



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

**TUESDAY 6 DECEMBER 2011  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Committee Members Present:**

Councillor B Turner (Convener for Items 2 and 3)  
Councillor P McLennan (Convener for Item 1)  
Councillor J Bell  
Councillor J Caldwell  
Councillor S Currie  
Councillor A Forrest  
Councillor D Grant  
Councillor N Hampshire  
Councillor W Innes  
Councillor R Knox  
Councillor S MacKinnon  
Provost S Richardson  
Councillor J Williamson

**Other Councillors Present:**

Councillor N Rankin  
Councillor J McNeil

**Council Officials Present:**

Mr P Collins, Executive Director of Environment  
Mr B Stalker, Development Management Manager  
Ms M Ferguson, Corporate Legal Adviser  
Mr B Cooper, Senior Transportation Manager  
Ms C Molloy, Senior Solicitor  
Ms S Greaves, Planner (Development Management)  
Ms E Taylor, Planner (Development Management)  
Mr G Talac, Transportation Planning Officer

**Clerk:**

Ms S Birrell

**Visitors Present:**

Item 1 – Mr S Williams  
Item 3 – Mr N Wright  
Mr T Drysdale

**Apologies:**

Councillor D Berry

Councillor L Broun-Lindsay

**Declarations of Interest:**

Councillor Turner declared an interest in Item 1 of the Agenda. Although he had not publicly or privately shared his opinion on the application for planning permission, he had been involved in numerous talks with Mr Walton regarding the site, and therefore advised that he would take no part in the discussion on Item 1, requesting that Councillor McLennan, as Vice Convener of the Planning Committee, took the Chair.

**1. PLANNING APPLICATION NO. 10/01077/P: ERECTION OF TELECOMMUNICATIONS MAST AND ASSOCIATED WORKS AT NEWHAILES INDUSTRIAL ESTATE, MUSSELBURGH**

The Executive Director of Environment had submitted a report on the application for planning permission. The Development Management Manager summarised the key points of the report for this application, which sought planning permission for the erection of a telecommunications mast and associated works in Newhailes Industrial Estate, Musselburgh. He reminded members that they had considered the application in May 2011, and had agreed to continue the item to allow for further consideration of alternative sites for the proposed mast. Although four additional sites had been identified in the vicinity, none were found to be a suitable alternative for that proposed in the application the assessment of which proposed remained unchanged from that which had been presented to Planning Committee in May.

The Development Management Manager answered questions from Members. In response to questions from Councillor Williamson, he confirmed that the compound, equipment and meter cabinets would not break the tree line, only the mast itself. If the visual impact of the mast proved more intrusive than what had been outlined in the report it would be very difficult to create a case for its removal, if planning permission was granted at today's meeting. He pointed out that it was clearly stated in the report that the top two thirds of the mast would be visible in the area. Provost Richardson asked about the alternative sites nearer the road, which had been rejected. The Development Management Manager responded that if positioned on those sites, the mast would be visible from the road but that on the advice of East Lothian Council Transportation Officers it would not be a road safety hazard. Responding to comments from Councillors McNeil, Williamson and Knox, the Development Management Manager stated that national ICNIRP guidelines had been adhered to in the submission of the application and therefore health concerns were not a material planning consideration in the determination of this application.

Mr Williams, of Inveresk Gardens Association spoke against the application. He stated that the 70 foot mast would have an unacceptable environmental and health impact on local residents. The visual cover provided by surrounding trees and shrubs would only provide a limited screening of the site. He also had concerns regarding the potential health implications connected with radio signals. He expressed his disappointment that all four alternative sites had been identified in the same Industrial Estate, and three sites had been rejected due to their proximity to a road, where visual impact would be limited to those travelling along the thoroughfare. He believed that

the applicant's reticence to assess alternative sites was due to their preference to dealing with East Lothian Council as landowner. If the mast were necessary within the Newhailes Industrial Estate, he would recommend a site in the north of the Estate. Concluding, he remarked that there were other more suitable sites for the mast in the area.

In response to a further question from Councillor McNeil, the Development Management Manager confirmed that the site proposed for the mast in this application was fully owned by East Lothian Council. When questioned by Councillors Hampshire and Knox regarding alternative sites he clarified that the application before Planning Committee today was solely concerned with the original site which had been brought to their meeting in May 2011. If the Committee were minded to refuse planning permission, the applicant would be entitled to appeal against the decision or submit a further application for planning permission for the positioning of the mast on an alternative site.

Local Member Councillor Williamson explained that he would be voting to refuse a grant of planning permission for the positioning of the mast as proposed in the application due to the unacceptable visual impact of the mast and its placement, close to a residential area. He advised that the shrub-like tree planting in the area was insufficient to provide adequate screening even if they were to grow to their full anticipated height.

Local Member Councillor McNeil stated that he retained concerns on medical grounds although he understood that these were not a subject for consideration at this time. He remained undecided regarding the visual impact of the mast.

Musselburgh Member Councillor Caldwell commented that points had been made at the May meeting during the Committee's discussion of the application regarding the potential of further growth in the Industrial Estate, although he added this was not a pressing concern at the moment as there were now a number of empty units at the Industrial Estate. He noted his disappointment that the alternative sites proposed had all been located in the same small area as the original application site and if the mast was erected on any one of them it would have a similar visual impact as to that if erected on the site proposed for it.

Musselburgh Councillor Knox recommended refusing planning permission in order to allow the applicant to make a fresh application for an alternative site, as this would be a more satisfactory outcome for the objectors.

Musselburgh Councillor Forrest touched on the point of an upgrading of the existing mast in Market Street, suggesting that if it were to be upgraded it might take up more of the pavement area and he also stated that it was situated close to a school. He noted that as technology moved quickly in this area, the mast might not be situated in the requested site for a long period of time.

Provost Richardson expressed her disappointment that the request to search for and identify alternative sites had not been adequately addressed.

Councillor Innes reminded the Committee that applicants had been encouraged to site masts on industrial ground, and that the applicant had done so in this case. He was of the view that none of the alternative sites suggested were viable and that other radio

masts in East Lothian were situated in much more sensitive areas than this one. He warned against setting a precedent by refusing the application.

Councillor Currie shared Provost Richardson's disappointment regarding the exploration of alternative sites, remarking that the network would not be compromised if the new mast was not situated as requested in the application. He reminded members that health issues were not a material planning consideration. He added that the visual impact of the mast in the position proposed for it would in his view be unacceptable and he would be voting against granting planning permission.

Councillor Hampshire questioned the manner of the discussion at the meeting, which had considered alternative sites for the mast. He emphasised that the application had only provided one site for the mast for discussion at Committee. He reminded members that there were numerous other masts located throughout the County, including a number located on school sites, where there had been no such detailed debate of health concerns and visual impact. In his view, all masts would have a visual impact by their very nature and this was an appropriate site for the mast in question.

There was further discussion on the circumstance of the decision taken by the Committee in May to continue consideration of this application with regard to the matter of alternative sites.

The Development Management Manager asked Members to take into account that to refuse to grant planning permission for the mast on the grounds of visual impact would be competent but capable of being tested in the event of an appeal. To refuse the application on grounds that there were other more suitable sites would not be competent. The Committee could refuse the application on the grounds that to approve the application would prejudice further business development in the area but this would be against officer advice and there was no evidence before the Committee to justify this conclusion.

In response to a request from Councillor McNeil, the Legal Adviser to the meeting explained that there were no particular issues of legality before the Committee at this time.

The Convener brought the discussion to a close. He moved that the recommendation to grant planning permission should be put to the vote.

### **Decision**

The recommendation that planning permission should be granted was put to the vote and received **seven** votes for and **three** votes against; there were **two** abstentions. The Committee agreed to grant planning permission subject to the following 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.

**2. PLANNING APPLICATION NO. 11/00827/PM: VARIATION OF CONDITION 1C OF OUTLINE PLANNING PERMISSION 06/00770/OUT TO EXTEND THE TIME PERIOD FOR A FURTHER 3 YEARS AT TESCO STORES LIMITED, MALL AVENUE, MUSSELBURGH**

The Executive Director of Environment had submitted a report on the application for planning permission. The Development Management Manager summarised the key points of the report, informing members that the application site was of a major development type and therefore had to be decided by the Committee.

In response to a question from Councillor Knox, the Development Management Manager reassured the Committee that it was unlikely that the new Local Plan would allocate a new use for this site, although clearly that could not be guaranteed at this time. Provost Richardson asked whether approving the recommendation would ensure that development occurred on the site more quickly; the Development Management Manager confirmed that if the application was approved, prospective developers would be made aware that the specified use for the site continued to have the support of the Planning Committee.

Local Member Councillor Caldwell was generally supportive of the extension, particularly due to the current construction downturn in the area. He added that he would be keen to ensure that the site was well maintained until such time as the site was fully developed. Local Member Councillor Forrest agreed with all these points.

Local Member Councillor Knox advised that he was supportive of continuing the time period available for a suitable developer to utilise the site, adding that if a further three years elapsed where there was no further progress then the site should be reassessed.

Musselburgh Councillor Williamson noted his agreement to the recommendations, which could encourage a developer to come forward.

The Convener brought the discussion to a close. He concurred with Councillor Caldwell and the other Musselburgh Councillors that the site should be kept in a good condition, and hoped that there would be no further delays to the development.

The Committee discussed the issue of the site's condition. The Development Management Manager advised that a letter could be sent to the applicant with the

decision notice asking them to maintain the site in a good condition until the time of its development.

### **Decision**

The recommendation that condition 1c of outline planning permission 06/00770/OUT be varied as follows was agreed unanimously by the Committee. The Committee also unanimously agreed that a letter should be sent to the applicant with the decision notice asking them to maintain the site in a good condition until the time of its development :

#### 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.

#### Condition 2

The site would be kept in good order, free of weeds and graffiti.

### **3. PLANNING APPLICATION NO. 11/00749/PCL: DEVELOPMENT AND CHANGE OF USE OF AREA OF OPEN SPACE TO FORM CAR PARKING AREA AT VILLAGE GREEN, MANSE ROAD, DIRLETON**

The Executive Director of Environment had submitted a report on the application for planning permission. The Development Management Manager summarised the key points of the report, advising the Committee that utilising the small strip of the village green would alleviate the parking problems within Dirleton, particularly during the summer months and would not have a harmful impact on the character, appearance and amenity of the village green, the setting of Dirleton Castle, or the setting of adjacent listed buildings.

Mr Drysdale of Dirleton Village Association spoke in support of the application. The Village Association's main objective was to preserve the area, and their 180 members represented 100 households in Dirleton. Their involvement with the project had

commenced more than 18 months ago, when they had been approached by East Lothian Council to try and find a solution to the problem of parking in the village. The Association had run a consultation process in April and May 2011 and had had no objections registered during this time. A similar scheme in Goosgreen, Gullane, had proved a valuable example of the proposed surfacing of grass-crete, which he believed would blend in well with the surrounding grass. The project was a simple and cost effective way to alleviate parking difficulties with the minimum of impact on the character of the village green, which had the full support of the village community. He urged the Committee to approve the application.

In response to a question from Councillor Hampshire, Mr Drysdale confirmed that no local residents had expressed concerns regarding the material which would be used for the kerbs.

Mr Wright spoke against the application on behalf of local resident Allan Murray. He outlined that the Planning Committee could refuse the application in terms of Policy C3 of the Local Plan, as the proposal would encourage cars to park on the village green. His client was of the opinion that alternative locations could be utilised for car parking, which would discourage parking on the green itself. The number of spaces proposed was not sufficient to deal with the increased demand in the summer. Mr Wright then began to explain the terms of the alternative parking scheme submitted as part of Mr Murray's representation on the application.

At this point, Councillor MacKinnon intervened, stating that, as was advised in the application report before the Committee, the alternative parking scheme could not be considered to be a material consideration in the determination of this application.

Mr Wright agreed with this and in his continuing presentation did not make further reference to the alternative parking scheme.

Councillor Caldwell asked whether utilising an alternative location would, in Mr Wright's view, stop cars parking on the village green. Mr Wright responded that an application could be brought forward to ensure there was no parking on the green itself by creating some kind of physical barrier which would be sensitive to the area.

In response to a question from Councillor Currie, the Development Management Manager confirmed that the site was Council owned.

Councillor Knox asked if Mr Wright was of the view, given his assertion that the need for car parking would increase over the next ten years, that this application would be presented at some point in time, due to the necessity to increase car parking. Mr Wright highlighted that alternatives were available in the area, without the need to impact on emergency vehicular access.

In response to a further question from Provost Richardson, Mr Wright remarked that he would be hesitant to discuss in detail the alternative parking locations, as they were not a material matter for discussion at this meeting.

Local Member Councillor Rankin spoke to the application, informing the Committee that it represented an improvement to the current situation whereby cars were parking on the green itself. The application sought to ameliorate the condition of the green whilst providing additional spaces in the village. The site had been sensitively treated

and the Dirleton Village Association had scrutinised the detail. The example of grass-crete in Gullane had addressed his concerns about the use of this material. He noted his support for the proposal, which would preserve and enhance the amenity of the village and its green.

Local Member Councillor MacKinnon noted his support of the application. The parking situation in the village had become untenable, and this solution was similar to the successful parking area in Goosegreen, Gullane. There had been full support from village residents in the Village Association’s consultation which had taken place in May 2011. The proposal would have no harmful impact on the village green and would alleviate the indiscriminate parking which had resulted in an incident regarding access for an emergency vehicle. Dirleton residents welcomed visitors in the summer and this proposal could remedy the parking issues without contravening Policy C3 of the East Lothian Local Plan 2008. He added that he was indebted to the Senior Transportation Manager for his assistance with this application.

The Convener brought the discussion to a close. He indicated that the Committee appeared to support the recommendation and asked if the Committee were minded to grant planning permission.

**Decision**

The recommendation that planning permission should be granted subject to the following condition, was unanimously agreed by the Committee,

- 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

Signed .....

Councillor Barry Turner  
Convener of the Planning Committee