



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

TUESDAY 14 JANUARY 2025
**COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON
& HYBRID MEETING FACILITY**

1a

Committee Members Present:

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

Other Councillors Present:

Councillor L-A Menzies
Councillor L Jardine

Council Officials Present:

Mr K Dingwall, Service Manager – Planning
Mr C Grilli, Service Manager – Governance
Ms E Taylor, Team Manager – Planning Delivery
Mr D Taylor, Planner
Ms A Smith, Planner
Mr N Morgan, Access Officer
Ms J Newcombe, Biodiversity Officer
Ms M Haddow, Transportation Planning Officer
Mr J Canty, Transportation Planning Officer
Mr R Miller, Transportation Planning Officer
Ms P Grey, Communications Adviser
Ms E Barclay, Democratic Services Assistant

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 2: Mr I Hinds, Mr H Harper, and Mr M Lindsay
Item 3: Mr I Hinds, Mr H Harper, Mr M Lindsay, and Mr R Moore
Item 4: Mr T Thomas, Mr J Urquhart, and Ms R Simpson Hughes
Item 5: Mr B Currie and Mr G Smith
Item 6: Mr N Mills and Mr C Miller

Item 7: Ms J Aitken and Ms J Bell

Item 8: Mr T Thomas, Mr D Lawson, Mr A Fraser, and Mr A B Walker

Item 9: Mr T Whitelaw

Apologies:

Councillor C Cassini

Declarations of Interest:

Item 4: For transparency, Councillor McMillan stated that he served on the Connected Economy Group with representatives of the Wemyss and March Estate, but felt he had no conflict of interest.

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

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

1. MINUTES FOR APPROVAL – PLANNING COMMITTEE, 3 DECEMBER 2024

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

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

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

A report had been submitted by the Chief Planning Officer to provide an update to the Committee, and to provide commentary on a progress report which had been submitted to the Planning Authority by the applicant. Keith Dingwall, Service Manager for Planning and Chief Planning Officer, spoke to the report, highlighting the salient points. He also highlighted two additional conditions, Conditions 25 and 26. The officer's recommendation was to grant consent.

Councillor McGinn asked whether traffic monitoring could be included within the attached conditions and fed back regularly to the community. He also pointed out that there had been significant issues throughout the development, and throughout the previous road closure, on a small stretch of Tranent Road; the Community Liaison Group sought a condition which prevented construction traffic from using this stretch of Tranent Road. Mr Dingwall had no issue in principle with such conditions, but suggested the views of the applicant and Roads Officers may also be sought.

Councillor McLeod proposed that the wording at Condition 25 be changed to require *acceptable* drainage for the development, rather than *adequate* drainage, and Mr Dingwall was content that this amendment could be made.

Councillor Menzies asked about rates of non-compliance by the developer during development Phase 1. Mr Dingwall explained that this would be a matter for Planning Enforcement Officers, and reminded Committee members that the application must be determined on its merits and the decision must not take into account the developer's track record.

Responding to questions from Councillor McIntosh, Mr Dingwall advised that the foul drainage connections had been discussed with Scottish Water, and reported that Scottish Water was now content with the applicant's proposals. He also pointed to recommended Condition 25 as providing further surety on this matter.

Ian Hinds spoke on behalf of the applicant, Bellway Homes, and gave information on the context, characteristics, and benefits of the proposed development. He advised that the proposals would complete the delivery of new housing on the site allocated for residential development within the East Lothian Local Development Plan (LDP) 2018, and advised that 28 of the 111 new homes would be affordable homes. He pointed out that the continuation of the application had been due to ongoing issues with the delivery of Phase 1, rather than the merits of the current application. He briefly summarised Bellway's actions in response to the concerns raised, and highlighted Bellway's detailed response appended to the report, which confirmed that all suggested actions had been reviewed and accepted by various Council departments. Returning to the Phase 2 proposals, he pointed out the variety of family homes which would be set within an attractive open space network, and advised that there would be a total of 51 affordable homes across the development. He highlighted the creation of a walking and cycle-friendly neighbourhood, designed to encourage active travel movements, with new path networks providing integration to public transport links. He highlighted that the new homes would also support the primary school role and result in enhanced education facilities through developer contributions. He pointed out the community benefits brought about by traffic calming, footpath widening, biodiversity enhancement, and the creation of new green network would areas. He also pointed out that a seamless transition into Phase 2 would minimise disruption in Elphinstone.

Bellway representatives answered questions from members. Responding to questions from Councillor McGinn, Mark Lindsay advised that a new contractor for the sewage connection works was not yet in place. Enhanced enabling works would take place on 6 February, and it would become clearer at this time whether the ground conditions would require further directional drilling or an alternative diversion. Mr Lindsay also advised that works had started on the temporary pumping station on the previously day, and should be finished by the end of January.

Councillor McGinn reiterated his suggested conditions for no construction traffic to be allowed on the small stretch of Tranent Road affected previously, and with regards to traffic monitoring on Elphinstone Main Road and through the village to understand the increase in traffic from the development. Mr Lindsay advised that Bellway would be happy to work with the Planning Authority to reach agreement on these conditions.

Responding to a question from Councillor McIntosh, Mr Lindsay provided a technical explanation relating to a porosity test which had been conducted; the test proved that the ground conditions were averse to seepage, meaning the flooding of gardens on Waterloo Place had not come from the Bellway site.

Responding to questions from Councillor Menzies, Mr Lindsay listed Bellway's actions in response to issues raised by residents. He pointed to a quarterly newsletter, meeting with

residents monthly, and setup of a designated email address which was monitored by the Bellway head office. He conceded that communication with residents could have been better previously. He advised that the affordable housing in Phase 2 was nowhere near the temporary pumping station. Regarding ground conditions, he explained that Bellway was still trying to understand why the sewage connection had failed, as the ground conditions changed dramatically from one section to the next; information was now being gathered to be able to agree the task with contractors before work commenced. He explained that there had also been issues with the appropriate time to close the road to undertake the work, which had also slowed the process. He conceded that further testing should have been undertaken when there had been initial delays and issues. He pointed out that Phase 2 properties could not be occupied until habitation certificates were granted, which would be dependent on the mains sewage connection being in place. He also gave reassurance that relevant permissions would be sought for any signage.

Responding to questions from Councillor Forrest, Mr Lindsay provided information on the telemetry which would flag any issues with the sewage pump, and advised that emergency storage capacity would allow ample time to fix any system issues.

Councillor McGinn, local member, thanked everyone who had come together to communicate through the Community Liaison Group, including local residents, Bellway, Scottish Water, Council representatives, and the Elphinstone Community Association. He highlighted that the new residents would become part of Elphinstone, and had to be embraced and welcomed for all that they would bring to the community. He hoped that the new families would safeguard the future of Elphinstone Primary School. He was pleased that Bellway had acknowledged what had gone wrong, and that collaborative working was now in place. He hoped that some of the lessons learned would also inform future developments.

Councillor McLeod, local member, concurred with Councillor McGinn's comments, and said he was grateful for Councillor McGinn's work with the Community Liaison Group. He felt that the Committee could not vote against the application when it was part of the LDP, but he had appreciated that the continuation in November allowed for dialogue with Bellway. He would continue to question Bellway if things did not work out in future.

Councillor Menzies, local member, expressed that she found it difficult to separate Phases 1 and 2. She remained concerned that Elphinstone village had doubled in size by the development of one site. She was dismayed that an emergency sewerage site sat next to social housing, and there had been serious issues with foul odours. She also raised issue with work starting at 7am at the weekend. She was heartened by the progress made, but felt that issues were still ongoing, and thought that to allow Phase 2 to go ahead was disregarding the Councillors' duty to ensure constituents were well cared for. She asked Planning Committee members to vote against the application, and for Bellway to apply again following resolution of all issues.

Councillor McIntosh was pleased that detailed answers had been provided regarding sewerage and drainage. She raised concern that the additional housing on site, which had been allocated for only 80 houses under the LDP, would cause additional pressure on East Lothian's growth, and was contributing to concerns about distinctive places in this part of the county being irrevocably changed by large-scale housing developments. She felt that the application constituted an overdevelopment of the site, and felt that placemaking must be considered in a more joined-up way than only considering whether a site was physically capable of housing the units. She would vote against the application because she felt the site could not comfortably hold up this number of units. She referenced Policy 14 of National Planning Framework 4 (NPF4), which said that a development which was detrimental to the amenity of a place would not be supported; she felt that residents were unhappy with the significant increase in the size of the village, and felt that the countryside should be defended.

The Convener responded to criticism of the LDP and the number of houses having to be delivered; he pointed out that this had been required by the Scottish Government and there was no option but to find land to deliver 10,050 houses. He said Bellway had let itself down in Phase 1, and felt the Planning Authority should have had greater control over the speed of development until there was an adequate drainage connection. He felt that there were now sufficient controls in place, particularly since units could not be occupied until sufficient drainage connections were in place to support the site. He considered the new housing coming forward in Elphinstone to be positive when there was such demand on housing; house prices would only increase if housing development was restricted. He thought that the affordable housing on the site was also necessary, and the increase in attendance would secure the future of Elphinstone Primary School. He said that actions would be considered in the future to ensure the Phase 1 issues were never experienced on another development.

Mr Dingwall summarised the amendments to conditions proposed by Councillors McGinn and McLeod, affecting Conditions 7, 25, and addition a new Condition 27, all noted below.

Additional Condition 27 and the amendments to Conditions 7 and 25 were formally proposed by Councillor McLeod and seconded by Councillor McGinn. There was unanimous support for these amendments by roll call vote.

The Convener then moved to a roll call vote on the officer's recommendation to grant consent, including the amended conditions. Votes were cast as follows:

Support: 9 (Councillors Hampshire, Allan, Collins, Findlay, Forrest, McGinn, McLeod, McMillan, and Yorkston)

Against: 2 (Councillors Gilbert and McIntosh)

Abstentions: 0

Decision

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

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

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

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

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

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

and

c. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the

Agreement the proposed development is unacceptable due to a lack of sufficient primary school capacity within the catchment, a lack of provision of affordable housing, a lack of sports infrastructure improvements and a lack of roads and transport infrastructure contrary to, as applicable, Policy 18 of NPF4, Policies DEL1, HOU3, HOU4 and Proposals T9, T10, T11, T15, T17, T21, T27, T28, ED4,CF1 and TT11 of the adopted East Lothian Local Development Plan 2018 and its adopted supplementary guidance: Developer Contributions Framework.

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

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

Reason:

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

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

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

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

Reason:

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

- 3 Unless otherwise approved in writing by the Planning Authority:

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

Year 2025/26 - 30 residential units

Year 2026/27 - 40 residential units

Year 2027/28 - 41 residential units

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

Reason:

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

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

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

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

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

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

Reason:

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

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

Reason:

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

- 6 Prior to the occupation of the last residential unit hereby approved, the proposed access roads, parking spaces and footpaths shall have been constructed on site in accordance with the docketed drawings. Unless otherwise approved in writing by the Planning Authority, driveways shall be at least 3.3 metres in width.

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

Reason:

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

- 7 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area, including from the effects of noise and dust, shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control construction traffic and shall include hours of construction work and routes of construction traffic to/from the site, delivery time restrictions and a health and safety method statement. It shall also make recommendations in respect of how building materials and waste will be safely stored and managed on site. The submitted details shall show that no construction traffic shall use Tranent Road to access or egress the site.

The Construction Method Statement shall also include details of wheel washing or alternative facilities to be provided, and that these facilities shall be maintained in working order during the period of operation of the site. All vehicles must use the wheel washing or alternative facilities to prevent deleterious materials being carried onto the public road on vehicle tyres.

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

Reason:

To minimise the environmental impact of the development.

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

Reason:

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

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

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

Reason:

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

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

Reason:

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

- 14 Prior to the commencement of development, an updated Gas Risk Assessment shall be submitted to and approved by the Planning Authority. Where risks are identified, a detailed Remediation Statement shall be submitted to and approved by the Planning Authority to demonstrate the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks. The Statement shall detail all works to be undertaken, proposed remediation objectives and remediation criteria as well as details of the procedures to be followed for the verification of the remedial work. It shall also ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development. The detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels. The Remediation Statement as approved shall be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. Following completion of the measures identified in the approved Remediation Statement, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Statement.

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

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

Reason:

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

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

Reason:

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

- 16 No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing must be as indicated on the drawing 'Figure 3.4 Tree Protection Plan' on p 33 of the Tree Survey and Arboricultural Impact Assessment by Caledon Tree Surveys dated April 2024, shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees and hedgerows and approved in writing by the Planning Authority.

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

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

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

Reason

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

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

Reason:

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

- 18 Unless otherwise approved in writing by the Planning Authority, all planting, seeding or turfing comprised in the approved details of landscaping on the drawings titled 'Landscape Proposals (Sheet 1 of 6)' with drawing number 231.29.01C, 'Landscape Proposals (Sheet 2 of 6)' with drawing number 231.29.02C, 'Landscape Proposals (Sheet 3 of 6)' with drawing number 231.29.03C, 'Landscape Proposals (Sheet 4 of 6)' with drawing number 231.29.04C, 'Landscape Proposals (Sheet 5 of 6)' with drawing number 231.29.05C, 'Landscape Proposals (Sheet 6 of 6)' with drawing number 231.29.06C shall be carried out in the first planting and seeding season following the occupation or completion of any part of the development hereby approved, whichever is the sooner. All planting shall be established and maintained in accordance with the details on the above drawings and as detailed in the 'Plant Schedule, Specification & Maintenance' document Revision B dated 22 October 2024. This includes maintenance of garden hedges at 1m in height and maintenance of the northern boundary hedgerow at 1.5m in height. Any trees, hedges or plants which die, are removed or become seriously damaged or diseased within a period of ten years from the completion of the development shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

No trees detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority. All landscape shall be retained and maintained to accord with the details of the approved details of landscaping.

Reason

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

Reason:

To ensure biodiversity provision and retention.

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

Reason:

To ensure the provision of acceptable drainage for the development.

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

Reason:

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

27. Prior to commencement of development, details of a programme of quarterly monitoring of traffic on Elphinstone Road and surrounding roads in the village of Elphinstone shall be submitted to and approved by the Planning Authority. The submitted details shall include a timetable for implementation and proposals for the reporting of this information to the Planning Authority. Development shall thereafter be carried out in accordance with the details so approved.

Reason:

In the interests of road safety.

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

The application was heard following the decision of Planning Committee on 5 November 2024 to continue planning applications 23/01333/PM and 24/00699/P to the following meeting to

allow time for concerns about the Bellway housing development at Elphinstone to be investigated.

The report discussed at Item 2 also concerned issues with Item 3, and the original officer report for planning application no. 23/00699/P was also appended to the report. Mr Dingwall presented the report, highlighting the salient points. The officer's recommendation was to grant consent.

Responding to a question from Councillor McGinn, Mr Dingwall discussed the principles of the footpath's connectivity. He pointed out that it was not necessarily fatal for a proposed path not to comply with the development brief, and said that it was down to Planning Committee members to decide whether the proposal was acceptable. If planning permission was refused, then officers would be happy to enter into discussions to find a solution for an alternative route.

Responding to questions from Councillor McIntosh, Mr Dingwall explained that the development brief had to be considered alongside all relevant policies in determining an application; there may still be sufficient reason to refuse a proposal despite compliance with the design brief. Morag Hadow, Transportation Planning Officer, confirmed that the proposed path was 3m wide, and therefore met the cycle design standards, and allowed for space on either side for adequate maintenance. She advised that better connections across Elphinstone Road were being considered. She felt that that the previously considered path through McFarlane Court may have been better as a route to school, but this proposal may have been better for connecting the community.

Officers and Bellway representatives responded to questions from Councillor Menzies and Councillor McLeod. Mr Dingwall explained that there had been no requirement for community consultation because the footpath was an local development type application. Mr Hinds pointed out that the footpath had been part of the development brief, so would have been covered by this consultation, and the application process had also included public consultation. Henry Harper, representing Bellway, advised that there would have been an increased loss of four or five trees had the McFarlane Court option proceeded.

Rob Moore spoke against the application, and also spoke on behalf of neighbours whose property directly bordered the proposed path. He explained that his key objection was that the pathway was to be built over part of his garden. He advised that the property deeds and the land registry both stated that he owned this land, and he was surprised that a pathway could be built over his garden. He also reported that no contact had been made by the Council or developer about adopting, owning, or borrowing land which was part of his property. He reported that a Council employee had commented that the situation did not make sense. He said that residents had been lied to by the Council and Bellway, who had intimated that the pathway being shown over the private land had been for artistic purposes only and would be removed, which had not happened. He gave an account of the purchase history of this plot of land. He felt that the path would be a route to nowhere and would increase antisocial behaviour and dog fouling; he pointed out that the quiet cul de sac did not lead to any amenities. He also considered that the lighting of the path would be disruptive to residential amenity and wildlife. He pointed out that the path was required to be three metres wide for active travel purposes, but the portion over his land would be less than two metres wide. He also considered there to be adequate pathways already in place in this area. He noted that the Council had been in touch with the farmer that owned the land which had been considered for the alternative pathway at McFarlane Court, but Mr Moore had never been contacted as an owner of the land affected by the current proposals. He also reported that the pathway was a cause of stress for many elderly residents concerned about the safety of their properties.

Following a question from Councillor Findlay, Mr Moore advised that he had had no opportunity to discuss the ownership of the land with the Council or Bellway. Ms Hadow advised that this piece of land was a Council-adopted footpath, and would therefore remain

as a footpath unless the Council otherwise approved a change of use. She advised that it had been the Council's responsibility to maintain the footpath, and she understood that no changes were planned for the land outside Mr Moore's house, but that it would connect into the proposed footpath.

Councillor Menzies, local member, asked Planning Committee members to consider how they would feel if they were in Mr Moore's situation. She pointed out that it was not the role of the Council to maximise Bellway's profits, and said that constituents faced with losing land in their ownership must be taken care of. She also pointed out that the proposals had come forward, then removed following objections, and then had been brought forward once more.

Councillor McLeod did not think that travelling via Waterloo Place represented the safest route to school, and thought that other pathways should be considered. He would not support the proposal.

Councillor McGinn said he would not support the application, and felt that the proposal was for the wrong path. He pointed out that Bellway would need to consider their next steps if this application was refused, and commented that it was very helpful when there was good communication. He would continue to work with Elphinstone residents for better outcomes.

Councillor McIntosh pointed out that there had been a better route across a farmer's field, and felt an alternative solution must be found because the proposed path was not an appropriate link. She also pointed out that the Local Access Forum could intervene with landowners over access rights. She assumed an alternative path proposal would come forward since the housing development had already been approved.

Councillor Allan felt the pathway was in the wrong place, and would not support a proposal which was not in the best interests of the community. Councillor Findlay agreed that the path was having a detrimental impact on residents, and he would not support the proposal when there were alternative options.

The Convener agreed with his fellow Councillors' comments. He commented that good footpath links were important for new developments, but felt that this proposal had been an afterthought. He hoped that Bellway would appreciate that the Council wanted to work with them, but said Bellway needed to keep the community on board.

The Convener moved to a roll call vote on the officer's recommendation to grant consent, and Members unanimously voted against the recommendation. Members also agreed the reason for refusal, noted below.

Decision

Planning Committee members refused planning permission for the following reason:

- 1 The proposed footpath would be harmful to the amenity of neighbouring properties, contrary to Policy 14 of National Planning Framework 4 and Policy DP2 of the adopted East Lothian Development Plan 2018.

4. PLANNING APPLICATION NO. 24/00629/P: ALTERATIONS AND CHANGE OF USE OF BUILDING TO FORM HOLIDAY LET AND ASSOCIATED WORKS, VACANT BUILDING ADJACENT TO SECOND AND THIRD GREEN OF KILSPINDIE GOLF COURSE, ABERLADY

A report had been submitted in relation to Planning Application No. 24/00629/P. Julie McLair, Planner, advised that Gullane Area Community Council had made an objection to the

proposals, which was incorrectly noted in the report as there having been no submission, and read out the objection. She then presented the report, highlighting the salient points. The report recommendation was to refuse consent.

Officers responded to questions from Committee members. Ms McLair advised that no structure to protect the front of the property from golf balls had been proposed. Jen Newcombe, Biodiversity Officer, confirmed that there were concerns over disturbance to wildlife in the construction phase, but also during the property's operation; disturbance to the birds would be detrimental to the European legislation they were covered by. Ms McLair also confirmed that Transportation Planning Officers had concerns over the lack of vehicular access, which was a recommended reason for refusal.

Tony Thomas, the applicant's agent, spoke to the application. He began by responding to previous questions by Councillors. He felt that any birds disrupted by operations would simply move 10-20 metres down the coast. He also considered that emergency vehicles would be able to gain access, just as they would in an emergency situation on a golf course. He advised that there were no figures available for the use of the bird hide, as members of the public were able to come and go as they pleased. Turning to his presentation, he suggested that the impact of the operation of the short-term let would be inconsequential, as there would be no one around in the area to be affected. He described the proposals as innovative and unique, and the property required guests to access it on foot. He described the property as having potential to become a signature destination, and pointed out that the proposals aligned with the Council's economic development policies. He implored members to consider the scale of proposed change, and considered that all impacts would be very small. He pointed out that the only opening towards the golf course would be the front door, and movements would be infrequent. He reported that the site had never flooded. He also thought that golfers would be unaware of whether the building was occupied, and felt the impact had been exaggerated given the scale of the proposal.

Mr Thomas responded to questions from Councillors Findlay, Gilbert, and Collins. He explained that the proposals were linked to Craigielaw accommodation and golf club development, an existing rural business, because Craigielaw would handle check-in. He did not consider that there was a significant chance that golf balls would land on the balcony of the property. He confirmed that the accommodation would house two occupants. He also advised that a private system to the west of the building would treat the small amount of sewage waste and release into the Forth.

Councillor McMillan asked whether other potential uses for the building had been considered. Mr Thomas explained that the building was in a state of disrepair and unsafe, and would be expensive to renovate. As its use as a bird hide would not be chargeable, it would incur the developer a large expense for no return.

The Convener raised concern about the risk of severe storm damage. Mr Thomas pointed out that the building had been reinforced significantly over the years, and the structural report was sound. He said the developer was optimistic about the long-term future of the building.

James Urquhart spoke against the application. He was an Aberlady resident and had walked along the site regularly for many years, so he knew its history, character, and wildlife, which were all cherished by local people. He strongly felt that the site should be protected from the harm which would be caused by this holiday let, particularly when there were so few other buildings on this stretch of coastline. He considered that the small size of the development was not relevant in the assessment of the holiday let's impact, and pointed out that the proposals did not comply with policy. He reported that the building had never been used as a bird hide because it had always been locked. He felt the modern private dwelling would conflict with the character of the area, its use as a nature reserve, the enjoyment of its existing use by walkers and golfers, and would harm the unique setting. He pointed out that a holiday let had

no operational requirement for a coastal location. He also pointed out that Aberlady Bay was a protected coastal area, and highlighted the considerable opposition to the proposals. He considered that planning policy was clear, and there were no valid merits to the proposals. He urged Committee members to support the officer's recommendation to refuse consent.

Rebecca Simpson Hughes, representing Gullane Area Community Council, spoke against the application. She said that the Community Council had been extremely upset that their comments had not been included in the report, and they had never spent so much time on a planning application in recent years in terms of community interest and concern. She conveyed the very serious concerns of the community; despite the tiny size of the building, to some, it was in an extremely meaningful location in a special setting. She conveyed that the Community Council fully concurred with the reasons for refusal.

Councillor Allan explained that she had called in the application because she felt it had been a unique proposal. She had observed dog walkers and golfers on the site visit, so felt that the modest increase in visitors would not have an impact on the area, and overall changes would be minimal. She felt that changes could not even be detected from a distance, and the site visit had swayed her to vote against the officer recommendation for refusal.

Councillor Findlay would have supported the proposals from an economic perspective, but had safety concerns about emergency access at night and dangers to people in the property on the golf course. He supported the officer's recommendation for refusal.

Councillor McIntosh pointed out that the application was in major violation of a large number of Council and national policies, and felt that the objections of NatureScot and the Biodiversity Officer should be taken seriously. She pointed out that Mr Thomas had only considered the impact on humans, but disturbance of birds would impact their energy availability, and said the Council must act upon its declared nature emergency. She considered the lack of flooding history to be irrelevant in a time of rising sea levels, and felt that it was important that the Council did not start to approve plans for vulnerable coastal properties. She also thought there were safety concerns regarding flying golf balls, and summarised that the proposal was poor on every metric.

Councillor Yorkston felt conflicted because he was aware of the quality of work produced by the Wemyss and March Estate in Longniddry South. He felt the proposals were innovative, but were in the wrong location, and would support the officer's recommendation for refusal.

Councillor Collins pointed out that it would be impossible to get a fire engine to the location, particularly if the ground was wet. She felt the concept was good, but in the wrong place. She hoped something would be done to keep the building, but did not agree that this was the right proposal.

Councillor McLeod agreed with the officer's recommendation to refuse consent. He thought staying in the property would be an amazing experience, but for reasons of safety, he could not support the application.

Councillor McMillan responded to the various arguments made by different parties, and understood the economic need for accommodation and tourism. He did not feel concerned about the health and safety aspect if guests were aware of the risk, which would require intelligent briefing and customer care. He commented that innovation must be encouraged, and the location was unique. He felt swayed by Councillor McIntosh's and Ms Newcombe's comments about the effect on wildlife. He felt the Wemyss and March Estate had put forward a good proposal and had considered mitigation, so it was with regret that he would support the officer's recommendation.

The Convener acknowledged that the Wemyss and March Estate had done good work along the coast, and could make a fantastic job of the development; however, he remained concerned about the destruction of coastline by recent storms, and felt the property would be affected by this in the future. He would support the development of high-quality accommodation in this area, but not directly on the coast. He would uphold the officer's recommendation.

The Convener moved to a roll call vote on the officer's recommendation to refuse consent, and votes were cast as follows:

Support: 9 (Councillors Hampshire, Collins, Findlay, Forrest, McGinn, McIntosh, McLeod, McMillan, and Yorkston)

Against: 2 (Councillors Allan and Gilbert)

Abstain: 0

Decision

Planning Committee refused the application for the following reasons:

- 1 It has not been demonstrated that the proposed scheme of development could be undertaken without undermining the conservation objectives and/or having an adverse effect on the integrity of the designated Firth of Forth SPA (also a Site of Special Scientific Interest (SSSI)) and the Outer Firth of Forth and St Andrew's Bay Complex SPA contrary to Policies 3 and 4 of NPF4 and Policies NH1 and DC1 of the ELDP.
- 2 The proposed scheme of development would not accord with the guidelines for development within the Special Landscape Area and as such the proposal is contrary to Policy 30 of NPF4 part (b) (ii) and (e) (i), and Policies DC1, DC6 and DC9 of the ELDP.
- 3 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding as such the proposed scheme of development is contrary to Policy 22 of NPF4 and NH11 of the ELDP.
- 4 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the safety hazard to guests from flooding and having to traverse active golf courses contrary to Policy 23 of NPF4.
- 5 The proposed scheme of development would not be located on a site capable of being conveniently and safely accessed on foot, by cycle, by public transport or by private vehicle contrary to Policy T1 of the ELDP.

5. PLANNING APPLICATION NO. 24/00828/P: CHANGE OF USE OF AGRICULTURAL LAND TO DOG WALKING FACILITY, FORMATION OF VEHICULAR ACCESS, FORMATION OF TWO FIELD SHELTERS, LIGHTING, FENCING, AND ASSOCIATED WORKS, LAND TO THE SOUTH OF MEADOWMILL COTTAGES, TRANENT

A report had been submitted in relation to Planning Application No. 24/00828/P. Julie McLair, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Committee members. Ms McLair advised that the applicant would be obliged to make a further planning application after one year, and at this

time, Environmental Health would advise whether there had been any issues reported. She pointed out that members of the public could currently walk on any field, but would not be able to enter the enclosed dog walking access area; it would be for Environmental Health to establish whether any noise issues were being caused by dogs being walked by members of the public or whether noise was coming from the dogs in the enclosed facility. Nick Morgan, Access Officer, confirmed that the Community Wardens would still have powers fine people who did not pick up dog mess, even on an informal path.

Responding to further questions, Ms McLair explained that onsite parking would be provided, so customers would not have to park at Meadowmill Cottages, and road markings on the main road would ensure access at all times. The site had gated access, and customers would purchase a slot and be provided with a code to use. She confirmed that the site was an area of unmanaged land which had not been in agricultural use recently.

Responding to a question from Councillor Findlay, Mr Morgan provided background information as to how access rights under the Land Reform Act applied to the area of ground should planning permission be granted. He had suggested that if the southern boundary was moved north, people would still have access to the southern edge. He acknowledged that the applicant would have security concerns about people accessing the site. Mr Morgan felt that it would no longer be reasonable for people to claim they had an access right to the site if they were able to walk around it, and this solution also created connectivity between the site on the east and west. He also confirmed that he was content with the proposed deer fencing.

Brian Currie, the applicant's agent, spoke to the application. He restated some of the key points from the planning statement, and reaffirmed the applicant's commitment to addressing these points. He advised that the facility would be secure, with access-controlled gates and deer fencing around the perimeter. There would be parking and turning for eight cars, and any noise generated would be abated by 2.5m high earth mounds. He advised that the facility would be managed by the applicant and her parents, who resided near the entrance. He advised that the remaining land, which was also owned by the applicant, would be landscaped and benefit from supplementary planting.

Gordon Smith spoke against the application as the chair of the Meadowmill Residents' Association. He advised that residents were concerned that vehicles accessing the site would cause a blockage on the B-road, and would make the road unsafe for children cycling and wheeling. He advised that the number of people coming down the street each day had increased significantly since more housing had come forward at Blindwells. He pointed out that there was a blind exit, and residents were concerned the additional traffic would lead to accidents. He also raised concern with the pavement being lower than the statutory minimum height. Residents were also concerned about the increase in noise, and did not agree that the earth mounds would block the noise; he had been able to hear a kennels and cattery facility from half a mile away when he lived at a previous property. He raised that the wellbeing of mostly older residents would be affected by the proposals, and thought there were no other similar businesses which were so close to residences. He thought that there would be an accident caused by the proposals, and the operations would affect the majority of residents on the street. He implored Planning Committee members to vote against the proposals.

Following questions from Councillor McMillan, Jon Canty, Transportation Planning Officer, advised that officers would have considered visibility splays and traffic movements to and from the site. Mr Dingwall added that Roads Officers would have recommended refusal if, in principle, a safe means of access could not be formed. The Convener added that if access and traffic issues arose in the year of operation, this could be considered when a further planning application was made.

Councillor McIntosh explained that she had called the application in because she sat on the Local Access Forum, and thought there was a theoretical issue with the Council's

responsibility to uphold access rights if the field, which currently could be accessed, would be fenced off in its entirety. She was satisfied with the suggested compromise. However, she was concerned about the conflict between the safe route to school and the entrance and exit point to the site. She asked whether recommended Condition 7 could be strengthened so that road safety measures took account of safe routes to school. She also suggested that there should be no changeover of booking slots at the busy times where children would be travelling to and from school. Mr Dingwall advised that it would be open to the Planning Committee to make amendments to recommended Condition 2 if they felt there was a road safety issue.

Councillor Collins described her personal experience a facility where up to 30 dogs were exercised at a time; it could be very noisy for the first five minutes, following which, the noise died down.

Councillor McGinn remembered when traffic had been much busier in the area, but it had been quieter for some time. He was willing to support the officer's recommendation for a temporary grant of one year. He commented that such facilities were invaluable for people who had a reactive dog. He was pleased to hear that representatives of the business lived close by and could respond to feedback.

Councillor McMillan suggested that a later start for the first slot of the day might help concerns about parking and the safe route to school, which could be earlier during school holidays. He thought that good management and supervision of the site would be needed. He acknowledged that locals had concerns, and felt these could be alleviated with good communication. He would support the officer's recommendation, given the condition that planning permission be granted for a period of one year.

The Convener thought the proposals would make the majority of the site open landscape and a more attractive area for residents. He acknowledged the concerns raised about the safe route to school, parking, and noise; he felt that officers had provided a fair assessment of what could be managed on the site, and he was willing to support the grant of planning permission for a period of one year. After this period, it would become clear whether there had been an impact on residents or pedestrians.

Councillor McIntosh felt that granting for a period of one year was a good and evidenced-based way to proceed.

Councillor McMillan knew the site well, and said it was incumbent on drivers and pedestrians to be cautious. He also hoped that Roads Officers would pay attention to the site. He agreed that the proposals should be allowed to go ahead with good management, and hoped that residents would communicate any concerns to the Council.

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

Decision

Planning Committee members granted planning permission, subject to the following conditions:

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

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

Reason:

In order to protect the amenity of nearby residential properties.

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

Reason:

In order to protect the amenity of nearby residential properties.

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

Reason:

In order to protect the amenity of nearby residential properties.

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

Reason:

In order to protect the amenity of nearby residential properties.

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

Reason:

In order to protect the amenity of nearby residential properties.

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

shall be submitted to and approved by the Planning Authority.

Reason:

In the interest of pedestrian and road safety.

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

Reason:

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

- 8 A Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic (including routes to/from site) and shall include hours of construction work and routing of traffic. The Construction Method Statement shall also provide details of utility/service drainage connections.

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

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

Reason:

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

- 9 Prior to commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. These measures shall include details of hedge and wildflower meadow planting and be accompanied with a management statement of these. The measures as so approved shall be implemented prior to any use being made of the dog walking facility hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

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

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

Reason:

To minimise the environmental impact of the development.

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

Reason:

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

6. PLANNING APPLICATION NO. 24/00963/P: EXTENSION TO HOUSE, AND ERECTION OF WALLS, FENCING, AND GATES, 29 MUIRFIELD PARK, GULLANE

A report had been submitted in relation to Planning Application No. 24/00963/P. Amelia Smith presented the report, highlighting the salient points. The report recommendation was to grant consent.

Nick Mills, the applicant's agent, spoke to the application. He noted the objections and provided clarification on areas where he felt objectors had misunderstood the proposals. He

confirmed that the existing boundary wall relative to the garage to no. 29 and the courtyard beyond would remain as part of the proposal; there were no proposals to change the fencing beyond that, which was past the line of development. He advised that details had been submitted to show there were no issues with proposals regarding daylight overshadowing relative to the boundary condition, and the existing mature trees to the rear of the neighbouring property would not be affected by the proposals. He considered that all other matters raised by objectors had been adequately covered by the officer's report.

Responding to questions from Councillor Gilbert and the Convener, Mr Mills confirmed that the western boundary wall with no. 28 would remain in place, and would not be demolished and rebuilt. He also advised that a concealed gutter would allow downpipes to be routed on the side of no. 29, and there would be no issues with surface water from the roof being discharged into the neighbouring property.

Colin Miller spoke against the application. He lived close to the property and considered that his property would be most affected by the proposals. He noted that the photograph displayed by the officer had been taken prior to further development to his own property; the flat-roof extension no longer existed, and the conservatory had been demolished and would be returned to garden space. He considered that the proposed flat-roof extension would impact the use of his patio. He felt that the design was not in keeping with the surroundings, which were red pantile roofed houses of 1.5 storeys high, with off-white external rendering, and with a specific pattern alternating end-on and front-facing; Mr Miller described the extension as turning the end-on house into a very large off-white flat-roof box, now with two storeys, which would sit incongruously with adjacent properties. He felt that other alterations made to other properties had been done sympathetically, and sat within the boundaries of their properties. He considered the ten-metre site extension to be an overdevelopment, which was more than 100% of the original dwelling, and was not subservient to the existing property. He was keen for formalisation of the west wall being totally contained behind the existing boundary wall. He also took exception to the use of dark grey concrete tiles on the west elevation, which would be very close to the boundary and his patio. He felt the development would change the character of the street. He was concerned that the noisy work he did in his garage was going to be too close to the extended property. He welcomed the requirement for obscured glass on the north face, but was aware of similar requirements being changed upon application in Gullane. He thought the white box would be larger than anything in the area and would be incongruous. He was also concerned that the sight line from the corner of the end of the west wall included the window of his property. He understood that the proposal for full-length decking had now been withdrawn and would be undertaken through permitted development rights; he pointed out the decking would decrease the fence height from 1.8m to only 1.2m.

Responding to a question from Councillor Findlay, Ms Smith advised that the demolition of the west wall could not be regularised by the Planning Authority.

Councillor Allan, local member, said she had called the application in due to concerns there could be damage caused to the neighbouring property because of problems with drainage; having heard further explanation of this aspect of the development, she was content to support the officer's recommendation.

Councillor McMillan noted the different architectural styles which were prominent within the surrounding area, and almost everyone had made changes to their properties. There were different styles of roofs, and he did not consider the proposals to be an overdevelopment. He would support the officer's recommendation to grant consent.

The Convener understood that the objector had been concerned about his property, however, the Committee had heard that the development would not impact on the wall of the neighbouring garage. He felt the extension would be attractive and would fit into the surroundings well. He would support the officer's recommendation to grant consent.

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

Decision

Planning Committee members granted planning permission, subject to the following conditions:

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

7. 24/00007/SGC: ENERGY CONSENTS UNIT (ECU) CONSULTATION: CONSTRUCTION AND OPERATION OF THE CRYSTAL RIG SOLAR DEVELOPMENT WITHIN THE PLANNING AUTHORITY AREAS OF SCOTTISH BORDERS COUNCIL AND EAST LOTHIAN COUNCIL, LAND APPROXIMATELY 13KM SOUTH OF DUNBAR AND BEING AN EXTENSION TO THE CRYSTAL RIG WIND FARM

A report had been submitted regarding the Council's proposed response to the above consultation by the Energy Consents Unit (ECU) on an application to them under the Electricity Act 1989, East Lothian Council planning online reference 24/00007/SGC. Mr Dingwall spoke to the proposed response, highlighting the salient points. The report recommendation was to approve the proposed consultation response as outlined at Appendix 1 to the report.

Julie Aitken spoke to the application on behalf of Fred Olsen Renewables (FOR). She advised that FOR had had an operational windfarm at Cystal Rig since 2003, and had worked closely with communities throughout this time. Residents had been informed of plans to develop solar energy at the windfarm through public exhibitions, community council meetings, and through FOR's involvement with the Local Transport Group and Biodiversity Group; she expected this consultation to continue following consent being granted. She explained that the rationale behind the plans was to make Crystal Rig as efficient as possible, to maximise the grid connection on site, and to provide a steady stream of clean energy. She outlined the application, which was for 55,000 photovoltaic panels covering 131 hectares and generating 27 megawatts of renewable energy. She also advised of a community benefit package of £500 per megawatt, which would be index-linked.

Ms Aitken responded to questions from Councillors Collins, Hampshire, and Jardine. She advised that there would be a tender process for the solar panels following consent, and they usually sat 2-3 metres at their highest point off the ground; sheep were able to graze and take shade under the panels. She advised that the size and location of the project took biodiversity considerations into account. She also advised of plans for habitat management and biodiversity net gain, and FOR were working with East Lammernuir's Biodiversity Group to ascertain how they could feed into their plans.

Sederunt: *Councillor Gilbert left the meeting.*

Jacque Bell made representation on behalf of East Lammernuir Community Council (ELCC). The statement, on behalf of Chris Bruce, ELCC chair, highlighted the 14 proposed electricity infrastructure developments in the area, and asked that proper recognition be given to the work of community members who had become involved to try to get the projects right for the community. ELCC asked the Planning Committee to use its power to ensure good practice and for developers not to be able to ignore what had come before. ELCC requested that the developers be required to be active on community liaison groups. ELCC felt that while proposed planning conditions went some way to addressing concerns, they continued to rely on an assumption that professionals knew best and the community only had to be informed; it was felt that there was no space for ELCC's contribution to be taken into account, despite current good practice by FOR in relation to their Crystal Rig construction programme. ELCC drew attention to the requirements at Condition 7, and noted that FOR had gone beyond these requirements by undertaking to: inform residents on a weekly basis of traffic movements; enforce a 20-mph speed limit on all traffic associated with the development leaving and returning to the A1; provide a monthly update on any incidents or near misses; work to identify routes to school to ensure safe passage; and attend monthly 'Lorries in Our Lanes' meetings to allow residents an opportunity to comment on progress or suggest improvements. ELCC highlighted that this went way beyond the requirements to *inform* the community, and represented a genuine attempt to *engage with* the community; ELCC felt that the Condition 7's wording should be amended to reflect this. Regarding Condition 18, ELCC were dismayed that there was no reference to the Biodiversity Community Liaison Group, whose express purpose was to promote alignment of Habitat Management and Enhancement Plans (HMEP), and asked that a requirement to work with the group be included in the planning condition.

Ms Bell also made representation on behalf of West Barns Community Council (WBCC). She pointed out that although an application had to be considered on its own merits, there had been a significant cumulative impact, and asked that strong conditions be imposed to mitigate these impacts on the community, agriculture, landscape, transport, and residents. She highlighted concerns about construction traffic and workers' cars, particularly at the A1 around Innerwick, which had a high accident record. WBCC requested that improvements be made, possibly funded by developers, such as illuminated signs on the A9 warning of turning traffic. It was also felt that a transport strategy was needed to consider ongoing repairs of rural roads, which it was asked that developers contribute to, and road safety on rural roads. WBCC also

supported ELCC's request for strengthening the wording of recommended Condition 7, in that the developer should fully engage with the community road safety group. She highlighted Condition 15 and restoration of the site after 35 years, and questioned how this would be enforced. WBCC also supported ELCC's request to strengthen recommended Condition 18 by making it a requirement for the developer to engage fully with the existing Biodiversity Liaison Group as part of the HMEP. It was also asked that consideration be given to the suitability of any solar panels, particularly with regards to withstanding storms.

Councillor Jardine, local member, recalled that she had spoken previously at Planning Committee about how difficult such developments were becoming for the East Lammermuir community, and said that ELCC had become extremely adept at working well with developers. She described FOR as an incredibly engaged and empathetic developer. She reported that she had never heard anyone in the community speak against the need for renewable energy, but said they all wanted to protect the environment they lived in. She had gotten involved because she felt it was the role of Councillors to represent concerns and achieve a balance between communities and developers; she felt that in this respect, the resources of Councillors and Planning Officers had been stretched beyond limit. She appreciated that the practicalities of the additional recommendations sought by ELCC were challenging, but she found it symptomatic of the imbalance of power between communities and developers that there appeared not to be any way of maximising meaningful engagement from developers to ensure a legacy that the community could see their influence over. She felt that this representation must be made to the ECU to seek to embed an approach to genuinely meaningful engagement that would enable development to continue without communities feeling they had little agency in the decision making about their own environment.

The Convener, local member, acknowledged that connections to the national grid meant that the area would see many renewable energy developments. He commented that the planning process had not caught up with the renewable developments coming forward. He felt that the local authority should have full control over developments which spread over a vast area of countryside and out to the sea. He felt that the current proposals were sensible, and would help to generate renewable electricity when there was a massive shortage. He fully supported the current proposals, but agreed that impacts had to be minimised; one example was proposals for remote car parks to allow workers to take buses to developments. He supported the officer's report.

Councillor Collins said that all Councillors had received representations from residents, who worried their area would be overwhelmed by the level of development. She thought that adding the solar panels within the boundary of the existing windfarm was the best idea, and agreed that meaningful engagement with the community from developers would be very positive.

Councillor McMillan was supportive of the application, and hoped that that previous submissions the Council had made to the ECU would also have been carefully considered. He discussed the meaning of the word 'engagement'; felt concern that he was unaware of the views of those in the Scottish Borders affected by the proposals, and that there were no national strategic development and electricity strategies to refer to. He felt that the next iteration of the LDP must take account of community wealth building. He supported the submission of Appendix 1 to the ECU, but it had made him consider further engagement through the LDP, or some other measure, to be able to deliver the sustainable energy needed.

Councillor McIntosh agreed that there was a requirement for further strategic oversight, which she encouraged everyone to take to their parties in Holyrood and Westminster. She also agreed that use of the windfarm site for solar panels was useful to make use of the connection and efficiencies in infrastructure to minimise pressures. She implored fellow Committee members to consider ELCC's thoughtful and detailed response, and did not consider it an unreasonable ask for developers to have to engage. She suggested that conditions should be ambitious, particularly since the ECU were the consenting authority, as they would have the

final say over whether the conditions would be accepted. She was keen to support ELCC's suggested wording change to recommended Condition 7 to *engage* rather than *inform*, and would formally propose this amendment if it was competent. She also wanted to support ELCC's proposal to amend recommended Condition 18, and suggested that this could include a sentence to describe how the HMEP would also meet the objectives of the Biodiversity Liaison Group.

Mr Dingwall was of the view that whether the wording was *engage* or *inform* would not make a great deal of difference, as by informing, the developers would be engaging in some sense. Although he agreed with the principle of being ambitious, he highlighted that it was also important to be legally competent; clear advice from different legal authorities in this space said that it would not be reasonable to compel a developer to join and actively participate in a group. He acknowledged that the applicant was voluntarily willing to continue to participate in groups, he urged Planning Committee members not to go beyond the current wording when the Council had received advice that it was not legally competent to do so.

Responding to a question from Councillor McIntosh, Mr Dingwall was happy for *inform* to be changed to *engage* on the basis that by informing the community, a developer had complied with this condition; Mr Dingwall could not see how enforcement action could be taken to compel developers to go beyond this. Councillor McIntosh responded that she felt that *engage* was more open to the other party participating as well, so wanted to formally propose this change.

The Convener asked Carlo Grilli, Servicer Manager – Governance, to give his view on the proposed change. Mr Grilli acknowledged that *engage* and *inform* had overlap in terms of duties, but felt that *engage* implied a higher level of action, and was concerned how enforcement action could enforce that higher level of action if it did not come forward; he questioned how the Planning Authority could judge whether there was true engagement.

Councillor McIntosh felt that *engage* would leave developers under some obligation to try to find compromise; as FOR was managing to engage, she felt this was a good opportunity to send this amended wording to the ECU for consideration. She conceded that if the advice was that the suggestions were incompetent, then this would have to be withdrawn. On the basis that the Planning Authority could not judge whether the suggested amendments were being complied with, Mr Dingwall advised that they were not legally competent, and Councillor McIntosh withdrew her proposal. She summed up that she would still support the Council's response at Appendix 1, but she had considered that this could have been a good opportunity to add in more ambitious conditions and engagement with Community Councils.

Councillor McMillan said that he would explore the good principles, the learning, and the areas for improvement, and consider what could be done better for the future. He agreed with Councillor Jardine's point that the agency of communities had to be considered, and particularly in this case when FOR was a willing collaborator. He felt that the key aim was for collaboration on the wider issues.

Councillor Collins commented that the public perceived that being informed was when they were only told what was happening, whereas engagement would actually involve them, which Councillors always wanted to see.

Councillor Allan asked for clarification on the national guidelines relating to engagement, and felt that having developer engagement was vital and must be encouraged. Mr Grilli revisited an earlier point that proper engagement was always encouraged by the Council, but confirmed that the Planning Authority could not compel a third party to engage, making the suggested amendments not competent. He noted that the Council could engage itself, but could not impose such a condition on this situation; he re-emphasised that there was a difference between informing and engaging.

The Convener then moved to a roll call vote on the recommendation to approve the consultation response at Appendix 1 of the report. Members unanimously supported the recommendation.

Decision

Planning Committee members approved the consultation response at Appendix 1 of the report.

8. PLANNING APPLICATION NO. 24/01054/P: ERECTION OF 16 HOUSES AND ASSOCIATED WORKS, LAND AT SALTCOATS FIELD, GULLANE

A report had been submitted in relation to Planning Application No. 24/01054/P. David Taylor, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Responding to a question from Councillor Findlay, Mr Taylor advised that the land to the area of the north of the site came under consideration for educational uses prior to the preparation of the 2018 iteration of the LDP, but after further role projections, the site had not been taken up.

Councillors Findlay, Allan, and McIntosh all raised concern as part of their questioning with the wastewater capacity. Councillor Allan said she had previously read that the wastewater treatment centre was at capacity. Mr Taylor responded that Scottish Water had undertaken a capacity assessment and had unequivocally advised that there was capacity for this development.

Councillor Allan said she intended to find out more from Scottish Water on the matter of wastewater, and Councillor McIntosh pointed out that there had been two incidents of discharge of sewage into the sea only since the start of the year. She felt that Committee Members should be able to speak to Scottish Water directly because she did not feel satisfied that capacity was available for further housing developments. The Convener pointed out that the legal responsibility for wastewater lay with Scottish Water, who were obliged to provide capacity if they did not submit a formal objection to a planning application. Responding to a question from Councillor Findlay, Mr Dingwall advised that recommended Condition 15 was there only to provide additional reassurance regarding wastewater capacity.

Mr Thomas, the applicant's agent, spoke to the application. He pointed out that the development would provide a much-needed mix of family homes in Gullane, and the Saltcoats development had been popular, with generous open space. Although previous concerns had been raised, he felt the actions of CALA Homes had alleviated concerns. He pointed out that the development met requirements for open space, access, and parking. He highlighted that the development included four 4-bedroomed bungalows. He noted the genuine concern regarding wastewater, and he appreciated that formal wastewater approval was required for the site through conditions. He noted that the land was no longer required for the expansion of Gullane Primary School. He explained that the developer would contribute to Memorial Park, support local initiatives, and the total developer contributions would be just under £6m. He highlighted wider sustainability objectives, such as the air source heat pumps to be installed in the new homes, and CALA's urban wildlife initiative to support biodiversity within gardens. He summarised that the application was small in scale, in an area for housing on land which was no longer needed for education. If approved, a seamless continuation of

construction activities was expected, with completions scheduled for the second quarter of 2026.

Responding to a question from Councillor Findlay, Derek Lawson, of CALA Homes, advised that further houses were being built in Gullane because there was a wider housing emergency in place, and homes were selling well in Gullane. He also pointed out the contributions CALA Homes were making towards parks and pitches, and land in the northern part of the site could be provided free of charge to support the Council's ambitions to develop a seven-a-side pitch. Mr Thomas added that there was an obligation on the Council for efficient use of land during a housing crisis.

Alan Fraser spoke against the application on behalf of Gullane Area Community Council (GACC). He raised concern about the 16 new connections proposed to the Gullane Area Wastewater Treatment Facility, and questioned why further investigation would be required when Scottish Water had already stated there would be capacity; he suggested that this meant that members could not have confidence that sewerage capacity had been properly investigated. He reported that Scottish Water had previously advised GACC that there was no further capacity in the wastewater treatment facility, and that Scottish Water could not support new connections; he reported that CALA Homes had also met with GACC and had been advised that there was no capacity for new connections. Mr Fraser reported that a retired senior water management official had also confirmed to GACC that the system was already beyond capacity and there was a significant risk of untreated sewage overflows. He also highlighted the location of the wastewater treatment facility as being on the edge of the Aberlady Bay Nature Reserve, meaning untreated sewage discharge was a matter of environmental catastrophe affecting a sensitive protected area, and a serious breach of licence for Scottish Water. Mr Fraser also raised GACC's objections that there was insufficient infrastructure to support the new proposals, including transport infrastructure. With a lack of new employment in the village, most were forced to commute; this was largely by car due to limited public transport options and the Council's lack of support for a safe cycle path to Drem Railway Station.

The Convener clarified that the Council did support an active travel route to Drem, but the landowner had refused to sell the required land.

Responding to a question from Councillor Findlay, Mr Fraser said that he had written correspondence from Scottish Water to confirm that there was no capacity in the wastewater system. He found it unbelievable, given the significant community interest, if further capacity had been found and this had not been communicated to GACC. The Convener pointed out that Scottish Water had confirmed there was capacity at Gullane in their response to this consultation. Mr Fraser thought that requiring Condition 15 did not therefore make sense, and Mr Dingwall reiterated that this was only to provide surety because officers were aware that this was a sensitive area; Committee members could choose not to impose the condition if they felt it was unnecessary. Mr Fraser asked for the detail of the Scottish Water response to be sent to GACC.

Sederunt: *Councillor McIntosh left the meeting.*

Responding to a question from Councillor McMillan, there was further discussion about wastewater capacity. Councillor McMillan felt it would be reassuring to understand the process for application for connections and to know that building would not start until this was in place. Mr Dingwall responded that the Planning Committee could ask the applicant to set out this process; however, recommended Condition 15 provided comfort that further investigations would be carried out. Following further discussion, the Convener suggested that the technical capacity study would be shared once it had been submitted by Scottish Water.

Alexander Brett Walker spoke against the application. Mr Walker also raised concerns about the wastewater capacity, particularly considering the increase from 130 houses on the original masterplan, to 166 houses on the overall site. He also noted that this site had been marked for open land in the original masterplan. He raised concern over the differing responses provided by Scottish Water. He pointed out that Aberlady Bay suffered a significant number of unauthorised discharges, posing serious consequences for human health and to the Site of Special Scientific Interest (SSSI). He pointed out where the outfalls were on a diagram of the site, which flowed straight into Aberlady Bay. He pointed out that under Policy 3 of NPF4, a development should not affect water quality. He was also concerned that Scottish Water were working from an assessment undertaken in 2017, and that assessment had not taken account of sewage discharges at Aberlady Bay. He considered that the prime agricultural land, if no longer needed for the community, should be returned to agricultural land; he commented that the housing crisis would not be solved by siting 16 houses on this site. He also felt that flood risk relating to backflow had not been considered. He also highlighted further NPF4 policies which covered protection of biodiversity. He did not consider potential alternative arrangements to be acceptable, should Scottish Water not have capacity for the connections upon further assessment. He pointed out that a similar condition to recommended Condition 15 on the 2018 application for 150 houses was never discharged. He urged Committee members to refuse the application, which he considered to be contrary to NPF4 Policies 1-4, 17, 18, and 22, LDP Policy NH5, and the approved masterplan for the overall site. He urged that further investment in Gullane Wastewater Treatment Centre to provide further strategic capacity must be resolved before any further sites were developed for housing which had not originally been planned.

Councillor Hampshire pointed out that some people would consider maximisation of the number of houses without taking more countryside land a positive aspect of the proposals. Mr Walker pointed out that the houses would benefit from less open space, and noted that there would be a requirement for significantly more sewerage connections than had originally been envisaged.

Councillor Findlay commented that there were serious issues to be answered in relation to foul drainage, and he also thought that a new playfield for Gullane Primary School would be welcomed. He was concerned that developing on this site would remove potential for future expansion of the school. He felt that that approving the application was too hasty, and thought that affirmative confirmation should be received from Scottish Water prior to approval.

Councillor Findlay proposed that the application be continued until such time as the sewage capacity had been established, and this was seconded by Councillor Allan. The Convener then moved to a roll call vote on this proposal, and votes were cast as follows:

Support:	3	(Councillors Allan, Collins, and Findlay)
Against:	6	(Hampshire, Forrest, McGinn, McLeod, McMillan, and Yorkston)
Abstain:	0	

The motion to continue the application fell, and the debate on the application therefore continued.

Councillor McMillan commented that the Council also wanted the matter of wastewater to be resolved, and was the same Council looked after the Aberlady Bay Nature Reserve by providing rangers, and who did the work to turn the land into a reserve in the first place. He would take the matter up with Scottish Water. He felt there were sufficient preventative measures in place, and pointed out that CALA Homes may be faced with Scottish Water responding, after further study, that the connections could not be made. He thought the Council also had to work with Scottish water to resolve the matter. He felt that the

recommended conditions provided sufficient security, and he pointed out that there was a real need for homes. He was also not convinced that this patch of land would ever be returned to agricultural use. He felt the application provided an opportunity for further development of homes in Gullane which were close to amenities. He would support the officer's recommendation, would ensure Condition 15 was met, and would discuss further with Scottish Water.

Councillor McGinn would support the officer's recommendation to grant consent. He referred to his experience of working with Scottish Water on the problems with the Bellway development in Elphinstone, and described their service as being first class. He was not in a position to suggest that their consultation response was incorrect, and felt that Scottish Water must be taken at their word.

Councillor Collins felt concerned by the increase in sewage problems being experienced around the county, and also felt that it was premature to abandon the potential for expansion of Gullane Primary School.

Councillor Forrest felt confident that the Planning Authority would ensure that the development could not start until it had been established that there was sufficient wastewater capacity, and pointed out that the developer would not want to build 16 homes that would sit empty because of sewage capacity issues. He particularly welcomed the four bungalows to be built, which were the type of houses communities needed.

Councillor Allan sought clarification that recommended Condition 15 meant that construction could not begin until there had been confirmation of wastewater capacity through provision of a technical report. Mr Dingwall confirmed this was the case, and Councillor Allan said that this made a difference as to whether she would support the application.

The Convener acknowledged that questions often came up at Planning Committee about Scottish Water, and it was his position that if Scottish Water responded to say there was capacity for a development, then the Planning Authority must allow the development to go ahead on this basis. He noted that the Education Authority had confirmed that the land was no longer required to be held for educational purposes. He considered the application for 16 units to be a good use of this piece of land. He raised concern that the required developer contribution per house was too low, and said this had been taken up with the Scottish Government. He would support the officer's recommendation to grant consent.

The Convener then moved to a roll call vote on the officer recommendation to grant consent, and votes were cast as follows:

Support: 7 (Councillors Hampshire, Allan, Forrest, McGinn, McLeod, McMillan, and Yorkston)

Against: 2 (Councillors Collins and Findlay)

Abstain: 0

Decision

Planning Committee agreed to grant planning permission, subject to the following:

1. The satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:
 - (i) a financial contribution to the Council of £8,539.00 towards the provision of strategic transport interventions;

- (ii) a financial contribution to the Council of £107,728.00 towards the provision of additional North Berwick High School accommodation;
- (iii) the transfer of land to the north of the development site, marked as Recreational Ground on Drawing: SG-PL-300-01 'Proposed Site Layout', at nil value to the Council for community use;
- (iv) a financial contribution to the Council of £110,000.00 towards Sports Provision and Changing;
- (v) a financial contribution to the Council of £9,072.00 towards Play and Recreation; and
- (iii) the provision of 4 affordable housing units within the application site.

2. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient school capacity, the lack of road and transport infrastructure improvements, and the lack of financial contribution towards sports provision and play and recreation, contrary to, as applicable, Policies DEL1, HOU3, HOU4 and T32 of the East Lothian Local Development Plan 2018 and Policy 18 of NPF4.

Conditions:

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

Reason:

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

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

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

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

Reason:

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

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

Reason:

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

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

Reason:

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

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

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

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

Reason:

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

- 6 The 4 residential units approved to be affordable housing units shall be operated as affordable housing and shall not be sold as market housing.

Reason:

In order to ensure the 4 houses are affordable housing and is therefore compliant with Policy HOU3 of the adopted East Lothian Local Development Plan 2018.

- 7 All planting, seeding or turfing comprised in the approved details of landscaping comprised on the drawing titled 'Phase 2 Landscaping Rev B' shall be carried out in the first planting and seeding season following the occupation or completion of any part of the development hereby approved, whichever is the sooner. All planting shall be established and maintained in accordance with the details on the above drawing.

Any trees, hedges or plants which die, are removed or become seriously damaged or diseased within a period of ten years from the completion of the development shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

No trees detailed in the approved landscaping plans to be retained on the site, shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the previous written consent of the Planning Authority. All landscape shall be retained and maintained to accord with the details of the approved details of landscaping.

Reason

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

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

Reason:

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

- 9 The residential scheme of development hereby approved shall comply with the following transportation requirements:

- i) all roads and paths shall conform to East Lothian Council's Transport Infrastructure in New Developments;
- ii) all path and footway connections from a zone under construction to the existing settlement shall be constructed to an adoptable standard before the occupation of any units in that particular zone; and
- iii) driveways shall have minimum dimensions of 3.3m width by 6m length. Double driveways shall have minimum dimensions of 6m width by 6m length or 3.3m width by 11m length.

Development shall thereafter be carried out in accordance with the details so approved unless otherwise approved by the Planning Authority in consultation with the Roads Authority.

Reason:

In the interests of pedestrian and road safety.

- 10 A Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic (including routes to/from site) and shall include hours of construction work and routing of traffic. The Construction Method Statement shall also provide details of utility/service drainage connections.

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

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

Reason:

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

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

Reason:

In the interests of road safety.

- 12 Prior to the occupation of any of the residential units hereby approved a Residents Travel Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking shall be submitted to and approved by the Planning Authority. The Residents Travel Pack will include local bus and train timetables, local cycling and walking maps, information on bike hire / car sharing, and shall include details of how it will be distributed to residents.

Reason:

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

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

- o Phase I - A preliminary investigation incorporating a desk study, site reconnaissance, development of a conceptual model and an initial risk assessment.
- o Phase II - Incorporating a site survey (ground investigation and sample analysis) and risk evaluation. It is required if the Phase I investigation has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation.
- o Phase III - Where risks are identified, a Remediation Strategy should be produced detailing and quantifying any works which must be undertaken in order to reduce the risks to acceptable levels.

Should remedial works be required then, prior to any residential units being occupied, a Validation Report shall be submitted to and be approved by the Planning Authority confirming that the works have been carried out in accordance with the Remediation Strategy.

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

Reason:

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

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

Reason:

To minimise the environmental impact of the development.

- 15 Prior to the commencement of development confirmation from Scottish Water shall be provided that demonstrates that there is an available connection to the public sewer and that Scottish Water will accept waste from this development. If Scottish Water cannot accept foul drainage from this site, proposals for alternative arrangements should be provided, prior to the commencement of development and SEPA should be re-consulted.

Reason:

In the interests of ensuring that foul drainage from the site can be accommodated.

9. PLANNING APPLICATION NO. 24/01007/P: SECTION 42 TO VARY CONDITION 1 OF PLANNING PERMISSION 21/00622/P, 95A HIGH STREET, TRANENT

A report had been submitted in relation to Planning Application No. 24/01007/P. Mr Taylor presented the report, highlighting the salient points. The report recommendation was to grant consent.

Mr Taylor responded to questions from Committee members. Responding to questions from Councillor McGinn, he advised that an approved extension to the adjacent property at 95 High Street would be one metre to from the wall to the west of the site. He advised that access

arrangements over the vennel would be a matter outwith the planning process for the parties to organise themselves.

Councillor McMillan raised concerns about the emergency exit. Mr Taylor highlighted that the proposals for planning permission 24/00064/P included a storage area and access path to serve that storage area, so it was assumed that works would be undertaken to clear out some of the stacks of barrels, palettes, and so on which had caused some concern at the site visit.

Tom Whitelaw, the applicant's agent, spoke to the application, and responded to some of the questions previously raised by Committee members. He advised that the door in question was only needed as a fire escape and for occasional maintenance, and the tenants would be forbidden to use it. He envisaged it would be used only twice a year, and advised that the door would be alarmed.

Responding to questions from Councillors Forrest, McGinn, and McMillan, Mr Whitelaw advised that tenants would be instructed to use the other main access, and the owner would be notified by the alarm going off if the emergency exit was used. He explained that the yard would be cleared, but he did not envisage wheelchair users becoming tenants of this property because the bedrooms were upstairs. He felt there was no real reason for his client to give up his legal right of access to the vennel, as it was convenient for occasional use. Mr Whitelaw had not personally been in touch with Council officers regarding licensing of the house in multiple occupation (HMO).

Councillor McGinn, local member, explained that he had been concerned about the plans because he had understood that the extension for the pub/restaurant would come right up to the emergency exit door. He also had concerns that the emergency exit would come out into a beer garden if the pub extension did not go ahead. He was concerned that the Committee would be approving something that could not be called an emergency exit, and he would not support the application.

Councillor Forrest also had concerns; he thought that just because a door was alarmed did not mean it would not be used. He would support the proposals in any case, because he could not find any reason to refuse. Councillor McMillan agreed with Councillor Forrest's comments, and acknowledged that the emergency exit was deemed to be workable by Planning Officers.

The Convener noted that keeping the exit for emergency use and for maintenance was acceptable in planning terms, and the access issues were for the owners to organise themselves.

The Convener moved to a roll call vote on the officer recommendation to grant consent, and votes were cast as follows:

Support: 7 (Councillors Hampshire, Allan, Collins, Findlay, Forrest, McMillan, and Yorkston)

Against: 1 (Councillor McGinn)

Abstain: 0

Decision

Planning Committee agreed to grant planning permission, subjection to the following conditions:

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

Reason:

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

- 2 Prior to any use of the building for two houses of multiple occupancy hereby approved the off-street car parking spaces as shown on drawing P1 Rev B titled 'Location and Existing Plans' docketed to this planning permission shall be fully formed and available for use; and b) the easternmost door in the north elevation of the building shall be removed and the door opening infilled in accordance with docketed drawing no. V1.
The off-street car parking spaces shall thereafter be retained in place free from obstruction to use unless otherwise approved by the Planning Authority.

Reason:

In the interests of road safety

- 3 At least one dedicated EV charging point per vehicle parking space shall be provided for each of the houses of multiple occupancy hereby approved. Such provision should involve engagement with electricity providers to ensure that the entire electricity supply infrastructure will have sufficient capacity to enable all chargepoints to operate simultaneously.

Reason

In the interests of sustainability.

- 4 The new roof windows hereby approved shall be installed in a manner that ensures their upper surface is as near flush as possible with the upper surface of the roof into which they will be installed and with minimum flashing, unless otherwise approved by the Planning Authority.

Reason:

To reduce the visual impact of the roof windows in the interest of safeguarding the character and appearance of the building and the character and appearance of the Conservation Area.

- 5 The emergency door hereby approved for the rear (north) elevation of the building shall, unless required for emergency purposes or essential maintenance, be kept in the closed position and shall not be used as a general entrance for resident access/egress.

Reason:

In the interests of protecting the residential amenity of the area.

Signed

.....

Councillor Norman Hampshire
Convener of the Planning Committee

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

2

***Note:** This application has been called off the Scheme of Delegation List by Councillor McFarlane for the following reason: Due to the condition of the building, I think the Committee should consider this application.*

Application No. **24/01051/CAC**

Proposal Demolition of building

Location **34 Dirleton Avenue
North Berwick
EH39 4BH**

Applicant Caledonian Heritable Ltd

Per Baseline Developments Ltd

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSAL

This application relates to the former Golf Hotel which is a two storey with attic and a lower ground level, detached building. The applicant notes the building has been vacant for some 4 years. The building is situated on the north side of Dirleton Avenue and occupies a prominent corner plot between Dirleton Avenue and Hamilton Road. The building is situated within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The building is also situated within the North Berwick Conservation Area. The building is not listed as being of special architectural or historic interest.

Through this application Conservation Area Consent is sought for the demolition of the existing building.

The submitted drawings also show the intention to demolish the existing single storey, pitched roof garage which is situated to the north of the building as well as sections of retaining walls and gates.

Through separate application 24/01050/P planning permission is sought for the erection of 14 flats and associated works. That application stands to be determined on its own merits.

LEGISLATION AND GUIDANCE

Under the duty imposed by section 64(1) of the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997, the Planning Authority is required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Therefore, the determining issue in this appeal is the effect of the proposed demolition works on the character and appearance of the North Berwick Conservation Area.

Historic Environment Scotland's (HES) Interim Guidance on the Designation of Conservation Areas and Conservation Area Consent (2019) sets out considerations to take into account when assessing proposals for the demolition of an unlisted building within a conservation area. These include establishing the importance of the building to the character or appearance of any part of the conservation area and proposals for the future of the cleared site. Where demolition is to be followed by redevelopment the guidance advises that consent to demolish should generally only be given where there are acceptable proposals for the redevelopment of the site.

DEVELOPMENT PLAN

National Planning Framework 4 (NPF4) policy 7 (historic assets and places) and policy CH3 (demolition of an unlisted building in a conservation area) whilst not part of the statutory test for conservation area consent, are relevant considerations in the determination of this application.

Policy 7(f) of NPF4 in respect of the demolition of buildings in a conservation area which make a positive contribution to its character will only be supported where it has been demonstrated that:

- i. Reasonable efforts have been made to retain, repair and reuse the building;
- ii. The building is of little townscape value;
- iii. The structural condition of the building prevents its retention at a reasonable cost ; or
- iv. The form or location of the building makes it reuse extremely difficult.

Policy CH3 (Demolition of an Unlisted Building in a Conservation Area) of the adopted East Lothian Local Development Plan 2018 states that support will be given for the demolition of buildings within Conservation Areas provided there are appropriate proposals for redevelopment or intermediate treatment and:

- (i) the building to be demolished is incapable of reasonably beneficial use by virtue

of its location, physical form or state of disrepair;

(ii) the structural condition of the building is such that it cannot be adapted to accommodate alterations or extensions without material loss to its character; or

(iii) the building does not positively contribute to the character or appearance of the conservation area and its removal or replacement would not adversely affect the character of the conservation area or it would facilitate positive townscape benefits.

REPRESENTATIONS

A total of 27 objections have been received in relation to this application. In summary the main grounds of objection are as follows:

i) The building has architectural merit and original features and thus should be retained and restored;

ii) The existing building should be submitted for consideration for listing as there has been no reassessment by HES in years;

iii) The building occupies a prominent location within North Berwick and the Conservation Area and is in-keeping with the surrounding buildings;

iv) The existing building contributes positively to the North Berwick Conservation Area;

v) The building is a 'one-off' and represents the foundation of Victorian and Edwardian architecture within North Berwick;

vi) The demolition of the building would negatively impact the historic environment and would be a material change to the character of the town;

vii) No evidence submitted to note why redevelopment of existing building isn't possible;

viii) No methodology provided for removal of asbestos which is likely to be present;

ix) The demolition of the building would be environmentally damaging;

x) The proposed building is too large for the site and would be taller than existing;

xi) The proposed building would dominate the surrounding;

xii) The proposed building would overshadow neighbouring properties causing a loss of sunlight and daylight;

xiii) Proposed parking provision is insufficient;

- xiv) It will be difficult to contain all building equipment within the site;
- xv) No CGI is provided to show the proposed building;
- xvi) The building should contain renewable energy and the heating system should be entirely carbon neutral;
- xvii) The proposed building should be of a form that respects the style and setting of the location and first with the North Berwick Conservation Area;
- xviii) The works to demolish the building will cause disruption for pedestrians and traffic in nearby streets;
- xix) An objector queries what provision is made for occupiers of the proposed flats to enter and exit the building;
- xx) An objector notes the public notice at the application site contained an incorrect date;
- xxi) Objectors requests the building be protected and listed by Historic Environment Scotland;
- xxii) The proposal is likely to result in the loss of mature trees within the grounds of the building;
- xxiii) The proposed flats will be luxury high end flats and will not alleviate the housing issues within the county;
- xxiv) The building is set back from the frontages of Dirleton Avenue and Hamilton Road and thus the existing building has been designed for its surroundings;
- xxv) Objectors note the proposal is contrary to Policy CH3 of ELLDP, Policy 7 of NPF4 and PAN 67;
- xxvi) All of the proposed elevations are substantially wider than the elevations of the current building and the proposed buildings footprint is larger than the existing building; and
- xxvii) An objector raises query with the applicants' intent to develop the site.

There is no planning requirement to provide information relating to the potential presence and removal of asbestos within the building the subject of this planning application.

Furthermore, there is no requirement for the submission of CGI images of the proposed flatted building.

The site notice with the incorrect dates was replaced with a new site notice with the correct dates and the period of representation was extended accordingly.

The following matters raised in representation to the application are not material considerations in the determination of this application for Conservation Area Consent.

- o the potential loss of mature trees within the application site;
- o the intent of the developer with regards to the application site and the proposed development including the form and appearance of the proposed building;
- o disruption caused by any works to demolish this building;
- o the existing building should be considered by Historic Environment Scotland for listing.

APPLICATION ASSESSMENT

In accordance with Historic Environment Scotland's (HES) Interim Guidance on the Designation of Conservation Areas and Conservation Area Consent (2019) the first consideration in the determination of this application is to establish whether the building makes a positive contribution to the character or appearance of the North Berwick Conservation Area.

The building of 34 Dirleton Avenue is a large, two storey and attic detached villa which is located on a prominent corner site at the junction of Dirleton Avenue with Hamilton Road and is therefore readily visible from within this part of the North Berwick Conservation Area.

Historic Environment Scotland note in their consultation response that "34 Dirleton Avenue is an architecturally significant building, built c1900, and highly visible on the main street that leads into the town, in the western part of the conservation area. It is a large, two storeys plus attic, sandstone detached villa with slated gambrel roof containing dormer windows. The exterior stonework is a mix of blonde and red sandstone and contains many architectural details from this period, such as bay windows, stone balustraded parapets, chimney stacks, porch and a circular corner turret or bow designed to address the corner crossroads. This last point is mentioned in the recent Buildings of Scotland for Lothian (2024) with 'two prominent stone villas where Hamilton and South Hamilton Road cross, both with circular bows at their corners'".

Whilst some alterations and additions to the building have taken place, the main part of the building still retains most of its traditional vernacular form, proportions, features and details and is on a highly visible corner site within this part of the conservation area.

The attached outbuildings at the rear appear to be later additions to the building. These elements are less visually prominent and are mainly in a poor state of repair. Given their design and poor condition they do not contribute significantly to the appearance or character of the conservation area.

Overall, the original building is of historic and architectural interest and despite being vacant, contributes positively to the townscape and therefore to the character and appearance of the conservation area. This aligns with the view of HES who

object to the demolition of the building.

As the building is of townscape value and contributes positively to the conservation area, then it must be established whether any of the other considerations set out in the HES guidance can be met to support the proposed demolition.

Have reasonable efforts been made to retain, repair and reuse the building?

In this instance no evidence has been submitted by the applicant or agent to demonstrate that efforts have been made to retain, repair or reuse the building. Prior to the submission of this application the applicant and agent did engage with the Council via the submission of two separate pre-application enquiries that related to the alterations and extensions to the building. However, the applicant decided not to pursue that proposal and instead submitted this conservation area consent application to demolish the existing building along with an associated planning application to erect a new flatted building on the site. In addition, no evidence that the property has been unsuccessfully marketed for alternative uses has been provided. Therefore, there is no evidence before the Council that demonstrates that reasonable efforts have been made to retain, repair and reuse the existing building.

Does the structural condition of the building prevent its retention at reasonable cost?

In this instance the agent has not submitted a structural survey report or any other reports or assessments that concludes that the structural condition of the building would prevent its retention at reasonable cost. The design and access statement submitted with this application does make reference to the pre-application process and engagement with the Council during the pre-application enquiries made, and notes that the alterations and extensions to the building would require the existing building fabric to be brought up to modern standards of insulation and energy efficiency making them, in the applicants' opinion, an uneconomically viable option. However, no reports or calculations have been provided to support this or to make comparison with the costs of demolition and the construction of a new building on the site. Therefore, it has not been demonstrated that the structural condition of the building prevents its retention at reasonable cost.

Does the form or location of the building make its reuse extremely difficult?

The application site occupies a prominent roadside position within the North Berwick Conservation Area and is readily visible from public views. There is no apparent reason that the location of the building would impact adversely on its reuse. The existing building sits comfortably within the grounds of the application site and the property has historically been extended. If those later, unsympathetic, extensions were to be removed and replaced with extensions that were deemed to be of an appropriate size, form, material and positioning then the building would be capable of being reused. Given these considerations it can reasonably be concluded that the form and location of the property does not present a significant challenge to its reuse.

Is there an acceptable replacement development proposal?

As noted above in this report, through separate application 24/01050/P planning permission is sought for the erection of 14 flats and associated works. The Report of Handling for that application has been placed on the weekly scheme of delegation list alongside this report. The report for the associated planning application recommends refusal of the proposed replacement building for the reasons set out in that report. Therefore, it can be concluded that the proposal to demolish the existing property fails to meet the requirements of the guidance which advises that generally consent should only be granted where acceptable proposals are in place.

Historic Environment Scotland have been consulted on this application and advise they object to this application as the information presented within the application does not justify the loss of this unlisted building in the Conservation Area which is contrary to relevant national policy and guidance.

Given all of the above considerations, the proposal to demolish the existing property at 34 Dirleton Avenue, North Berwick is contrary to Policy 7 of NPF4, Policy CH3 of the adopted East Lothian Local Development Plan 2018 and HES Interim Guidance on the Designation of Conservation Areas and Conservation Area Consent (2019).

In all of the above considerations, the proposed demolition works would fail to preserve or enhance the character or appearance of the North Berwick Conservation Area. Therefore, this application for conservation area consent should be refused.

REASON FOR REFUSAL:

- 1 Given the particular architectural and historic interest of the existing building, and that the building is of townscape value and contributes positively to the conservation area, the demolition of it would neither preserve nor enhance the character and appearance of the North Berwick Conservation Area. Furthermore, insufficient evidence has been submitted to demonstrate that the building is not capable of being reused or that the structural condition of the building prevents its retention at reasonable cost. Accordingly, the proposal is contrary to Policy 7 of NPF4 and Policy CH3 of the adopted East Lothian Local Development Plan 2018, and HES Interim Guidance on the Designation of Conservation Areas and Conservation Area Consent (2019).

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

3

***Note:** This application has been called off the Scheme of Delegation List by Councillor McFarlane for the following reason: Given the affordable housing crisis, this application warrants a discussion at Committee.*

Application No. **24/01050/P**

Proposal Erection of 14 flats and associated works

Location **34 Dirleton Avenue**
 North Berwick
 EH39 4BH

Applicant Caledonian Heritable Ltd

Per Baseline Developments Ltd

RECOMMENDATION Application Refused

REPORT OF HANDLING

APPLICATION SITE

The property to which this application relates is a two storey with attic and a lower ground level, detached building. The applicant states the building has been vacant for some 4 years. The building is situated on the north side of Dirleton Avenue and occupies a prominent corner plot between Dirleton Avenue and Hamilton Road. The building is situated within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. The building is situated within the North Berwick Conservation but is not listed.

The property is bounded to the north and west by neighbouring residential properties, to the east by Hamilton Road and further beyond by neighbouring residential properties and to the south by Dirleton Avenue and further beyond by neighbouring residential properties.

PLANNING HISTORY

Planning permission (ref: 06/00303/FUL) was sought in March 2006 for the change of use of the former hotel building to a staff hostel for the Marine Hotel. That application was withdrawn in June 2006 without it being determined.

In August 2023 and July 2024, the applicant sought pre-application advice with East Lothian Council, as Planning Authority on a proposed scheme of development to alter and extend the existing building to form 14 residential units. The advice given by the Planning Service on those proposals was the proposed extensions would appear incongruous in their visual relationship with the architectural style of the building and the built form of the area, would not be in keeping with the size, scale, form, massing and proportions of the existing building and would appear as incongruous and unsympathetic additions to the existing building.

The advice also was that the demolition of the existing building on the site would unlikely to be supported as it contributes positively to the character and appearance of the North Berwick Conservation Area, and if demolition and a new build development was proposed, it would need to demonstrate that the requirements of Policy 30c of NPF4 and Policy TOUR4 of the East Lothian Local Development could be met with regard to the loss of the authorised hotel use of the site.

PROPOSAL

Planning permission is now sought for the erection of a four-storey, detached flatted building which would contain 14 residential units.

Planning permission is also sought for the following associated works:

- (i) The re-positioning of the existing vehicular and pedestrian access with associated gates to the eastern boundary of the site;
- (ii) The formation of a new pedestrian access with associated gate to the eastern boundary of the site;
- (iii) The formation of 14 parking spaces;
- (iv) The formation of paths and associated steps and hardstanding within the application site;
- (v) The erection of fencing and formation of hardstanding to form a refuse compound within the northeast corner of the application site; and
- (vii) The erection of three cycle shelters within the eastern component of the application site.

Through separate application 24/01051/CAC conservation area consent is sought for the demolition of the building. That application stands to be determined on its own merits.

The proposed four storey detached flatted building would be U-shaped and would be sited further to the south of the application site than the existing building. The proposed flatted building would also project further to the east than the front elevation of the existing building and would have a larger footprint than the existing building.

The proposed flatted building would have a length of some 29 metres, at its longest point, a width of some 28 metres at its widest point and would have a height of some 13.9 metres when measured at its highest point.

The proposed flatted building would contain 14 residential units which would comprise of 8 two-bedroom apartments and 6 three-bedroom apartments.

The external walls of the proposed flatted building would be finished in a white render with red sandstone which would be reused from the existing building. There would also be sections of timber cladding which would be painted anthracite grey. The pitched roof component would be clad in grey natural slate which would be salvaged from the existing building whilst the flat roof components would be clad in a slate grey roofing membrane. The proposed window and door frames would be of timber construction and would feature anthracite grey frames. The apartments to the top floor would feature terraces which would be enclosed by a glass balustrade and the decking to the terraces would comprise of composite deck boards.

The proposed flatted building would be served by a total of 14 off-street parking spaces, one of which would be designated as an accessible parking space. The parking would be situated on the northern part of the application site and would comprise of a tarmac finish.

Vehicular and pedestrian access would both be taken from the eastern boundary of the application site and would be accessed via Hamilton Road. Two pedestrian access are proposed to the south of the proposed vehicular access.

The submitted drawings show that three cycle shelters would be provided, one to the east of the flatted building and two within the southeast corner of the application site. The submitted brochure relating to the proposed cycle shelters states they would each have a height of some 1.35 metres, a width of some 2.3 metres and a depth of some 2.4 metres. It is further noted that each cycle shelter could store 5 bicycles.

With regards to waste storage, a refuse compound is proposed within the northeast corner of the application site which would be partially enclosed by a 1.6-metre-high timber fence. The hardstanding to the proposed refuse compound would be finished with natural stone paving.

The proposed path to the east of the proposed flatted building would comprise of a natural paving stone finish. The path to the south and west would comprise of gravel and the path to the north and partially the west of the building would comprise of block paving.

There are five existing trees shown to the north of the proposed flatted building,

however, these trees fall outwith the application site but are noted to be retained. The submitted drawings also show the retention of a tree to the east of the proposed flatted building and two trees to the south of it. However, the submitted landscape plan indicates that a total of 6 trees within the application site would be removed which are a mix of Holly, Laburnum, Bay Laurel and Norway Spruce. The submitted landscape plan also indicate the existing sycamore tree to the south of the site would have all deadwood cut out and retrenchment pruning to reduce the crown. It is also proposed to remove damaged limbs and retrenchment pruning to reduce the crown to the Cherry-gean tree to the east of the site. The submitted drawings indicate that additional landscape planting would be undertaken to the east, south and west of the application site with a total of 13 new trees proposed and new shrubs also proposed.

The agent has submitted a design and access statement which supports their submission for the erection of the proposed flatted building comprising of 14 residential units and associated works on the application site. The statement notes the proposal seeks to deliver a high quality, high specification and energy efficient development that benefits from the use of current construction and environmental enhancing technologies, and which will, over time settle into its surrounds and become a positive addition to the local fabric of the conservation area. As noted above in this report the statement confirms the flatted building would consist of 14 residential units which would comprise of 8 two-bedroom apartments and 6 three-bedroom apartments. With regards to the rationale of demolishing the existing building the agent has noted in their design and access statement that the existing building due to the form and location of the building make it extremely difficult to reuse in a viable way. It is noted that materials from the demolished buildings will be re-used where possible and other masonry material such as hardcore or aggregate will be re-used within the site where possible. The statement notes that high thermal insulation and air tightness values will allow the proposed flatted building to significantly reduce its heating and other carbon producing demands and emissions. Furthermore, zero and low carbon generating technology, systems and materials will be used to further reduce the flatted buildings imbedded carbon footprint and energy use. Subsequent to the registration of the application the agent has confirmed in writing that the proposed residential units would be heated via an electric boiler located in the utility room of flat and internal clothes drying would also be provided within the utility rooms.

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.

National Planning Framework 4 (NPF4) Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 6 (Forestry, woodland and trees), 7 (Historic assets and places), 9 (Brownfield, vacant and derelict land and empty buildings), 12 (Zero Waste), 13 (Sustainable Transport), 14 (Design, quality and place), 15 (Local living and 20 minute neighbourhoods), 16 (Quality homes) and 30 (Tourism) of NPF4 would be relevant in the determination

of any forthcoming planning application. In addition, policies TOUR4 (Hotels and Guest Houses), RCA1 (Residential Character and Amenity), Proposal CF1 (Provision of New Sports Pitches and Changing Accommodation), CH2 (Development Affecting Conservation Areas), Proposal ED7 (North Berwick Cluster Education Proposals), HOU3 (Affordable Housing Quota), HOU4 (Affordable Housing Tenure Mix), T1 (Development Location and Accessibility), T2 (General Transport Impact), T32 (Transport Infrastructure Delivery Fund), SEH2 (Low ad Zero Carbon Generating Technologies), W3 (Waste Separation and Collection), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH10 (Sustainable Drainage Systems), DP1 (Landscape Character), NH8 (Trees and Development), DP2 (Design), DP7 (Infill, Backland and Garden Ground Development) and DEL1 (Infrastructure and Facilities Provision) of the East Lothian Local Development Plan 2018 would be relevant to the determination of any forthcoming planning application.

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

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

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

Also material to the determination of this planning application is the Council's Supplementary Planning Guidance on Affordable Housing and The Cultural Heritage and the Built Environment.

COMMUNITY COUNCIL

North Berwick Community Council have objected to this planning application in their capacity as a consultee. In summary their main grounds of objection are:

(i) The proposed building would be positioned at a higher ground level than the flats at Hamilton Road which would make the proposal stand out more;

(ii) The proposal would dominate the entire stretch of road and radically change the impression into North Berwick;

(iii) The site would be overdeveloped; and

(iv) The Community Council welcome the addition of new flats but any new building on this site should be lower and further set back from Dirleton Avenue.

REPRESENTATIONS

A total of 35 objections have been received in relation to this planning application. The main grounds of objection can be summarised as follows:

o The loss of the hotel would add to the struggle for accommodation for visitors;

o The demolition of the building will not preserve or enhance the character or appearance of the area;

o The existing building should be submitted for consideration for listing as there has been no reassessment by HES in years;

o The property could be turned into flats, if needed through an extension to the existing building;

o The existing building makes a positive contribution to the North Berwick Conservation Area and has architectural merit;

o There is no justification as to why the building needs to be demolished and why it cannot be renovated instead;

o The proposal to demolish the existing building does not comply with Policy CH3 of the ELLDP;

o The proposal does not comply with Policy CH2 of the ELLDP or PAN 67;

o There is no methodology provided for the removal of asbestos;

o The proposal is an overdevelopment of the site;

o The proposed building is one storey higher than existing and would dominate the surrounding area;

o The proposed building would not be in-keeping with the area and would not contribute or enhance the character of this part of the conservation area;

- o The proposed building does not accord with the size, proportions, alignment or materials or nearby buildings;
- o The footprint of the proposed building is larger than the existing building;
- o The elevations of the proposed building are wider than the existing building;
- o The building occupies a prominent site within North Berwick;
- o The proposed building would result in a loss of sunlight and daylight to neighbouring residential properties;
- o The proposed building would result in the loss of privacy to neighbouring residential properties;
- o The proposed off-street car parking is insufficient and the proposal would create additional pressure on nearby roads;
- o The proposed entrance to the site is dangerous given its proximity to the entrance to Broadsands;
- o An objector notes that EV charging should be required;
- o It will be difficult to store building equipment within the site due to the size of development and size of the site;
- o No CGI has been submitted to show the proposed building;
- o The proposed building does not show carbon emission reducing measures;
- o The proposed building should be reduced in height by one-storey as this would fit within the locality and result in better parking provisions within the site;
- o Additional tree planting should be provided within the site;
- o Any new building should be of a form that respects the style and setting of the location;
- o The construction works would cause disruption for neighbouring residential properties;
- o An objector queries the proposed access to the site and parking provision;
- o The cherry-gean tree is the most significant tree within the plot and should be pruned as little as possible;
- o The proposal does not include adequate communal land/gardens and environmentally friendly garden space for residents;
- o Outbuildings such as cycle storage and bin shelters should not be

positioned within public views within a conservation area;

- o If approved the proposal would result in the loss of all vegetation and trees within the site; and

- o The applicant must provide evidence of a formal marketing campaign at a reasonable price for a minimum of a year, including details of methods of marketing, relevant dates, copies of particulars, and details of all interest and offers received in relation to the loss of the hotel.

The comments received in relation to the proposed demolition of the existing building are not material to the consideration of this planning application. The assessment of the proposal to demolish the existing building relates to the associated conservation area consent application reference 24/01051/CAC.

The comments relating to the recommendation for the existing building to be considered by Historic Environment Scotland for listing is a separate matter and process that is not material to the determination of this application.

There is no planning requirement to provide information relating to the potential presence and removal of asbestos within the building the subject of this planning application.

Furthermore, there is no requirement for the submission of CGI images of the proposed flatted building.

The storage of any building equipment within the site would be temporary and this is not a material consideration in the determination of this application.

Any disruption caused by any works to demolish this building would be temporary in nature and would be investigated through separate environmental health legislation.

The proposed vehicular, pedestrian accesses as well as the proposed parking provision are shown on the submitted drawings.

PLANNING ASSESSMENT

The proposed (i) re-positioning of the existing vehicular and pedestrian access with associated gates; (ii) hardstanding areas; (iii) refuse compound with associated fencing; and (iv) cycle shelters would be readily visible from public views. However, they would be seen in relation to the proposed flatted building and as such they would not appear as overly prominent or incongruous features. Therefore, by virtue of their form, size, materials and positioning these proposals would not be harmful to the character or appearance of the surrounding area or to the North Berwick Conservation Area.

The use of the proposed hardstanding areas would not give rise to any harmful overlooking of any neighbouring residential properties.

The proposed refuse compound and cycle shelters would not give rise to a harmful

loss of sunlight or daylight to any neighbouring residential properties.

The **Council's Waste Services** have been consulted on the application and advise they raise no objection but advise that the Council supply individual 240 litre bins to flats and not communal bins. It would therefore be the resident's responsibility to present these out with the bin storage area for kerbside collection. The developer should order the containers for waste and recycling in bulk to avoid repeat journeys.

The **Council's Environmental Health Officer** has been consulted on the application and raises no objection to it, satisfied that the proposed development would not be harmful to the amenity of any neighbouring residential property.

The **Council's Contaminated Land Officer** has been consulted on the application and advises there is no direct evidence to suggest any previous contaminative use of the site as it was originally agricultural land prior to the construction of the hotel on the site. Following the demolition of the building there is the possibility that localised 'hotspots' of contamination may exist (possible asbestos containing materials in the building fabric) as well as areas of made ground in the wider site area.

The Contaminated Land Officer also states that it should be noted that according to the latest Radon Mapping data the site falls within a Radon Affected Area (Class 4: 5 to <10 % of properties are at or above the radon action level). This means that the new build will require basic radon protection measures to be installed. In this instance it would be advisable to obtain a Site-Specific Radon Report to determine the actual radon potential (as there is an existing building on the site).

Given the above and due to the nature of the development (residential), the Contaminated Land Officer advises that further information is required to determine the ground conditions and potential contamination issues impacting on the site (with the minimum of a Phase I Geo-Environmental Assessment being carried out). Such a requirement could be imposed as a condition on a grant of planning permission, were that to be the decision.

The **Council's Flooding Officer** has been consulted on the application and advises that SEPA's Flood Hazard Mapping indicates that the site is not at risk from a flood event with a return period of 1 in 200 years, plus climate change.

The Design and Access Statement submitted with the application informs that the main foul drainage from the proposed development would discharge into the existing sewer network and that a connection point is available at the existing manhole located on Hamilton Road adjacent to the site, and that surface water would be collected and taken to surface water attenuation located below the new parking court with controlled outfall to the existing surface water drainage network.

The Flooding Officer has no objection in principle to this arrangement, but advises that full drainage details for the proposed development, including a drainage impact assessment and surface water management plan which should outline any drainage calculations / attenuation calculations should be submitted. Such a requirement could be imposed as conditions on a grant of planning permission,

were that to be the decision.

Scottish Water have been consulted on the application and advise they raise no objection, being satisfied that there is sufficient capacity for in the Castle Moffat Water Treatment Works to service the proposed development and they advise there is sufficient capacity for a foul only connection in the North Berwick Waste Water Treatment works.

The **Council's Planning Obligations Officer** has highlighted that the application site is located within the school catchment areas of Law Primary School and North Berwick High School. Proposal ED7 (North Berwick Cluster Education Proposals) of the ELLDP stipulates that the Council will provide an additional phased permanent extension to North Berwick High School to meet the need arising from new housing development within the cluster. Development contributions will be sought from housing development where permanent provision is created in catchment primary schools with new primary and secondary school establishments and campus land and developer contributions being sought from developers of relevant sites to fund this additional provision.

The Council's Planning Obligations Officer advises that Law Primary School has sufficient capacity to accommodate children that could arise from the proposed development. However they advise that North Berwick High School will not have sufficient capacity to accommodate children that could arise from the proposed development. Therefore, The Council's Planning Obligations Officer advises that they would object to the application on the grounds of lack of permanent capacity at that school. However, they would withdraw that objection provided the applicant makes a financial contribution to the Council of £94,262 indexed towards the provision of additional school accommodation at North Berwick High School.

The required payment of a financial contribution of a total of £94,262 indexed linked from Q1 2019 until date of Payment using the BCIS All-in Tender Price Index towards the provision of additional school accommodation can be secured through an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 or by some other appropriate agreement. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement and on this consideration the proposed development does not conflict with Policy 18 of NPF4, Proposal ED7 or Policy DEL1 of the LDP or with the Council's approved Developer Contributions Framework Supplementary Guidance.

As per the Adopted Supplementary Guidance: Developer Contributions Framework, all secondary Education Contributions will be increased in line with indexation from Q1 2019 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment and the Play Provision Contribution will be increased from Q3 2017 using the All-in Tender Price Index published by the Building Cost Information Service (BCIS) Limited for the Royal Institution of Chartered Surveyors until due date of payment.

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

In terms of Strategic Transport, the Council's Planning Obligations Officer advises this site lies out with the Strategic Intervention contribution zones within the DCF therefore no Strategic Transport contributions are required, and the **Council's Road Services** confirm there are no requirements for a local transportation contribution.

Proposal CF1 of the ELLDP states that development proposals for 5 or more homes must make provision for the delivery of new sports pitches and changing accommodation as set out in the Developer Contributions Framework Supplementary Guidance. The Council's Planning Obligations Officer advises the site lies out with the North Berwick Sports Facilities Contributions Zone within the Supplementary Guidance: Developer contributions framework therefore no sporting provision contribution will be sought. Therefore, the planning obligations officer advises there is no contribution to be sought.

Policy 16e) of NPF4 states that Development proposals for new homes will be supported where they make provision for affordable homes to meet an identified need. Proposals for market homes will only be supported where the contribution to the provision of affordable homes on a site will be at least 25% of the total number of homes. Policy HOU3 of the ELLDP states that development proposals that in their totality will bring forward five or more dwellings must make provision for affordable housing, with the required proportion being 25% of the total number of dwellings proposed for the site.

The **Council's Strategy and Development Team** advises that in accordance with the Council's Affordable Housing Policy, 25% of the proposed 14 flats require to be affordable housing units. The affordable housing component of the proposed development is 4 flats. The Strategy and Development Team advise that communication continues with East Lothian Council's Strategy and Development Team Housing Enabler to secure the provision of 4 affordable housing units within the flatted building or if it can be demonstrated to the Council that this, or the off-site provision of 4 affordable units is not practicable, to secure from the applicant a commuted sum payment to the Council in lieu of such an on or off-site provision. The terms for the provision of this affordable housing requirement can be the subject of an agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. Subject to the Council securing the affordable housing requirement, which the applicant is willing to do, the proposal would be consistent with Policy 16 of NPF4 in respect of affordable housing provision and Policies HOU3 and HOU4 of the ELLDP and the Council's adopted SPG on Affordable Housing.

On-site play provision is not required for residential developments of this size. However, the **Council's Amenity Services Manager** confirms a developer contribution is required towards play provision for this proposed residential development to enhance and upgrade local play area facilities in the vicinity of this site which would be impacted by the additional usage arising as a direct result of the proposed development, which would be a contribution of £566 per dwelling index linked from Q3 2017. The basis of this is consistent with the tests of a planning agreement set in Planning Circular 3/2012: Planning Obligations and Good Neighbour Agreements. The applicant has confirmed in writing that they are willing to enter into such an agreement and on this consideration the proposed development does not conflict with Policy 21 of NPF4 or Policy DEL1 of the LDP or with the Council's approved Developer Contributions Framework Supplementary Guidance.

The Council's Amenity Services Manager further advises that sufficient levels of garden ground and communal space for future residents should be provided, in accordance with the supplementary planning guidance 'Design Standards for New Housing Areas'. The submitted drawings indicate there would be sufficient outdoor space provided for residents.

With regards to the proposed off-street car parking provision, cycle storage and alterations to vehicular and pedestrian accesses to the application site, the **Council's Road Services** have been consulted on this application. They note they support the rationalisation of the existing two vehicular site access points to a single point of access taken from Hamilton Road and they note the slight repositioning of this access point. Visibility at the repositioned site access should be 2m by 20m (with no obstructions above 1.05m) and the Council's Road Services are satisfied that this visibility splay could be achieved should planning permission be granted.

Furthermore, the Council's Road Services confirm the width of the proposed repositioned vehicular site access of 4.75m is acceptable, however, they do not support the inclusion of gates across the site access unless they are positioned a distance of 6.0m back from the rear of the footway into the site.

With regards to the proposed car parking provision the Council's Road Services note that 14 spaces would be provided which is equivalent to one parking space per unit which is below the Council's adopted car parking standards of 1.5 spaces per unit (i.e. 21 spaces) for properties of this size. However, given the last authorised use of the existing building is as a hotel, the Council's Road Services advise the parking requirements for a hotel use is 1 parking space per room, and with the hotel previously operated with 18 bedrooms according to sales particulars, means the historic parking requirement for the hotel use would be 18 car parking spaces. Therefore, use as a hotel would generate more vehicular trips than the proposed new residential development and as such the provision of 14 car parking spaces is considered acceptable.

In addition, Road Services note the dimensions of the proposed car parking spaces are 2.4m by 4.8m which are below the Council's standard dimensions of 2.5m by 5.0m and therefore this should be modified should planning permission be granted.

However, the Council's Road Services advise the application site could still accommodate 14 parking spaces whilst adhering to the standard parking space dimensions. Furthermore, the Council's Road Services advise there is sufficient space is provided in front of the bays for manoeuvring which is noted and the provision of one disabled bay as part of the parking provision is acceptable. However, they note that one EV charging unit should be provided for each car parking space if planning permission were to be granted.

With regards to the proposed refuse compound and cycle storage these are acceptable to the Council's Road Services.

The proposals include three pedestrian access points to the development from Hamilton Road which are proposed to include gates across these access points. The Council's Road Services recommend that the gates are removed from these accesses to allow ease of movement for those with a physical or sensory impairment, should planning permission be granted.

Therefore, given the above comments from the Council's Road Services and subject to the above recommended control being imposed as conditions on a grant of planning permission, were that to be the decision, the proposal would comply with Policy 13 of NPF4 and Policies T1 or T2 of the ELLDP.

In June 2006 planning application (ref: 06/00303/FUL) which sought planning permission for the proposed change of use from a hotel to a staff hostel for use in association with the Marine Hotel, was withdrawn. As such the last approved use of the site is a Class 7 (Hotel) Use.

In this a main material consideration in the determination of this planning application is whether the proposed change of use of the existing hotel use of the site to a residential use would be acceptable.

NFP4 policy 30 (c) requires that proposals for the change of use of a tourism related facility (e.g. hotels, guest houses, etc) will only be supported where it is demonstrated that the existing use is no longer viable and that there is no requirement for alternative tourism-related facilities in the area. ELLDP 2018 policy TOUR4 states similar.

With regards to the above policies the applicant has not submitted any information in support of their application which adequately demonstrates that the hotel use is no longer viable. As such the proposal is contrary to NFP4 policy 30 (c) and Policy TOUR4 of the ELLDP.

Thereafter, other main material considerations are whether the proposed flatted building with associated works would be appropriate within this part of the Conservation Area and, whether there would be any detrimental environmental or amenity impacts.

It also must be established whether the proposed flatted building on this application site would, as required by Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, preserve or enhance the character or appearance of the conservation area, and thereafter whether this form of

development would be consistent with national and local planning policy or if not whether there are any material considerations that would outweigh the fact that it would not accord with planning policy.

Whilst the former use of the building was a hotel (Class 7 Use), the application site is situated within a larger predominantly residential area as defined by Policy RCA1 of the adopted ELLDP. Policy RCA1 does not actively promote the development of land for new build residential development. The application site is not allocated for residential development in the adopted ELLDP. Although the principal purpose of Policy RCA1 is to ensure that the predominantly residential character and amenity of existing housing areas is safeguarded from the adverse impacts of uses other than housing it does state that proposals for new development will be assessed against appropriate local plan policies, which in the case of infill, backland and garden ground development is Policy DP7 of the adopted ELLDP.

Policy DP7 of the adopted ELLDP states that out with greenbelt and countryside and coastal locations, the principle of development within infill and backland locations will be supported where:

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

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

Policy 14 of NPF states that development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places, will not be supported

The proposed flatted building is of a contemporary design, and there would be a contrast between its design and the design of the existing building on the site and

the designs of other buildings within this part of the Conservation Area. Nevertheless, it would reflect elements of the existing variety of built form within the setting of the application site and in terms of its external finishes and some of its architectural features, would be respectful of the finishes and architecture of neighbouring buildings in this part of the Conservation Area.

The area around the application is characterised by buildings of predominantly traditional stone construction with slate roofs, timber windows and a display a variety of traditional features such as bay windows and turrets. A common character of this part of the North Berwick Conservation Area are architect designed Victorian, Edwardian and Georgian housing in a variety of styles which are typically set within large private grounds. This spatial character and density of development makes a positive contribution to the character and appearance of the North Berwick Conservation Area.

The North Berwick Conservation Area Character Statement contained within the Council's Cultural Heritage and the Built Environment Supplementary Planning Guidance makes particular reference to properties of this traditional style and setting. The size of the existing hotel building and its spatial relationship within its large grounds make it a component feature of Dirleton Avenue and thus of this part of North Berwick Conservation Area.

The proposed flatted building would have a larger footprint than the existing building on the site, its elevations would be wider, and the building would be one-storey taller than the existing building. Moreover, the proposed flatted building would extend further into the site on its east and south sides. The increased size and massing of the proposed new building in its relationship to the garden ground around it would erode the spatial character of large buildings in generous grounds in this part of the Conservation Area. It would result in a more dominant building that would be an overdevelopment of the site, would not represent a similar density of development of surrounding buildings and their gardens and thus would result in a significant change to the characteristic density of development of this part of the Conservation Area.

The proposed new flatted building by virtue of its size, scale, massing and positioning would appear as an overly dominant and incongruous addition to the streetscape, would not be sympathetic to its setting or well-integrated into its surroundings and would be harmful to the defined spatial layout of the existing buildings in this part of the Conservation Area. It would be inappropriate to its place. In this it would not preserve or enhance, but rather would be harmful to the character and appearance of this part of North Berwick Conservation Area.

As such the proposed flatted building is contrary to Policies 7 and 14 of NPF4 and Policies CH2, DP2 and DP7 of the ELLDP.

Policy DP7 amongst other things requires that the occupants of existing neighbouring properties experience no significant loss of privacy and amenity from new development and that the occupants of any new development must also enjoy privacy and amenity.

On the matter of the impact of the proposed flatted building 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 sunlight test has been undertaken on March 21st in line with the guidance set out in Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair. The sunlight test indicates the proposed flatted building would cast a gradual shadow on the garden ground of 1-6 Lamb Court between the hours of 08.00 and 11.00. The sunlight test also indicates the proposed flatted building would cast a gradual shadow on the garden ground of 5-9 Hamilton Road between the hours of 11.00 and 15.00 and would also cast a gradual shadow on the garden ground of 2 Hamilton Road and Broad Sands between the hours of 15.00 and 16.00. However, the guidance states that at least half of a garden should receive at least two hours of sunlight on 21st March. Therefore, the proposed flatted building by virtue of its size, form and positioning would not allow for a harmful loss of sunlight to any neighbouring residential properties.

Application of the 25-degree daylight test to the neighbouring residential property of 2 Hamilton Road indicates the proposed flatted building would fail in relation to the ground floor windows of that property. However, the ground floor windows that properties extension are served by other glazed openings. In addition, the two ground floor windows to the original component of that property would be situated between the two legs of the proposed flatted building and as such, they would pass the 25-degree daylight test.

Application of the 25-degree daylight test to the neighbouring residential properties of 1-6 Lamb Court indicates the proposed flatted building would fail in relation to the ground and first-floor bathroom windows of that flatted building. However, as the windows affected serve bathrooms then there is no requirement for natural daylight to those bathrooms of the flatted properties at Lamb Court.

Application of the 25-degree daylight test to the neighbouring residential properties of 55-59 Dirleton Avenue indicates the proposed flatted building would pass in relation to the windows of those properties.

Application of the 25-degree daylight test to the neighbouring residential property of 5 Hamilton Road indicates the proposed flatted building would fail in relation to the ground floor windows of that property and as such the proposed flatted building due to its size, scale and positioning would result in a harmful loss of amenity to the neighbouring residential property of 5 Hamilton Road. The proposed flatted building is therefore

Therefore, given the above consideration it can be concluded that the proposed flatted building would result in a harmful loss of daylight to the neighbouring residential property of 5 Hamilton Road which is situated to the north of the proposed flatted building respectively, contrary to Policy 14 of NPF4 and Policy DP7 of the adopted East Lothian Local Development Plan 2018.

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

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

In relation to the above, the glazed openings to be formed at ground, first and second floor levels within the front (east) elevation of the proposed flatted building would face over the application site, Hamilton Road and beyond to the high stone wall boundary of the neighbouring properties to the east for some 15 metres and those windows would not fall within 18 metres of any directly facing windows of the neighbouring residential properties to the east and as such the use of them would not allow for any harmful overlooking.

The use of the proposed terraces at third floor level would not fall within 18 metres of any directly facing windows of any neighbouring residential properties and as such the use of them would not allow for any harmful overlooking.

The glazed openings to be formed at ground, first, second and third floor levels in the side (south) elevation would not fall within 18 metres of any directly facing windows of the neighbouring residential properties to the south and as such the use of them would not allow for any harmful overlooking.

The glazed openings to be formed at ground, first, second and third floor levels in the rear (west) elevation would face over the application site for some 6 metres and beyond to the grounds of the flatted building named Lamb Court. However, the grounds of that development do not currently benefit from any significant degree of privacy as they are already overlooked by the occupants of Lamb Court. Furthermore, the front ground of Lamb Court is situated adjacent to Dirleton Avenue and therefore also has no significant degree of privacy at present. The side (east) elevation of Lamb Court features windows however, these windows are obscure glazed and as such the use of the proposed flatted building would not allow for any harmful overlooking of those neighbouring residential properties.

The glazed openings to be formed at ground, first, second and third floor levels in the side (north) elevation would face over the application site for some 14 metres and would not fall within 18 metres of any directly facing windows of the neighbouring residential properties to the north and as such the use of them would not allow for any harmful overlooking.

Therefore, given the above considerations it can reasonably be concluded that the use of the proposed flatted building would not allow for any harmful overlooking of neighbouring residential properties.

Policy NH8 of the ELLDP in summary states there is a strong presumption for the retention of individual and group of trees that make a significant positive contribution to the setting and amenity of the area. This is echoed by Policy 6 of NPF4.

The **Council's Landscape Officer** has been consulted on the application and advises there are a number of trees within the application site, and that the mature

sycamore to the south boundary is protected by a Tree Preservation Order (TPO). The other trees both on and adjacent to the site lie within the North Berwick Conservation Area. Another sycamore to the southern boundary, protected by Tree Preservation Order, was agreed to be felled on condition of replacement planting.

The Council's Landscape Officer notes the proposal increases the mass of building on the site such that the existing trees to the east and west boundaries could not be successfully retained. The Council's Landscape Officer advises that due to the size of the proposed new flatted building the proposal does not provide sufficient space to enable new planting to be undertaken to mitigate for the trees proposed to be felled. In addition, no tree survey has been submitted with the application to indicate that these trees require to be removed for arboricultural reasons. Even if these trees required to be felled for arboricultural reasons, the Council's Landscape Officer would expect to see mitigating planting. Therefore, the Council's Landscape Officer objects to the application.

The proposed development would lead to the loss of trees within the application site that make a significant positive contribution to the visual amenity of the North Berwick Conservation Area. The loss of the trees would not facilitate a development that would contribute more to the good planning of the area than would retaining them.

Therefore, on this consideration the proposal is contrary to Policy 6 of NPF4 and Policy NH8 of the ELLDP.

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

The **Council's Biodiversity Officer** advises that a Biodiversity Enhancement Plan would be required that outlines measure the applicant proposed to enhance biodiversity within the application site. Should planning permission be granted then a condition could reasonably be imposed seeking the submission of a Biodiversity Enhancement Plan.

The Council's Biodiversity Officer further advises there are records of European Protected bat species less than 100m from the application site. Due to this and the nature of the proposal that includes demolition of the existing building the Biodiversity Officer advises that a Preliminary Roost Assessment for bats is required, and that bat surveys and reports must comply with the latest good practice guidelines. If evidence of bats or their roosts is found in the surveys, the applicant will be required to submit to the Planning Authority a Species Protection Plan for bats.

However, the applicant has not submitted a Preliminary Roost Assessment to satisfy this request and therefore, the Council's Biodiversity Officer objects to the planning application as it has not been demonstrated the proposal would not result in the loss, harm or disruption of any bats. The proposal is therefore contrary to Policy 3 of NPF4 and NH5 of the ELLDP.

In conclusion, for the reasons set out above the proposed development does not accord overall with the relevant provisions of the Development Plan and that there are no material considerations which outweigh the proposals discordance with the Development Plan.

REASONS FOR REFUSAL:

- 1 It has not been clearly demonstrated that all reasonable efforts have been made to retain the property in use as a hotel, nor has it been demonstrated that the use of the building as a hotel is no longer viable and that there is no requirement for alternative tourism-related facilities in the area. As such the proposal is contrary to Policy 30 part c of NPF4 and Policy TOUR4 of the adopted East Lothian Local Development Plan 2018.
- 2 The proposed new flatted building by virtue of its size, scale, massing and positioning would appear as an overly dominant and incongruous addition to the streetscape, would not be sympathetic to its setting or well-integrated into its surroundings and would be harmful to the defined spatial layout of the existing buildings in this part of the Conservation Area. It would be inappropriate to its place. In this it would not preserve or enhance, but rather would be harmful to the character and appearance of this part of North Berwick Conservation Area. Therefore, the proposed flatted building is contrary to Policies 7, 14 and 16 of NPF4 and Policies CH2, DP2 and DP7 of the adopted East Lothian Local Development Plan 2018.
- 3 The proposed flatted building, due to its size, scale and positioning would result in the harmful loss of daylight to the windows of the neighbouring residential property of 5 Hamilton Road, which would be harmful to the amenity of that neighbouring residential property. As such the proposal is contrary to Policy 14 of NPF4 and Policy DP7 of the adopted East Lothian Local Development Plan 2018.
- 4 Due to the proposed increases in the mass of building on the site the existing trees to the east and west boundaries could not be successfully retained. The proposal does not provide sufficient space to enable new planting to mitigate for the trees proposed to be felled. In addition, no tree survey has been submitted with the application to indicate that the trees shown on the submitted drawings for removal require to be removed for arboricultural reasons. The proposed development would lead to the loss of trees within the application site that make a positive contribution to the amenity of the North Berwick Conservation Area and as such the proposal is contrary to Policy 6 of NPF4 and Policy NH8 of the adopted East Lothian Local Development Plan 2018.
- 5 It has not been demonstrated the proposal would not result in the loss, harm or disruption of bats. The proposal is therefore contrary to Policy 3 of NPF4 and NH5 of the adopted East Lothian Local Development Plan 2018.

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

4

***Note:** This application has been called off the Scheme of Delegation List by Councillor Jardine for the following reason: Due to local concerns.*

Application No. **24/00660/P**

Proposal Change of use of agricultural land and outbuildings to use as a dog exercise park and dog day care business (Retrospective)

Location **Thornfield
Thorntonloch
Innerwick
East Lothian**

Applicant Harry's Hounding Around

Per Planning Solutions Edinburgh

RECOMMENDATION Granted Permission

REPORT OF HANDLING

PROPOSAL

This application relates to an area of agricultural land at Thorntonloch which is situated within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. It is positioned immediately to the north side of the main east coast railway line and some 280 metres to the south of the A1 Trunk Road. The application site measures some 1.14 hectares.

In February 2009 planning permission was refused retrospectively for the change of use of agricultural land for the siting of a mobile home including the formation of domestic garden ground and associated hardstanding area. This application related to an area of land that comprises part of the western area of the application site. The refusal of this planning application was subsequently appealed at Local

Review Body in July 2013 however this appeal was dismissed.

In May 2023 planning application (Ref: 23/00292/P) was submitted for the retrospective change the existing use of the land from agricultural to land use for exercising dogs as part of a dog day care business. The applicant for that application was 'The Fast and The Furriest Dog Playcare'. It has since been confirmed in writing that business no longer operates from the application site and that planning application is therefore to be withdrawn.

Planning permission is now sought retrospectively for the change of use of agricultural land to a dog day care and dog exercise business. The business is known as 'Harry's Hounding Around'.

The area the subject of the retrospective change of use has an area of some 1.14 hectares. The site is accessed via a gate from the road to the southwest and the submitted drawings indicate an area of parking for 4 vehicles within the southwest section of the application site. The areas that are used for dog exercise are fenced off with post and mesh fencing. This fencing is 1.8 metres in height however, 0.3 metres of this facing is stated to be below ground and therefore the visible height of this fencing is 1.5 metres.

The application site currently contains 3 outbuildings and two hardstanding parking areas, all of which are subject to the retrospective change of use.

The timber outbuilding to the northeast of the parking area ('Outbuilding 1') is single storey in height and has a pitched roof with a canopy overhang. Outbuilding 1 has a length of 7.5 metres; a width of 4.7 metres and a height of 3.2 metres, when measured at its highest point.

Outbuilding 1 is predominantly of timber construction with a plastic and metal corrugated roof with associated plastic rainwater goods.

The outbuilding to the far east of the site ('Outbuilding 2') is single storey in height and has a mono-pitched roof. Outbuilding 2 has a length of 4.5 metres; a width of 4.2 metres and has a height of 2.7 metres, when measured at its highest point. Outbuilding 2 is predominantly of timber construction with a pitched felt covered roof.

The timber outbuilding to the southeast of the parking area ('Outbuilding 3') is single storey in height and has a flat roof. Outbuilding 3 has a length and width of 2.5 metres and a height of 2.1 metres. Outbuilding 3 is predominantly of timber construction with a pitched felt roof and is enclosed by a high timber post and wire fence with associated access.

A supporting statement submitted with the application informs that the application site was chosen as it offered a quiet rural setting only a few miles from Dunbar. The provides the dogs with a generous amount of openspace which fits in well with the business ethos. The site already has deer fencing which provides an additional barrier dividing the fields into separate areas where the dogs can run freely without disturbing wildlife or escaping onto nearby roads. The change of use would not result in a substantial increase in the number of vehicle movements to the site.

Three or four vans will arrive on site at 9am and leave the site at 1pm Monday to Friday. Under no circumstances will customers ever be expected to drop dogs off at the site. All dogs faeces will be collected and composted in small portable wormeris strtelgically placed on the site.

DEVELOPMENT PLAN

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

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

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 5 (Soils) and 29 (Rural Development) of NPF4 and Policies DC1 (Rural Diversification), DP1 (Landscape Character), DP2 (Design), NH11 (Flood Risk) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

The applicants' submission notes the number of dogs on-site are limited to 55 per day to allow space for each dog.

REPRESENTATIONS

One public letter of objection has been received in relation to the application. In summary, the main grounds of objection are:

i) The objector notes the statement made in the applicants' submission that states there are three small buildings on the site and one was primarily used as a dog shelter is untrue. The double stables was used to keep horses, the open fronted shelter at the east end was the field shelter for sheep and the small shed with mesh enclosure to the south, next to the railway, was a chicken shed. According to the objector no part of the application site was ever used for dog walking;

ii) The objector notes the statement made in the applicants' submission that states the site already has deer fencing is untrue. The objector notes the fencing in place is plastic mesh cable tied to spindle sticks, which the dogs often chew through;

iii) The objector also notes the statement made in the applicants' submission that states dogs can roam freely without disturbing wildlife is untrue. The objector notes there are 2 heron pairs that frequent the application site. However, as soon as vans/dogs start to arrive on the site these herons fly off;

iv) The objector also notes the statement made in the applicants' submission that states the buildings have provided valuable shelter for dogs in inclement weather is untrue as the previous occupier of the site did not keep dogs in the buildings and neither do the dog walkers. The objector notes the dog walkers sit in

the stables whilst the dogs run around;

v) The objector also notes the statement made in the applicants' submission that states three/four vans arrive on site at 10am. The objector notes they have observed five vans appear between the hours of 09:30 and 11:00 with additional van movements noted between 07:00 and 09:00 and also between 13:30 - 17:00;

vi) The objector notes vans often stop in the middle of the road whilst the gates to the site are opened/closed. This forces other cars to go into the middle of the road, into oncoming traffic to navigate the bend and bridge;

vii) The objector notes that despite the applicants submission stating there are no vehicle movements during the weekend they have observed the site being used at weekends;

viii) The applicant has allegedly tipped over 100 tons of stone into the field that was used for horses and sheep. Then packed it down to provide a parking area for the vans, situated in front of the stables. The objector notes they do not see this area marked on the submitted plans;

ix) The applicants' submission notes the perimeter fencing used at the site is deer fencing. However, the objector states this is not deer fencing, it is a thin plastic mesh for wall climbing plants, cable tied to thin sticks and the objector also notes the fencing is falling apart and does not stop dogs digging under it and escaping;

x) The objector notes the fencing is not actually 1 metre below the surface but instead has been cable tied to the existing stock fence;

xi) The objector notes the field has flooded 5 times to their knowledge and on each of these occasions the water came beyond the stables and totally swamped the field shelter towards the East. The most recent flooding episodes were in 2009, 2012, 2018 and 2019;

xii) The objector notes there have been several occasions where the dog faeces disposal boxes have been left out for weeks on end at the gate. Several locals who walk their dogs along this road comment on the smell;

xiii) The objector believes the proposal does not comply with Policies DC1 of the adopted East Lothian Local Development Plan 2018;

xiv) With regards to Policy T2 the objector notes the vans arrive at the site from Peebles and West Linton noting only one/two of the clients are local. The objector queries how this can be acceptable during a climate emergency;

xv) The objector notes the dogs can be in the van for 2 hours or more and raises issues from an animal welfare point of view and has provided a screenshot that allegedly confirms the vans can hold 25-30 dogs each;

xvi) The objector notes there are trees along the burn and on the fence lines and railway banking however the applicant has noted on their application form that

there are no trees;

xvii) The objector believes dogs are stuck in vans for hours and the exercise they receive is chaotic and uncontrolled. The objector notes a local vet has treated numerous dogs from the business;

xviii) The objector states the number of dogs on the site could be up to 125 dogs a day and the noise is not acceptable, furthermore this number of dogs is uncontrollable;

xix) The objector queries if the business were to expand how many dogs may be on the site;

xx) The objector notes the testimonials provided as part of the applicants' submission appear fake;

xxi) In addition to the herons, the objector notes there may be a badger set within the site and additionally rabbits used to use it to frequent the site but since the business has been in operation they have not been seen;

xxii) The objector notes the running of this business has negatively impacted on their mental health; and

xxiii) If the application is approved then this will result in the complete loss of amenity for the objector.

In relation to the above, comments raising inaccuracy with a statement made in the applicants' submission relating to the historic use of the outbuildings and the current use of these outbuildings as shelters for dogs being untrue are not a material consideration in the determination of this planning application.

The comments raising issues with the construction/type of fencing and dogs damaging this fencing is not a material consideration in the determination of this planning application.

The comments relating to the alleged disturbance of wildlife will be assessed further in this report by way of the Biodiversity Officers' consultation response.

The comments relating to vans arriving/leaving the site out with the hours of operation can be controlled by way of a condition attached to any grant of planning permission which will condition the hours of operation of the business.

With regards to the comments noting vans stop in the middle of the road before accessing the site, the **Council's Road Services** have been consulted on the application and their comments are noted further in this report.

With regards to the area being used for parking vans not being shown on the submitted drawings, this area is shown on drawing number 1.

The comments received in relation to the site flooding will be addressed by the

consultation response from SEPA further in this report.

The comments received in relation to the dog waste disposal boxes being left at the gate to the site is not a material planning consideration in the determination of this planning application.

The comments received which raise concerns of dog safety/welfare are not material planning consideration in the determination of this planning application.

With regards to the comment noting that the application form does not state there are trees adjacent to the application site, whilst true, this omission does not necessarily prevent the determination of the application.

The expansion of the site by way of increasing the land used for the dog exercise business would be subject to a further planning application should the applicant wish to expand. Any such planning application would be determined on its own merits.

With regards to the concerns raised around the legitimacy of the testimonials submitted as part of the application, this is not a material planning consideration in the determination of this planning application.

PLANNING ASSESSMENT

The provision of a dog exercise and day-care facilities is a use that requires an area of land large enough to facilitate that use. Such an area of land is unlikely to be found within an existing settlement but is more likely to be found in the countryside. Therefore as this use has an operational requirement for this countryside location the principle of the use is not contrary to Policy DC1 of the adopted East Lothian Local Development Plan 2018.

The application site is within a location suited to the proposed dog exercise and day-care facilities. This use would not result in the loss of a significant area of prime agricultural land. Furthermore, if this planning application was granted, it could at a later date be reversed and the land easily returned to agricultural use given there is no new development proposed.

The site is enclosed and sectioned into areas by some 1.8 metre high fencing with 0.3 metres of this fencing being situated below ground. As noted earlier in this report the visual appearance of this fencing is viewed as some 1.5 metres in height. The application site is accessed by a wooden gate, which opens inwards into the application site and is accessed from the road to the west. This provides access to a gravel section of the site which then leads to a further gate with fencing which provides access to the dog exercise/day-care area. The application site contains 3 existing outbuildings. The parking area used by the operators of the site is situated to the south of outbuilding 1. However, the section of land which is accessed off the road to the west would also be capable of parking vehicles given its size. All works are retrospective.

The fencing, gates and outbuildings are all relatively minor in size, when compared

to the area of land in which they are sited on. They are of a design and appearance reflective of their countryside setting. Therefore, it is not inappropriate for its countryside setting and does not harm the character of the landscape of the area.

The site is sufficiently distanced from neighbouring residential properties to ensure the use of the site does not allow for any harmful overlooking or loss of sunlight or daylight as a result of the three outbuildings.

The neighbouring residential property to the north is situated some 127 metres from the application site whilst the neighbouring residential property to the east is situated some 152 metres from the application site.

The **Council's Environmental Health Officer** has been consulted on the application. The Council's Environmental Health Officer states they have significant concerns regarding noise arising from the dogs on site impacting upon the amenity of nearby residential properties, particularly in the evenings and at weekends when neighbours may be enjoying the use of external amenity areas within their own properties.

The Council's Environmental Health Officer goes on to state evidence submitted by an objector indicates barking dogs are an issue and management of noise associated with barking will need to be addressed by the applicant as a matter of urgency. The severity of any noise impact upon amenity will ultimately depend upon the behaviour/characteristics of the individual dogs using the facility. Noise at any given time on any given day may vary and levels will be subjective. However, with previous applications for dog walking/boarding developments, effective management of the facility, combined with compliance with the undernoted recommended conditions, should minimise any loss of amenity.

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

With regards to the number of dogs permitted on-site at any one time, the applicants' submission notes the number of dogs on-site are limited to 55 per day to allow space for each dog. The Council's Environmental Health Officer advises the number of dogs on-site should be limited to 55 in order to prevent expansion, in the interest of the amenity of neighbouring residential properties and the surrounding area. This could reasonably be made a condition upon any grant of planning permission and would allow the Council's Environmental Health team to monitor the situation over the period of temporary consent. Subject to that condition, the proposal would not lead to a harmful loss of amenity to any neighbouring residential properties.

With regards to Policy T2 of the adopted East Lothian Local Development Plan the

Council's Road Services have been consulted on the application and note the site is currently in use and the site uses an existing access onto the U214 unclassified road. The access is located near a bend and a bridge underpass beneath the East Coast main railway line. Therefore, the visibility to the south/southwest is restricted and the road is relatively narrow but vehicle speeds will be reduced because of the road alignment in the vicinity of the access. Subsequent to the submission of a revised site plan which accurately reflects the parking areas on-site the Council's Roads Services are content there is sufficient space within the application site for vehicles to turn around and exit onto the road in a forward gear. Therefore, the Council's Road Services advise they do not object to this planning application.

The **Council's Biodiversity Officer** has been consulted on the application and notes the change of use of this agricultural land is unlikely to result in a significant disturbance to local wildlife and in particular heron, due to the availability of alternative suitable habitat in the vicinity. Furthermore, the Council's Biodiversity Officer states the change of use does not have a significant impact on the Local Biodiversity Site (Thornton Burn) given the fencing to the perimeter of the application site and in general supports the creation of dog care/exercise spaces on agricultural land as this can contribute to a reduction in disturbance of wildlife. However, it is requested by the Council's Biodiversity Officer that the applicant provide biodiversity enhancement within the application site, that can reasonably be made a condition to any grant of planning permission.

SEPA have been consulted on the application and advise they do not consider the proposals to increase the land use vulnerability and note that the footprint of the buildings will remain the same and as such raise no objection.

The **Council's Flooding Officer** has been consulted on the application and confirms that SEPA's Flood Hazard Mapping indicates that the site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year. The flood maps show increased fluvial flood risk from the Thornton Burn to the north boundary of the site. The Council's Flooding Officer notes from the location plan that the land used for dogs at the north and west of the site lies within the risk area. There have been reports of flooding in this area in 2009, 2012, 2018 and 2019, which have resulted in the evacuation of the livestock that previously resided in these fields. Notwithstanding the above, due to the nature of the application, the Council's Flooding Officer raises no objection on the grounds of flood risk.

Network Rail have been consulted on the application and advise it will have no impact on railway infrastructure and therefore has no objection with regards to this application.

Transport Scotland have been consulted on the application and advise they raise no objection.

The **Council's Emergency Planning Department** have been consulted on the application and have contacted the agent directly to arrange being added to the Torness calendar distribution and other procedures associated with that.

The **Council's Landscape Department** have been consulted on the application however no response was received.

The **Council's Access Officer** has been consulted on the application and advises there are no public rights or ways or informal paths running through the area and the surrounding area does not contain a large number of residential properties. As such the Council's Access Officer advises it is unlikely there would be demand for anyone to want to access or walk through the application site. As such, the Council's Access Officer advises he raises no objection to this application.

Given the above considerations and subject to the aforementioned condition the retrospective change of use and development are consistent with Policies 1, 2, 5, and 29 of NPF4 and Policies DC1, DP1, DP2, NH11 and T2 of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh their accordance with the Development Plan.

CONDITIONS:

- 1 The use of the dog walking area shall be for a temporary period of one year from the date of any grant of consent to allow any complaints that may arise due to noise to be monitored and assessed.

Reason:

In order to protect the amenity of nearby residential properties.

- 2 The external dog walking area shall only be used between 0800-1800 hours on any day. The dog walking area shall not be operated at any other time.

Reason:

In order to protect the amenity of nearby residential properties.

- 3 The total number of dogs permitted on-site at any one time, including dogs housed in other temporary accommodation such as a vehicle or shelter, shall be limited to 55 dogs.

Reason:

In order to protect the amenity of nearby residential properties.

- 4 Within 2 months of the date of this decision notice a Noise Management Plan shall be submitted to and approved by the Planning Authority. The Noise Management Plan will outline the measures to be taken to minimise the impacts of noise from dog barking arising from the use of the proposed dog walking area. The measures outlined in the Noise Management Plan shall thereafter be implemented in accordance with the details so approved.

Reason:

In order to protect the amenity of nearby residential properties.

- 5 Details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority within 2 months of the date of this decision. The measures as so approved shall be implemented and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

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