

**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 December 2011  
**BY:** Executive Director of Environment  
(Planning & Building Standards)  
**SUBJECT:** Application for Planning Permission for Consideration

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Application No. **10/01077/P**  
Proposal Erection of telecommunication mast and associated works  
Location **Newhailes Industrial Estate  
Musselburgh  
East Lothian**  
Applicant Vodafone/02  
Per A and K Solutions Ltd  
Ward 001  
RECOMMENDATION Consent Granted

#### UPDATE POSITION

At their meeting on 10th May 2011 the Committee decided to continue this planning application to give the applicant the opportunity to: (i) propose a solution that does not include the loss of valuable industrial space/economic development land; and (ii) explore other sites and the potential to upgrade other existing masts.

One of the persons objecting to planning application 10/01077/P is Mr D Walton, who operates a business from premises adjacent to the site of the telecommunications mast proposed in the application. At the meeting of the Committee on 10th May 2011 Mr Walton suggested that there were more suitable sites for the proposed mast.

Subsequently the case officer for application 10/01077/P in contacting Mr Walton was told by him that the sites he had in mind when addressing the Committee are all within Newhailes Industrial Estate. They are:

1. To the north of Unit 4 of Block 1, between that unit and the north boundary of the Industrial Estate with Newhailes Road;

2. On the grass verge on the south side of the access road to the south of Unit 6, between the access road and the trees to the south of the Industrial Estate;
3. In the yard of Unit 4 of Block 3, adjacent to the north boundary of the Industrial Estate with Newhailes Road; and
4. On the grass verge adjacent to the east elevation wall of Unit 4 of Block 3.

In his assessment of these suggested sites the applicant's agent explains that as the land of the Industrial Estate is generally of the same ground level a telecommunications mast erected on them would, in order to provide the level of coverage and capacity that is being sought by Vodafone and Telefonica (O2), have to be the same height and with the same open headframe as the mast proposed in application 10/01077/P.

The applicant's agent states that Sites 1 and 3 would each be within 5 - 7 metres of the A6095 public road (Newhailes Road). There is some tree planting between the back edge of the public footpath on the south side of the road and the Industrial Estate. However, if erected on any one of these two sites a mast of the size and type required would project above the trees and thus would be highly visible from Newhailes Road.

A mast erected on Site 4 would be slightly further away from Newhailes Road than if erected on Sites 1 and 3. However, it would still be visible from Newhailes Road and by its closer proximity to the road would be more visible than if erected on the site proposed for it in application 10/01077/P.

A mast erected on Site 2 would be in closer proximity to the trees between the Industrial Estate and the nearby houses of Clayknowes Place/Clayknowes Drive than if it were erected on the site proposed for it in application 10/01077/P and would place greater pressure on the longevity of the trees.

From his assessment the applicant's agent concludes that a 21m tall, open lattice telecommunications mast erected on any one of the alternative sites suggested by Mr Walton would be equally visible from the houses of Clayknowes Place/Clayknowes Drive as if it were to be on the site proposed for it in application 10/01077/P and he respectfully suggests that there are no sites available within the Industrial Estate, that are better for the siting of the proposed mast.

The applicant's agent reiterates that a new mast is required to deliver a 3G service to the customers of Vodafone/O2. 3G technology, which provides multimedia and internet data access, operates at a much lower power capacity than earlier 2G networks. As such, 3G cell areas are geographically smaller than their 2G counterparts and, because of this, 3G telecommunications apparatus has to be closer together.

The applicant's agent states that "whilst a further examination of the wider area has been undertaken no further sites were apparent or indeed have been suggested" for the siting of the proposed mast.

On the matter of site sharing on existing telecommunications installations the response from the applicant's agent is that Vodafone and Telefonica (O2) are progressing a programme of sharing assets. He informs that since the Committee met on 10th May 2011 the existing Vodafone installation at Musselburgh Rugby Football Club, some 720 metres to the northeast of Newhailes Industrial Estate, has been upgraded with the grant

of planning permission 11/00024/P and now also accommodates Telefonica (O2) apparatus. This upgrading utilises an existing structure to accommodate two operators thereby avoiding the need for a further new ground based installation. What is proposed in application 10/01077/P is part of this ongoing site sharing agreement and it would provide a new installation to enable both Vodafone and Telefonica (O2) to provide enhanced coverage to the west. He reiterates that this new installation would result in the removal of the existing roadside monopole that is close to the junction of Newhailes Road and Clayknowes Crescent and which presently accommodates only Telefonica (O2) apparatus. To upgrade that existing Telefonica (O2) monopole would still leave a signal deficit for both Vodafone and Telefonica (O2) and would require an enlargement of that existing monopole. The current proposal allows both an improvement to the existing network provision and a rationalisation of the current networks with an overall reduction in installations.

There is an existing 21m tall lattice mast in a position adjacent to 102 Market Street, Musselburgh, some 850 metres to the northeast of Newhailes Industrial Estate. Due to the more easterly positioning of that mast the operation of it, even to an upgraded standard, in conjunction with the upgraded mast at the Musselburgh Rugby Football Club site would not provide full signal coverage to the west. A signal deficit would remain that could only be addressed by the operation of the upgraded mast at the Rugby Club site with the new 21m tall mast proposed for Newhailes Industrial Estate. In which case there would be no operational requirement for the Market Street mast and, as the applicant's agent reiterates, that existing mast would be removed.

The site of application 10/01077/P is a small part of an area of undeveloped land within Newhailes Industrial Estate. The Council's Estates Surveyor advises that not all of the undeveloped land is owned by East Lothian Council. A part of the land is held in common ownership by the owners of the houses of the nearby residential estate to the south, and a footpath crosses over it. The amount of the undeveloped land that is owned by the Council is small in comparison to the size of the developed plots of the Industrial Estate. Notwithstanding, the estates Surveyor is satisfied that the siting of the proposed telecommunications on the part of the land that is the application site would not prejudice what development potential the remainder of the area of undeveloped land in Council ownership has. He is also satisfied that the siting of a telecommunications mast on the application site would, in property terms be an acceptable use of that part of the land.

The Council's Economic Development Manager acknowledges that the site of application 10/01077/P is a small area of land approximately 25 metres square. It is in a corner of Newhailes Industrial Estate and her understanding is that it is not able to be easily developed. The enhanced telecommunications coverage provided by the siting of the proposed mast on the application site would help to facilitate economic development in the area.

No business proposals have been received from Mr Walton for the undeveloped area of land of which the application site is a part.

The foregoing responses to the Committee's decision of 10th May 2011 do not identify a suitable alternative to the proposal in application 10/01077/P to erect the proposed 21m telecommunications mast on the application site and do not propose a solution that does not include the loss of valuable industrial space/economic development land.

The Officer Report for application 10/01077/P remains the same as that which was presented to the Committee on 10th May 2011 and it is hereby reproduced:

THE FOLLOWING IS THE TEXT OF THE REPORT PRESENTED TO THE PLANNING COMMITTEE AT THEIR MEETING ON TUESDAY 10th MAY 2011.

A planning assessment report on this planning application was on the Scheme of Delegation List issued to all Members of the Council on 17th March 2011. At the request of Councillor Williamson the application is now referred to the Planning Committee for a determination.

Between the time of the application having been reported on the Scheme of Delegation List and it now being brought before the Committee it was brought to the Council's attention that one of the notifiable neighbours for the application (i.e. the neighbouring property of Unit 5 Newhailes Industrial Estate) had not received notification of the application. To remedy this, the Council served notification of the application on the occupier of that neighbouring property, with a requisite 21 day period for them to submit to the Council representation on the application.

Rower Developments Ltd, the occupier of Unit 5 Newhailes Industrial Estate, have submitted a written objection to the development proposed in this application. The grounds of objection are that:

- i. the proposed telecommunications development would be too close to their premises and would raise concerns with their staff members;
- ii. the proposed telecommunications development would be too close to an electrical sub-station;
- iii. the proposed telecommunications development would be three times higher than the adjacent industrial unit building;
- iv. the proposed telecommunications development would be visually intrusive, out of context and scale with the industrial unit building and would appear unsightly in this area;
- v. the proposed telecommunications development may cause interference with IT installations, electrical equipment and mobile phones;
- vi. there are too many telecommunications sites within the area, indeed two masts would be removed should the proposed development proceed;
- vii. if a higher level of coverage is required in the area the existing masts should be upgraded prior to considering new sites;
- viii. the land of the application site is zoned for industrial use;
- ix. the objector has on-going enquiries with the Council requesting to use this area of land and would like this matter to be resolved prior to alternative uses of the land being considered;

- x. the proposed development would sterilize the site for future use;
- xi. if a new telecommunications development is required in the area a more suitable location for it would be further to the west of the existing right of way towards the railway line or to the east of the yard of Units 4/5 Newhailes Industrial Estate;
- xii. his company was not included in the consultation process carried out by the developer; and
- xiii. in the site selection documentation submitted with the application by the developer, Unit 5 Newhailes Industrial Estate is identified as being an unsuitable location for a ground based mast however the objector disagrees with this position stating that he could provide four locations that would easily accommodate the proposed development.

Of these new grounds of objection the matters of impact on public health, the height and visual impact of the proposed telecommunications mast and the 'zoning' of the land of the application site (points i, iii, iv and viii above) are addressed in the 'PLANNING ASSESSMENT' of the application as reported on the Scheme of Delegation List and which is re-produced in full below.

The response to the other grounds of objection from Rower Developments Ltd is:

1. There are no guidelines within planning legislation that stipulate a minimum distance requirement between a telecommunications development and a electrical sub-station (point ii above).
2. Whether or not a proposed telecommunications development would interfere with IT installations, electrical equipment and mobile phones is not a material consideration in the determination of a planning application (point v above).
3. The applicant states that the existing telecommunications base stations are not adequate to meet their network coverage requirements and that they are seeking to upgrade the network through the erection of the proposed telecommunications base station on what they consider to be the most suitable location. Moreover, if planning permission were granted for the proposed telecommunications base station two of the existing telecommunications base stations in the locality would be removed (points vi, vii, xi, xii, and xiii above).
4. Whether or not the objector is in the process of an enquiry with the Council's Estates Division regarding their use of the land of the application site is not a material consideration in the determination of this planning application (point ix above).
5. The objector states that "the proposed development would sterilize the site for future use" (point x above). He does not state what future use would be sterilised and in any event one of the material considerations in the determination of this application is whether or not the proposed telecommunications mast would be an acceptable use of the land, a consideration that is addressed in the 'PLANNING ASSESSMENT' of the proposed development re-produced below.

The responses given in 1-5 above do not alter the findings of the 'PLANNING ASSESSMENT' of the proposed development which, as follows, is reproduced as a basis for the Committee's consideration and determination of this planning application.

## PLANNING ASSESSMENT

The application site comprises a small area of grassland that is located some 13 metres to the southwest of Unit 5 Newhailes Industrial Estate and which is also to the southwest of an existing turning head of the Industrial Estate road. It is part of a larger area of grassland that forms part of the wide verge of the Industrial Estate road. To the north, northwest and to the northeast beyond the turning head of the road, and to the southwest beyond an area of verge are other industrial units. To the southeast is an area of verge beyond which is a treed area, which denotes the southeast boundary of the Industrial Estate. Beyond the treed area is a public right of way. Beyond both the treed area and the public right of way are the residential properties of Clayknowes Drive. The nearest neighbouring residential properties are some 40 metres to the southeast of the application site. The trees within the treed area to the south of the site are some 7 metres high.

By being within Newhailes Industrial Estate the land of the application site is covered by Policy BUS1 of the adopted East Lothian Local Plan 2008. The buildings on the industrial estate are mainly two-storey in height and are generally constructed of brick and profiled metal cladding.

There are no other existing telecommunications masts located within the industrial estate. However, there are three other telecommunications installations located within 850 metres of the application site; a 15 metres high streetworks monopole on Newhailes Road some 350 metres to the northeast, a 17 metres high lattice mast at Musselburgh Rugby Football ground some 720 metres to the northeast and a 21 metres high lattice mast at 102 Market Street some 850 metres to the northeast.

Planning permission is sought for the erection on the application site of a telecommunications lattice mast with 9 antennas (3no. Vodafone antennas and 6 no. O2 antennas), equipment cabinets and associated works.

The proposed telecommunications mast, including the 9 antennas, would be some 21.0 metres in height. The mast would be triangular in shape and would be of lattice construction. The application site has a rectangular footprint, measuring some 5.6 metres by 5.4 metres. The mast would be positioned relatively centrally within the site with 3 equipment cabinets positioned to the northwest and northeast of it. The mast and the equipment cabinets would be positioned on a concrete plinth. The highest of the equipment cabinets would measure some 1.65 metres in height above the level of the plinth. Two of the equipment cabinets would be coloured grey and the other one equipment cabinet would be coloured green. The associated works would include the erection of 1.8 metres palisade fencing to enclose the site. Access into the site would be gained from a pedestrian gate in the northeast boundary of the site.

The application is made on behalf of Vodafone and O2 (UK) Limited, who currently operate from the three other telecommunications installations located within 850 metres of the application site to the northeast. Supplementary information submitted with the application informs that the proposed telecommunications mast is required to consolidate

existing network assets and to improve 3G network coverage. In addition, it is stated that the existing O2 streetworks monopole on Newhailes Road (Site ref. 17593) would be removed, should planning permission for the proposed mast be granted. The applicant states that they have considered a number of other sites in a range of locations in the locality. Their conclusion is that those sites are unsuitable for various reasons and that the most suitable option is the erection of a new telecommunications mast on the application site.

Since it was first registered the application has been amended through the submission of revised drawings to re-position the proposed telecommunications base station some 1.5 metres further to the northwest in order to ensure that it would not have a harmful impact on the health of the trees that are to the southeast of the application site. This change is shown on amended application drawings submitted by the applicant's agent.

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.

There are no policies of the approved Edinburgh and the Lothians Structure Plan 2015 relevant to the determination of this application.

Policy BUS1 (Business and General Industrial Locations), INF2 (Telecommunications Development) and DP14 (Trees on or Adjacent to Development Sites) of the adopted East Lothian Local Plan 2008 are relevant to this application.

Material to the determination of the application is Scottish Government's policy on Communications Infrastructure given in Scottish Planning Policy: February 2010 and Planning Advice Note 62: Radio Telecommunications.

In paragraphs 249 and 250 of Scottish Planning Policy it is stated that the siting and design of electronic communications infrastructure, such as base stations for mobile phone networks, are key issues to be addressed through the planning system. More environmentally sensitive solutions can be achieved through greater use of smaller and less visually intrusive equipment with less conspicuous fittings. All components of the equipment should be considered together. Equipment should be designed and positioned as sensitively as possible, though technical requirements and constraints may limit the possibilities. Planning authorities should take the cumulative visual effects of equipment into account when assessing new proposals. Policy INF2 of the adopted East Lothian Local reflects this requirement.

Planning Advice Note 62 provides supplementary advice on the process of site selection and design for telecommunications development and illustrates how the equipment can be sensitively installed. In selecting the site and design of telecommunications development, operators and planning authorities must have regard to the cumulative effects when two or more masts are intervisible (i.e. simultaneously visible), but also when several base stations are seen in succession as people pass through an area. They also need to think beyond individual proposals and consider how future telecommunications equipment will be integrated into the landscape because one mast on a site may be acceptable but the cumulative effect of two or three might not. Paragraph 69 advises that a mast that breaks the skyline or is sited on a prominent ridge is generally not desirable as it creates a visual

focus, which draws the eye away from the natural landscape. The ever-changing light and weather, which is characteristic of Scotland, can also at times illuminate a metallic structure and increase its prominence.

Three written representations to the application have been received. One of the representations is from the Inveresk Gardens Residents Association. All of the written representations raised objections to the proposed development. The grounds of objection are that:

- i. the proposed telecommunications development would be close to residential properties;
- ii. the proposed telecommunications development would be within 350 metres of a primary school;
- iii. the proposed mast would be an ‘eye-sore’ and its visual impact would not be minimised;
- iv. the proposed mast would be close to overhead power lines;
- v. there are police requirements for the installation of powerful equipment;
- vi. the health risks associated with such structures; and
- vii. the proposed mast would lead to a devaluation of residential properties in the vicinity.

One of the written representations comments that neighbour notification has not been sent to local residents and businesses. This matter was investigated by the Council and it was found that the neighbour notification procedure has been carried out correctly with all neighbouring property with a conterminous boundary or within 20 metres of the application site being notified. However, as there is some land within 20 metres of the application site that does not have any buildings on it the application has also been advertised in the local press as well.

There is no requirement in legislation to consult the Police regarding telecommunications development.

The proposed telecommunications mast would be some 100 metres to the northeast of the existing overhead power lines and as such there is no requirement in legislation to consult the utility company.

The matter of the impact of the proposed development on the value of neighbouring residential properties is not a material planning consideration in the determination of an application for planning permission.

Musselburgh and Inveresk Community Council, as a statutory consultee on the application, have concerns about the height of the new mast and the number of masts in Newhailes. They are concerned that the proposed mast is close to another mast at Musselburgh Rugby Football Club some 720 metres to the northeast.

As stated in paragraph 253 of Scottish Planning Policy (SPP) the planning system should not be used to secure objectives that are more properly achieved under other legislation. Emissions of radiofrequency radiation are controlled and regulated under the other legislation. To demonstrate to planning authorities that the known health effects have been properly addressed, applications for planning permission involving antennas to be employed in an electronic communications network must be accompanied by a declaration that the equipment and installation is designed to be in full compliance with the appropriate ICNIRP guidelines for public exposure to radiofrequency radiation. With these mechanisms in place the Scottish Executive concludes that it is not necessary for planning authorities to treat radiofrequency emissions as a material consideration. The applicant has confirmed in writing that the proposed installation would conform to the ICNIRP guidelines for public exposure to radiofrequency radiation.

Paragraph 254 of SPP informs that in response to the report in 2000 by the Independent Expert Group on Mobile Phones (the Stewart Report) a number of precautionary measures relating to mobile phone masts were put in place out with the planning process. OFCOM carries out these duties on behalf of the UK Government. Guidelines for the location of mobile phone masts in relation to schools fall within these precautionary measures.

The application site although in an area of coverage of Policy BUS1 of the adopted East Lothian Local Plan 2008 is part of the landscape strip at the edge of the industrial estate and the installation and operation of the proposed telecommunications mast and cabinets on it would not prejudice the principal business/industrial use of the industrial estate. Accordingly the proposed development is not contrary to Policy BUS1 of the adopted East Lothian Local Plan 2008.

The proposed compound and equipment and meter cabinets would be located within the confines of the industrial estate, and would not be readily visible from public views, other than directly down the length of the Industrial Estate service road. They would be screened from views from the southeast by the treed area. In their location the proposed compound, equipment and meter cabinets would be in keeping with the industrial character and appearance of the industrial estate. In such a context and by being beside the trees that are to the southeast of the application site they would not in themselves appear harmfully prominent, intrusive or exposed in their setting and would not have an adverse affect on the character and appearance of the area.

The area surrounding the application site is characterised by a number of vertical structures including the buildings on the industrial estate, street lighting columns, existing electricity pylons and the trees to the southeast of the application site and further afield on the north side Newhailes Road.

At a height of 21 metres the proposed lattice mast would be visible from within and outwith the industrial estate. The semi-mature trees to the southeast of the site would provide only limited visual cover to the lower part of the proposed lattice mast from the adjacent residential properties to the southeast. The upper two-thirds of the proposed lattice mast and the antennas would be visible above the trees and the neighbouring industrial buildings. These upper parts of the proposed lattice mast would be viewed against the background of the sky. However, given the industrial character of the industrial estate and that the proposed mast would be viewed in the context of the built

form of the neighbouring industrial units and the existing electricity pylons, that the trees to the southeast of the site would as they continue to grow provide an increasing level of visual containment over time, and due to its narrow form, open lattice construction and colouring, the proposed mast would not appear harmfully prominent within its landscape setting.

The two existing telecommunications masts some 720 metres and some 850 metres away to the northeast are some distance apart but are intervisible with each other when approaching along Newhailes Road from the west and along Olive Bank Road some distance away to the northeast. The proposed lattice mast would also therefore be intervisible with those existing telecommunications masts. When viewed together the proposed lattice mast and the existing telecommunications masts would lead to a proliferation of telecommunications apparatus at this locality the cumulative effect of which would be an increase in the visual intrusiveness and impact of telecommunications masts on the locality in a manner harmful to the visual amenity of the area. However, the applicant's agent advises that two of the existing three telecommunications installations in the locality are to be removed. Those being, the 15 metres high streetworks monopole that is some 350 metres to the northeast on the north side of Newhailes Road and the 21 metres high lattice mast that is some 850 metres to the northeast adjacent to No.102 Market Street, Musselburgh. A condition requiring that these two existing telecommunications masts be removed from the locality within 2 months of the new mast coming into operation can be reasonably and competently imposed on the grant of planning permission for the proposed mast. Such a condition is necessary to ensure that three closely intervisible masts do not exist permanently at this location in a manner that may have a detrimental impact on the character and appearance of the area. Subject to such a condition, if built the proposed development would not increase the levels of intervisibility of telecommunications installations in the locality. The applicant has indicated in writing that they are agreeable to such a condition.

The Council's Head of Transportation raises no objection to the proposed development. However, he advises that in order to enable the Council to fulfil its roadworks co-ordination role the applicant should notify the Council of their intended start date. He further requests that a minimum unobstructed footway of 1.0 metres should be provided at all times for pedestrians and that all work should comply with Chapter 8 of the Traffic Signs Manual and Safety at Street Works and Roadworks, a Code of Practice 2002, as appropriate. A copy of the Head of Transportation's consultation response has been passed onto the applicant for their information.

The proposed mast and associated works would be positioned outwith the root protection areas and crown spread of the nearest of the trees that are to the southeast of the application site. The landscape advice from the Council's Policy and Projects Section is that the proposed development would not have a detrimental impact on the trees. However to safeguard the trees from damage it is recommended that temporary protective fencing is erected during the construction period. This matter can be controlled by a condition on the grant of planning permission.

The proposed telecommunications development would be sufficiently well integrated into its landscape setting so as not to appear harmfully intrusive or exposed to the detriment of the character of the area and there is an operational requirement for it. The proposed development does not conflict with the provisions of Policy BUS1, INF2 and DP14 of the

adopted East Lothian Local Plan 2008, with Scottish Government guidance given in Scottish Planning Policy: February 2010 or with Planning Advice Note 62: Radio Telecommunications.

#### CONDITIONS:

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

Reason:

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

- 2 Within two months of the date upon which the telecommunications mast hereby approved becomes operational the existing streetworks monopole located on the north side of Newhailes Road some 350 metres to the northeast of the application site shall have been removed in its entirety from that site, and the existing lattice mast located at 102 Market Street, Musselburgh some 850 metres to the northeast of the application site shall have been removed in its entirety from that site. Within 14 days of the date upon which the telecommunications mast hereby approved becomes operational the applicant shall notify the Planning Authority of that date in writing.

Reason:

In order to prevent the proliferation of telecommunications masts in the locality in the interests of the visual amenity of the area.

- 3 No development shall take place on site until temporary protective fencing 2.3 metres in height and comprising standard scaffold poles as uprights driven into the ground avoiding tree roots, with 3 standard scaffold poles as horizontal rails (top, middle and bottom), all with weldmesh wired to uprights and rails has been erected to the approval of the Planning Authority. This temporary protective fencing shall be positioned on an alignment some 6 metres from the centre of the existing fence adjacent to the treed area that is to the southeast of the application site and shall extend for a length equal to the length of the southeast boundary of the application site. It shall be erected and kept in good condition throughout the duration of the works for the installation of the telecommunications development the subject of this planning permission in accordance with Figure 2 of British Standard 5837: 2005 'Trees in Relation to Construction'. All weather notices shall be erected on said fencing with words such as "Construction exclusion zone - Keep out" and the fencing shall remain on site and intact through to completion of the development.

The ground level of the land on the southeast side of the temporary protective fencing shall neither be raised nor lowered and no materials, temporary buildings, plant, machinery or surface soil shall be placed or stored and no herbicides shall be used on that land.

Care should be taken when planning site operations to ensure that wide or tall loads, or plant with booms, jibs and counterweights can operate without coming into contact with any retained trees.

Material that will contaminate the soil, e.g. concrete/mortar mixing, diesel oil, paints, solvents and vehicular washings, should not be discharged within 10 metres of any tree trunk. It is essential that allowance be made for the slope of the ground so that such damaging materials cannot run towards retained or new trees.

Fires should not be lit in a position where their flames can extend to within 5 metres of tree foliage, branches or trunk, and due cognisance must be taken of wind speed and direction prior to and during such operations.

Details of any trenches or services in the fenced off areas shall require the prior consent of the Planning Authority and all trenches shall be dug and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.

Reason:

In order to ensure protection of the trees adjacent to the application site in the interests of safeguarding the landscape character of the area.

- 4 No trees or shrubs, adjacent to the site, which are to be retained shall be damaged or uprooted, felled, topped, lopped or interfered with in any manner without the prior written consent of the Planning Authority.

Reason:

In order to ensure the retention of the trees adjacent to the application site in the interests of safeguarding the landscape character of the area.

*Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)*



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 December 2011  
**BY:** Executive Director of Environment  
(Planning & Building Standards)  
**SUBJECT:** Application for Planning Permission for Consideration

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**2**

Application No. **11/00827/PM**

Proposal Variation of condition 1C of outline planning permission  
06/00770/OUT to extend the time period for a further 3 years

Location **Tesco Stores Limited**  
**Mall Avenue**  
**Musselburgh**  
**East Lothian**  
**EH21 7TS**

Applicant Dundas Estates

Per Manson Architects

Ward 002

**RECOMMENDATION** Consent Granted

#### PLANNING ASSESSMENT

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

Planning permission in principle (Ref: 06/00770/OUT) was granted in September 2008 for a mixed use development on some 8.8 hectares of land located close to Musselburgh Town Centre which at the time of determination of application 06/00770/OUT included land of the former Brunton Wire Works, land of the then Tesco supermarket, and the bus depot that is operated by First Bus. When granted the planning permission in principle included for a retail store, residential development of up to 140 residential units, a primary health care centre, a care home for the elderly (including a day centre and associated specialist housing with support) and associated access roads and car parking.

The masterplan docketed to planning permission in principle 06/00770/OUT shows: (i) most of the southern part of the land of the then Tesco supermarket designated for development as a care home and the remainder of that land for residential development, (ii) the land adjacent to Musselburgh Bowling Club designated for development as a primary health care centre, (iii) a reconfiguration of the parking area of the flatted properties at the junction of Mall Avenue and Inveresk Road, and (iv) the remainder of the application site designated for development as a retail superstore. Planning permission in principle 06/00770/OUT does not allow for any change to the established use of the bus depot.

Condition 1 of planning permission in principle 06/00770/OUT states that:

(a) Before development commences written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any building(s), means of access and the landscaping (collectively these are termed "reserved matters").

(b) Plans and particulars of the reserved matters referred to in (a) above shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.

(c) Application for the approval of reserved matters shall be made to the planning authority within 3 years from the date of this permission.

(d) The development hereby permitted shall commence within 5 years from the date of this permission, or within 2 years from the date of approval by the planning authority of the last of the reserved matters to be approved.

Reason:

Pursuant to Section 59 of the Town and Country Planning (Scotland) Act 1997.

In September 2008 planning permission (Ref: 06/00769/FUL) was granted to Tesco Stores Limited for the erection of a retail superstore, a petrol filling station, automated teller machine pod, car parking, and pedestrian and vehicular accesses on land approved in principle for such development by planning permission in principle 06/00770/OUT. Planning permission 06/00769/FUL has been implemented, that part of the site of planning permission in principle 06/00770/OUT has thus been developed and the Tesco retail superstore is trading.

In January 2010 reserved matters approval (now known as approval of matters specified in conditions) 09/00500/REM was granted for the erection of a primary care centre on the land designated for it in the masterplan and approved in principle for such development by planning permission in principle 06/00770/OUT. Reserved matters approval 09/00500/REM has been implemented and development of the primary care centre is well advanced.

To date, no detailed proposals have been brought forward for a residential and care home development of the remainder of the land the subject of planning permission in principle 06/00770/OUT (i.e. the land of the former Tesco supermarket).

Through this current application planning permission is now sought for the variation of Condition 1 of planning permission in principle 06/00770/OUT. The variation is to extend the lifetime of the permission by another 3 years to enable submission of details of a residential and care home development of the still undeveloped part of the site the subject of planning permission in principle 06/00770/OUT and which are designated in the masterplan for such development.

As a statutory requirement of major development type proposals the applied for variation of Condition 1 was the subject of community consultation prior to this application having been made to the Council. As a further statutory requirement a pre-application consultation report is submitted with this application. The report informs that only a small number of people attended the pre-application consultation event held in Musselburgh. Attendees included representatives of both Musselburgh Conservation Society and Inveresk Village Association. The report does not indicate that any comments were received from attendees relating specifically to the variation of Condition 1 of planning permission in principle 06/00770/OUT. The conclusion of the report is that no material changes to the pre-application proposal were considered necessary.

In their pre-application consultation report, the applicant informs that residential development has been delayed due to uncertainties with the housing market associated with the 'credit crunch' and the general downturn in the economy. The applicant does however consider that there are signs that the economy is slowly beginning to recover. It is on this basis that the applicant is seeking to extend the period of time by three years for the making of application(s) for the approval of reserved matters in respect of the residential development and the care home.

One written objection to the application has been received. It is from a local resident, who is concerned that extending the time period by three years would:

- i) not benefit the local community or the environment in the area;
- ii) not provide any local work opportunities at a period of low investment in the area;
- iii) not make efficient use of currently sterilised, unsightly and fenced off ground;
- iv) retain land in the company land bank with undefined planning requirement;
- v) maintain profits within the company rather than contribute to local requirements.

Given that this application is seeking only to vary Condition 1 of planning permission in principle 06/00770/OUT, all other conditions imposed on the grant of planning permission in principle 06/00770/OUT, including the conditional control on limiting the residential development to no more than 140 residential units, would otherwise remain unaltered and in force.

An agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997 also remains in place, including provisions for the delivery of developer contributions for education and affordable housing.

As planning permission is sought merely to extend the time allowance of condition 1 of planning permission in principle 06/00770/OUT by a further 3 years then the matters raised by the objector are not material considerations in the determination of this planning application.

The principle of residential and care home development of the mixed use development the subject of planning permission in principle 06/00770/OUT is consistent with relevant strategic and local planning policy, which is now Policies HOU2 (Brownfield Housing Sites) and ENV1D (Regional and Local Natural and Built Environment Interests) of the approved Edinburgh and the Lothians Structure Plan 2015 and Policies BUS4 (Bruntons Site, Musselburgh), INF3 (Infrastructure and Facilities Provision), H4 (Affordable Housing), T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

To extend the time period of planning permission in principle 06/00770/OUT by three years would not prejudice the integrity of that grant of planning permission in principle.

## RECOMMENDATION

That planning permission be granted for a variation to Condition 1 of planning permission in principle 06/00770/OUT to extend the time period given in part (c) by a further 3 years to 6 years:

1 Condition 1

(a) Before development commences written approval from the planning authority must be obtained for the details of the siting, design and external appearance of any building(s), means of access and the landscaping (collectively these are termed "reserved matters").

(b) Plans and particulars of the reserved matters referred to in (a) above shall be submitted for consideration by the planning authority and no work shall begin until the written approval of the authority has been given.

(c) Application for the approval of reserved matters shall be made to the planning authority within 6 years from the date of this permission.

(d) The development hereby permitted shall commence within 5 years from the date of this permission, or within 2 years from the date of approval by the planning authority of the last of the reserved matters to be approved.

Reason:

Pursuant to Section 59 of the Town and Country Planning (Scotland) Act 1997.

*Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)*



**REPORT TO:** Planning Committee  
**MEETING DATE:** Tuesday 6 December 2011  
**BY:** Executive Director of Environment  
(Planning & Building Standards)  
**SUBJECT:** Application for Planning Permission for Consideration

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**3**

Application No. **11/00749/PCL**

Proposal Development and change of use of area of open space to form car parking area

Location **Village Green  
Manse Road  
Dirleton  
East Lothian  
EH39 5EP**

Applicant East Lothian Council

Ward 005

RECOMMENDATION Consent Granted

#### PLANNING ASSESSMENT

Through this application East Lothian Council seeks planning permission to develop for use as additional public car parking spaces a long, narrow strip of land that presently comprises almost all of the western edge of the Village Green of Dirleton.

The long, narrow strip of land is 95m in length and some 3m in width and it is proposed to form on it a total of 19 public car parking spaces that would be surfaced with a 'grass-crete' product.

The Village Green is an area of public open space covered by Policy C3 of the adopted East Lothian Local Plan 2008. It is within Dirleton Conservation Area.

As an amendment to this planning application the sides of the proposed strip of public car parking spaces are to be edged with a concrete channel and not with white paint as previously proposed. This amendment has been the subject of a re-notification of neighbours and of re-advertisement in the local press.

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

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

Policies ENV1C (International and National Historic or Built Environment Designations), ENV1D of the approved Edinburgh and the Lothians Structure Plan 2015 and Policies ENV3 (Listed Buildings), ENV4 (Development Within Conservation Areas), C3 (Protection of Open Space) 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 Sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building or its setting given in Scottish Planning Policy: February 2010.

Scottish Planning Policy echoes the statutory requirements of Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 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 building or its setting or any features of special architectural or historic interest which it possesses.

Scottish Planning Policy echoes the statutory requirements of 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. It is stated in Scottish Planning Policy that proposed development that would have a neutral affect upon the character or appearance of a conservation area (i.e. does no harm) should be treated as one which preserves that character or appearance. The design, materials, scale and siting of new development within a conservations area should be appropriate to the character of the conservation area.

There are two objectors to the application.

One is the Architecture Heritage Society of Scotland. They object to the proposed use of standard precast concrete curbs on both of the long edges of the proposed new strip of public car parking spaces.

The other objector is the owner of a neighbouring residential property. Whilst he is generally supportive of the intent to resolve the indiscriminate parking that is causing damage to the Village Green it is the nature of the Council's proposed solution to this that he objects to. He puts forward for consideration an alternative proposal for the provision of additional public car parking spaces in the vicinity of the Village Green.

By being part of the representation received from the owner of the neighbouring residential property the alternative parking scheme his agent puts forward on his behalf is

material to the determination of this application. Accordingly it is copied to the Members of the Planning Committee together with the other written parts of his representation.

However, whatever the merits of the alternative parking scheme may be, it is not for the Committee, in their determination of this application to compare the Council's proposed scheme of public car parking provision against the alternative scheme put forward by the objector. Indeed this planning application must stand to be determined on the merits of the proposed scheme for which planning permission is sought.

The determination must be whether or not what is proposed is acceptable for its place, with due regard to relevant development plan policy.

The long, narrow strip of land proposed by the Council for development and use as 19 additional public car parking spaces is only a very small part of the much larger area of public open space of Dirleton Village Green. Due to the extent of the land that would remain as public open space the loss of the 3m wide strip comprising its western edge would not affect the recreational, amenity or landscape potential of the remaining area of public open space of The Village Green and does not conflict with Policy C3 of the adopted East Lothian Local Plan 2008.

The Council's Landscape and Countryside Management Division raise no objections to the 3m wide strip of the western edge of the Village Green being changed in form and use to 19 additional car parking spaces.

Dirleton Village Green is a large area of public open space that greatly contributes to the amenity of Dirleton and to the character and appearance of Dirleton Conservation Area. It is an intrinsic component of the setting of Dirleton Castle (a Scheduled Monument and Category A listed building) and of the buildings on the north and west sides of the Green, some of which are listed as being of Special architectural or historic interest.

It is said in the Character Statement for Dirleton Conservation Area given in the adopted East Lothian Local Plan 2008 that development impinging on either of the Dirleton greens would adversely affect the Conservation Area.

However, the proposed row of 19 additional car parking spaces, due to their linear form and limited width of 3 metres, would little impinge onto the Village Green. With their 'grass-crete' surfacing they would sensitively integrate with the grassed surfaced form of the adjoining substantial area of the Village Green. Moreover the 'grass-crete' surfacing of the 19 car parking spaces would be slightly lower than the adjoining ground level of the Village Green on their east side and flush with the level of the carriageway of the public road on their west side. The concrete channels (named as precast concrete curbs in the objection from the Architectural Heritage Society of Scotland) would be set flush with the 'grass-crete' surfacing. In all of this the proposed row of 19 new car parking spaces would not be unduly prominent and would not appear harmfully intrusive or incongruous in their setting. Due to their discrete form and appearance and the functional appropriateness of their positioning alongside the public road they would not harm the amenity of the Village that derives from the composition of the Village Green and its surroundings. Similarly they would not have a harmful impact on the character and appearance of the Conservation Area or the setting of the nearby listed buildings, particularly those on the west side of the public road (Manse Road). Due to their discrete

form and appearance and their distance away from Dirleton Castle they would not harmfully impact on the setting of that Scheduled Monument and Category A listed building.

On these considerations the proposed 19 new car parking spaces do not conflict with Policies ENV1C, ENV1D and ENV1G of the approved Edinburgh and the Lothians Structure Plan 2015, Policies ENV3, ENV4 and DP2 of the adopted East Lothian Local Plan 2008 and Scottish Planning Policy: February 2010.

Historic Scotland raise no objection to the application.

The Head of Transportation raises no objection to the application. The proposed 19 new car parking spaces do not conflict with Policy T2 of the adopted East Lothian Local Plan 2008.

Dirleton Village Association in their representations on the application wish the Committee to know that they are fully supportive of the Council's proposed scheme of provision of the 19 new car parking spaces and that at their meeting on 17 November 2011 they voted to unanimously reject the alternative parking scheme put forward by the agent for the neighbour who is objecting to the application.

#### RECOMMENDATION:

That planning permission be granted subject to the following condition:

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

Reason:

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

*Please note that the remainder of pages relating to this item have been removed as they contain personal information (for example - names and addresses of people that have made representation)*