

**REPORT TO:** Planning Committee

**MEETING DATE:** Tuesday 6 October 2015

**BY:** Depute Chief Executive  
(Partnerships and Community Services)

**SUBJECT:** Application for Planning Permission for Consideration

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*Note - this application was called off the List by Councillor Goodfellow for the following reason: I feel this application needs the full consideration of the Committee as it could have the potential to introduce an element of business use into a predominately residential area.*

Application No. **15/00492/P**

Proposal Alterations and change of use from domestic garage and part domestic garden to artist's studio and gallery (class 10) use

Location **The Coach House  
Broadgait  
Gullane  
East Lothian  
EH31 2DJ**

Applicant Mrs Stacey Karsgaard

Per Fiona Lumsden Architect

RECOMMENDATION Consent Granted

#### PLANNING ASSESSEMENT

This application relates to a single storey pitched roofed garage building and a small area of the garden forming part of the front garden of the house of The Coach House, Broadgait, Gullane. It is within a predominantly residential area as defined by Policy ENV1 of the adopted East Lothian Local Plan 2008.

In July 2015 planning permission 15/00461/P was granted for the alteration and change of use of a stable building within the northwest corner of the front garden of the house for use as holiday let accommodation. Planning permission has not been implemented and remains extant until 17 July 2015.

Planning permission is now sought for the alteration and change of use of the garage building to form an artist's studio and gallery including an area of garden to be used in association with it.

The proposed alterations to the garage building comprise the installation within the aperture of its garage door opening a timber framed door with a top light and side screen and the repainting of the dark brown stained timber elements of the building light blue (Farrow & Ball 22).

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

The development plan is the approved South East Scotland Strategic Development Plan (SESplan) and the adopted East Lothian Local Plan 2008.

Relevant to the determination of the application is Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies ENV1 (Residential Character and Amenity), DP22 (Private Parking) and T2 (General Transport Impact) of the adopted East Lothian Local Plan 2008.

Nine written objections to the application have been received. They are from local residents. The main grounds of objection raised are:

1. The proposal would appear to fail to comply with the provisions of Class 10 of The Town and Country Planning Use Classes (Scotland) Order 1992 as it is instead a Class 1 retail outlet;
2. The retail outlet would be in a residential area and harmful to amenity which is contrary to Policies ENV1, DP6, DP7 and T2 of the adopted East Lothian Local Plan 2008;
3. The proposal would be contrary to R1 (New Shops) of the adopted East Lothian Local Plan 2008, which makes it clear that retail outlets should be located in a town centre, not an isolated and conspicuous commercial venture in a residential area. There is no similar isolated commercial facility anywhere else in Gullane;
4. It will result in increased footfall and most certainly increased traffic causing disturbance and noise for those living in adjacent properties;
5. If the commercial enterprise is approved it would be committed to increased business and therefore to increased dislocation to a settled and quiet community;
6. There is no provision for off-street parking;
7. The application if successful would set a precedent for other future applications of a similar nature;
8. The proposed glass frontage of the gallery would be visually unattractive; it will look like a shop and be totally out of keeping with the character of the neighbourhood;
9. Any restrictions that may be proposed for the development with regard to hours of operation and goods to be sold will not address concerns with regard to the impact of the proposed use on residential amenity; and,
10. The retail gallery would be set up without the overheads of business commercial rent, property maintenance, retail insurance and security systems and so would be in competition in an unfair advantage.

Two written representations have been made in support of the application. They consider the enterprise would:

1. be wonderful for the community to view works from local artists;
2. make great use of the garage building that in a thriving community such as Gullane can only be a positive; and would
3. have lower footfall than the former doctor's surgery that was nearby.

Gullane Area Community Council, as a statutory consultee on the application, considers the description of the application to be misleading in light of the applicant's intention to sell art from the premises. They are of the view that the retail function is one which falls within Class 1 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 and incompatible with the location of the premises in a residential area. Furthermore customers visiting the premises would likely create a traffic hazard. They also consider the proposal, if approved, would set an undesirable precedent and that the anticipated footfall to be purely speculative estimate.

Commercial competition and the mechanisms for the financial operation of a business are not material considerations in the determination of an application for planning permission.

Any future application submitted for a similar proposal within a residential area, would be considered on its own merits or otherwise and in accordance with the provisions of the development plan.

Part (c) of Class 10 Non Residential Institutions of the Schedule to Article 3 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 includes the display of works of art (otherwise than for sale or hire).

In her original statement written in support of the application the applicant advised that the artist studio would be used for the production of wood and lithograph hand prints. The gallery space would allow the hand prints to be sold, but also include items for sale by local artists and artisans.

The applicant was advised that should the function of the proposed gallery the subject of this application be primarily for the sale of art it could not be considered a use consistent with the terms of Class 10 (Non- residential Institutions) of The Town and Country Planning (Use Classes)(Scotland) Order 1997. It would instead be considered a retail gallery under Class 1 (Shops) of the Schedule to the Order.

The applicant has advised in a revised written statement that the primary function of the gallery space is for the display of art, the focus being unique hand-made items including prints, ceramics and art from found and recycled objects. It is proposed to operate the gallery element Thursday to Sunday inclusive between the hours of 11am to 4pm and the artist studio element between Tuesday to Sunday Inclusive 11am to 4pm, both all year round. The applicant anticipates visitor footfall to be 5-8 visits per day.

Part (3) of Article 3 of The Town and Country Planning (Use Classes)(Scotland) Order 1997 states that a use included in and ordinarily incidental to any use in a class shall not be precluded from that use by virtue of being specified in another class.

Circular 1/1998: The Town and Country Planning (Use Classes) (Scotland) Order 1997 reiterates this point and advises that a use which is normally ancillary to a use in a class specified in the UCO is not excluded from the use to which it is ancillary merely because it is specified in the UCO as a separate use.

In which case, ancillary sales that may transpire from viewing works of art in the proposed gallery would be ancillary to the primary function of the gallery space and would not conflict with the provisions of The Town and Country Planning (Use Classes) (Scotland) Order 1997 or the advice given in Circular 1/1998.

If the gallery space was instituted and incidental sales were no longer ancillary to it, this would constitute a material change in use of the gallery to a retail space. In such circumstance planning permission would be required for it. The considerations of the impact of that retail use would need to be the subject of a new application for planning permission and determined on its own merits or otherwise.

In that a retail gallery does not form part of the proposals for consideration in this application Policy R1 (New Shops) of the adopted East Lothian Local Plan 2008, which relates specifically to proposals for new retail developments, is not relevant and is not therefore a material consideration in the assessment of them.

Whilst the proposal is for the change of use and alteration of a building within garden ground associated with the existing house of The Coach House it is not proposed that the use of the building and the land to be associated with it is put to use as a separate residential dwelling. In such circumstance Policy DP7 (Infill, Backland and Garden Ground Development) is not relevant and is not a material consideration in the determination of this application.

Policy ENV1 of the adopted East Lothian Local Plan 2008 states that the predominantly residential character and amenity of existing or proposed housing areas will be safeguarded from the adverse impacts of uses other than housing. Development incompatible with the residential character and amenity of an area will not be permitted.

A material consideration in the determination of this application is whether or not the artist studio and gallery use of the garage building and a part of the garden of The Coach House is acceptable relative to its relationship with the neighbouring residential properties.

The Council's Environmental Protection Service has no comment to make regarding the proposed use of the garage as an artist's studio and gallery.

A condition can reasonably and competently be imposed on the grant of planning permission restricting the hours and days of operation of the artist studio and gallery to that stated by the applicant.

The artist studio and gallery is a use that falls within Class 10 (Non-residential Institutions) of the Town and Country Planning (Use Classes) (Scotland) Order 1997. Other uses within that Class (e.g. crèche, day nursery, day centre, public hall, etc) might be likely to have a different impact on neighbouring residential properties and the wider locality. Therefore, it would be prudent to restrict the Class 10 use of the garage building specifically to the artist studio and gallery use applied for. This can also be reasonably and competently controlled by a condition on the grant of planning permission.

The garage building is positioned in close proximity to the house of The Coach House and from where its use independently of the residential use of the house would harmfully impose itself on the privacy and residential amenity of the house.

In the interests of protecting the residential amenity of the occupier(s) of the house of The Coach House the use of the garage building as an artist studio and gallery should only be operated by the occupier of the house and by no other party. This matter can be

controlled by a condition imposed on the grant of planning permission.

Subject to the aforementioned controls the proposed use of the garage building as an artist studio and gallery neither by its nature nor scale of operation or otherwise by its detachment from other buildings and roadside location would it be harmful to the amenity of the neighbouring and nearby residential properties in the locality. It would not have an adverse impact on the residential character and use of the area. Accordingly it would not conflict with Policy ENV1 of the adopted East Lothian Local Plan 2008, which seeks to protect residential amenity.

It is indicated on the planning application drawings the intention to use an area of garden to the southwest of the garage building for use for the parking of vehicles associated with the proposed use of the building as an artist's studio and gallery. This area of garden is currently used for parking.

The use of the area of garden for a use in association with the use of the building as an artist studio and gallery would not impact on the privacy or amenity of any neighbouring residential property. On these considerations the proposed change of use of the area of garden for use in association with the proposed artist's studio and gallery would not conflict with Policy ENV1 of the adopted East Lothian Local Plan 2008.

The Council's Road Services advises that the small scale nature of the proposed use would not result in a significant increase in parking demand in the area. Furthermore that on-street parking demands are lower during the day and thus during the times of operation of the artist studio and gallery. They are satisfied that the artist's studio can be suitably served by off street parking immediately to the southwest of the building or beyond on the road side of Broadgait. Accordingly they raise no objection to the application. The proposed use of the building for the purpose intended does not on the matter of parking or general transport impact conflict with Policies DP22 and T2 of the adopted East Lothian Local Plan 2008.

The proposed glazed door with top light and side screen would infill the existing garage door opening. The existing garage doors would be retained, concealing the proposed infill when closed. With the extent of glazing proposed and the timber finishing of the frames that would hold it, the proposed glazed door with top light and side screen would not be unsympathetic to the proportions of the garage door opening or to the architecture of the building.

The proposed door with top light and side screen, including the repainting of parts of the building would where applicable by their extent, form, positioning, materials and finishes be in keeping with the existing building and well integrated into their surroundings. They would not be harmful to the character and appearance of the building or the character and appearance of the area.

On the consideration of design the proposed alterations are consistent with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) June 2013 and Policy DP6 of the adopted East Lothian Local Plan 2008.

It is indicated on the application drawings the intention to display advertisements, one on the front elevation of the building in the form of painted letters and the other a chalk board on the south boundary wall of the garden of the house for the purposes of displaying the opening hours of the proposed gallery. These advertisements do not require planning permission and do not form part of this application. They can instead be displayed with the benefit of deemed consent under the provisions of Class 2 of Schedule 4 of The Town and Country Planning (Control of Advertisements)(Scotland) Regulations 1984.

## CONDITIONS:

- 1 The artist studio and gallery hereby approved shall be operated only by the resident of the house of The Coach House and shall not be used as an independent commercial enterprise by any party not resident in that house.

Reason:

In the interests of protecting the residential amenity of the occupants of The Coach House.

- 2 The hours of operation of: (i) the artist studio shall be restricted to 1100 to 1600 hours Thursday to Sunday (inclusive) and (ii) the gallery use shall be restricted to 1100 to 1600 Tuesday to Sunday (inclusive).

Reason:

To restrict the hours of operation of the artist studio and gallery to those applied for.

- 3 The artist studio and gallery use is the only use of Class 10 of the Town and Country Planning (Use Classes) (Scotland) Order 1997 that is hereby approved.

Reason:

In the interests of safeguarding the amenity of the area.

- 4 The existing parking area formed to the southwest of the garage building hereby approved to be put to use as an artist's studio and gallery shall be retained for the provision of off-street parking associated with the approved use unless otherwise approved by the Planning Authority.

Reason:

To ensure an adequate standard of parking provision for the approved use.