

**REPORT TO:** Planning Committee

**MEETING DATE:** 2 March 2010

**BY:** Executive Director of Environment

**SUBJECT:** Pre-determination Hearing:  
Planning Application No. 09/00053/OUT – Outline planning permission for drainage works and enabling residential development at Fenton Barns, North Berwick

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## **1 PURPOSE**

- 1.1 In furtherance of the Scottish Government's modernising planning agenda, Section 14 of the Planning etc. (Scotland) Act 2006 has introduced to development management a new procedure of Pre-Determination Hearings. Pre-Determination Hearings are mandatory where a planning application is made for a national development or for a major development that is significantly contrary to the local development plan.
- 1.2 As the area of the site of application 09/00053/OUT is greater than 2 hectares, the development proposed in it is, under the provisions of The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 defined as a major development. Furthermore the enabling housing component of the proposed development is significantly contrary to Policy HOU8 of the approved Edinburgh and the Lothians Structure Plan 2015 and Policy DC1 of the adopted East Lothian Local Plan 2008. Application 09/00053/OUT is therefore brought before the Planning Committee for a Pre-Determination Hearing prior to the consideration of the merits and the determination of the application by a meeting of the Council.
- 1.3 The purpose of this report is to provide the Committee with a description of the development proposal and with summaries of the development plan policies and other material considerations, consultation responses and public representations applicable to application 09/00053/OUT

## **2 RECOMMENDATION**

- 2.1 That the Committee refer to the content of the report as an informed context for the Hearing.

### **3 BACKGROUND**

#### **3.1 Description of Application**

The application site consists of several areas of land that are mostly in the locality of Fenton Barns but also at West Fenton. The areas of land are in the countryside to the north of Drem, to the south of Dirleton and to the southeast of Gullane. There are a number of residential and commercial properties in the wider locality.

Planning permission in principle (formerly known as outline planning permission) is sought for drainage works and for a residential development on the application site.

It is proposed that the new foul drainage system would replace the existing private foul drainage systems for the Fenton Barns area, and would involve foul waste being discharged into existing public drainage infrastructure and ultimately into the existing waste water treatment works at Gullane. It is the applicant's intention that it would be a public system to be maintained by Scottish Water. The principal component of the proposed foul drainage system would be a new waste water pumping station. It is indicatively shown to be located in the southern edge of a field that is immediately to the south of Fenton Barns, in a position some 110 metres to the west of the B1345 road that passes through Fenton Barns. It is further indicated that the compound would be some 14.5 metre in length and 5 metres wide, with most of its equipment being contained in an underground chamber, although a metal crane type structure, some 2.5 metres in height is shown to be erected above ground level. The new waste water pumping station is intended to replace the existing privately owned sewage treatment works, located approximately 1km to the south of Fenton Barns. The applicant advises that the existing sewage treatment works would be demolished on the new pumping station becoming operational. In support of the operation of the new waste water pumping station and to enable foul waste to be taken to the existing public drainage infrastructure and waste water treatment works that the proposed new foul drainage system is to be connected to it is proposed that a network of new drainage pipes and rising mains could be installed underground.

The proposed surface water drainage system is indicatively shown to include the formation of two attenuation ponds and the laying of new field drainage channels. One of the attenuation ponds is shown to be located to the east of the proposed waste water pumping station, with the other attenuation pond shown to be located on agricultural land to the north of the residential properties of Fenton Barns Cottages.

In February 2010 planning permission (09/00054/FUL) was granted for the formation of a new foul and surface water drainage system at Fenton Barns. The approved drainage system is identical to the drainage scheme that is proposed as part of this planning application.

The principle of the housing is being promoted by the applicant as a necessary provision of enabling development to fund, complete and vest in Scottish Water the development of the proposed drainage works. The applicant advises that due to market uncertainties, the proposal is for a maximum buildings area rather than unit numbers in order to retain flexibility.

The master plan indicates how the housing could be developed on some 10.66 hectares of land on the eastern part of the application site. The proposed housing site is bounded to the north by Dairy Cottages, to the east by farmland, to the south by Fenton Barns farm cottages and Fenton Barns farm steading, and to the west by a section of the B1345 road. The western part of the proposed housing site was previously used as a mini-golf course. However that use has ceased and the western part of the site now comprises of grassed land. The eastern part of the proposed housing site was previously partly used as a golf driving range. That use has ceased and the former golf driving range buildings are now used for storage and as a retail unit. The land of the former golf driving range is in use as a field. The proposed housing site is bisected into an eastern half and a western half by the unclassified road that provides access to Fenton Barns from the B1345 road. The masterplan shows how some lower density housing surrounded by green space might be accommodated on the eastern part of the proposed housing site. It is shown that the western part of the proposed housing site could contain a mix of lower and higher density housing. The masterplan indicates that the existing tree planting along the western and part of the southern boundaries of the proposed housing site would be retained. A pedestrian link is shown to provide pedestrian access from the proposed housing site to the business units at Fenton Barns that are to the southwest of the proposed housing site. The masterplan also indicates land at Fenton Barns that could be used for future business development. The applicant confirms that this proposed business development does not form part of the planning permission in principle application. A brochure submitted with the planning permission in principle application indicates possible designs for the proposed housing.

In a planning statement submitted with the application, the applicant informs that land under his ownership was acquired by the War Office in both world wars for use as an airfield. The land was returned to the applicant's family in 1947 along with various airfield buildings and a private sewage treatment works that had been established at that time. Since then, Fenton Barns has been subject to development with some new residential properties and with small businesses. The private sewage treatment works still services the business and residential uses within the Fenton Barns area. However the applicant states that it is no longer fit for purpose. The evolution of the area as a business location in particular has exacerbated the problems experienced at the existing private treatment works. The existing private drainage system is incapable of meeting the rising discharge standards imposed by the Scottish Environment Protection Agency license. The combined system

in place (foul and surface water) in times of heavy rainfall is unable to deal with the flows through the system and the private sewage treatment works regularly discharges into the Peffer Burn leading to pollution of Aberlady Bay. Despite the best efforts of the landowner in maintaining the works, it and the associated pipework are no longer suitable or reliable. Several pollution incidents have occurred, including very recent incidents, which raise questions over the whole future of Fenton Barns as one of the key important employment centres in East Lothian. The applicant advises that the modern and effective drainage system proposed would benefit both residential and commercial properties within the Fenton Barns area. However such a system comes at considerable expense. The applicant considers that the enabling housing development is fundamental in order to cover the primary costs of the drainage upgrade and can only be met by the sale of the land proposed for housing development.

A separate development appraisal report that seeks to justify the inclusion of the housing as enabling development has also been submitted by the applicant. The applicant has also submitted proposed draft Heads of Agreement that might form the basis of a legal agreement to be entered into by the applicant and the Council should planning permission in principle be granted.

### 3.2 Development Plan Policy and Other Material Policy Considerations

The development plan is the approved Edinburgh and the Lothians Structure Plan 2015 and the adopted East Lothian Local Plan 2008.

Policies HOU8 (Development on Greenfield Land), ENV1C (International and National Historic or Built Environment Designations) and ENV3 (Development in the Countryside) of the approved Edinburgh and the Lothians Structure Plan 2015 and Policies DC1 (Development in the Countryside and Undeveloped Coast), NH3 (Important Local Biodiversity Sites), ENV3 (Listed Buildings), INF1 (Pipeline Consultation Zone), DP17 (Art Works- Percent for Art) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008 are relevant to the determination of the application.

Material to the determination of the application are Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Scottish Ministers' policy on development affecting the setting of a listed building as given in the Scottish Historic Environment Policy: July 2009, and Scottish Ministers' policy on housing as given in Scottish Planning Policy: February 2010.

Section 59 of the Act requires that in considering whether to grant planning permission for development which affects a listed building or its setting a planning authority shall have special regard to the desirability of preserving the buildings setting.

With regard to housing in rural areas, paragraph 84 of Scottish Planning Policy: February 2010 informs that the majority of housing land requirements will be met within or adjacent to existing settlements and this approach will help to minimise servicing costs and sustain local schools, shops and services. Authorities should also set out the circumstances in which new housing outwith settlements may be appropriate, particularly in rural areas.

### 3.3 Consultations

The Council's Head of Transportation raises no objection in principle to the proposed development, being satisfied that the proposed housing could be safely accessed and that sufficient off street car parking could be provided. He is satisfied that the existing road network could accommodate the additional traffic that would be generated by the proposed development. He does however recommend that footways and bus stops should be provided in the vicinity of the site access to enable continuous segregated pedestrian access from the site to public transport facilities.

In terms of the proposed housing, the Council's Senior Environmental & Consumer Services Manager raises concern that the occupants of the proposed houses may be affected by noise emanating from existing non-domestic premises in the area. He therefore recommends that a noise assessment be submitted to and approved in writing by the Planning Authority. The noise assessment should include details of any mitigation measures that may be required to protect the amenity of the occupants of the proposed housing.

The landscape advice given by Policy and Projects is that the developer should seek to retain the existing trees within the application site, and that the proposed scheme of landscaping should demonstrate connectively to the existing tree planting in the locality.

The Council's biodiversity officer welcomes the creation of two attenuation ponds, advising that they would add some wetland habitat to the area. He raises no objection to the principles of the proposed development, being satisfied that it would not have any adverse biodiversity impacts.

The Council's Executive Director of Education and Children's Services advises that there would not be sufficient capacity at Dirleton Primary School to accommodate children that could arise from the proposed development, and that there is no opportunity to expand the primary school roll further at Dirleton Primary School.

Gullane Area Community Council state that the proposed development is contrary to both the approved Edinburgh and the Lothians Structure Plan 2015 and the adopted East Lothian Local Plan 2008. In their view a

concrete case has not been made to justify any amendments to the Plans, and therefore the regulations should not be set aside.

A National Gas Transmission Pipeline is located to the east of the proposed housing site. The Health & Safety Executive does not advise, on safety grounds, against the granting of planning permission in principle for the proposed housing development.

The Scottish Environment Protection Agency welcome the proposed sustainable wastewater drainage system.

The Council's Heritage Officer advises that the application site is within an area of considerable archaeological importance and recommends that there be an archaeological investigation of it prior to the commencement of site development works.

### 3.4 Representations

14 written objections and 1 letter of representation have been received in respect of this application. The main grounds of objection are summarised as follows:

- i) there is no justification for the enabling housing proposed;
- ii) the drainage system should be funded by the applicant or through funding sources other than housing ;
- iii) proposed housing would be at odds with the rural nature of the area;
- iv) use of enabling development to fund a financial shortfall in an existing business would set an awkward precedent;
- v) unclear whether new drainage system would benefit local residents or whether they would be subject to unknown running costs;
- vi) lack of local services and public transport to serve the proposed housing; and
- vii) proposed housing would be incompatible with nearby business uses.

The letter of representation does not raise objection to the principle of the proposed development, although some concern is raised over the increased traffic that would be generated by the proposed housing development and the impact that it would have on road safety.

## 4 POLICY IMPLICATIONS

### 4.1 None

## 5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

## 6 RESOURCE IMPLICATIONS

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

## 7 BACKGROUND PAPERS

- 7.1 None

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