

REPORT TO: Planning Committee

MEETING DATE: 4 February 2025

BY: Executive Director – Place

SUBJECT: 24/00008/SGC: Energy Consents Unit (ECU) Consultation: Electricity Act 1989 – Application for battery energy storage system and associated infrastructure. Amendment to application ECU reference: ECU00004926, to sub divide the site with Parcel B being formed, comprising 102 MW of BESS and associated infrastructure, Land to South-West of Inglis Farm, Cockenzie

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ECU Application No. ECU00006022

ELC Reference No. 24/00008/SGC

Proposal Electricity Act 1989 – Application for Battery Energy Storage System and Associated Infrastructure. Amendment to application ECU Reference: ECU00004926, to sub divide the Site with Parcel B being formed, comprising 102 MW of BESS and Associated Infrastructure.

Location Land South-West of Inglis Farm, Cockenzie, EH32 0JT

Applicant Naomi Warrenberg

Cockenzie Storage B Limited
2 Upperton Gardens, Eastbourne, BN21 2AH

Ward 02 Preston, Seton, Gosford

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 battery energy storage system is to be treated as an electricity generating station.

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 battery energy storage system on land South-West of Inglis Farm, Cockenzie. 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

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ENERGY CONSENTS UNIT (“ECU”) CONSULTATION: PROPOSED BATTERY ENERGY STORAGE SYSTEM ON LAND SOUTH-WEST OF INGLIS FARM, COCKENZIE (REFERRED THROUGHOUT THIS REPORT AS “COCKENZIE BESS”), EAST LoTHIAN COUNCIL’S RESPONSE

Proposed Battery Energy Storage System (BESS), Transformers, Substations and Associated Infrastructure

BACKGROUND

This application has been made to the Scottish Ministers under Section 36 of the Electricity Act 1989 for the construction and operation of a Battery Energy Storage Facility (BESS). 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.

Application ECU Reference: ECU00004926 was previously considered by ELC Planning Committee at its meeting on 4th June 2024 ([Agendas, reports and minutes | East Lothian Council](#)). This application is still under consideration by the Scottish Ministers and now the application is proposed to be amended to sub-divide the site into Parcel A and Parcel B. The amended application is referred to as “Cockenzie

BESS - Amended Application (Application A). Parcel A is to comprise 240MW of BESS with supporting infrastructure. The new S36 application is referred to as “Cockenzie BESS - New Application (Application B)” and would comprise of 102 MW of BESS with supporting infrastructure in Parcel B.

The underlying development proposed on Parcel A and B is fundamentally the same as in the original application (ECU Reference: ECU00004926) which was subject to statutory consultee comments in 2024. Also, all mitigation and enhancements remain the same as in the original application. Therefore, no physical differences are now proposed to the scheme of BESS development approved by Planning Committee at their meeting of the 4th June. The proposal only seeks to sub-divide the site into Parcel A and Parcel B.

The application site measures approximately 15.2ha in size and is located on land south-west of Inglis Farm, Cockenzie, East Lothian, EH32 0JT. The northern section of the site comprises agricultural land (categorised as prime agricultural land of class 1) with small areas of grassland and woodland. The southern section of the site covers part of the approved Cockenzie Link Road scheme (Ref: 22/00440/P) and part of the former coal store. The BESS equipment would be located within the northern section of the larger application site i.e. north of the approved, but as yet unbuilt, Cockenzie Link Road. The BESS equipment would be constructed within two separate compounds or parcels ie Parcel A that would accommodate batteries of 240MW of installed capacity (considered under the original application ECU Reference: ECU00004926) and Parcel B with batteries of 102MW capacity. The application that is the subject of this report is for Parcel B and supporting infrastructure that would be located within the red line boundary of the application site.

The closest residential properties at Whin Park are located approx. 150 metres north of the proposed battery containers included within Parcel B. A large area of open space, including a playing field and play area called Whin Park is located immediately to the north of the application site. The nearest battery containers within Parcel B would be sited some 130 metres from this play area.

The site is within the inventory Battlefield for the Battle of Prestonpans and an area allocated in the adopted LDP as Proposal EGT1 (Land at Former Cockenzie Power Station).

On 11th of September 2023, the Scottish Ministers issued an Environmental Impact Assessment (“EIA”) screening opinion that the proposal does not constitute EIA development and that the application submitted for this development is not required to be accompanied by an EIA report.

PROPOSAL

The proposed application is for a 102MW BESS facility that would consists of:

- 44 battery containers
- 11 transformers
- 22 inverters
- 1 switchgear containers,

- a control building,
- a customer control room
- 2 water storage tanks,
- a surface water pump station,
- access tracks,
- fencing,
- a 2.8m high noise attenuation landscaped earth bund,
- planting, and
- gates and associated infrastructure.

The proposed BESS facility is intended to provide electricity for export to the grid from batteries which will store surplus electricity to be fed into the grid when required at short notice. A maximum of 102MW of electricity would be imported and exported from the application site to the grid network as required. The development would consist of 44 lithium-ion battery containers. There will also be three containers for Customer switchgear and one control building.

The battery storage units would be arranged in rows 7m in length, 2.8m wide, and 3.1m in height. The Proposed Development will also require associated infrastructure that will allow the power to be imported from and exported into the grid, including two substations, inverters and transformers with some individual elements of this infrastructure being in the region of 13.7m in height.

The nature of BESS facilities means that the technology operates at varying times of the day dependent on demand.

There are two points of access to the site. The first being from the west, off the B1348, this would be for emergency and maintenance purposes only. The second main access would be taken from the south east, from the B6371. This would be for construction purposes. These points of access would be used until such time as they are replaced by a replacement road that would link the B1348 with the B6371 (the approved Cockenzie Link Road).

The construction of the proposed development would take approximately 12-14 months with the majority of the construction to be completed in a 4–6-month period. Once completed, the site will be operated remotely, however there will be weekly maintenance and inspection visits (taking access from the west off the B1348).

THE DEVELOPMENT PLAN

The application is made under the Electricity Act 1989 and not the Planning 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 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. Relevant Policies are:

- 1 – Tackling the climate and nature crises
- 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
- 11 – Energy
- 13 – Sustainable Transport
- 14 – Design, Quality and Place
- 22 – Flood risk and water management
- 23 – Health and safety

Local Development Plan

The following policies and proposal are relevant:

- EGT1 (Land at Former Cockenzie Power Station),
- NH5 (Biodiversity and Geodiversity Interest, including Nationally Protected Species),
- NH7 (Protecting Soils),
- NH8 (Trees and Development)
- NH11 (Flood Risk),
- NH12 (Air Quality)
- NH13 (Noise)
- OS1 (Protection of Open Space)
- Policy CH5 (Battlefields)

T2 (General Transport Impact),
T4 (Active Travel Routes and Core Paths as part of the Green Network Strategy),
DP1 (Landscape Character),
DP2 (Design); and
SEH2 (Low and Zero Carbon Generating Technologies).

REPRESENTATIONS

East Lothian Council has received 25 written representations, all of which make objection to the proposed development.

The main grounds of objection can be summarised as follows:

1. Loss of prime grade 1 arable greenfield land.
2. Lack of key information that is required to assess the proposal eg lack of an Emergency Plan or an Evacuation Plan
3. Impact on amenity and environment. The proposed BESS would be one of the largest such installations in Scotland and is far too close to housing, a school, a doctor's surgery, a play park and the main route in and out of the area. There are concerns of the noise from the air-cooled air conditioning units that will operational continuously.
4. There are concerns about the safety aspects of building this facility so close to our community. There are concerns about any coherent safety plan in place and if the local fire service have the ability to cope with a fire and toxic fumes. The objections highlighted that given the prevailing winds, the whole community would be affected by this. The Battery Storage Safety Management Plan submitted by the applicant is insufficient.
5. Future of the site and impact wider ecosystem. In the event of accident and potential contamination what assurances exist that the site can be returned to prime arable land? There are concerns of a risk of contaminated water entering the Forth. Also some objectors expressed their concerns of the acoustic impacts on protected species such as bats.
6. There is already a vast amount of BESS consented within the UK, including in Scotland, and surely there should be a national process to evaluate suitable sites.
7. Concern over the structure of the company who will be building and operating these BESS systems.

There are a number of BESS already consented in the United Kingdom. However it is still open for developers to seek consent for new BESS, and each application must thereafter be treated on its individual merits.

The structure of the operating company is not a material consideration in the determination of this application.

COMMUNITY COUNCIL COMMENTS

Cockenzie & Port Seton Community Council raised the following objections:

1. The proposed site is greenfield grade 1 arable land, sitting as the only such site (approx. 5ha) within a much larger site of approx. 100ha the vast majority of which is brownfield and requiring redevelopment.
2. Due to the proximity of the site to housing, Cockenzie Primary School, and major routes into and out of Cockenzie and Port Seton additional concerns are raised around Impact on Amenity and Safety. Some representatives of the renewable energy industry sector would not consider sites within 200m of residential properties.
3. The acoustic impact on surrounding properties and wildlife populations, in particular bats, must be considered.
4. As regards safety, the current application is either deficient or wilfully misleading. National Fire Safety Services (Ltd) produced a report which describes the primary battery technology as Lithium-Ion Phosphate (not a recognised technology). Lithium-Ion is the more dangerous (lower thermal runaway threshold, at 100C when fully charged and as little as 80C when overcharged, and potential for production of Hydrofluoric Acid in an emergency situation). Before a decision can be reached a full safety analysis including Plume Assessment, Evacuation Plan, Emergency Response plan all involving SFRS must be carried out.

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.

Proposal EGT1 of the adopted East Lothian Local Development Plan 2018 is of relevance in the determination of this application, as almost the entire site is located within the EGT1 allocation. This Proposal states that land at the above site “will be safeguarded for future thermal power generation and carbon capture and storage consistent with National Development 3. Land at Cockenzie may also present significant opportunities for renewable energy-related investment. The Council will work together with developers, the landowner, the relevant agencies, local organisations and interested parties, including local residents to ensure that the best use is made of the existing land and infrastructure in this area. If there is insufficient land for competing proposals, priority will be given to those which make best use of the location’s assets and which will bring the greatest economic benefits. Development proposals must avoid unacceptable impact on the amenity of the surrounding area, including residential development”.

The ELLDP helps 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.

Generally, both NPF4 and the LDP look to focus development within settlements or previously developed land, with only limited types of development being acceptable in the countryside. Proposal EGT1, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may also present significant opportunities for renewable energy related investment. By being a form of renewable energy related investment, the proposal is not inconsistent with Proposal EGT1.

The northern tip of the site is allocated within the ELLDP as existing open space and therefore Policy OS1 (Protection of Open Space) is relevant to the determination of this application. This Policy states that recreational, leisure and amenity open space and facilities, including outdoor sports facilities, will be safeguarded to meet the recreational needs of the community or protect the amenity or landscape setting of an area. Alternative uses will only be considered where there is no significant loss of amenity or impact on the landscape setting and:

- i. the loss of a part of the land would not affect its recreational, amenity or landscape function, or
- ii. alternative provision of equal community benefit and accessibility would be made available, or
- iii. provision is clearly in excess of existing and predicted requirements.

With regards to this part of the application site, the proposal includes tree planting and landscaping and therefore it would not change the function of the existing open space allocation. Therefore, this element of the proposal is consistent with Policy OS1 of the ELLDP.

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

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

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

However, it is important to ensure that the lifecycle carbon impacts of the proposal itself are assessed and mitigated. At its meeting on the 27th of August 2019 the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on the 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority a report on the actions to be taken to reduce the carbon emissions from the completed development should be imposed on consents for relevant development proposals.

It is recommended that such a condition should be imposed on any consent for this proposed development, consistent with the requirements of Policy 2 of NPF4 and Policy SEH2 of the ELLDP.

BIODIVERSITY

The proposal is supported by Habitat Regulations Assessment (HRA) and Ecological Impact Assessment (EclA) which are included within this application. The Energy Consent Unit who, under the Habitats Regulations, are the competent authority is required to consider the effects of the proposal on the Firth of Forth Special Protection Area.

Having considered the submitted information, the Biodiversity officer is content that the proposal would not impact on bats and that no further surveys or assessments are required in this regard. The **Council's Biodiversity Officer** does not raise any objections to the current proposal subject to implementation of the recommended conditions relating to ecology and a Landscape and Ecological Mitigation and Management Plan. Subject to the imposition of this recommended condition the proposal conforms with NPF4 Policy 3.

LANDSCAPE AND VISUAL IMPACT

The land of the application site is allocated by Proposal EGT1 of the ELLDP and thus forms part of the former Power Station site. It is located north to the approved (yet to be built) link road and to the southeast of the existing substation.

The **Council's Landscape Projects Officer** comments on the previously considered application (Application ECU Reference: ECU00004926) noted that the proposed development would be seen in the context of the existing infrastructure e.g. electricity pylons, electricity substations. The Landscape Officer does not raise any objections to the current proposal subject to implementation of the recommended conditions.

HISTORIC ENVIRONMENT

The **Council's Archaeology/Heritage Officer** advises that given the location of the proposal there is no or minimal indirect impacts likely on the historic environment. In relation to direct impacts there is some potential for buried archaeological remains to be impacted and therefore the Council's Archaeology/Heritage Officer would advise that an Archaeological Programme of Works (5% Evaluation by archaeological trial trench) is carried out on the area of the development which lies outside the former coal store. If consent is granted it is recommended that this requirement be secured by the imposition of a condition.

SOILS

NPF4 has a strong policy presumption against development that is located on prime agricultural land. However, one exception is where the proposal is for 'essential infrastructure and there is a specific locational need and no other suitable site'. The definition of 'essential' infrastructure in the NPF includes energy storage and generation technologies therefore covering this proposal.

Policy EGT1 of the adopted East Lothian Local Development Plan 2018 states that land at Cockenzie may present significant opportunities for renewable energy-related investment.

The agricultural land classification for the site is the highest Class 1 – land capable of producing a very wide range of crops. However, this classification was previously considered when East Lothian Council allocated the wider site for development through Proposal EGT1 of the ELLDP.

The proposed development is essential infrastructure with a specific need for its location, justified by its site selection process, to reinforce the electricity transmission system, supporting a secure and stable supply of energy as part of National Development 3 of NPF4. Therefore, the proposed development is not inconsistent with Policy 5 of NPF4 or Policies NH7 and EGT1 of the adopted East Lothian Local Development Plan 2018.

NOISE AND VIBRATION AND AMENITY

The applicant has undertaken an Acoustic Design Specification report which looks at the noise impact of the proposed BESS on properties ('noise-sensitive receptors'). A number of residential and non-residential properties have been selected including those located in Cockenzie on: Inglis Farm (80m distance from the source of noise), The Chimneys (90m distance from the source of noise) and in Prestonpans on: Cedar Drive (150 distance from the source of noise) and Atholl View (168m distance from the source of noise).

The **Council's Senior Environmental Health Officer** reviewed the noise report submitted with the previous application (Application ECU Reference: ECU00004926) and was satisfied that, subject to mitigation measures being adopted, the development will not result in any significant loss of amenity to the occupants of those nearby residential properties. The Senior Environmental Health

Officer has no additional comments to make regarding the current proposal as all previously discussed noise attenuation measures remain in place.

Subject to the recommended noise control being secured by a conditional grant of consent, the Council's Senior Environmental Health Officer raises no objection to the proposed Cockenzie BESS, being satisfied that it would not have an unacceptable impact on the residential amenity of nearby properties.

The **Council's Senior Environmental Compliance Officer** raises no objection to the proposal in respect of ground contamination.

The Cockenzie BESS would be located sufficiently far from the nearest residential properties such that it would not harm their residential amenity through harmful loss of sunlight or daylight.

FLOOD RISK

The proposal is supported by a Flood Risk Assessment (FRA) and Surface Water Drainage Strategy.

The **Council's Flood Protection Manager** did not submit comments on the current application. However, with regards to the previous application (Application ECU Reference: ECU00004926) he provided the following comments which are considered to be relevant to the current proposal.

It was confirmed that SEPA's Flood Hazard Mapping indicates that the site is not at risk from a river or coastal 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.

There are however small pockets of surface water flood risk shown on the northern side of the site at a 1 in 200-year surface water flood event.

The applicant has submitted a Drainage Strategy and Flood Risk Assessment as part of their application, highlighting the risk and proposed mitigation measures.

The Council's Flood Protection Manager previously advised that the Drainage Strategy is appropriate and highlighted the measures which he would seek to see in a drainage strategy. It is stated that the surface water will be directed through the ground, to a SUDS detention basin, where it will then be pumped and discharged into a private sewer to the South. The discharge rate is limited to 10.9l/s/Ha, having been calculated using existing greenfield runoff rates. The detention basin is to provide attenuation up to a 1 in 200 + CC (40%) level without flooding. A safe route is shown for any overspill above this.

It is noted that the applicant has, as per Figure 5.4 of the FRA, highlighted that none of the infrastructure is situated within the river, surface water or coastal functional flood plain (1 in 200 year) as identified by SEPA's Flood Hazard Maps. The Senior Engineer was previously content with this approach.

The Council's Flood Protection Manager expects Micro Drainage or similar calculations to be submitted to provide evidence of the statement that the drainage will not surcharge at a 1 in 30 + CC (40%) flood event. The applicant will be required to submit this information.

The Council's Flood Protection Manager advised that within the drainage layout drawing, it is noted that the "Connection to Existing Drain to be confirmed". The applicant will be required to clarify that there can be a connection made to this drain before the Senior Engineer could accept the approach.

The submission of Micro Drainage or similar calculations and clarification that the new drainage can tie into the existing drain on the southern side can both be secured by a conditional grant of consent for the proposed development. Subject to this, the Council's Flood Protection Manager previously raised no objection to the Cockenzie BESS proposal on the grounds of flood risk or drainage.

TRANSPORTATION AND ACCESS

The Cockenzie BESS would be located immediately to the north of the link road approved by the grant of planning permission 22/00440/P. The approved link road includes a footway on the northern side of the carriageway. Such a footway is necessary to provide a safe means of access for pedestrians. The **Council's Road Services** commented that the shared-use path is now on the south side of the new link road and that the BESS proposal should take full account of the active travel connections in the area, in particular the raised tables proposed over the side roads of the link road.

The plans submitted for the Cockenzie BESS Parcel B application show that the footway could be formed in accordance with planning permission 22/00440/P.

The Council's Road Services confirmed that the following comments submitted for the previous application (Application ECU Reference: ECU00004926) are still relevant:

1. A dilapidation survey of the construction traffic access route should be undertaken before commencement of development
2. All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
3. The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
4. As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
5. Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning

Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.

6. Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.

These matters can all be secured by a conditional grant of consent for the proposed development.

The Council's Road Services further advise that all works within or affecting the public road including works on paths and footways must be authorised in advance by this Council. Further, any proposals, which include new or extended public roads, will also require Road Construction Consent prior to carrying out any works and for which application should be made to the Head of Infrastructure.

FIRE RISK

Several objections have been received on this issue raising concerns about the fire risk and proximity to residential properties.

Scottish Fire and Rescue Services did not provide comments on the current application.

Scottish Fire and Rescue Services previously advised however that there is currently no statutory requirement for Fire and Rescue Services (FRSs) to engage in the planning process of 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 BESS 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 Cockenzie BESS is acceptable, as Proposal EGT1 of the ELLDP, which covers the application site and the wider former Power Station site, states, amongst other things, that land at Cockenzie may present significant opportunities for renewable energy related investment. The proposed development would also contribute towards the increased decarbonisation of our electricity system, consistent with Scottish Government objectives.

It is considered that the proposal complies with the policies of the adopted East Lothian LDP and NPF4.

The Council further recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or

that the matter of fire risk is competently dealt with under other legislation.

RECOMMENDATION:

1. The Council strongly recommends that the ECU should satisfy themselves that either the proposed BESS would not result in an unacceptable fire safety risk or that the matter of fire risk is competently dealt with under other legislation. The Council further recommends that the ECU should consider whether a safety management plan should be required. The ECU should also consider whether it is necessary to further consult with the Health & Safety Executive on this matter.
2. 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
3. That the East Lothian Chief Planning Officer be authorised to undertake any discussions with the Scottish Government Energy Consents Unit to resolve any issues relating to conditions to be attached to the consent if required; and
4. That if consent is granted then it be subject to the following conditions:

REQUIRED CONDITIONS

Part 1 - Conditions attached to the Section 36 Consent

1. Commencement of Development

- (1) The Commencement of the Development shall be no later than three years from date of this consent, or such other period as the Scottish Ministers may direct in writing. Written confirmation of the intended date of Commencement of Development shall be provided to the Scottish Ministers and the Planning Authority no later than one calendar month before that date.

***Reason:** To ensure that the Development is commenced within a reasonable period. And to allow the Planning Authority and Scottish Ministers to monitor compliance with obligations attached to this consent and deemed planning permission as appropriate.*

2. Notifications

- (1) Written confirmation of the Date of Final Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

***Reason:** To allow the Planning Authority and the Scottish Ministers to calculate the date of expiry of the consent.*

3. Assignment

- (1) The Company must not assign the consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment, with or without conditions or refuse the assignment.
- (2) In the event that the assignment is authorised, the Company shall notify the Planning Authority and Scottish Ministers in writing of principal named contact at the assignee and contact details within fourteen days of the consent being assigned.
- (3) The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with this condition.

Reason: *To safeguard the obligations of the consent if transferred to another company.*

4. Serious Incident Reporting

- (1) In the event of any breach of health and safety or environmental obligations relating to the Development causing harm to the environment (including harm to humans) during the period of this consent, written notification of the nature and timing of the incident shall be submitted to the Scottish Ministers within twenty-four hours of the incident occurring, including confirmation of remedial measures taken and/or to be taken to rectify the breach.

Reason: *To keep Scottish Ministers informed of any serious incidents which occur, and which may be in the public interest.*

5. Design and Operation of Storage Technology

- (1) There shall be no Commencement of the Development unless and until details of the Storage Technology and Approved Layout to be implemented, including final details of access and water supply for emergency services, have been submitted to and approved in writing by the Scottish Ministers in consultation with the Planning Authority. The Storage Technology details and infrastructure, including the battery storage units to be deployed, shall be consistent with the Application.
- (2) Thereafter, the Development shall be installed and maintained in accordance with the approved details, unless otherwise agreed in writing by the Scottish Ministers in consultation with the Planning Authority.

Reason: *In the interests of protecting the environment and visual amenity.*

Part 2 - Conditions attached to Deemed Planning Permission

6. Implementation in accordance with Approved Layout and requirements of the section 36 consent

- (1) Except as otherwise required by the terms of this consent and deemed planning permission the Development shall be undertaken in accordance with the Application, the planning drawings and all documentation lodged by the Company or its appointed agents on behalf of the Company in support of the Application. For avoidance of doubt this includes any recommended or proposed measure to avoid, minimise or offset any identified potential impact of the Development which is committed to or recommended in the Application and its constituent assessments.

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

7. Commencement of development

- (1) The Development must be begun not later than the expiration of three years beginning with the date of this consent.
- (2) Written confirmation of the intended date of Commencement of Development shall be provided to the Planning Authority and the Scottish Ministers no later than one calendar month before that date.
- (3) There shall be no Commencement of Development unless and until details of the phasing of the Development has been submitted to and approved in writing by the Planning Authority. Thereafter the Development shall be implemented in accordance with the approved phasing scheme unless any change is agreed in advance in writing by the Planning Authority.

Reason: *To comply with section 58 of the Town and Country Planning (Scotland) Act 1997 and to ensure that the permission is implemented within a reasonable period and to allow the Planning Authority to monitor compliance with obligations attached to this planning permission as appropriate, and to ensure a properly programmed development.*

8. Colours

- (1) 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.*

9. Environmental Impact

- (1) 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.*

10. Species Protection Plan

- (1) Unless otherwise agreed in writing by the Planning Authority through the submission and approval of a Species Protection Plan prior to the commencement of development, no removal of hedgerow, trees or clearance of vegetation within the site shall take place during bird breeding season (which is March-August inclusive).

Reason: *In the interests of safeguarding biodiversity interests.*

11. Construction Environmental Management Plan

- (1) There shall be no Commencement of Development unless and until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The CEMP shall include (but not be limited to) provisions in respect of:
 - a) mitigation measures for potential dust, noise, and vibration impacts on nearby properties;
 - b) waste management, pollution control and mitigation;
 - c) surface water management;
 - d) procedures for monitoring compliance and dealing with any breaches of the approved management plan;
 - e) the formation of access from the public road to accommodate construction vehicles;
 - f) access geometry, surfacing, and sightlines (this should specify both the construction and post construction access arrangements);
 - g) the additional signage on both public roads where access will be taken to inform drivers of the construction vehicles;
 - h) details of proposed temporary site compound for storage of materials;
 - i) machinery, and designated car parking;
 - j) details of a routing plan for deliveries to the Site; and

- k) a timetable for the construction phase including confirmation of site operating times on each day of the week.

The measures set out within the approved CEMP shall thereafter be implemented in full.

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

12. Public Access Management Plan

- (1) Prior to the commencement of development a Public Access Management Plan shall be submitted to and approved in writing by the Planning Authority. The Public Access Management Plan shall include the following details:
 - a) Measures to manage and control the speeds of construction traffic, including advisory speed limit signage on the local road network; and
 - b) Details of any temporary and permanent infrastructure that will be delivered to ensure the safe and convenient active travel routes in the local area, including a timetable for the implementation of the measures.

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

Reason: *To ensure the safe continuation of public access and amenity.*

13. Financial Guarantee

- (1) There shall be no Commencement of Development unless and until a bond or other form of financial guarantee, which secure the cost of performance of all decommissioning, restoration and aftercare obligations referred to in condition 14 is submitted to and approved in writing by the Planning Authority.
- (2) 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 referred to in condition 14.
- (3) The financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all decommissioning, restoration and aftercare obligations referred to in condition 14.
- (4) 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.

- (5) It shall be the responsibility of the applicant to fund any work undertaken by a suitably qualified independent professional.

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.

14. Site Decommissioning, Restoration and Aftercare

- (1) The Development will disconnect from the grid and cease to import or export electricity no later than the date falling forty 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 forty-one years from the Date of Final Commissioning without prior written approval of the Scottish Ministers in consultation with the Planning Authority.
- (2) No Development shall commence until a Decommissioning, Restoration and Aftercare Strategy has been submitted to and approved in writing by the Planning Authority. The strategy shall include measures for the decommissioning of the Development, restoration and aftercare of the Site and will include, without limitation, proposals for the removal of the above ground elements of the Development, confirmation of the status of subterranean elements of the Development (retention, removal, or other such proposal), the treatment of ground surfaces, the management and timing of the works and environmental management provisions.
- (3) No later than 3 years prior to decommissioning of the Development or the expiration of the consent (whichever is the earlier) a detailed Decommissioning, Restoration and Aftercare Plan, based upon the principles of the approved Decommissioning Strategy, shall be submitted to the Planning Authority for written approval. The detailed Decommissioning, Restoration and Aftercare Plan, will provide updated and detailed proposals for the removal of the Development, the treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include:
 - a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases); to include the items listed in the CEMP site waste plan.
 - b) details of the formation of the construction compound, welfare facilities, any areas of hardstanding, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
 - c) a dust management plan;

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

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

15. Removal of redundant equipment

- (1) The Company shall supply to the Planning Authority an annual written report confirming that the battery energy storage facility is importing and exporting electricity to the grid. If the battery storage facility fails to import or export electricity to the grid for a continuous period of 12 months, then unless otherwise agreed in writing with the Planning Authority, the Company shall no later than one year after the last day of this 12-month period submit the Site Decommissioning, Restoration and Aftercare Plan to the Planning Authority for approval and implement it in accordance with condition 14.

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

16. Drainage

(1) Prior to the commencement of development, the following details shall be submitted to and approved by the Planning Authority:

- The submission of Micro Drainage or similar calculations; and
- clarification that the new drainage can tie into the existing drain on the southern side of the site.

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.*

17. Construction Traffic

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

- a) All vehicles likely to access the site must have room to turn within the site to avoid the need for reversing out onto the public road (existing and proposed public road)
- b) a dilapidation survey of the construction traffic access route
- c) The core paths and permissive route shown on the Landscaping plan must remain accessible at all times or an appropriate alternative pedestrian route provided.
- d) As noted by Transport Scotland the Abnormal Loads Assessment Report is outstanding and will be required for approval prior to commencement of development
- e) Prior to the movement of any abnormal load, any accommodation measures required on the local road network, including the removal of street furniture, junction widening and traffic management must be the subject of a Road Safety Audit, and subsequently approved and implemented to the satisfaction of the Planning Authority. Any resultant reinstatement works should be approved at the same time and be implemented within the agreed timeframe.
- f) Temporary measures will be necessary to deal with surface water run-off during construction of the site, in accordance with the requirements of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 and General Binding Rules.
- g) details of temporary signage in the vicinity of the site warning of construction traffic;

- h) details of wheel washing facilities which must be provided and maintained in working order during the period of construction and/or decommissioning of the site. All vehicles must use the wheel washing facilities to prevent deleterious materials being carried onto the public road on vehicle wheels;
- i) details of how the behaviour of contractor and subcontractor drivers will be monitored and enforced with particular regards to vehicle speeds; and
- j) a Staff Travel Plan to include measures to minimise dependency on the private car to and from the construction compounds.

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

Thereafter the approved programme of monitoring shall be implemented. Any remedial works required to those public and trunk 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 the development that is identified during the monitoring which could result in a significant risk to road safety shall be repaired immediately.

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

18. Abnormal Loads

- (1) Prior to commencement of deliveries to site, the proposed route for any abnormal loads on the trunk road network must be submitted to and approved by the Planning Authority, in consultation with Transport Scotland as the trunk roads authority.

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

- (2) Prior to the movement of any abnormal load, any accommodation measures required on the trunk road network, including the removal of street furniture, junction widening and traffic management must be approved and implemented to the satisfaction of the Planning Authority, in consultation with Transport Scotland.

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

- (3) Prior to the movement of any components and/or construction materials, any additional signing or temporary traffic control measures deemed necessary on

the trunk road network due to the size or length of any loads being transported must be undertaken by a recognised QA traffic management consultant, to be approved by Transport Scotland.

Reason: *To ensure that the transportation of any components/materials will not have any detrimental effect on the road and structures along the route.*

19. Noise

(1) Prior to the commencement of development, a further noise report shall be submitted to and approved by the Planning Authority. The further noise report shall:

a) Specify the detailed engineering that is required to provide attenuation to the following equipment, in order to accord with part c) of this condition:

- Battery Containers,
- Inverters,
- Transformers,
- Substation Transformers;

b) Provide details of a 4m high bund that will be installed to the north boundary of the compound to provide further attenuation to the houses of Inglis Farm, The Chimneys and Cedar Drive. All perimeter fencing around the equipment compounds will be 4m acoustic fencing as outlined in Figure 6 of Ian Sharland Ltd's Noise Report of 14th January 2024; and

c) Demonstrate that the following noise limits can be met:

- For operational noise, the Rating Level, LArTr, of noise associated with the operation of the proposed facility when measured at least 3.5m from the façade of any neighbouring residential property in freefield conditions, shall be no more than 5dB (A) above the background noise level, LA90,T. All measurements to be made in accordance with BS 4142: 2014+A1:2019 "Methods for Rating and Assessing Industrial and Commercial Sound".

The further noise report shall also contain a timetable for the implementation of all necessary mitigation measures.

Development shall thereafter be carried out in accordance with the further noise report so approved, and operational noise from the battery energy storage system shall comply with the noise limits set out above.

Reason: *To safeguard the amenity of nearby noise sensitive properties*

20. Lighting

- (1) There shall be no Commencement of Development unless and until details of external lighting (including details of the lighting units and any emergency lighting, the time period for illumination for each unit, the angle and intensity of illumination and hours of operation) has been submitted to and approved in writing by the Planning Authority. Unless essential emergency lighting only, any other lighting must not be operational unless personnel are on site.

Reason: *In the interests of visual amenity in the area, and to avoid unnecessary light disturbance*

21. Archaeological works

- (1) There shall be no commencement of development until the applicant has undertaken and reported upon a Programme of Archaeological Work (5% Evaluation by archaeological trial trench) of the area of the development which lies outside the former coal store with a written scheme of investigation which has been submitted by the applicant (or their agent) and approved by the Planning Authority.

Reason: *In the interests of archaeological and natural heritage.*

22. Coal mining legacy

- (1) Prior to the commencement of development, a competent person must be employed by the Company to carry out a positional review of the mine entry in the area, to calculate its potential area of departure and zone of influence and to prevent unauthorised access into this area of potential instability.
- (2) Once the potential area of departure and zone of influence has been ascertained, no works must be undertaken during the construction and operation of the development.

Reason: *In the interests of public safety.*

23. Landscape and Ecological works

- (1) There shall be no Commencement of Development until an updated Landscape Masterplan, and a Landscaping and Ecological Mitigation and Monitoring Plan (LEMMP), has been submitted to and approved in writing by the Planning Authority. Thereafter, the approved scheme shall be fully implemented prior to the site becoming operational, unless otherwise agreed in writing by the Planning Authority.
- (2) The LEMMP shall cover the forty year life of the development and shall detail 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.

- (3) The updated Landscape Masterplan shall include (but not be limited to) the following:
- a) A full planting plan and planting schedule and specification (with the maximisation of native planting species for new planting and mitigation for loss of existing features);
 - b) A scheme of earthworks including levels to all bunds and SUDS basins
 - c) Woodland creation;
 - d) Hedgerow planting;
 - e) Appropriate habitat creation to the SUDS basin
 - f) A programme of management, replacement planting, thinning and pruning with a typical 12-month cycle for the forty year life of the development;
 - g) Details of measures if reptiles are found during construction;
 - h) Precautionary measures for the protection of mammals during construction;
 - i) Specification of the timetable for implementation (to account for breeding birds, and all other seasonal requirements) and management thereafter for a thirty year period;
 - j) Tree protection measures for trees retained on and adjacent to the site to include temporary protective fencing in accordance with figure 2 of BS5837:2012 and ground protection as required;
 - k) Details of existing trees on and adjacent to the site including their root protection areas as defined by BS5837:2012.

Reason: In order to ensure the planting is acceptable at this location, and in the interests of visual amenity and ensure that species and habitats affected by the development are afforded suitable protection during the construction and operation of the development.

REPORT TO: Planning Committee
MEETING DATE: 4 February 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

2

Application No. **24/01266/PM**
Proposal Section 42 application to vary Condition 6 of planning permission 18/01366/AMM
Location **Land At Saltcoats Field
Gullane
East Lothian**

Applicant CALA Homes (East) Ltd

RECOMMENDATION Consent Granted

REPORT OF HANDLING

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

SITE CONTEXT

This application relates to the housing development under construction at Saltcoats Fields granted planning permission in principle Ref: 16/00594/PPM in 2018 and Approval of Matters (Specified in Conditions of planning permission in principle 16/00594/PPM) Ref: 18/01366/AMM in September 2019.

Condition 6 of Approval of Matters (ref: 18/01366/AMM) was granted subject to a number of conditions. Condition 6 of that planning permission states:

"No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping.....".
Condition 6 also specified the details the scheme of landscaping should incorporate within it including:

"that no shrub planted or hedged area shall be narrower than 1.5m to enable successful establishment of the landscaping to ensure successful amenity for the development....."

In accordance with Condition 6 a scheme of landscaping was submitted by the applicant prior to development commencing in 2021. That scheme of landscaping was reviewed by the Councils Landscape Officer who was satisfied with the details and therefore that scheme of landscaping was approved. However, notwithstanding that the scheme of landscaping was acceptable it included some areas of hedging that were 0.6m in width and therefore narrower than 1.5m in width contrary to the wording of condition 6.

Therefore this application, submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997, seeks to vary the wording of condition 6 of Approval of Matters (ref: 18/01366/AMM) to remove the requirement for all hedging to be no narrower than 1.5m in width to reflect the details submitted in the scheme of landscaping approved in 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 National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (ELLDP).

In terms of Policies 1, 2 and 3 of NPF4, the contribution this development could make to addressing the climate and nature crises (Policy 1), to make adjustments or incorporate features that reduce greenhouse gas emissions (Policy 2), or to protect, conserve, restore and enhance biodiversity (Policy 3), is largely predetermined by the previous planning permission (ref: 18/01366/AMM).

Therefore Policy 14 (Design, quality and place) of NPF4 is relevant to the determination of this application. Also relevant is Proposal NK7: Saltcoats Field and Policies DP1 (Landscape Character) and DP2 (Design) of the ELLDP.

REPRESENTATIONS

Ten letters of public objection have been received against the application.

The main grounds of objection are:

i) a 60 cm border is not sufficient to enable satisfactory growth of the beech hedge. Given the strong prevailing winds and relatively low rainfall in this area, the hedges

- need to have as wide a border as possible to survive;
- ii) any narrowing of the shrub borders will almost certainly lead to the further demise of the shrubs and hedges therein due to the lack of capacity for absorbing and retaining the rainwater necessary for healthy growth. The appearance of the roads in the affected area is materially worsened by dead and dying hedges;
 - iii) there have been numerous instances of hedges requiring to be replaced on the development. Given that these are beech hedges which the Royal Horticultural Society advises are susceptible to death in drought conditions, what is proposed and has been implemented is not wide enough for a long term viable hedge and the original requirement of a 1.5 meter width should be implemented.
 - iv) 50cm border is not wide enough. There has already been a high degree of hedge deaths requiring replacement which is wasteful and makes the development unsightly
 - v) a number of hedges require to be replaced due to being poorly planted or not having adequate soil area. Changing the plans will reduce the chances of any shrubs or hedges being given suitable ground to root and collect sufficient water to sustain.
 - vi) neighbour notification is very poor and does not contain any information as to the nature of the variation. Altering the size of the borders will very likely affect the development of the hedges they have planted and are due to plant. Residents have replaced hedging that died and many that were planted already dead.
 - vii) developer has failed to meet requirements of Condition 6, page 11 of planning permission ref 18/01366 for some time. Reducing hedge width from 150cm to 60cm will cause more hedge death.
 - viii) the existing legal requirement should be enforced;
 - ix) many of hedges within the development are dying because the border is too narrow and is not providing sufficient water absorption to maintain a healthy hedge. Shrub borders should be at least 150cm wide;
 - x) residents will be required to pay for any future replacement of dead hedges. Failure to meet costs will result in poor environment and loss of visual amenity; and
 - xi) this is yet another section 42 application submitted by applicants that offers no precise details of application proposals.

A further letter of representation has been received in relation to:

- i) application proposals are unclear which boundary hedges are in scope and there is widespread uncertainty within the community about the implications of the proposed changes. Any proposal to the change in depth of the hedging would need to consider the following: Impact on Landscape and Biodiversity; Impact on Neighbouring Properties; and Long-term Maintenance.

On the matter of some hedging that has been planted failing to establish, Condition 6 of Approval of Matters 18/01366/AMM also stipulates that :

"Any trees or plants which die, are removed or become seriously damaged or diseased 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. "

Therefore if any components of the landscaping included in the approved scheme

of landscaping for the development die or are damaged then they should be replaced. Failure to do so would be a matter for the Council's Planning Enforcement Service to investigate.

COMMUNITY COUNCIL COMMENT

None

PLANNING ASSESSMENT

The intent of this application to vary the wording of condition 6 of Approval of Matters ref: 18/01366/AMM is to ensure the condition does not conflict with the details of the scheme of landscaping already approved for the housing development at Saltcoats Field and which included areas of hedging that were narrower than 1.5m. It is not the intent of this application to amend that already approved scheme of landscaping.

The **Council's Senior Landscape Officer** advises that the areas of 0.6 meters wide hedge planting are generally within the front or side gardens of the development and is satisfied that the hedges will have space to successfully establish, as has been the case in other housing developments where hedging of a similar size and type have been planted. Therefore, she is satisfied that the variation of condition 6 to remove the requirement that all hedge planted areas be no narrower than 1.5m will not compromise the scheme of development approved at Saltcoat Field and will not compromise the establishment of the landscaping to enhance the amenity of the development. The Council's Senior Landscape Officer therefore raises no objection to the proposals.

On the above considerations the proposed development does not conflict with Policy 14 of NPF4 or with Proposal NK7: Saltcoats Field and Policies DP1 (Landscape Character) and DP2 (Design) of the ELLDP.

In conclusion, the proposal is 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.

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 for the applied for variation to Condition 6 of planning permission 18/01366/AMM and subject to the conditions from planning permission 18/01366/AMM, where it is intended these should apply. In this case, all the other conditions should continue to apply with the exception of conditions 1, 2, 4, 9, 11,

15, 16 and 17 as the requirements of those conditions have been complied with.

CONDITIONS:

- 1 Prior to the occupation of the last house or flat 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 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 in the interests of road safety.

- 2 All the open space recreation areas indicated on the docketed drawings shall be available for use prior to the occupation of the last house or flat on the site. The open space recreation areas, when provided, shall be used for such purposes at all times thereafter unless agreed in writing by the Planning Authority.

Reason:

To ensure the satisfactory laying out of all areas of open space in the interest of the amenity of the future occupants of the dwellings hereby approved

- 3 No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or re-contouring of the site including SUDS basin/ponds details; tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting. 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.

It shall be based on the drawing titled 'Soft landscape layout' numbered SF-RF-AA-XX-DR-L-0002 and specifically include a mixed native species hedgerow along the full length of the southern boundary of the site, a native mixed woodland of a minimum of 20m wide along the full length of the western boundary of the site, groups of mixed sized species trees on the southerly located areas of open space, large species trees within open spaces throughout the site, and feature trees and landscaping on the eastern road frontage of the site. Large species trees should be spread throughout the site. Additional pine and oak trees should be included to the southern boundary areas. Holm oak should also be introduced to the mix. Feature pines, oaks and horse chestnuts should be placed within the centre of the large open spaces such as the linear park from plots 86 and 93 to 41 and 42; also within the park between plots 72 and 57 with root barriers to protect the underground services. Care should be taken in locating the large pine and beech trees close to property gables, no large species tree shall be located closer than 12m to any building. These should be substituted with hornbeams at plots 23, 30, 01 and 38. No shrub planted area shall be narrower than 1.5m to enable successful establishment of the landscaping to ensure successful amenity for the development. All hedging to rear of boundary wall shall be maintained at a height of between 1.75 and 2m in height.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development or occupation of any house hereby approved, whichever is the sooner. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation. No trees or shrubs, detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority.

Reason:

- 4 In the interests of achieving an appropriate landscaped setting for the housing development 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, 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 titled 'Tree retention and removal' numbered SF-RF-AA-XX-DR-L-0003 rev B, shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees and approved in writing by the Planning Authority.

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

- 5 In order to form Construction Exclusion Zones around retained trees and protect retained trees from damage. Prior to commencement of development on site, full details of the proposed Sustainable Drainage System shall be submitted to and approved in writing by the Planning Authority. Thereafter, the approved details shall be implemented as approved for the lifetime of the development.

Reason:

- 6 To ensure that the final Sustainable Drainage System design complies with 'Sewers for Scotland 3' and in the interest of flood prevention and the long term amenity of the site. 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:

- 7 In the interests of road safety. Prior to the commencement of development, details showing compliance with the following transportation requirements shall be submitted to and approved in writing in advance by the Planning Authority.

(i) a supplementary construction method statement shall be provided for the site to expand on that already provided and controlled through planning permission in principle 16/00594/PPM. This shall take account of routes to the site from the A198;

(ii) cycle parking shall be provided at the rate of 1 space per flat. This shall be provided in a secure/ undercover area;

(iii) all footpaths and cycle paths from a zone under construction to their connections to

existing pedestrian/cycle routes shall be constructed to an adoptable standard before the occupation of any of the residential units of the particular zone;

(iv) driveways shall have minimum dimensions of 6 metres by 3 metres. Double driveways shall have minimum dimensions of 5 metres width by 6 metres length or 3 metres width by 11 m length;

Reason:

In the interests of road safety.

- 8 The roof lights on the east facing roof slopes of the houses to be built on Plots 08,101 & 108, on the west facing roof slopes of the houses to be built on Plots 70, 94 & 111, on the north facing roof slope of the house to be built on Plot 20 and on the south facing roof slope of the house to be built on Plot 21 shall be obscurely glazed, prior to the occupation of those houses. Thereafter those roof windows shall continue to be obscurely glazed unless otherwise agreed in writing by the Planning Authority.

Reason:

To safeguard the privacy and amenity of the occupants of neighbouring houses.

- 9 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 windows or other glazed openings shall be formed on the first floor or within the roof slope of the east elevation of the houses to be built on Plots 08,101 & 108, the west elevation of the houses to be built on Plots 70, 94 & 111, north elevation of the house to be built on Plot 20 and on the south elevation of the house to be built on Plot 21 without the prior permission of the Planning Authority.

Reason:

In the interests of safeguarding the privacy and amenity of the occupants of neighbouring residential properties.

- 10 Notwithstanding that shown on drawings docketed to this Approval of Matters the car ports on plots 31-37 and 46-52 inclusive shall not have vehicular access doors installed within them but shall instead remain open fronted. Thereafter those car ports shall remain open fronted with no vehicular access doors unless otherwise approved in writing by the Planning Authority.

Reason

To meet the Council's Road Services parking standards for new housing.

REPORT TO: Planning Committee
MEETING DATE: 4 February 2025
BY: Executive Director – Place
SUBJECT: Application for Planning Permission for Consideration

3

Application No. **24/01140/P**
Proposal Erection of 1 house and associated works
Location **Former Garden Ground of
1 Dirleton Avenue
North Berwick
East Lothian**

Applicant Mr Euan Revell
Per APT Planning & Development

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSAL

This application relates to an area of land on the east side of the properties of 1 and 1A Dirleton Avenue in North Berwick. The application site occupies a corner location on the west side of the junction of Dirleton Avenue with Station Road. It is in a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan ('ELLDP 2018') and is located within the North Berwick Conservation Area.

To the north of the site is the public road of Dirleton Avenue, to the east is the public road of Station Road, beyond which is the flatted building containing the flats of 1-34 Royal Apartments, to the south is the house and garden of 2 Station Road and to the west is the buildings of 1 & 1a Dirleton Avenue. The building of 1 and 1A Dirleton Avenue contains a dental practice at ground floor level (addressed as 1 Dirleton Avenue) and a residential flat on part of the ground floor, first and second floors of the building (addressed as 1A Dirleton Avenue). There are areas of garden ground to the north (front) and south (rear) of the building of 1 and 1A Dirleton

Avenue and an existing driveway that serves it, accessed off Station Road, to the east side of the building, which is within the application site boundary. The flatted property of 1A Dirleton Avenue has its own garden ground and a detached garage situated to the rear of the existing building. This garage is accessed from the existing driveway off Station Road.

The application site is separated from the adjacent site by a 1.8m high timber fence. There are two existing car parking spaces associated with the application site which lie outwith the fenced off area. The application site is currently used to grow potted Christmas trees in connection with a business (North Berwick Christmas Tree Company Limited). The applicant's agent advises that the site is in use as garden ground.

Access into the site is obtained via the singular vehicular access on the northeast boundary of the site at the crossroads where Dirleton Avenue meets Station Road. That access is shared with the occupants of the adjacent flat and dental practice within 1 and 1A Dirleton Avenue.

PLANNING HISTORY

In June 2021, Planning Permission was granted ref: 21/00362/P for the erection of fencing around the north and west boundaries of the application site. This consent has since been implemented.

In April 2013, Planning Permission was refused ref: 13/00090/P for the erection of a 2-storey house, formation of vehicular access and associated work which included a new vehicular access which was proposed to be taken from the east of the application site from Station Road. This application was refused for the following reasons:

1. The proposed house by virtue of its size, scale and positioning would be an intrusive and inharmonious form of infill development on this prominent corner site and in its position between the building of 1 and 1A Dirleton Avenue and Station Road would be a crammed form of infill development harmful to the pattern and density of development of the streetscape of the south side of Dirleton Avenue, which is a definitive part of the character and appearance of this part of the Conservation Area.

The proposed house would not therefore preserve or enhance but would be harmful to the character and appearance of the Conservation Area. Consequently, the proposed house is contrary to Policies ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies ENV4, DP2 and DP7 of the adopted East Lothian Local Plan 2008, Scottish Government policy on infill housing development given in Scottish Planning Policy: February 2010 and the advice on designing for place given in Planning Advice Note 67: Housing Quality.

2. By virtue of its position close to the traffic signal-controlled junction of Dirleton Avenue with Station Road, use of the proposed new vehicular access would result in an increased number of vehicle-to-vehicle potential collision points. Therefore, the proposed new vehicular access would be a road safety hazard,

contrary to Policy T2 of the adopted East Lothian Local Plan 2008.

An application for planning permission was submitted under ref: 12/00782/P in October 2012 for the erection of a one and a half storey, detached house and associated works. Parking provision was proposed to be provided outwith the current application site boundary to the south on Abbey Court. The application was withdrawn by the applicant in December 2013.

In October 2008, planning permission ref: 08/00104/FUL was refused for the erection of a 2.5 - 3 storey house, the formation of vehicular access, part demolition of wall and associated works. The proposed house was proposed to be situated centrally on the application site with access to the site being formed from the east.

The reasons for refusal were as follows:

1. The proposed house by virtue of its size, positioning and design features would not respect, but would be a dominant, intrusive and disruptive forms of infill development on this prominent corner site at odds with the design, pattern and density of layout of the buildings on the south side of Dirleton Avenue to the detriment of the character and appearance of the streetscape of Dirleton Avenue and of this part of the North Berwick Conservation Area contrary to Policies ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies ENV3, ENV4 and ENV10 of the adopted East Lothian Local Plan 2000, Government policy guidance on infill housing development given in Scottish Planning Policy 3: Planning for Homes, Government policy guidance on the control of development in a conservation area given in NPPG 18 and planning advice on designing new housing for place given in Planning Advice Note 67.

That decision was appealed to the Scottish Government. The Reporter appointed by the Scottish Ministers to determine the appeal dismissed it, thereby refusing to grant planning permission for that proposed erection of a house on the application site.

Her reasoning for reaching that decision was that the development would be detrimental to the character and appearance of the streetscape and the North Berwick Conservation Area, and the access arrangements proposed in that application would be a pedestrian and road safety hazard.

PROPOSAL

Planning permission is now sought for the erection of a single storey detached house and associated works on land to the east of 1 & 1A Dirleton Avenue.

The proposed house would be formed in a rough 'T' shaped formation and would be positioned centrally within the application site with garden ground to the rear (east) as well as areas of garden ground to the north and west. The site would be accessed via the existing access located to the northeast of the application site.

The proposed house would predominantly be split into two components which would be linked together by an entrance lobby. The section of the house furthest

north would comprise as an open plan kitchen, dining and living room. The second section would be situated further back to the south of the application site and would comprise of 3x bedrooms and a separate family bathroom. One of the bedrooms would also have an en-suite.

The proposed house would be constructed with natural sandstone walls, it would have a flat roof with dark grey PPC aluminium flashing, which would be topped with a green roof. Window and door frames would be of aluminium construction and would be dark grey in colour.

The entrance door which would be recessed would be contained on the front (west) elevation. 2x further glazed window openings would be contained on this elevation and would service 'Bedroom 1' and 'Bedroom 2' respectively. The side (north) elevation would contain a total of 2x glazed openings, the side (northeast) elevation would contain 1x glazed window opening which would service a bathroom. The rear (east) elevation would contain 2x sets of patio doors and 1x glazed opening of which would also be recessed. Of the side (south) elevations, a set of patio doors would service the proposed kitchen/dining, living room providing access into the rear garden.

The proposed house would have an area of private rear garden ground of some 115m² to the east of the property. The property would also have an area of garden ground to the north and an area of garden ground to the west. A private patio area would be formed to the east of the proposed house within the rear curtilage. Areas of hardstanding would also be formed west of the proposed front (west) elevation. The patio and hardstanding areas would be formed with porcelain plank paving (Marshals Symphony). Porcelain planks would be some 1200mm by 300mm.

An Air Source Heat Pump (ASHP) would be situated west of the front (west) elevation of the proposed house. It would be some 632mm in height, some 886mm in width and would have a thickness of some 353mm. It would be white in colour. An EV charger would be installed adjacent to the ASHP.

There are two existing car parking spaces within close proximity to the south boundary wall which are already hard formed. As part of this application, the applicant proposes to lengthen these spaces to a total of 5m in length. The spaces would each remain as 2.5m in width.

A formal turning area is proposed to be created through the widening of the private access track, using a portion of land from the application site. The new turning area would be some 6.6m by 7m and would be formed with asphalt to match the existing track.

Elements of new fencing and two new gates would be erected at some 1.8m in height and would be constructed with horizontal timber battens to match existing fencing. New or realigned fencing would be positioned along the north and part of the west boundaries. A new gate would provide pedestrian access within this fence line on the northwest boundary into the front curtilage. A further gate would be positioned within the fence line on the north boundary and would provide pedestrian access into the rear curtilage.

Sections of existing fencing would be required to be removed to facilitate the proposed development. The removal of part of a fence within a conservation area would not require Conservation Area Consent.

In support of this application, the applicant's agent has submitted the following documents:

- i. A Supporting Statement;
- ii. A Scheme of Landscaping;
- iii. A Root Protection Area Survey;
- iv. A Transport Statement; and,
- v. A Sunlight and Daylight Study.

The Supporting Statement summaries proposals put forth and highlights that the application site is well defined owing to its existing boundary treatments and as such would almost appear hidden from public views. Further, the applicant's agent puts forth that polices 1, 2, 7, 9, 11, 12, 13, 14, 15 and 16 of National Planning Framework 4 ('NPF4') and policies RCA1, CH2, CH3 and DP7 of the ELLDP 2018 are of most relevance in the determination of this application and provides an appraisal of the proposed development with relevance to these Development Plan policies in demonstrating that proposals are policy compliant.

The scheme of landscaping details that existing multi-species hedgerows along the east of the site would be retained as well as the parts of the existing beach hedge along part of the north and northwest of the application site. A grass lawn would be planted within the rear curtilage along with a cherry tree within the southeast corner. New planting is also proposed along part of the south, north and west boundaries of the application site.

The Root Protection Area Survey as submitted with this application indicates that there are three existing trees on the application site. There is a sycamore and a holly tree located to the north-east of the site by the access junction and a birch tree is located to the south. The Root Protection Area Survey indicates that the northern (side) elevation of the proposed house would encroach into the tree root protection areas of both the holly and the sycamore tree by approx. 0.15m² and 0.38m² respectively.

The Transport Statement as submitted by the applicant has been provided by Mor, a Transport Planning and Development Consultancy. It details:

- i. The plot has two existing parking spaces which are used daily.
- ii. The access is located within the signalised junction and is shared with the dental practice and the flatted residential dwelling of 1a Dirleton Avenue.
- iii. The existence and use of this access pre-dates the introduction of the signalised crossroad junction.
- iv. The existing access into the site is not controlled by signals but behaves successfully as a give-way/priority type arrangement with drivers observing safe exit.
- v. Vehicles enter and exist onto the public road in a forward gear.
- vi. Visibility to all arms of the junction from the access is good, allowing drivers to observe signal operation, pedestrians and other vehicles.
- vii. Analysis of the latest available accident data from Crashmap.co.uk confirms

that no accidents were reported for the 5-year period to the end of 2022. This confirms that the signalised junction, which incorporates the development site access and currently operates safely; and,

viii. Public transport links and public services are within walking distance and accord with the local living/20-minute neighbourhood concept.

The Sunlight and Daylight Study submitted concludes that as a result of the proposed development, the adjacent residential properties of both 2 Station Road and 1A Dirleton Avenue would receive adequate levels of sunlight and daylight. Further, it sets out that any future occupants of the proposed dwelling would also receive adequate levels of sunlight and daylight.

Subsequent to the registration of this application and at the request of ELC's Landscape Officer, a Root Protection Area Survey was submitted. The applicant also amended drawings to i) remove reference to a proposed footpath north of the proposed house; ii) identify parking spaces for each use on site; and iii) alter the red line boundary slightly bringing it in tightly against the private access track on the west boundary.

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 comprises NPF4 and the adopted ELLDP 2018.

Policies 1 (Tackling the Climate and Nature Crisis), 2 (Climate Mitigation and Adaptation), 3 (Biodiversity), 6 (Forestry, Woodland and Trees), 7 (Historic Assets and Places), 9 (Brownfield, Vacant, Derelict Land and Empty Buildings), 12 (Zero waste), 13 (Sustainable Transport), 14 (Design, Quality and Place), 15 (Local Living and 20-minute Neighbourhoods) and 16 (Quality Homes) of NPF4 are of relevance and Policies CH2 (Development Affecting Conservation Areas), RCA1 (Residential Character and Amenity), T1 (Development Location and Accessibility), T2 (General Transport Impact), SEH2 (Low and Zero Carbon Generating Technologies), W3 (Waste Separation and Collection), DP1 (Landscape Character), DP2 (Design), DP7 (Infill, Backland and Garden Ground development) and NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species) of the ELLDP 2018 are relevant to the determination of this application.

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

Section 64 of the (Listed Buildings and Conservation Areas) (Scotland) Act 1997 requires that a planning authority must have regard to the desirability of preserving or enhancing the character or appearance of a conservation area in exercising its responsibilities in the determination of any application for planning permission for development affecting a conservation area.

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

Housing Quality.

Planning Advice Note 67: Housing Quality explains how Designing Places should be applied to new housing. In PAN 67 it is stated that the planning process has an essential role to play in ensuring that: (i) the design of new housing reflects a full understanding of its context - in terms of both its physical location and market conditions, (ii) the design of new housing reinforces local and Scottish identity, and (iii) new housing is integrated into the movement and settlement patterns of the wider area.

The creation of good places requires careful attention to detailed aspects of layout and movement. Developers should think about the qualities and the characteristics of places and not consider sites in isolation. New housing should take account of the wider context and be integrated into its wider neighbourhood. The quality of development can be spoilt by poor attention to detail. The development of a quality place requires careful consideration, not only to setting and layout and its setting, but also to detailed design, including finishes and materials.

REPRESENTATIONS

A total of nine representations have been received in respect of this application. Three of which were letters of objections and six of which were letters of support. The main grounds of objection are:

- i. Loss of privacy to neighbouring properties.
- ii. Loss of view to the east.
- iii. Loss of amenity as a result of proposals.
- iv. The property is not in keeping with the historic and traditional properties in which surround the application site.
- v. The proposed house by virtue of its form, positioning and size would fail to respect the established pattern of development and the site context on this prominent site.
- vi. It would be at odds with the design, pattern and density of development characteristics of the south side of Dirleton Avenue.
- vii. The proposal would not sit comfortably in the street scene or in the Conservation Area.
- viii. One objector has experienced problems with cars coming out of the dental surgery and ignoring the green man, thinking they have the right to proceed.
- ix. The development of this awkward site would give rise to increased vehicle movements that would increase danger to other road users; and
- x. The proposal does not accord with development policies, the statutory tests or with PAN 67.

The main grounds of support are:

- i. It seems out of character for a "corner site" to be empty.
- ii. The design offers a great opportunity for a new home in central North Berwick, being within close proximity to local shops and public transport.
- iii. The design is well considered, it is both modern and in keeping with the surrounding architecture.

- iv. As a low-level design, the home would be of great benefit to the ageing population / elderly residents.
- v. It is an imaginative and sensitive building.
- vi. The crossroads has a significant visual impact when visitors enter the town and a high-quality dwelling such as this would set a wonderful tone for tourists to experience.
- vii. It would be a great addition to North Berwick.
- viii. The high perimeter wall would hide the property nicely.
- ix. The plot of land has always seemed a bit messy and is not used to its full potential.
- x. Proposals would add to the character and uniqueness of the town, particularly as a somewhat hidden nook of a house, similar to that in Nungate, Abbey Crescent and Westgate. This kind of hidden gem is consistent with that kind of character of North Berwick.
- xi. The house has minimal impact relative to the surroundings such as the Royal Apartments opposite, or the house at 2 Station Road, the block of flats at Abbey Court, or the Station Car Park.
- xii. The proposed house does not affect the skyline and the surrounding environs are not particularly unique or distinctive of North Berwick's Conservation Area.
- xiii. Nearby May Terrace is an example of a street with a range of home styles and Station Road would benefit from emulating that.
- xiv. It has sustainable features such as a green roof, heat pump and EV charging, all which contribute to low carbon living; and,
- xv. Proposals are a good use of space, and the design is sympathetic to the surrounding conservation area.

The right to a view is not a material consideration in the determination of this application. All other matters will be addressed below.

COMMUNITY COUNCIL

No comments have been received from the community council.

PLANNING ASSESSMENT

Policy 16 of NPF4 supports new homes on non-allocated housing sites where new homes are consistent with the spatial strategy and other relevant policies including local living, 20-minute neighbourhoods and, where the proposal is for smaller scale opportunities within existing settlement boundaries. Policy 15 of NPF4 seeks for development proposals to contribute to local living including, where relevant, 20-minute neighbourhoods.

Proposals are small scale in nature comprising the erection of 1 house and associated works. Whilst the site is not allocated for residential development within the adopted ELLDP 2018, it is within the existing settlement boundaries of North Berwick and is well connected to existing transport infrastructure. It is also within walking distance of the North Berwick Town Centre and other amenities it offers as well as local schools, beaches and other facilities. Proposals would therefore actively contribute toward local living with most amenities, facilities and services

being within a 20-minute walk of the site. Proposals would therefore be compliant with Policies 15 and 16 of NPF4.

The purpose of Policy RCA1 of the ELLDP is to safeguard predominantly residential areas against detrimental impacts from other potentially harmful land uses. Whilst residential development within an area covered by policy RCA1 would generally be considered acceptable in policy terms, this policy does not actively promote the development of land for residential development. Rather and in respect of proposed residential development in back land or infill locations, it states that proposals must be assessed against Policy DP7 of the ELLDP 2018 which supports the principle of infill or back land development including the subdivision of garden ground.

The site is not located within the greenbelt, a countryside or coastal location, rather it is located within a predominantly residential area within the settlement of North Berwick. Historically, the site appeared to form as garden ground associated with 1 Dirleton Avenue. As proposals would be located on former garden ground forming as infill development and as proposals are of a residential nature which would not be detrimental to the predominantly residential nature of the area, policies RCA1 and DP7 of the ELLDP 2018 would in principle, be supportive of proposals.

Policy DP7 does however require for any such infill or backland development to be consistent with the following criteria:

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

On the matter of design, Policies DP2 and Part iii of DP7 of the adopted ELLDP 2018, amongst other matters, requires that all new development be of an appropriate scale, design and density and be well designed and integrated into its surroundings. Policy 14 of NPF4 also requires for new developments to be suitably designed to improve the quality of an area.

Policy 7 of NPF4 and Policy CH2 of the ELLDP 2018 requires proposals be located and designed to preserve or enhance the special architectural or historic character or appearance of the Conservation Area. New development should accord with the size, proportions, orientation, alignment, density, materials, and boundary treatment of nearby buildings and public and private spaces.

As a site located within the North Berwick Conservation Area, the Conservation Area Character Appraisal ('Character Appraisal') for the North Berwick Conservation Area given within the adopted ELLDP 2018 is of particular relevance. In relation to the western expansion of North Berwick, it states that homes are predominantly architect designed Victorian, Edwardian and Georgian in a variety of styles set within large private grounds. The buildings in this part of the Conservation Area vary in height and some of these large buildings, namely houses have been subdivided to form more than one residential unit, as is proposed in this case. It further states that a feature of this area is the mature trees and planting within the wider area which provides a natural soft setting for the built-up area. It goes on to say that such landscape features often allow for housing to be subsequently developed in the grounds of larger houses.

Furthermore, there are examples of more modern development including single storey flat roofed buildings on Westbay Road and a large, flatted development on the opposite side of Station Road, known as the Royal Apartments. Therefore, this part of North Berwick Conservation area is characterised by buildings of a variety of architectural forms and finishes.

The proposed house would be a detached single storey house which would be positioned to the east of the existing building at 1 Dirleton Avenue. The proposed house would be set back from its front (north) elevation. It would also be positioned centrally and would therefore be set back from the public roads of both Dirleton Avenue and Station Road and also in alignment with the general positioning of the built development along the southern side of Dirleton Avenue. The subdivision of this plot, by way of erecting a detached dwellinghouse of a modest size within its grounds would not be so harmful to the density of the immediate area. Furthermore, as identified within the Character Appraisal, the original low-density development of the area is supplemented by some infill development, which generally appears subservient to existing older buildings. By virtue of its single storey height, its footprint and its offset position, it would otherwise appear subservient to the existing building of 1/1A Dirleton Avenue and would not therefore compete with its dominant massing in this prominent corner location.

The proposed house due to its single storey, flat roof form would in part be screened by existing boundary enclosures and by the existing building of 1/1A Dirleton Avenue. Whilst the proposed house would look somewhat architecturally different from the existing building at 1/1A Dirleton Avenue, it would be predominantly finished in natural sandstone which is reflective of the predominate material used within the North Berwick Conservation Area. Therefore, given its size, scale and position in a part of North Berwick characterised with varying styles of architecture within the immediate area, the proposed house would not appear intrusive and incongruous within its existing setting. It would not detract from or harm the character and appearance of this part of the North Berwick Conservation Area.

The realignment of the 1.8m timber fencing and the erection of gates proposed along part of the north and northwest boundaries of the site would be positioned back from the existing stone boundary wall which bounds the wider site. They

would sit alongside existing fencing with a like for like specification to that approved under ref: 21/00362/P. The fencing and gates would be partially screened from public views by the existing mature trees and landscaping to the front of the site and would be complimented by additional planting which would help soften the timber screening. The realigned fencing and proposed gates would therefore not be so harmful to the character and appearance of the conservation area, the proposed house, or building of nos. 1 and 1A to the west.

The formation of hardstanding areas inclusive of alterations to the existing private drive to improve turning arrangements for users of this access would not be particularly visible from public views and would be of a similar nature to other areas of hardstanding within a residential setting. Proposals would not therefore be harmful to the residential nature of the area, or the character and appearance of the conservation area.

The EV charger and the ASHP would be situated on the west (front) elevation of the proposed house and just north of the south boundary retaining wall. The EV charger and the ASHP would therefore be set back from the roadside and screened by proposed and existing landscaping. Owing to their siting, scale and positioning, they would not be harmful to the character or appearance of the house or the conservation area.

Overall, in design terms, the erection of this house and associated works would not conflict with Policies 7 and 14 of NPF4 or Policies CH2, DP1 and DP2 of the adopted ELLDP 2018. Nor would proposals conflict with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 or PAN 67.

Policy DP2 of the adopted ELLDP 2018 requires, amongst other matters, that new development should ensure privacy and amenity for the occupants of any neighbouring residential properties as well as the occupants of any new development. Particular regard must be given to factors such as levels of sunlight, daylight and overlooking.

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 9 metres separation distance between the windows of a proposed new building and the garden boundaries of neighbouring residential properties and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

Starting with the 2x glazed window openings on the side (north) elevation of the proposed house, these would face onto a stretch of ground which would be associated with the application site. Beyond which would be the private access track and the front grounds associated with the dental practice. Glazed openings on this elevation would not therefore result in harmful overlooking or the loss of privacy of any neighbouring residential properties.

The formation of 1x glazed opening on the side (northeast) elevation of the proposed house would face onto part of the proposed house and beyond onto part

of the associated curtilage of the proposed house. This window would not therefore result in the harmful overlooking of neighbouring properties.

Glazed openings proposed on the rear (east) elevation would face onto the applicant's proposed garden ground and beyond onto Station Road. Therefore, these windows would not result in harmful overlooking of neighbouring properties.

A set of glazed patio doors are proposed on one of the side (south) elevations of the proposed house and would serve the proposed kitchen, dining and living room. These doors would look onto some 13m of the applicant's proposed rear garden ground. There is a separation distance of some 15m between the glazed doors on this side (south) elevation of the proposed house and the ground floor windows on the side (north) elevation of 2 Station Road. The side (north) elevation of 2 Station Road only contains windows on the ground floor level. There is an existing 1.8m timber fence which delineates the southern boundary of the garden for the proposed house which would satisfactorily address any harmful overlooking, subject to its retention.

No glazed openings are proposed within the other side (south) elevations. Should glazed openings be formed in these elevations at a later date, they would otherwise require the grant of planning permission owing to their presence within the North Berwick Conservation Area.

The formation of glazed openings on the front (west) elevation of the proposed house would be some 9m from the east boundary of 1A Dirleton Avenue's residential curtilage and would not be within 18m of any directly facing windows, rather both glazed openings on this elevation would look onto the blank (east) elevation of a garage approved under ref: 22/01072/P.

The glazed front door and associated window on the front (west) recessed elevation would look onto some 5m of garden associated the application site, beyond onto the private access track of some 4m. These glazed openings would however only be some 12.5m from the directly facing window on east elevation of 1A on the ground floor level and would therefore result in harmful overlooking. However, proposals would make use of an existing 1.8m fence which sits on the northwest boundary of the site, paired with the slight realignment of additional fencing and the installation of a gate on the northwest boundary. The high fencing and gate would therefore sit between the directly facing windows of the proposed development and would prevent any harmful overlooking. The formation of glazed openings on this front recessed (west) elevation would not therefore result in the harmful overlooking of neighbouring properties.

Subject to the 1.8m fencing being positioned in accordance with the proposed site plan so submitted, the erection of this house would not result in the harmful overlooking, or the loss of privacy to any neighbouring residential properties.

On the matter of impact of the proposed house on daylight and sunlight on neighbouring properties, guidance is taken from "Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair ("the Guide").

Proposals would not result in the loss of sunlight or daylight from either the neighbouring property of 1a Dirleton Avenue to the west, or from 2 Station Road to the south. Proposals would not result in the harmful overshadowing of neighbouring residential gardens.

In respect of any prospective occupant's own amenity, the proposed house has a number of ground floor windows which are located within close proximity to a private track shared by the dental practice and the residential flat at 1 and 1A Dirleton Avenue. Other users of this track would if the presence of the 1.8m fencing were not in place, have views into windows located on the north, northwest and the recessed west elevations of the proposed house. Owing to the presence of the existing fence on the north elevation and the partial realignment of the fence and gate on the northeast boundary, the applicant would not be overlooked on these elevations by visitors to the wider site.

The two glazed openings on the front (west) elevation of the proposed house would look onto and be within close proximity to the private track and altered turning area. There would however be a landscape buffer between the turning area inclusive of an existing birch tree which would sit to the west of bedroom 3's window. As users of the turning area would likely only be using it for short durations, on balance, any prospective owner would have sufficient privacy.

The proposed house would also benefit from a sufficient level of sunlight, daylight and outlook. In addition, the private garden ground would benefit from adequate levels of sunlight and daylight and would not be unacceptably overshadowed.

East Lothian **Council's Senior Environmental Health (EH) Officer** was consulted as part of this application and raised concerns over potential noise nuisance to neighbouring residential properties from the proposed ASHP. The EH Officer therefore recommended that a condition be imposed on any grant of planning permission restricting noise associated with the operation of the ASHP.

Subject to the imposition of a condition requiring that the ASHP 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 existing neighbouring residential property with windows/doors open, proposed ASHP would not harm the residential amenity of the occupants of neighbouring residential properties.

With regard to residential amenity for both existing and prospective occupants, proposals would be compliant with Policy DP2 and Part ii of DP7 of the ELLDP.

The **Council's Contaminated Land Officer** was consulted as part of this application and raised no objection, stating that it would be unlikely there would be any contaminated land issues at this site. It was however advised that the site may fall within an intermediate radon probability area, where 1-3 % of properties are above the radon action level, possibly requiring radon protection measures to be installed. As an advisory, the Officer recommends that the applicant obtain a Radon Risk Report from the UK Radon website to confirm if there would be an issue with radon levels in the proposed new property. The applicant has been sent a copy of

this consultation response.

At its meeting on Tuesday 27th August 2019, the Council approved a motion declaring a Climate Emergency. Thereafter, at its meeting on Tuesday 3rd September 2019 the Council's Planning Committee decided that a condition requiring a developer to submit for the approval of the Planning Authority, a report on the actions to be taken to reduce the carbon emissions from the building and from the completed development should be imposed on relevant applications for planning permission.

The report is required to set out how the applicant would seek to minimise waste, use materials with the lowest forms of embodied carbon (such as recycled and natural materials) and use materials that are suitable for reuse with minimal processing. Such a condition should be imposed on any grant of planning permission for this proposed development.

Subject to the imposition of this condition on any such grant of planning permission, the proposed development does not conflict with Policies 1 (Tackling the Climate and Nature Crises), 2 (Climate Mitigation and Adaptation) and 12 (Zero Waste) of NPF4. Notwithstanding this, proposals do include for an ASHP in accordance with Policy SEH2 of the ELLDP.

The **Council's Waste Services** raise no objection to this application. Moreover, the general collection and management of waste and recycling from the proposed development will be operated by the Council's Waste Services from the public road of Dirleton Avenue or Station Road. Accordingly, the proposals are consistent with Policy W3 of the adopted ELLDP 2018.

Scottish Water were consulted as part of this application and raised no objection.

The **Council's Road Services** were consulted as part of this application and advised that they were satisfied with the altered turning area as proposed, subject to the turning area being retained on-site in perpetuity to ensure residents, visitors, or customers of the dental practice do not need to reverse into a busy junction. This could reasonably be controlled by a planning condition.

In respect of off-street parking associated with proposals, the Senior Road's Officer advised that sufficient parking had been provided for the erection of 1 house (with 5 or less habitable rooms) in accordance with ELC's Parking Standards.

The proposed house would be accessed by the existing access to the northeast which is positioned on the corner of a 4-point crossroads junction and is controlled by traffic lights which operate in four stages. The access sits within this junction and is not therefore controlled by these traffic lights.

The applicant's transportation advisor summarises that a) the 2x parking spaces are used every day by the applicant and therefore the erection of the house would not increase the levels of use of this access; b) there is good visibility from the access to all arms of the junction; and, c) that there has never been an accident.

However, the Senior Road's Officer advises that the application site does not have planning permission for any uses other than as garden ground. Therefore the existing vehicular access is currently only approved for use by the occupants of the flat and the dental practice operating within the adjacent building. The Senior Roads Officer does not accept that the erection of one house would not lead to the intensification of the use of the existing access. On that basis, the Senior Roads Officer advises that they object to this application on the grounds that the intensification of the use of this access within such a sensitive location would be a road safety hazard.

Furthermore, through the determination of the appeal submitted against the refusal of planning application ref: 08/00104/FUL in 2008, Scottish Minister's also highlighted concerns with the use of this existing access by stating that 'The existing vehicular and pedestrian access is a few metres north of the busy traffic signalled junction on the corner of Dirleton Avenue and Station Road. Visibility in both directions is poor and traffic movements in and out are disruptive to the free flow of traffic on both roads'. As the access arrangements of this planning application are not dissimilar to those the subject of planning application 08/00104/FUL then the reasoning of Reporter in that appeal decision still apply to this current application.

Therefore as the erection of a house on the site would result in the intensification of traffic movements at the access junction where Dirleton Avenue meets Station Road within a controlled traffic area and therefore within a very sensitive and busy location to the detriment of the road users and pedestrians, the proposals are contrary to Policies T1, T2 and Part i of DP7 of the adopted East Lothian Local Development Plan 2018 and policy 13 of NPF4.

The **Council's Senior Landscape Officer** was consulted as part of this application and notes that the Root Protection Area (RPA) Survey as submitted with this application indicates that there would be a minor encroachment of the proposed house into the Root Protection Area of the Holly and Sycamore trees to the north. The Landscape Officer further advises that site conditions such as the presence of roads and structures can influence root growth and that these factors should be taken into consideration in the production of a RPA Survey. A survey which takes these factors into consideration would depict a RPA in a polygonal shape in accordance with BS5837:2012, rather than a circular shape as shown within the RPA as submitted.

In addition, the Officer advises that no information has been provided on underground drainage locations or other underground services which could also impact on the RPAs.

Without the submission of an Arboricultural Assessment which contains the aforementioned information, the Senior Landscape Officer is not able to fully assess the likely root distribution within the application site and the impact, if any of the proposals on the existing trees on site, two of which have particular amenity value. Accordingly, the Senior Landscape Officer objects to proposals on this basis of the potential loss of trees.

As it has not been demonstrated that the proposals would not result in the loss of the proposals conflict with policies NH8 and Part iv of DP7 or policy 6 of NPF4.

Policy 9 of NPF4 supports developments which make use of brownfield, vacant and derelict land. However, this policy states that in determining whether the reuse is sustainable, the biodiversity value of brownfield land which has naturalised should be taken into account.

The **Council's Biodiversity Officer** was consulted as part of this application and advised that the existing site has established vegetation which could provide habitats for birds, invertebrates and mammals as well as providing a suitable nesting and foraging habitat for breeding birds. The Officer also highlighted that the footprint of the building and hard landscaping features would be within close proximity to the red line boundary which has established vegetation of hedges, shrubs and trees. Whilst mitigatory features such as planting works and a green roof have been proposed, the Biodiversity Officer advises that an Ecological Report and an Arboriculture Assessment would be required to be submitted, alongside a Biodiversity Enhancement Plan (BEP) in order to assess how the proposals may impact upon ecological features on-site.

Whilst a condition could reasonably be imposed seeking the submission of a BEP and further details pertaining to the green roof, the Biodiversity Officer is not able to support proposals without first reviewing an Ecological Report and an Arboriculture Assessment. As neither an Ecological Report or an Arboriculture Assessment have been submitted alongside this application, the Biodiversity Officer objects to proposals at this time. As it is not possible to substantiate the likely impact of proposals on existing biodiversity and ecological value, it has not been demonstrated that proposals are compliant with policies 3 and 9 (in part) of NPF4 or policy NH5 of the ELLDP 2018.

Taking the proposed development into consideration as a whole, whilst in design terms, the proposals represent a complementary form of infill development within an appropriate and sustainable location in accordance with polices 1, 2, 7, 12, 14, 15 and 16 of NPF4 and policies RCA1, CH2, DP1, DP2, DP7 (ii & iii), SEH2, W3 of the adopted ELLDP 2018, this does not outweigh the fact that it has not been demonstrated to the satisfaction of the Planning Authority that proposals would comply with policies NH5, NH8 and Part iv of DP7 or Policies 3, 6 and 9 of NPF4 and would not result in the loss of trees or ecological habitats. Nor does it outweigh the proposal's non-compliance with policy 13 of NPF4 and policies T1, T2 and DP7 (i) of the ELLDP 2018 in respect of the unacceptable intensification of the existing access junction in a sensitive location, between Dirleton Avenue and Station Road which would compromise road safety.

Proposals do not therefore wholly comply with all development plan policies and no material considerations outweigh the proposed development's discordance with the development plan. It is therefore recommended that planning permission be refused.

REASONS FOR REFUAL:

- 1 The proposed development would, if permitted, result in the intensification of traffic movements at the access junction where Dirleton Avenue meets Station Road within a controlled traffic area and therefore within a very sensitive and busy location to the detriment of the road users and pedestrians, contrary to Policies T1, T2 and Part i of DP7 of the adopted East Lothian Local Development Plan 2018 and policy 13 of NPF4.
- 2 It has not been sufficiently demonstrated that the proposed development would not result in the loss of amenity value trees within a conservation area contrary to NH8 and Part iv of DP7 of the ELLDP and policy 6 of NPF4.
- 3 It has not been demonstrated that the proposals would not have a harmful impact on birds, invertebrates and mammals nesting and foraging within the site, contrary to Policy 3 and 9 of NPF4 and Policy NH5 of the adopted East Lothian Local Development Plan 2018.