels within the rear (north) elevation of the proposed extension which align with the rear (north) elevation of the existing house would be some nine metres from the boundary of the curtilage and would be a distance of some 23 metres from directly facing windows. Such glazed openings would not therefore result in the reduction in privacy or amenity of neighbouring properties.

One glazed opening is proposed on the first-floor level of the side (east) elevation of the extension. It would be some 13 metres from the east boundary of the application site and given its recessed nature, it would look onto the west roof slope of the existing house. It would not therefore result in the overlooking of any neighbouring residential properties.

No windows are proposed on the side (west) elevation wall of the proposed extension. Some 10x roof lights are proposed on the side (west) roof slope. They would be within nine metres of the boundary of the curtilage to the west and within 18 metres of a directly facing window. However, 5x of these roof lights would be positioned close to the eaves and would provide light into the ground floor (kitchen) of the proposed extension. As these roof lights would be positioned above head height, they would not result in the overlooking of the neighbouring property to the

west. The remaining three rooflights on the side (west) roof slope would service a bedroom and storage area. These rooflights would however be above head height level and would therefore not result in the overlooking of neighbouring properties to the west.

Should glazed openings be installed or altered at a later date on either part of the west (side) wall of the proposed extension or the west roof slope, dependent on their positioning, such glazed openings would result in the overlooking of the neighbouring property to the west. In such circumstances, should planning permission be granted, permitted development rights can be removed from this side (west) elevation and west roof slope to prevent the installation of either new glazed openings, or altered glazed openings on this elevation and roof slope without prior consent from the planning authority.

The component of the extension which projects out some 1.4m from the rear (north) boundary of the existing house would have glazed openings on the rear (north) elevation. Given these windows project out from the rear (north) elevation of the existing house, there would only be a distance of some 7.6m from the rear (north) elevation of this projecting component and the north boundary fence. These glazed openings would therefore result in the overlooking of the neighbouring property to the north.

One glazed opening is proposed on each of the side (east) and the side (west) elevations of the projecting component of the proposed extension. These windows would face onto the neighbouring residential properties of 28 Muirfield Park to the west and 30 Muirfield Park to the east. Whilst in neither instance, the proposed windows would face onto any directly facing glazed openings, the proposed glazed opening on the side (east) and side (west) elevations of the projecting component of the proposed extension would be less than nine metres from each of the east and west boundaries of this application site. Glazed openings on each of the side (east) and side (west) elevations of the projecting component would therefore result in the overlooking of the neighbouring properties to the east and west.

In respect of the glazed openings on the rear (north) and sides (east and west) of the projecting component of the proposed extension and in usual circumstances, the provision of a 1.8m fence separating the neighbouring residential gardens from the affected elevations of the proposed development would be sufficient to address overlooking. However, in this instance, the projecting component of the extension would have an underbuild of some 0.8m, and therefore the average user of this projecting component could see over the fences on the north, east and west boundaries. The windows on each of the rear (north) and side (east and west) elevations would therefore result in the overlooking of neighbouring properties. Any such grant of planning permission should therefore be subject to a condition that the glazed openings on the (north) and side (east and west) elevations will be obscurely glazed to prevent harmful overlooking.

The formation of roof lights on the flat roof component of the proposed extension would not result in harmful overlooking.

Subject to the imposition of a planning condition removing permitted development

rights from the side (west) elevation and west roof slope and subject to a condition requiring that the glazed openings on the (north) and side (east and west) elevations of the projecting component of the proposed extension are obscurely glazed, proposals would not allow for any harmful overlooking of any neighbouring properties.

The addition of some eight solar panels on the flat roof component of the proposed extension would only be visible in short duration glimpsed views given their position and would not therefore be harmful to the character and appearance of the house, or the surrounding area. Further, the installation of the solar panels would align with the aims of NPF4, and the climate emergency as declared by elected members at a committee meeting on Tuesday 27th August 2019. Proposals would therefore comply with Policies 1 and 2 of NPF4 and subject to conditions, the proposed solar panels and the proposed extension would accord with Policy DP5 of the ELLDP 2018 and policies 14 and 16 of NPF4.

Development within the rear curtilage of this property would not fall outwith tree root protection areas of neighbouring mature trees and therefore the proposed extension would not impact upon mature trees within neighbouring gardens. Through the erection of boundary enclosures forward of the principal elevation of this dwellinghouse, a small cherry tree would need to be removed. Permitted development rights would allow for the formation of hardstanding within the front curtilage as well as the erection of a low-lying wall (under one metre) in isolation to the fence top. Such works would cause damage to the roots of the existing cherry tree and would be outwith the control of the Planning Authority. As works which constitute as permitted development would cause damage to the existing tree anyway, ELC's Senior Landscape Officer raises no objection to the removal of this tree, subject to replacement planting works being carried out to retain visual amenity within the area. Therefore, should planning permission be granted for the boundary enclosures, it can be made a condition that a scheme of landscaping is submitted to the Planning Authority for approval and implemented thereafter in accordance with approved plans. Subject to the imposition of this condition, proposals would therefore accord with Policy 6 of NPF4 and Policy NH8 of the ELLDP 2018.

The erection of boundary enclosures between 1.5 - 1.7m in height and forward of the principal elevation of this dwellinghouse would be of a height higher than many other boundary enclosures enclosing the front gardens of the houses of Muirfield Park. Given Muirfield Park is largely characterised by front gardens enclosed with either hedges or low boundary enclosures, the fencing and gates proposed for the front garden of the applicant's house by being between some 1.5 - 1.7m in height would appear visually intrusive and incongruous to the detriment of the character and amenity of this residential area as well as the streetscape of Muirfield Park. There is one instance along Muirfield Park on the opposite side of the road, where a boundary enclosure is in excess of 1.5m in height and forward of the principal elevation. This fence is however somewhat set back from the roadside, though, irrespective, it does not appear to benefit from any grant of planning permission and may therefore be unauthorised and in breach of planning control. The boundary enclosures proposed for the front garden of the house the subject to this application would be harmful to the character and amenity of the surrounding area

and are therefore contrary to Policies 14 and 16 of NPF4 and DP2 of the ELLDP.

Furthermore, if approved, the boundary enclosures proposed for the front garden of the house if approved would set a harmful precedent for allowing the addition of similar forms of boundary enclosures to be erected in the front gardens of other residential properties within the locality. Such a change would be out of keeping with the character and appearance of the surrounding area.

East Lothian Council's Road Services were consulted as part of this application and advised that given the road speed of Muirfield Park is 20mph, a visibility splay of 2.0 (x) metres by 45.0 (y) metres should be provided and maintained on each side of the proposed vehicular access such that there is and shall be no obstruction to visibility splays above a height of 1.05 metres measured from the adjacent carriageway level within the area defined above. A visibility splay should also be provided from the driveway to the footway to allow young children to be seen by the drivers accessing and egressing the property. This splay should be two metres by 2 metres from the driver's eye height of 1.05 metres to an object height of 0.6 metres above the rear of the footway. The Roads Officer further advises that where the proposed boundary enclosure is greater than 0.6m as is in this case, the vehicular access should be a minimum width of five metres.

In this instance and owing to the positioning and height of the boundary enclosures, the Council's Roads Officer advises that the application documents and drawings are not reflective of their stipulations and do not show the required visibility splays or gate width can be achieved. Therefore, the Council's Road Services advise that they cannot support the boundary enclosures proposed to enclose the front garden of the house and forward of the principal elevation of this house as they are contrary to Policy T2 of the ELLDP 2018.

In conclusion, the boundary enclosures proposed for the front garden of the house would be harmful to the character and amenity of the surrounding area and are therefore contrary to Policies 14 and 16 of NPF4 and DP2 of the ELLDP and also contrary to Policy T2 of the ELLDP 2018 as they form as a road safety hazard. Therefore, it should be made a condition of any grant of planning permission for the proposed extension that the boundary enclosures ranging from 1.5 - 1.7m in height to be erected to enclose the front garden of the house should be refused planning permission.

Given the above considerations and with the exception of the boundary enclosures, the erection of this extension is consistent with Policies 1 (Tackling the Climate and nature Crises), 2 (Climate Mitigation and Adaptation), 6 (Forestry, Woodland and Trees), 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 and Policies DP2 (Design) and DP5 (Extension and Alterations to Existing Buildings), T2 (General Transport Impact) and NH8 (Trees and Development) of the adopted ELLDP 2018. No material considerations outweigh the proposed extension accordance with the Development Plan. It is therefore recommended that planning permission be approved for the proposed extension only.

CONDITIONS:

- 1 Planning permission is not granted for the wall, fencing and gates proposed to enclose the front and side boundaries of the front garden of the house, and positioned forward of the principal elevation of the applicant's house.

Reason:

The boundary enclosures are harmful to the character and residential amenity of the surrounding residential area and would pose a road safety hazard contrary to policies DP5 and T2 of the ELLDP 2018 and policies 14 and 16 of NPF4.

- 2 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.

- 3 Prior to any use being made of the extension hereby approved, the glazed openings of the projecting component of the extension as approved shall be obscurely glazed on its rear (north) and side (east and west) elevations in accordance with a sample of the obscure glazing to be submitted to and approved by the planning authority prior to its installation within these window openings. The obscure glazing of the glazed openings shall accord with the sample so approved and thereafter shall remain obscurely glazed unless otherwise approved by the Planning Authority.

Reason:

In order to safeguard the privacy and amenity of the occupants of the neighbouring house to the north, east and west.

- 4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended by Part 1 of the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011), or of any subsequent Order amending, revoking or re-enacting the 1992 Order, no windows or other glazed openings, other than the glazed openings approved as part of this application shall be formed within the west side elevation or the west side roof slope of the extension hereby approved, unless otherwise approved by the Planning Authority.

Reason:

To safeguard the privacy and residential amenity of the residential property to the west.

REPORT TO: Planning Committee

MEETING DATE: 14 January 2025

BY: Executive Director – Place

SUBJECT: 24/00007/SGC: Energy Consents Unit (ECU) Consultation: Construction and operation of the Crystal Rig solar development within the planning authority areas of Scottish Borders Council and East Lothian Council, Land Approximately 13km South of Dunbar and being an extension to the Crystal Rig Wind Farm

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Note: This consultation has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: There has been a significant community interest sufficient to warrant consideration by the Planning Committee

ECU Application No. ECU00004759

ELC Reference No. 24/00007/SGC

Proposal Construction and operation of the crystal rig solar development within the planning authority areas of Scottish Borders Council and East Lothian Council

Location Land approximately 13 kilometres (km) south of Dunbar and being an extension to the Crystal Rig Wind Farm

Applicant Julie Aitken, Fred Olsen Renewables Ltd.

Ward 6: Dunbar and East Linton & 5: Haddington and Lammermuir

REPORT

In Scotland, any proposal to construct, extend, or operate an onshore electricity generating station with a capacity of 50 megawatts (MW) or over requires the consent of Scottish Ministers under Section 36 of the Electricity Act 1989. Such applications are processed on behalf of the Scottish Ministers by the Energy Consents Unit ("ECU"). Onshore generating stations which will have a capacity of less than 50MW when constructed are not within the scope of the Electricity Act, and such proposals require an application for planning permission to be submitted to the relevant local planning authority. A solar farm falls under this legislation.

The ECU consults East Lothian Council on all Section 36 applications within East

Lothian.

At the Council meeting of 27 February 2024, a new procedure for processing Section 36 consultation requests was approved. It was agreed that once the consultation response has been completed by the Planning Service, it will be placed on the Committee Expedited List. Members then have seven days in which to request referral to Planning Committee. Otherwise, the consultation response is deemed to be accepted and the Service Manager for Planning shall be authorised to proceed on that basis.

The ECU have consulted the Council in respect of a proposed Solar Farm at Crystal Rig. The consultation response completed by the Planning Service is attached as Appendix 1.

RECOMMENDATION

It is recommended that the content of Appendix 1 is approved as the Council's consultation response to the ECU.

Appendix 1

ECU Application No.	ECU00004759
ELC Reference No.	24/00007/SGC
Proposal	Electricity Act 1989 – CONSTRUCTION AND OPERATION OF THE CRYSTAL RIG SOLAR DEVELOPMENT WITHIN THE PLANNING AUTHORITY AREAS OF SCOTTISH BORDERS COUNCIL AND EAST LOTHIAN COUNCIL
Location	Land approximately 13 kilometres (km) south of Dunbar and being an extension to the Crystal Rig Wind Farm
Applicant	Julie Aitken Fred Olsen Renewables Ltd
Ward	6: Dunbar and East Linton & 5: Haddington and Lammermuir

ENERGY CONSENTS UNIT (“ECU”) CONSULTATION: THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (SCOTLAND) REGULATIONS 2017

APPLICATION FOR CONSENT UNDER SECTION 36 OF THE ELECTRICITY ACT 1989 FOR CONSTRUCTION AND OPERATION OF THE CRYSTAL RIG SOLAR DEVELOPMENT WITHIN THE PLANNING AUTHORITY AREAS OF SCOTTISH BORDERS COUNCIL AND EAST LOTHIAN COUNCIL

BACKGROUND

This application is made under the Electricity Act 1989. This Act requires that in formulating relevant proposals, the applicant shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna, geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest, and do what they reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

In considering such proposals, Scottish Ministers must have regard to the desirability of these matters, and the extent to which the applicant has complied with their duty of mitigation. The applicant must also avoid causing injuries to fisheries or fish stocks.

This application has been made to the Scottish Ministers under Section 36 of the Electricity Act 1989 for the construction and operation of a Solar Farm. In the case of S36 applications planning authorities are a consultee to the application process and are not the Consenting Authority.

With regard to paragraph 2(2) of Schedule 8 to the Electricity Act and regulation 8 of the Consents Regulations, if a planning authority makes an objection within the timescale given by regulation 8 (1) and that objection is not withdrawn, the Scottish Ministers must cause a Public Inquiry to be held unless the Scottish Ministers propose to accede to the application subject to such modifications or conditions as will give effect to the objection of the planning authority.

SITE

The Proposed Development Area is part of the Crystal Rig Wind Farm and is located on the East Lammermuir Plateau of the Lammermuir Hills in East Lothian and the Scottish Borders local authority areas.

In conjunction with the operational wind turbines and their associated infrastructure the land is used for rough grazing. The Proposed Development is 13 kilometres (km) south of Dunbar. The majority of the Proposed Development Area is located within the administrative area of Scottish Borders. A small area in the south west of the Proposed Development Area falls within the administrative boundary of East Lothian Council, within the Haddington and Lammermuir Ward.

EIA (Scotland) Regulations 2017

The Applicant has undertaken an Environmental Impact Assessment (EIA) and produced its findings in the EIA Report (EIAR). The EIAR informs readers of the nature of the Proposed Development, likely significant environmental effects and measures of mitigation proposed to protect the environment during site preparation, construction, operation and decommissioning.

No significant issues were raised by our consultees on the content of the EIAR and the adequacy of its coverage of the required subjects although our climate officer raised the point that the application is still lacking details regarding how embodied carbon of the development will be mitigated and how waste will be handled at the decommissioning phase.

PROPOSAL

The proposed development is for a solar farm battery energy storage system of up to 27MW capacity for an operational period of 35 years. The proposal would consist of the following aspects:

- Approximately 55,000 solar panels;
- New and existing access tracks;
- String inverters;
- Transformers;
- CCTV;
- Fences;
- Site signage;

- Underground cabling; and
- Biodiversity enhancement and management.

It is anticipated that the access route to site for Heavy Goods Vehicles (HGV) and Light Goods Vehicles (LGV) will be taken from the north off the A1, Dunbar; however, there is a secondary access point off the B6355 which could be used for operational purposes. The A1 route progresses close to the settlement of Innerwick, to the existing site access of the Crystal Rig Wind Farm.

Once the proposal has reached the end of its operational life, approximately 35 years, it would need to be decommissioned. Following the conclusion of the operational period all PV panels, tables and associated equipment will be removed from the Proposed Development Area and then the site restored to an agreed condition.

THE DEVELOPMENT PLAN

This application is made under the Electricity Act 1989 and not the Planning (Scotland) Act, and therefore the development plan does not have the primacy it normally would for planning decisions. It is still an important material consideration in this instance and informs the Council's consultation response.

The development plan comprises the National Planning Framework 4 ("NPF4"), which was adopted by Scottish Ministers on 13 February 2023, and the adopted East Lothian Local Development Plan 2018 ("ELLDP").

NPF4 identifies 18 National Developments that are significant developments of national importance. National Development 3 of NPF4 (Strategic Renewable Electricity Generation and Transmission Infrastructure) supports renewable electricity generation, repowering, and expansion of the electricity grid.

National Development 3 informs that the electricity transmission grid will need substantial reinforcement including the addition of new infrastructure to connect and transmit the output from new on and offshore capacity to consumers in Scotland, the rest of the UK and beyond.

Whilst National Development 3 references a Scotland wide rather than a specific location, the south of Scotland (including East Lothian) is identified for supporting on and offshore electricity generation from renewables and delivering new and/or upgraded infrastructure directly supporting on and offshore high voltage electricity lines, cables and interconnectors including converter stations, switching stations and substations.

National Planning Framework 4

NPF4 is Scotland's national spatial strategy for Scotland. It sets out spatial principles, regional priorities, national developments, and national planning policy. Policies which are relevant to this proposal are as follows:

- 1 – Tackling the climate and nature crises
- 2 – Climate mitigation and adaptation
- 3 – Biodiversity
- 4 – Natural places
- 6 – Forestry, woodland and trees
- 7 – Historic Assets and Places
- 11 – Energy
- 22 – Flood risk and water management
- 23 – Health and safety

Local Development Plan

The following policies and proposal are relevant to the proposal:

- DC1 (Rural Diversification)
- NH5 (Biodiversity and Geodiversity Interest, including Nationally Protected Species)
- NH7 (Protecting Soils)
- NH8 (Trees and Development)
- NH11 (Flood Risk)
- NH12 (Air Quality)
- NH13 (Noise)
- CH4 (Scheduled Monuments and Archaeological Sites)
- T2 (General Transport Impact)
- T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy),
- DP1 (Landscape Character)
- DP2 (Design)
- SEH2 (Low and Zero Carbon Generating Technologies)

REPRESENTATIONS

East Lothian Council has received no written representations to the proposed development.

COMMUNITY COUNCIL COMMENTS

Two Community Councils responded to the consultation. These responses have also been submitted to the ECU.

East Lammermuir Community Council supported the proposal as it increases the resilience of the energy network but raised the following points that they thought should be addressed in any approved application:

- The need for a comprehensive transport plan to address safety, and minimise impact on the local network;
- A requirement on the developer to join the community liaison group to manage construction traffic;
- More detail on the drainage plan for the site area;
- Minimisation of impact on vegetation adjoining access routes and replacement planting where necessary;

- A requirement for the developers to join the East Lammermuir Biodiversity Community Liaison Group; and
- A plan for decommissioning and bonds to cover compliance.

West Barns Community Council also responded with the following points:

- There are concerns about the cumulative impact on the loss of agricultural land;
- There are concerns about the impact on road safety in the area during the construction phase both at the unlit Innerwick junction (which has a high accident record) and on the narrow rural roads. If approved, the developer should take part in road safety initiatives along with other energy project developers in the vicinity. The developer should contribute towards road safety improvements at junctions on the A1 corridor. The developer should take part in road safety discussions with East Lammermuir Community Council and other concerned individuals/groups;
- There should be a condition to secure contributions to net biodiversity gain in the area. The developer should take part in biodiversity initiatives;
- Consideration should be given to drainage issues in the locality; and
- The developer should make clear representations to the community on any proposed community benefits of the development.

The Council has taken these comments into account and has imposed recommended conditions below to cover the issues raised, where it considers it reasonable to do so.

PRINCIPLE OF DEVELOPMENT

The proposed development would enable the storage of electricity and would contribute to the delivery of infrastructure of national importance. As transmission infrastructure to support renewable energy, it is also part of National Development 3 and is thus supported by NPF4.

As the proposal supports renewable energy, the principle of the proposal is also consistent with Policy 11 of NPF4, which states that development proposals for all forms of renewable, low-carbon and zero emissions technologies will be supported, including enabling works, such as grid transmission and distribution infrastructure.

The LDP 2018 helps to facilitate the transition to a low carbon economy by supporting means of energy generation that help to reduce greenhouse gas emissions. It seeks to support a diverse range of renewable and low carbon energy generation in appropriate locations, taking environmental, community and cumulative issues into account.

This proposal would be located on undeveloped agricultural land covered by Policy DC1 (Rural Diversification) of the LDP 2018.

As an infrastructure proposal, the principle of the proposed development is consistent with Policy DC1.

While the principle of this development is acceptable, there are several other issues that require to be considered. This is in line with Policy 11 of NPF which lists thirteen criteria relating to the design and mitigation of energy related developments that require to be addressed to determine their compliance with the Development Plan.

CLIMATE

Policy 1 of NPF4 states that when considering all development proposals significant weight will be given to the global climate and nature crises.

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

The Climate Change Plan notes operating a zero-carbon electricity system will mean finding new ways to provide a range of technical services and qualities currently provided by fossil fuel and nuclear generation. Solar Power is one technology which helps achieve these goals.

The Council's Sustainability and Climate Change Officer has provided comments stating that generally the EIA is fine although the content of the proposal lacks detail regarding how embodied carbon of the development will be mitigated and how waste will be handled at the decommissioning phase. It is recommended that, should consent be granted for this proposal, a condition will be required to provide full details of site decommissioning and restoration.

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 completed development should be imposed on consents for relevant development proposals. This can be secured by a conditional grant of consent.

LANDSCAPE AND VISUAL IMPACT

The proposal is located adjacent to the wind turbines that comprise the Crystal Rig wind farms I – IV. To the southwest of the existing turbines and northwest of the location of the Crystal Rig IV turbines.

This is a different form of development to anything within the uplands of the Lammermuir Hills at present.

The majority of the site lies within the Scottish Borders. At the western end of the development the end of nine solar arrays extend within East Lothian. Existing tracks within East Lothian will be used to access the proposal. A new cable route will be required alongside the existing track. This will extend into East Lothian by approximately 142m to

reach the existing substation. The direct landscape impact on East Lothian is therefore minimal.

Each solar table containing 52 solar PV panels has been shown to be no more than 3m in height and approximately 32.5m long by 4m wide. These will be set in long rows side by side over 500m long in places and in rows north to south. This gives a mass of area covered by solar PV panels forming two areas of arrays with a right of way between. They will be raised above the ground on legs and angled at 20° to the south.

The Council previously agreed several viewpoints at EIA scoping stage and these have been assessed as part of the LVIA. There were initial concerns about possible visibility from significant high points in East Lothian, notably Lammer Law and Meikle Says Law beyond the 5km study area. These hill tops both have high amenity value and are both within Special Landscape Areas (SLA). Visibility of solar panels at this scale in the hills could significantly impact on the appreciation of the landscape from these.

The ZTV has been extended to include Lammer Law and Meikle Says Law. This ZTV showed no theoretical visibility from the summit of Lammer Law would occur due to screening from intervening landform. It predicted that between 1-200 PV tables could be visible from the summit of Meikle Says Law. A wireline was produced to predict the extent of this visibility. This showed that only one PV table would be visible at a distance of 8.02 km due to screening by intervening landform. This would not be a significant effect on the appreciation of the landscape from this viewpoint.

The ZTV in figure 4.4 shows limited and enclosed visibility of the proposal, with the majority of the visibility in East Lothian kept to the bowl landscape where Crystal Rig wind farms are located. The ridge line running between Clints Dod and Spartleton less than 1km to the west of the site constrains the majority of views of the proposals in views to the west. The rising land of the Lothian Edge at Deuchrie Edge and Halls Edge curtails views 4km to the north. Bransley Hill curtails views 3km to the east. There is predicted minimal visibility outwith this bowl or from the SLAs in East Lothian. What visibility there is beyond the immediate bowl landform is from the summits of the hills running north to south from Rangely Kip to Bleak Law to the west. Where there is visibility, this is predicted to be of up to 200 PV tables with only the summit of Rangely Kip having greater visibility, predicted to be up to 400 PV tables.

Landscape Impact

The LVIA has considered the landscape impact on the Lammermuir Moorland SLA. It appears to assess the wrong boundary for this mentioning the wind farm of Crystal Rig and the Whiteadder Reservoir within this assessment. Nonetheless potential effects on this SLA would occur through visibility of the proposed development from beyond the site boundary and that this would occupy a relatively small part of a much larger SLA. It would also be seen within the context of other man-made features, principally the operational Crystal Rig Wind Farms Phases I, II, III and the consented Crystal Rig IV wind farm and Aikengall Wind Farm. The size and scale of the change would be small due to the low profile of the development, with the main effects occurring at elevated locations at Eachil Rig, Clints Dod and Rook Law to the northwest and at the eastern boundary of the SLA adjacent to the solar PV array. No

special qualities of the SLA would be affected by the Proposed Development such that there would be a significant adverse effect on the integrity of this SLA.

The LVIA does not assess the landscape impact on the Whiteadder SLA, although it does note that theoretical visibility within the Whiteadder valley is predicted to be limited with the proposed development visible from a number of hill tops, but owing to the low profile would not alter or affect the panoramic views obtained. The ZTV in fact only shows the hilltop of Spartleton to have visibility of the development from within the Whiteadder SLA. The Whiteadder SLA is focussed on the Whiteadder Reservoir and it appears unlikely that the proposed development would affect any of the special qualities of the Whiteadder SLA.

Visual Impact

Herring Road

The LVIA notes that the value of potential views from this route are considered to be High as this is a long-distance heritage route that is well promoted and popular for recreation. It notes that the susceptibility of receptors along this route is considered to be High as this is an identified walking route where walkers' main attention is on the surrounding landscape. The majority of the route where the ZTV predicts visibility of the proposed development is within the Crystal Rig wind farm. The wind turbines form prominent man-made features changing the feeling of being in moorland to being in a wind farm landscape. The naturalness of the setting is detracted by the turbines, manmade tracks, drainage ditches, and concrete hardstanding areas. The proposal adds an additional development type to the landscape, however this is in an area that is already reduced in naturalness due to wind turbines and overhead pylons.

Viewpoint 1 (figure 4.6) is from the historic Herring Road now a Core Path route. It is within and close to the eastern boundary of the Lammermuir Moorland SLA. The proposed development sits to the east 290m from this viewpoint. This is side on to the traveller on the core path and beyond the dominant overhead pylon line.

Viewpoint 2 (figure 4.7) is also from the Core Path route along the Herring Road route further north and with the Crystal Rig wind farm area. The proposed development lies 450m southeast from this viewpoint. It sits in front of the view of Spartleton Hill from here. However this view is already impacted by the overhead pylons that runs east to west to the south of the Crystal Rig wind farm.

The LVIA notes that overall, a 1 km section of this path would experience views of the Proposed Development to the east which would form the foreground towards the Crystal Rig Wind Farm. It states that this would be close but occupy only a small to medium extent of the overall view. It notes that the low profile of the solar PV arrays would reduce the size and scale of the change. It also notes from close range, it would be possible to see the deer fence and CCTV cameras spaced along the periphery, but these would not be as visible as the mass of solar panels. For the section of the Herring Road within 1km of the proposed development the LVIA predicts a major-moderate adverse and significant effect from the development.

An additional four wirelines (figure 4.10) have been produced at various points along the Herring Road Core Path route through the Crystal Rig wind farm. These indicate that the proposed development will be visible beyond the wind turbines and around the base of Spartleton Hill. Its low profile leads it to be contained by the landform reducing its prominence and impact in an area where the wind turbines are the dominant element surrounding the viewer.

Spartleton

Viewpoint 3 (Figure 4.8) is from the northern slopes of Spartleton Hill within the Whiteadder SLA. This is a popular summit for walkers visiting the Lammermuir Hills with the hill top commanding extensive views across the surrounding uplands in all directions. This includes close views of the Crystal Rig Wind Farm to the north east and views to the Whiteadder Reservoir to the southwest. The development lies 1km northwest from here. As indicated in the Cultural Heritage viewpoint 3 (Figure 7.5b) there is no visibility of the proposed development from the cairn at the top of the hill. However, as you head north off the top of the hill visibility opens up of the landscape and the development site can clearly be seen on the improved grassland to the south of the existing Crystal Rig wind turbines and the overhead power line. The tables and PV panels will be tilted towards the viewer in this view. As noted in the LVIA the solar array will occupy 55° of the view from this viewpoint. The development would appear as two large geometric blocks contrasting with the surrounding moorland and semi-improved farmland in comparison to the nearby wind turbines in which the moorland can still be perceived. Part of the western array would be screened due to land sloping away to the north. The effect of the proposal would be major-moderate adverse and significant from here.

Rook Law, Clints Dod and Eachil Rig

Figure 4.10e considers the impact on the views from the core path route at Rook Law. This is a popular summit with hill walkers and is also located within the Lammermuir Moorland SLA. It is representative of the hilltops of Eachil Rig, Clints Dod and Rook Law which are situated approximately 1.4 - 2.7 km to the north west of the proposed solar PV array. The LVIA notes that from the summit views are extensive over the surrounding uplands as well as farm land to the north and close views to Crystal Rig wind farm to the east. Visibility of the proposed development is limited to mainly up to 200 tables over a small proportion of the view. Extensive views of undeveloped open moorland are still visible to the north, west and south. The development would have a moderate adverse but not significant effect here.

Rangely Kip, Bleak Law and Moss Law

The LVIA has also assessed the impact on Rangely Kip, Bleak Law and Moss Law where the ZTV predicts visibility from the summits. These hill summits are located between 3.3 to 3.9 km to the west of the proposed development. The LVIA notes that these summits are not as popular but are visited by some walkers who access from the surrounding rough tracks. There are extensive views from the summits over both the upland plateau to the east and south, and the lowland plain to the north and west. The summit of these hills form the boundary between the Danskin to Whitecastle SLA to the northwest and the Lammermuir Moorland SLA to the southeast.

As noted above views of the proposed development from these summits is predicted in the ZTV to be limited, of up to 200 PV tables, with only the summit of Rangely Kip have greater visibility of up to 400 PV tables. The PV solar arrays would be low in profile and occupy part of the mid-ground when looking east towards the Crystal Rig Wind Farm which would form the background. The size and scale of change to the views of the landscape would be low from here. The development would have a moderate adverse but not significant effect here.

The proposal introduces a new type of development into an area dominated by wind turbines. The proposed development is large in scale but of a low height. This low height, combined with its proposed location within the 'bowl' landscape where Crystal Rig wind farms are located, helps to limit its wider visibility. The assessment has shown that the proposals will have a major-moderate adverse and significant effect on views within 1km of the proposed development.

However, these views are from within the existing wind farm or contain views of wind turbines where the wind turbines and overhead pylons have already reduced the sense of naturalness of the moorland. The development does not have a significant impact on the Special Landscape Areas of East Lothian or on the landscape or views beyond 1km from its boundary. Given this the Council does not object to the proposals on landscape grounds.

BIODIVERSITY

The Councils Biodiversity Officer commented that The EIA report states:

'It is proposed that the cable will be laid within existing tracks and therefore impacts to natural habitats will be minimised as far as possible. Furthermore, it is considered likely that the unsurveyed areas around the cable route are highly modified improved grassland habitats with little to no conservation value based on site knowledge and aerial imagery.'

A scoping report for the proposed development was commented on by consultees in 2023. Comments made at the time in relation to the application with respect to East Lothian's wildlife included:

- including the Lammermuir Local Biodiversity Site
- recommending that TWIC was used for comprehensive biological records
- consider the impact on mountain hare populations
- surveys and assessments for reptiles and amphibians including great crested newt and
- other biodiversity enhancement as stated in in NPF 4 mitigation for any adverse effects.

Responses to the above addressed in the EIAR include-

- Lammermuir Local Biodiversity Site scoped out.
- TWIC records included.
- mountain here have been considered in this application the habitat within the proposed development is predominantly Purple Moor grass which is not considered to be optimum mountain hare habitat and the East Lothian section of the application site is below 300 metres in elevation. The applicant has therefore concluded that mountain here will not be impacted.
- No ponds were present within the site boundary or within 500 metres of the application site and therefore great crested newts are not considered within the

application. Reptiles are considered to be present without need for additional survey and the implementation of embedded mitigation would be sufficient to result in no significant effect.

The requirement under National Planning Framework 4 policy 3 ensures the planning and implementation of habitat enhancement for positive biodiversity impacts. This application has used a biodiversity metric system to determine this. An outline habitat management plan is presented within the EIAR and it is proposed that a detailed HMP will be produced and this should be secured by planning condition.

Habitat management plan shall include riparian tree planting, compensatory habitat creation for ground nesting birds, creation of a scrape to support wetland birds and conservation management within the Solar Developable Area to take into consideration habitat loss in particular marshy grassland within the application area.

Conclusion

With the embedded mitigation within the Construction Management Plan and enhancements for biodiversity within the Habitat Management Plan, which should be secured through condition, being carried out in full, there is no objection to the proposal from a biodiversity perspective subject to the appropriate conditions being added.

Should consent be given for this proposal, it is recommended that, in order to manage the local impacts of the proposal on biodiversity, a number of conditions are required. These would seek to secure proposed biodiversity measures are carried out sufficiently, and for a long-term management plan to be in place. This would involve a condition requiring a Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 30-year period to be produced to detail proposals for landscape and biodiversity mitigation and enhancement to be attached to the consent.

In order to secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the development, it is recommended that an Ecological Clerk of Works be appointed to monitor the development. If considered more acceptable by the ECU, the Council would be equally content were a Planning Monitoring officer to be appointed instead. This would require a change to recommended condition 19 below.

Subject to the imposition of and compliance with the recommended conditions, the proposal would conform to NPF4 Policy 3 and Policy 6.

TRANSPORT AND ACCESS

The proposal is noted as being for 55,000 solar panels with associated access tracks and infrastructure located within land associated with the existing Crystal Rig windfarms based primarily within the Scottish Borders but with construction access routes through East Lothian through the existing windfarm sites, utilising existing tracks and local roads C123 and C122 onto the A1 at the Innerwick junction. This route has already been established for construction of the existing wind farms in the area.

During the 35-year operational phase transport movements would be minimal at only 2-3 visits per month and therefore there is no need for any impact assessments to consider the operational life of the project. Further, the traffic associated with decommissioning would be less than the construction phase and therefore there is no need for assessment of this phase either. It is therefore recognised and agreed that the construction phase results in the most significant impacts and only the impacts during this phase require assessment in the EIA.

It is noted that there will be no abnormal loads required and that delivery of components will be via 16.5m articulated or 'low loader' vehicles. It is noted that the construction period will be approximately 12 months in duration and that the maximum monthly movements would be 248 HGVs and 880 cars / light goods vehicles, which would correspond to an average of 11 HGVs and 40 car / light goods vehicle traffic movements per day (over a 22-day working month). Whilst this level of construction traffic would not result in a significant impact on the capacity of the road network (and on this basis, no mitigation measures required in relation to capacity enhancements), it would contribute to the deterioration of the public road network along the assigned route and would therefore contribute to the need for co-ordinated repairs during the construction period alongside that of the Crystal Rig IV Wind Farm project.

No prospective construction dates are quoted in the documentation; however, it may be that there is an overlap with the Crystal Rig IV project construction and therefore co-ordination between the projects in relation to the dilapidation impacts would be welcomed.

A draft CEMP has been submitted and the content of that document is considered to be broadly acceptable. In addition to this, a Construction Traffic Management Plan is proposed to be undertaken – it is recommended that this be secured through a relevant planning condition.

Assuming the appropriate conditions are attached to the application there are no objections to this planning application from a transportation perspective.

HISTORIC ENVIRONMENT

The Council's Archaeology/Heritage Officer was consulted on the proposal and no objections have been raised to the application.

It is recommended that, if consent is granted for this proposal, a condition is imposed to effectively manage and monitor the impacts on the historic environment.

NOISE, VIBRATION AND AMENITY

The applicant has undertaken an Acoustic Design Specification report which looks at the noise impact of the proposed battery energy storage system on nearby land uses, known as "noise-sensitive receptors". A number of receptors have been identified and impacts have been assessed on them, with calculations provided for operational noise levels on the site.

The Council's Senior Environmental Health Officer has been consulted and no objections were raised to the application.

In relation to the impacts of the development associated with noise, vibration and amenity, the proposed development would be generally compliant with NPF4 policy 23 and LDP 2018 policy NH13.

FLOOD RISK

The proposed development is supported by a Flood Risk Assessment and a Drainage Statement. Consultation was undertaken with the Council's Flood Risk Manager and no objections were raised.

Whilst the proposal appears to be broadly compliant with NPF4 policy 22 and LDP 2018 policy NH11, it is recommended that, should consent be granted for this proposal, a number of conditions will be required in order to secure the additional information or clarification/corrections within existing reports. It is recommended that ongoing liaison between the applicant/agent, SEPA and the Council's Flood Risk Manager will be required.

FIRE RISK

Scottish Fire and Rescue Services advises that there is currently no statutory requirement for Fire and Rescue Services (FRSs) to engage in the planning process of Solar Farms and BESS sites. However, The National Fire Chiefs Council (NFCC) encourages early engagement with the local FRS, continuing throughout the planning process, and have therefore provided a guidance document. This document relates specifically to grid scale BESS, in open air environments, using lithium-ion batteries.

The Council recommends that the ECU should satisfy themselves that either the proposed Solar Farm and associated infrastructure would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation.

CONCLUSION

The principle of the Crystal Rig Solar Farm is acceptable under NPF4 National Development 3, and applicable NPF4 policies in relation to the contribution towards national priorities for achieving net zero through decarbonisation of the electricity energy network and tackling the climate crisis.

The principle of development is accepted, based on the assessment against Local Development Plan 2018 policies. Assuming the conditions attached to this response are made a requirement of any approval of this application, the Council raises **no objections** to the proposal with the on the following matters which would have significant impacts for East Lothian.

RECOMMENDATION:

1. That the Scottish Government Energy Consents Unit is informed that East Lothian Council does not object to the granting of consent under Section 36 of the Electricity Act 1989 for the reasons set out in this report; and
2. That the East Lothian Chief Planning Officer be authorised to undertake any required further discussions with the Scottish Government Energy Consents Unit to resolve any further points arising from the proposal; and
3. That if consent is granted then it be subject to the following conditions:

RECOMMENDED CONDITIONS

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

Reason:

To ensure that the development is commenced within a reasonable period.

- 2 Prior to the commencement of development details of the finishing colours for all of the components of development shall be submitted to and approved in writing by the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the visual amenity of the area.

- 3 Prior to the commencement of any development a report on the actions to be taken to reduce the Carbon Emissions 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 including the consideration of any opportunities for heat recovery systems, 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.

- 4 Prior to the commencement of development, a Landscape and Ecological Mitigation and Management Plan (LEMMP) covering a 35-year period shall be submitted for the approval of East Lothian Council.

The LEMMP must include details of enhancements for landscape and biodiversity mitigation and enhancement. This should be informed by the ecological survey work and consider the ongoing long-term management of biodiversity enhancement measures. To include:

- a. A full planting plan and planting schedule and specification
- b. A program of management, replacement planting, thinning and pruning with a typical 12-month cycle showing the detail and frequency of when different aspects of the landscape maintenance specification occur on site

The submitted LEMMP proposals should also accord with the following requirements:

- Field margins surrounding the development should be supplemented with a local native wildflower seed mix to encourage the development of suitable habitat and nectar for pollinator species. Vegetation management is suggested to retain diverse wildflower rich swards.
- Planting of native hedgerows or scattered trees around the margins of the development to compensate for loss of habitat.
- The LEMMP shall include a report investigating the impact of the removal of any vegetation, stone walls or hedgerows (to facilitate vehicular access) on local lichen, amphibian and reptilian populations. This report shall also include appropriate measures (and a timetable for implementation) to replace and enhance this habitat.
- If reptiles are found during construction works will stop and an ecologist contacted for advice
- The LEMMP shall include a Species Mitigation and Management Plan (including Mountain Hare, Great Crested Newts, other riparian species and breeding birds).
- Where removal of habitat suitable for bird nesting is required, this should ideally take place outside the nesting bird season, or if that is not possible a nesting bird check should be carried out immediately prior to the works. A buffer zone to exclude works will be established while the nest is active.
- A buffer zone to exclude works shall be established around riparian areas.
- Precautionary measures to protect mammals during construction.

The submitted LEMMP proposals shall include a timetable for implementation, and management thereafter. Development shall thereafter be carried out in accordance with the LEMMP proposals so approved.

Reason:

In the interests of safeguarding biodiversity interests.

- 5 A full planting plan shall be submitted for the approval of the local planning authority before commencement of development. This plan should include full biodiversity enhancement in addition to:
 - Any native woodland;
 - Native riparian planting;

- Native hedgerow and hedgerow trees to all boundaries of the site and to either side of the access tracks; and
- Details of mitigation and reinstatement for any hedgerows, trees of vegetation required to be removed as part of site access arrangements.

A full landscape maintenance and management plan for the life of the development shall be included with the planting plan to show how the landscaping will be established and developed.

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

Reason:

In the interests of managing the landscape and visual impacts of the development

- 6 No external lighting shall be installed on site unless and until details of it have been submitted to and approved by the Planning Authority.

Reason:

In the interests of the visual amenity of the area.

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

(i) details of any changes in access routes to the site from the A1;

(ii) details of all temporary signage and traffic management measures deemed necessary on the local road network;

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

(iv) vehicle tracking of all vehicle types for the turning movements along the assigned access route on the local road network from the A1;

(vi) updated information on programme, vehicle types and the construction traffic trip generation;

(x) arrangements for road maintenance and cleaning;

(xi) detail of how building materials and waste will be safely stored and managed on site;

(xii) details of wheel washing facilities which must be provided and maintained in working order during the period of construction. All vehicles must use the wheel

washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;

(xiii) Details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds;

(xiv) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds;

(xv) Summary of the arrangements for road maintenance, dilapidation surveys and repairs during the construction programme; and

(xvi) measures for regular liaison with local community councils, local residents and other energy developers working within the local area, to inform them of traffic associated with the construction of the development.

The CTMP shall also include a timetable for implementation of the measures above.

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

- 8 Prior to the commencement of development, a Stage 1 and 2 Road Safety Audit shall be submitted to and approved by the Planning Authority, which shall be undertaken for the preliminary and detailed design of the site access for the construction and operational phases of the development alongside any other temporary and permanent works proposed on the local public road network. Following submission of the audits, Designers Responses should be provided and the issues raised will be required to be resolved to the satisfaction of the Overseeing Authority as part of the detailed design process for the proposed site access and other works.

Reason: In the interests of road and vulnerable user safety.

- 9 Prior to the commencement of the development a programme for monitoring the condition of the public roads to be used by construction traffic shall be submitted to and approved in writing by the Planning Authority. Thereafter the approved programme of monitoring 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 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. Any damage to the road surface as a direct result of the construction process of this development that is identified during the monitoring which could result in a significant risk to road safety should be repaired immediately, together with general repairs undertaken on a regular basis and periodic resurfacing where necessary, full details to be agreed with the Planning Authority.

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

- 10 Prior to the commencement of development, the following details shall be submitted to and approved by the Planning Authority:

- A final Drainage Plan is submitted for approval (currently only indicative); and
- Discharge rate and attenuation calculations.

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

Reason:

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

- 11 No development shall take place on the proposed site until the applicant has undertaken and reported upon a programme of archaeological work (Archaeological Evaluation by Trial Trenching) in accordance with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the planning authority.

The programme of work should comprise a field evaluation by trial trenching which should be reported upon initially through a Data Structure Report (DSR) submitted to East Lothian Council Archaeology Service (ELCAS). All work should be carried out under the terms of a Written Scheme of Investigation (WSI) which will need to be approved by ELCAS (on behalf of the planning authority) prior to work commencing.

The area to be investigated should be no less than 10% of the total site area.

Reason:

In the interests of the historic environment including archaeological remains.

- 12 The Development will disconnect from the grid and cease to import or export electricity no later than the date falling thirty-five years from the date of Final Commissioning. The total period for operation of the Development, decommissioning and restoration of the Site in accordance with this condition shall not exceed thirty-six years from the date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.

Reason:

To ensure the development only operates within its designed and planning lifespan.

- 13 If the Development fails to export electricity via the grid connection for a

continuous period of twelve months, then it shall be deemed to be redundant and unless otherwise agreed in writing with the Planning Authority, the Company shall undertake the decommissioning, restoration and aftercare of the Site as required by other stated conditions.

Reason:

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

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

Unless the Development has been deemed to be redundant under condition 13, no later than twelve months prior to decommissioning of the Development or the expiry of the section 36 consent (whichever is the earlier) a Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

If the Development has been deemed to be redundant under condition 13, no later than twelve months from the date the Development has been deemed to be redundant, a Detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning, Restoration and Aftercare Strategy, shall be submitted for the written approval of the Planning Authority.

The Detailed Decommissioning, Restoration and Aftercare Plan shall provide updated and detailed proposals, in accordance with relevant guidance at that time, for the removal of above ground elements of the Development, the treatment of ground surfaces, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the management and timing of the works and environment management provisions which shall include (but is not limited to):

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

- (c) a dust management plan;
- (d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- (e) a pollution prevention and control method statement, including arrangements for the storage and management of oil and fuel on the site;
- (f) details of measures for soil storage and management;
- (g) a surface water and groundwater management and treatment plan, including details of the separation of clean and dirty water drains, and location of settlement lagoons for silt laden water;
- (h) details of measures for sewage disposal and treatment;
- (i) temporary site illumination;
- (j) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- (k) details of watercourse crossings; and
- (l) a species protection plan based on surveys for protected species carried out no longer than eighteen months prior to submission of the plan.

The Development shall be decommissioned, the site restored, and aftercare undertaken in accordance with the approved Detailed Decommissioning, Restoration and Aftercare Plan, unless and until otherwise agreed in writing in advance with the Planning Authority.

Reason:

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

- 15 No development shall commence unless and until a bond or other form of financial guarantee in terms reasonably acceptable to the Planning Authority which secures the cost of performance of all decommissioning, restoration and aftercare obligations are submitted to the Planning Authority.

The value of the financial guarantee shall be agreed between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations.

The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations.

The value of the financial guarantee shall be reviewed by agreement between the Company and the Planning Authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional no less

than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning, restoration and aftercare obligations and best practice prevailing at the time of each review.

Reason:

To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

- 16 Prior to commencement of development details of measures to seek to maximise local employment opportunities relating to the proposed Solar Farm shall be submitted to and approved by the Planning Authority. Those measures shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of the local economy

- 17 Development shall not commence unless and until the Planning Authority has approved in writing the terms of appointment by the Company of an independent Ecological Clerk of Works (ECoW). The terms of appointment shall;

- a) Impose a duty to monitor compliance with the ecological and hydrological commitments provided in the supporting information lodged with the application and the Construction and Environmental Management Plan;
- b) Require the ECoW to report to the Company's nominated construction project manager any incidences of non-compliance with the ECoW works at the earliest practical opportunity;
- c) Require the ECoW to submit a monthly report to the Planning Authority summarising works undertaken on site; and
- d) Require the ECoW to report to the Planning Authority any incidences of non-compliance with the ECoW Works at the earliest practical opportunity. The ECoW shall be appointed on the approved terms throughout the period from Commencement of Development, throughout any period of construction activity and during any period of post construction restoration works.

Reason:

To secure effective monitoring of and compliance with the environmental mitigation and management measures associated with the Development.

- 18 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.

REPORT TO: Planning Committee
MEETING DATE: 14 January 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

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Note: This application has been called off the Scheme of Delegation List by Councillor Findlay for the following reasons: To enable the Committee to consider the local concerns of overdevelopment of the site, lack of foul water connections, and loss of land currently designated for educational use.

Application No. **24/01054/P**
Proposal Erection of 16 houses and associated works
Location **Land At Saltcoats Field**
 Gullane
 East Lothian

Applicant Cala Management Ltd
Per Apt Planning & Development

RECOMMENDATION Consent Granted

REPORT OF HANDLING

SITE CONTEXT

This planning application relates to some 1.6 hectares of former agricultural land located on the southern side of Gullane. The application site forms part of a larger area of land allocated by Proposal NK7: Saltcoats, Gullane of the adopted East Lothian Local Development Plan 2018 for circa 130 homes. It is currently in use as a construction compound and materials storage area for the residential development being built on Saltcoats Fields.

In January 2018 following the conclusion of a S75 legal agreement to secure education and affordable housing contributions, as well as contributions to play facilities, sports pitch and transportation interventions, planning permission in

principle 16/00594/PPM was granted for a residential development on Land at Saltcoats Field. Condition 2 of planning permission in principle 16/00594/PPM states that no more than 150 residential units are approved for the site.

In August 2019 Approval of Matters specified in conditions of planning permission in principle 16/00594/PPM (ref: 18/01366/AMM) was granted for the erection of 122 houses, 28 flats and associated works. Development of the site is well underway with a number of the residential units occupied.

The site of this application forms the northern part of an area of land approved for use as open space in the form of a meadow and located to the west of the development approved by approval of matters consent (ref: 18/01366/AMM). It is bounded to the north by the grounds of Gullane Primary School and the eastern part of an area of woodland known as Millennium Wood and to the south by the remaining land for use as an open space meadow. To the west is an area of land approved for new woodland planting with agricultural land beyond.

In the preparation of the adopted East Lothian Local Development Plan 2018 consideration had been given to using the application site as additional campus land for Gullane Primary School. However, based on current roll projections it was established before the ELLDP was adopted that the additional campus land was no longer required.

PROPOSALS

Planning permission is now sought for the erection of 16 houses and associated works.

The proposed development would comprise of a mix of six different house types featuring a mix of 2, 3, 4 and 5 bedrooms, together with internal access roads, parking and landscaping. Of the 16 houses proposed within this application 12 would be for private sale and four would be operated as affordable housing.

All of the proposed 12 house for private sale would be two storeys in height. Of those houses 10 would be detached and two would be semi-detached. In terms of size they would consist of two houses featuring three bedrooms, two houses of four bedrooms and eight having five bedrooms. The remaining houses would be for social rent and would comprise of four semi-detached two-bedroom bungalows.

The proposed houses would have predominantly rendered walls and pitched roofs finished in grey or rustic tiles. Each house would have areas of private garden ground and 8 of the houses would have detached pitched roof garages within their curtilages. The windows of the proposed house would be constructed in grey uPVC and external doors would be of a composite finish. All of the proposed houses would feature an external heat pump at ground floor level. All rainwater goods would be finished in black uPVC.

Access would be provided at a point to the east taken from the new internal road formed as part of the development approved by planning permission (ref: 18/01366/AMM). Pedestrian access to the site, as well as an alternative cycle

access, would also be provided from footpaths formed to the northwest allowing access to Millenium Wood and Gullane Primary School and to the south of the site.

The submitted details also include for the internal access roads, garages, visitor parking, boundary treatments, indicative landscaping and a large area of open space recreational ground to the north.

A Planning Statement and a Design and Access Statement have been submitted in support of the application.

Since the application was first registered updated drawings have been submitted in response to comments from the Council's Landscape (Projects).

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).

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 6 (Forestry, Woodland and Trees), 12 (Zero waste), 13 (Sustainable transport), 14 (Design, quality and place), 15 (Local Living and 20 minute neighbourhoods), 16 (Quality Homes), 18 (Infrastructure first) and 22 (Flood risk and water management) of NPF4 are relevant to the determination of this application. Also relevant are Proposal NK7: Saltcoats, Gullane and Policies DP1 (Landscape Character), DP2 (Design), DP3 (Housing Density), DP9 (Development Briefs), OS3 (Minimum Open Space Standards for New General Needs Housing), OS4 (Play Space Provision in new General Needs Housing Development), HOU3 (Affordable Housing Quota), HOU4 (Affordable Housing Tenure Mix), NH8 (Trees and Development), NH10 (Sustainable Urban Drainage Systems), NH11 (Flood Risk), T1 (Development Location and Accessibility), T2 (General Transport Impact), W3 (Waste Separation and Collection), T32 (Transport Infrastructure Delivery Fund) and DEL1 (Infrastructure and Facilities Provision) of the ELLDP.

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.

Also material to the determination of the application is Supplementary Planning Guidance (SPG) on 'Design Standards for New Housing Areas' adopted by the Council in May 2020.

Also material to the determination of the application is the development brief for allocated site NK7: Saltcoats which is within the Development Briefs Supplementary Planning Guidance 2018 and the approved masterplan for the site

as approved by the grant of planning permission in principle 16/00594/PPM. The Development Brief informed the masterplan and sets out the land uses expected for the allocated site and how the Council requires the site to be developed.

REPRESENTATIONS

Two letters of public objection have been received against the application.

The main grounds of objection involve:

- i) 16 additional houses is an unnecessary overdevelopment of this site and while the demand may be there, the supporting infrastructure within the village is not;
- ii) building on this planned green space means there will be no option in the future for this land to be sold as recreational ground for Gullane Primary School;
- iii) the proposals will result in increased traffic of approximately 30 more cars on one of the 2 roads in and out of the development and will compromise road safety;
- iv) Cala have now built in excess of 300 homes in Gullane in recent years and the village now needs a break from building;
- v) there is inadequate sewage capacity to deal with discharges from this development;
- vi) the land of the application site is zoned for Education purposes and has not been declared surplus to requirements by the Education Authority; and
- vii) the proposals are contrary to the adopted East Lothian Local Development Plan 2018.

There is no requirement for an applicant to demonstrate the need for the proposed 16 houses.

The land of the application site has not been zoned for educational purposes. The land is part of the allocated housing site REF: NK7 of the adopted East Lothian Local Development Plan 2018.

COMMUNITY COUNCIL COMMENTS

Gullane Area Community Council object to the application on the following grounds:

- i) there is insufficient capacity in the Gullane Waste Water (GWW) system to support further development;
- ii) further housing development is contrary to the recent Gullane Community Local Place Plan feedback;
- iii) lack of employment options within Gullane and how this is increasingly leading to more working people having to commute to work, increasing pressure on transport infrastructure with associated negative climate change implications and a carbon negative outcome, all contrary to National Planning Policy; and
- iv) given the proximity of the existing woodland, further housing would negate an opportunity to extend the woodlands to contribute positively towards East Lothian's response to the climate and nature crisis.

In a written consultation response to the Council, Scottish Water have confirmed that there is currently sufficient capacity for a foul-only connection in the Gullane

Waste Water Treatment Works to service the proposed development, and that further investigations may be required to be carried out further to submission of a formal application for such connection.

The Local Place Plan for Gullane has not yet been registered as valid. Notwithstanding, a Local Place Plan has no weight in the determination of a planning application.

PLANNING ASSESSMENT

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

The land of this application site comprises of part of the allocated housing site of PROP NK7: Saltcoats, Gullane of the ELLDP which allocated the site for circa 130 homes. Approval of matters consent (ref: 18/01366/AMM) for 150 residential units was been approved, as the site was capable of accommodating the additional houses without being and overdevelopment of the site and there was no impediment on other grounds such as educational or road capacity.

What is proposed through this application is the erection of an additional 16 houses on land to the west side of the houses approved through 18/01366/AMM but still within the allocated housing site. Policy 16 of NPF4 supports the principle of housing on land already allocated for that use. The principle of housing is therefore supported on this site by Policy 16 of NPF4.

What is proposed through this application is the erection of an additional 16 houses which together with the residential units approved through approval of matters consent (ref: 18/01366/AMM), would bring the total of residential units approved for Saltcoats Field to 166 residential units. Therefore, this application must not only be considered in isolation but in relation to the potential implication it would have in combination with those residential units approved. It is relevant to note that planning permissions have been granted for other allocated sites of the ELLDP for a higher number of housing units than their site allocation and some have seen planning permissions granted for a smaller number of housing units than their site allocation. The provision of a larger number of housing units compared to an approximate capacity stated in the ELLDP does not in itself amount to a conflict with the development plan.

NPF4 policies 13 (Sustainable transport) and 15 (Local living and 20-minute neighbourhoods) seek to encourage development in locations well-served by sustainable transport modes (e.g. public transport, walking, wheeling and cycling). In terms of Policies 13 and 15 of NPF4, as a development within the wider Saltcoats housing development, the proposed development would be located with good walking, cycling and wheeling connections to the existing footpath network of Gullane, with good access to local public transport services and with good access to local shops, amenities and facilities. In such locational circumstances, the

proposals would contribute to local living and 20-minute neighbourhoods and thus would not conflict with Policies 13 and 15 of NPF4.

It is now necessary to consider the design and layout of the proposal against Council policies and other material consideration to ascertain whether the site can accommodate the proposed number of units and whether there is any impediment on other grounds such as educational or road capacity.

The proposed residential development would form an extension to the western edge of the residential development being built on Saltcoats Field, and would be a natural extension of that residential development. Therefore, the additional 16 units of housing would not be inappropriate or out of keeping with the character of this part of Gullane

The houses and associated areas of ground, in their proposed groupings, orientations, and layout would be consistent with the Council's SPG on 'Design Standards for New Housing Areas' and with the Scottish Government Policy Statement entitled 'Designing Streets'. The proposed layout of roads, pathways and parking spaces would also generally be consistent with those principles.

The 16 houses proposed through this application would consist of six types of detached and semi-detached houses ranging in size from two bedrooms to five bedrooms. However, in terms of the wider Saltcoats housing site 24 types of residential units were approved by approval of matters consent (ref: 18/01366/AMM) involving a mix of 1, 2, 3, 4 and 5 bedroomed houses, cottage flats and apartments. The mix of detached and semi-detached houses proposed by this application would be consistent with that already approved for the wider Saltcoats site.

The architecture of the proposed houses is of a traditional pitched roof form and a relatively traditional design overall, and the materials proposed are generally traditional in appearance, including two different roofing colours and different render colours along with some use of a contrasting wall finish (i.e. reconstituted stone). A condition can be imposed on a grant of planning permission for the proposed development to address these matters.

The proposed houses, due to their positioning on the site and by virtue of their density, their height, size and scale, architectural design and finishing would satisfactorily integrate into their surroundings and would not appear as prominent or intrusive features.

The proposed development would provide an attractive residential environment for future residents of the proposed houses. The houses are shown to be laid out in such a way that adheres to the normally accepted privacy and amenity criteria on overlooking and overshadowing, thereby affording the future occupants of the houses as well as the occupants of existing neighbouring houses an appropriate level of privacy and residential amenity.

The application site is capable of accommodating all of the houses without being an overdevelopment of the site and without being incompatible with the density of

existing housing development in the area.

The application site is adjacent to an area of open space and is also in close proximity to the areas of openspace approved as part of planning permission in principle 16/00594/PPM and Approval of Matters 18/01366/AMM. The Council's Strategy, Policy & Development Manager raises no objection to the application, being satisfied that the areas of open space shown to be provided would provide sufficient, usable areas of open space for informal recreation for the proposed development.

The site is also in close proximity to Millenium Park and children of the future occupants would be able to access that park.

On all of these foregoing findings on matters of design, layout and amenity, the proposals are consistent with Policies 14, 15 and 16 of NPF4 and with Policies DP1, DP2, DP4 OS3 and OS4 of the ELLDP, the Scottish Government Policy Statement entitled "Designing Streets", the Masterplan approved by planning permission in principle 16/00594/PPM and 18/01366/AMM the Council's Supplementary Planning Guidance on 'Design Standards for New Housing Areas'.

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. Such a condition should be imposed on a grant of planning permission for this proposed development.

The **Council's Environmental Protective Services** were consulted on the application and have responded no comment.

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 aforementioned 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 a grant of planning permission 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.

In relation to considerations of contaminated land issues, the **Council's Senior Environment Compliance Officer (Contaminated Land)** advises that: i) there is the potential for localised areas of contamination to exist within the application site as a result of its current use as a construction compound and materials storage area; and ii) there is the possibility that areas of localised contamination may exist due to the presence of made ground on the site. Given the above and due to the nature of the proposed residential development, further information will be required to determine the ground conditions and potential contamination issues impacting on the site (with the minimum of a Phase I Geo-Environmental Assessment being carried out). In light of this, the Senior Environment Compliance Officer recommends that a condition is attached to any grant of consent involving 'Land Contamination Condition - Investigation, Risk Assessment, Remediation and Validation'.

Subject to the above controls, the **Council's Senior Environment Compliance Officer** raises no objection to the proposals, being satisfied that they would be acceptable in terms of safety for future occupiers of the site.

The **Council's Senior Engineer – Flooding** raises no objection to the application on grounds of flood risk, being satisfied with the SUDS and drainage arrangements proposed for the site.

Scottish Water have been consulted on the application. Having undertaken a Water Capacity Assessment and a Waste Water Capacity Assessment, they raise no objection to the proposals, being satisfied that there is sufficient capacity in the Castle Moffat Water Treatment Works and for a foul only connection in the Gullane Waste Water Treatment works to service the proposed development. Notwithstanding it can be made a condition of any grant of planning permission that prior to the commencement of development confirmation from Scottish Water shall be provided that demonstrates that there is an available connection to the public sewer and that Scottish Water will accept waste from this development. If Scottish Water cannot accept foul drainage from this site, proposals for alternative arrangements should be provided, prior to the commencement of development and SEPA should be re-consulted.

The **Council's Road Services** have considered the details of this application and raise no objection to the proposed development, being satisfied that it could be accessed safely and would not lead to a road or pedestrian safety hazard. They recommend a number of transportation requirements involving:

- i) all roads and paths shall conform to East Lothian Council's Transport Infrastructure in New Developments;
- ii) all path and footway connections from a zone under construction to the existing

settlement shall be constructed to an adoptable standard before the occupation of any units in that particular zone. All remote paths should have a 1 meter wide level verge on both sides to aid maintenance and maintain effective width;

iii) driveways shall have minimum dimensions of 3.3 meters width by 6 meters length. Double driveways shall have minimum dimensions of 6 meters width by 6 meters length or 3.3 meters width by 11 meters length;

iv) 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;

v) 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 hours of construction works, routing of vehicles and delivery time restrictions and provide details of utility/service drainage connections, including what temporary measures shall be put in place to control surface water drainage during the construction of the SuDS. The Construction Method Statement shall also provide a health and safety method statement, recommendations in respect of how building materials and waste will be safely stored and managed on site and shall include provision for wheel washing facilities or alternative facilities to prevent deleterious materials being carried onto the public road on vehicle tyres; and

vi) a wheel washing facility be provided and maintained in working order during the period of operation of the site.

Subject to appropriately worded conditions attached to a grant of planning permission, the proposals do not conflict with Policy 13 of NPF4 or with Policies T1 or T2 of the ELLDP.

Policy DEL1 of the ELLDP stipulate that new housing will only be permitted where appropriate provision for infrastructure, required as a consequence of the development, is made. Policy T32 of the ELLDP specifically relates to the package of transportation interventions to mitigate the cumulative impact of development on the transport network which have been identified by the Council in consultation with Transport Scotland. In line with Policy DEL1, relevant developments are required to contribute to the delivery of these transportation interventions, on a proportionate, cumulative pro-rata basis, as set out in Developer Contributions Framework Supplementary Guidance.

For the site of this application there is a requirement for developer contributions towards the interventions at Bankton Interchange, Musselburgh Town Centre, Tranent Town Centre and a Rail Package. The **Council's Planning Obligations Officer** has confirmed the contributions required for these interventions are:

These contributions breakdown as follows;

(a) Improvements to Bankton Interchange (PROP T15) - £195.75 per unit - Overall for 16 units = £3,132.00;

- (b) Musselburgh Town Centre Improvements (PROP T17) - £23.93 per unit - Overall for 16 units = £383.00;
- (c) Tranent Town Centre Improvement (PROP T27- £16.83 per unit - Overall for 16 units = £269.00; and
- (d) Rail Network Improvements (PROP T()) - £297.16per unit - Overall for 16 units = £4,755.00;

The total developer contributions towards the transportation interventions of £8539.00 (indexed linked from Q1 2019) can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements.

Policy 18 of NPF4 requires development to take into account the capacity and any additional needs for community services and facilities, as part of the infrastructure first approach. Policy DEL1 of the ELLDP stipulates that proposals for housing will only be permitted where appropriate provision for infrastructure, required as a consequence of the development, is made.

The Council's Planning Obligations Officer also advises that a Secondary Education contribution will be required towards North Berwick High School of £6,733 per unit indexed from Q12 2019 using the BCIS All-in Tender Price Index until date of payment. The total amount required is £107,728 indexed and the date of payment will be set in the S75.

The Council's Planning Obligations Officer advises that there will be no requirement for primary school contributions as there is capacity in the expanded Gullane primary school to accommodate children generated from this proposal for 16 houses.

Additionally, the Council's Planning Obligations Officer advises that contributions towards sports provision and changing contributions are require, including:

- a) Land to the north of the development site, marked on Drawing: SG-PL-300-01 Proposed Site Layout as Recreational Ground, shall be transferred at nil value to the Council for community use;
- b) a financial contribution of £86,000.00 indexed from Q4 2024 to the date of payment using the BCIS All-in Tender Price Index towards the development and maintenance of a grass sports pitch; and
- c) a financial contribution of £24000.00 towards the enhancement of the sport pavilion within the Memorial Park Recreation ground indexed to the date of payment using the BCIS All in Tender Price Index;

Additionally, the Council's Planning Obligations Officer advises that a financial contribution of £567 per unit - Overall for 16 units = £9,072.00 indexed from Q2 2017 to the date of payment using the BCIS All-in Tender Price Index towards the provision of additional play/recreation facilities within Gullane for the residents generated from the development is required.

As per the Adopted Supplementary Guidance: Developer Contributions

Framework, all Strategic Transportation and Secondary Education Contributions will be increased in line with indexation from Q1 2019 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment, the play/recreation contribution will be increased from Q2 2017 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment and the Sports Pitch and Maintenance Contribution and the Pavilion Contribution will be increased in line with indexation from Q4 2024 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment.

The terms for the provision of these contributions for Strategic Transport, Education, Sports Provision and Changing and Play and Recreation can be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set out in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant's agent has confirmed the applicant's agreement to enter into such a Section 75 Agreement.

Subject to the satisfactory conclusion of such an agreement to secure the Strategic Transportation contributions, Education contributions, sports provision and changing contributions and Play and Recreation contributions, the proposal is consistent with NPF4 Policy 18 and Policy DEL1 of the East Lothian Local Development Plan 2018.

Policy HOU3 of the ELLDP require that developments of five or more dwellings must make provision for affordable housing at a rate of 25% of the total number of dwellings proposed for the site. The **Council's Housing Enabler (Strategy and Development)** advises that in accordance with the Council's Affordable Housing Policy, 25% of the proposed 16 residential units (4 units) require to be affordable housing. Due to the small size of the site, the units are in one area of the site.

The Council's Housing Enabler (Strategy and Development) advises that the affordable housing component of the proposed housing development is to be operated by Places for People (Scotland). The Council's Housing Enabler further advises that the affordable housing must meet Housing for Various Need (HfVN) standards and recommends that communication continues with East Lothian Council Strategy and Development Team. Their delivery can be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set out in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant's agent has confirmed the applicant's agreement to enter into such a Section 75 Agreement. Subject to the satisfactory conclusion of such an agreement to secure the 4 affordable housing units, the proposal is consistent with NPF4 Policy 18 and Policies HOU3, HOU4 and DEL1 of the

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:

It is recommended that planning permission be granted subject to:

1. The undernoted conditions.
2. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:
 - (i) a financial contribution to the Council of £8,539.00 towards the provision of strategic transport interventions;
 - (ii) a financial contribution to the Council of £107,728.00 towards the provision of additional North Berwick High School accommodation;
 - (iii) the transfer of land to the north of the development site, marked as Recreational Ground on Drawing: SG-PL-300-01 'Proposed Site Layout', at nil value to the Council for community use;
 - (iv) a financial contribution to the Council of £110,000.00 towards Sports Provision and Changing;
 - (v) a financial contribution to the Council of £9,072.00 towards Play and Recreation;and
 - (iii) the provision of 4 affordable housing units within the application site.
3. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient school capacity, the lack of road and transport infrastructure improvements, and the lack of financial contribution towards sports provision and play and recreation, contrary to, as applicable, Policies DEL1, HOU3, HOU4 and T32 of the East Lothian Local Development Plan 2018 and Policy 18 of NPF4.

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 and flatted buildings 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 buildings 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 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.

- 5 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.

- 6 The 4 residential units approved to be affordable housing units shall be operated as affordable housing and shall not be sold as market housing.

Reason:

In order to ensure the 4 houses are affordable housing and is therefore compliant with Policy HOU3 of the adopted East Lothian Local Development Plan 2018.

- 7 All planting, seeding or turfing comprised in the approved details of landscaping comprised on the drawing titled 'Phase 2 Landscaping 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 drawing.

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 landscape 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.

- 8 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.

- 9 The residential scheme of development hereby approved shall comply with the following transportation requirements:

- i) all roads and paths shall conform to East Lothian Council's Transport Infrastructure in New Developments;
- ii) all path and footway connections from a zone under construction to the existing settlement shall be constructed to an adoptable standard before the occupation of any units in that particular zone; and
- iii) driveways shall have minimum dimensions of 3.3m width by 6m length. Double driveways shall have minimum dimensions of 6m width by 6m length or 3.3m width by 11m length.

Development shall thereafter be carried out in accordance with the details so approved unless otherwise approved by the Planning Authority in consultation with the Roads Authority.

Reason:

In the interests of pedestrian and road safety.

- 10 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.

- 11 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 interests of road safety.

- 12 Prior to the occupation of any of the residential units hereby approved a Residents Travel 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. The Residents Travel 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.

Reason:

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

- 13 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:

o Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.

o Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation.

o Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

The presence of any previously unsuspected or unforeseen contamination that becomes evident during the development of the site shall be brought to the attention of the Planning Authority. At this stage, further investigations may have to be carried out to determine if any additional remedial measures are required.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable prior to the occupation of any of the residential units.

- 14 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.

- 15 Prior to the commencement of development confirmation from Scottish Water shall be provided that demonstrates that there is an available connection to the public sewer and that Scottish Water will accept waste from this development. If Scottish Water cannot accept foul drainage from this site, proposals for alternative arrangements should be provided, prior to the commencement of development and SEPA should be re-consulted.

Reason:

In the interests of ensuring that foul drainage from the site can be accommodated.

REPORT TO: Planning Committee
MEETING DATE: 14 January 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

9

Note: This application has been called off the Scheme of Delegation List by Councillor McGinn for the following reasons: There are concerns this fire escape will open directly against a planned extension to an adjoining building; There are concerns tenants will have to use an access into what is effectively a pub beer garden; and there are concerns at the limited space available in the area the door will open into. I believe the Planning Committee would benefit from a site visit to gain an understanding of the area proposed.

Application No. **24/01007/P**

Proposal Section 42 to vary condition 1 of planning permission
21/00622/P

Location **95A High Street
Tranent
EH33 1LW**

Applicant Mr Altaf Khan

Per Whitelaw Associates

RECOMMENDATION Consent Granted

REPORT OF HANDLING

SITE CONTEXT

This application relates to a two-storey former restaurant building located in a backland location on the south side of High Street, Tranent. It is within Tranent Town Centre and therefore within an area of mixed uses as defined by Policy TC2 of the adopted East Lothian Local Development Plan 2018. It is also within Tranent Conservation Area.

The building abuts the residential property of 10 Well Wynd to the west. To the south is the flatted development of 4 Well Wynd. The building further abuts the

building of 95 High Street to the northeast, in use as a public house. To the north is a vennel leading from Tranent High Street, in use as a beer garden and external storage area associated with the public house. That vennel is closed-off from Tranent High Street by means of a locked roller shutter door. Prior to the installation of that roller shutter door pedestrian access to the former restaurant was taken from Tranent High Street via the vennel by means of an existing external double doorway on the north elevation of the building. Surrounding uses to the north include a takeaway, beauticians and other commercial premises with residential uses at the upper floors.

PLANNING HISTORY

In October 2021 planning permission (ref: 21/00622/P) was granted for alterations and change of use of existing restaurant to form two Houses of Multiple Occupation (HMO) and associated works. That planning permission has been implemented and works to form the two approved HMOs are nearing completion. Pedestrian access to the building is now taken from Well Wynd to the south. Four vehicle parking spaces to serve the approved HMOs have been formed within a parking area to the south of the site.

In August 2024 planning permission (ref: 24/00063/P) was granted for extension to building and erection of gate at 95 High Street. That planning approval grants consent for the erection of a single storey extension to be attached to the side elevation of the existing public house and would be positioned within the existing beer garden and external storage area of the premises. No development has been implemented and planning permission (ref: 24/00063/P) remains extant.

Condition (1) of planning permission (ref: 21/00062/P) states:

'Prior to any use of the building for two houses of multiple occupancy hereby approved: a) the off-street car parking spaces as shown on drawing P1 Rev B titled 'Location and Existing Plans' docketed to this planning permission shall be fully formed and available for use; and b) the existing doors in the north elevation of the building shall be removed and the door opening infilled in accordance with docketed drawing no. P5 rev B.

The off-street car parking spaces shall thereafter be retained in place free from obstruction to use unless otherwise approved by the Planning Authority.

Reason:

In the interests of road safety'

PROPOSALS

Through this application permission is now sought to vary condition 1 of planning permission 21/00062/P to allow the retention of one of the doors in the north elevation of the building, to be used as an emergency access. It is proposed that the condition be varied to read:

'Prior to any use of the building for two houses of multiple occupancy hereby approved the off-street car parking spaces as shown on drawing P1 Rev B titled 'Location and Existing Plans' docketed to this planning permission shall be fully formed and available for use; and b) the easternmost door in the north elevation of the building shall be removed and the door opening infilled in accordance with docketed drawing no. V1.

The off-street car parking spaces shall thereafter be retained in place free from obstruction to use unless otherwise approved by the Planning Authority.

Reason:

In the interests of road safety'

The applicant's agent has provided a statement informing that the variation to Condition 1 as applied for would allow for the retention of an external doorway on the north elevation of the building for use as an emergency exit only and to facilitate essential maintenance if required.

Further information submitted in support of the application purports that the building the subject of this application benefits from a servitude right of access over land to the north that constitutes the vennel. Applicants further confirm a means to access the existing locked roller shutter door.

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).

NPF4 Policies 7 (Historic Assets and Places), 13 (Sustainable Transport), 14 (Design, Quality and Place) and 27 (City, town, local and commercial centres) are relevant to the determination of the application. Also relevant are Policies HOU7 (Housing in Multiple Occupation), TC2 (Town and Local Centres), CH2 (Development Conservation Areas), DP5 (Extensions and Alterations to Existing Buildings) and T2 (General Transport Impact) of the ELLDP.

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

Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

REPRESENTATIONS

Two letters of public objection have been received against the application.

The main grounds of objection are:

- i) the land which the emergency exit door would open onto is outwith the ownership of applicants;
- ii) development approved by planning permission (ref: 24/00063/P) will not allow for access from the proposed emergency exit;

- iii) access to the vennel from Tranent High Street is required to remain locked for security purposes;
- iv) potential for increased noise and disturbance caused by multiple occupants of HMO dwellings; and
- v) potential for detritus.

As stated above, the applicant's agent has provided a statement informing that the building the subject of this application benefits from a servitude right of access over land to the north that constitutes the vennel.

Applicants further confirm a means to access the existing locked roller shutter door.

The matter of potential for detritus is not a material planning consideration relevant to the determination of this planning application.

COMMUNITY COUNCIL COMMENTS

None

PLANNING ASSESSMENT

The use of the building for two HMOs is approved by the grant of planning permission (ref: 21/00622/P). The proposed variation of condition 1 of that planning permission seeks to retain one of two existing glazed timber external doors within the north elevation of the building for use as an emergency exit and to facilitate essential maintenance as required. The vennel to the north of the application site is not readily visible from any public places. Therefore, the external door it is proposed to retain is not visible from any public place and does not have an appreciable effect on, and therefore does not harm the character and appearance of the Tranent Conservation Area. The external door is not contrary to Policies 7 and 14 of NPF4 or to Policies CH2 and DP5 of the ELLDP.

The variation of Condition 1 of planning permission (ref: 21/00622/P) would allow the use of the vennel to facilitate emergency exit from, and access to, the approved HMO building and to undertake any essential maintenance. In the determination of this application, it must be considered whether such uses would harm the amenity of any neighbouring residential properties. A condition can be attached to any planning permission granted to restrict the use of the door to emergency purposes and to facilitate essential maintenance only, safeguarding against potential loss of amenity from use of the vennel for any purpose other than that applied for.

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

The **Council's Road Services** have been consulted and raise no objection to the application.

A revised version of Planning Series Circular 3/2013 (Development Management Procedures) was published by the Scottish Government in September 2015. Annex I of the Circular gives guidance on applications for planning permission under

section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. The application that is the subject of this report is made under section 42 of the Act. Annex I states that, "Planning authorities should attach to the new permission all of those conditions from the previous permission, where it is intended these should apply and ensure (where appropriate) that permission is granted subject to the conclusion of any appropriate planning obligation". Therefore, planning permission should be granted subject to the applied for variation of condition 1 and subject to all of those conditions from planning permission 21/00622/P, where it is intended these should apply. In this case, the conditions that should continue to apply are Conditions 2 (EV Charging) and 3 (Flush Fitting).

It is also necessary to impose two further conditions on this grant of planning permission. Of these additional conditions, one of them is required in accordance with up-to-date planning policy legislation to ensure that the development begins before the expiration of 3 years from the date of this permission. The other condition is required to restrict the use of the external door to emergency purposes and essential maintenance only, thus safeguarding against potential loss of amenity from use of the vennel for any purpose other than that applied for. Accordingly, an appropriately worded condition can be imposed on a grant of planning application to control such use.

The proposed variation of Condition 1 of planning permission 21/00622/P is not contrary to NPF4 Policies 7, 13, 14 and 27 and Policies HOU7, TC2, CH2, DP5 and T2 of the ELLDP. 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.

CONDITIONS:

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

Reason:

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

- 2 Prior to any use of the building for two houses of multiple occupancy hereby approved the off-street car parking spaces as shown on drawing P1 Rev B titled 'Location and Existing Plans' docketed to this planning permission shall be fully formed and available for use; and b) the easternmost door in the north elevation of the building shall be removed and the door opening infilled in accordance with docketed drawing no. V1.

The off-street car parking spaces shall thereafter be retained in place free from obstruction to use unless otherwise approved by the Planning Authority.

Reason:

In the interests of road safety

- 3 At least one dedicated EV charging point per vehicle parking space shall be provided for each of the houses of multiple occupancy hereby approved. Such provision should involve engagement with electricity providers to ensure that the entire electricity supply infrastructure will have sufficient capacity to enable all chargepoints to operate simultaneously.

Reason

In the interests of sustainability.

- 4 The new roof windows hereby approved shall be installed in a manner that ensures their upper surface is as near flush as possible with the upper surface of the roof into which they will be installed and with minimum flashing, unless otherwise approved by the Planning Authority.

Reason:

To reduce the visual impact of the roof windows in the interest of safeguarding the character and appearance of the building and the character and appearance of the Conservation Area.

- 5 The emergency door hereby approved for the rear (north) elevation of the building shall, unless required for emergency purposes or essential maintenance, be kept in the closed position and shall not be used as a general entrance for resident access/egress.

Reason:

In the interests of protecting the residential amenity of the area.