

REPORT TO: Planning Committee

MEETING DATE: Tuesday 2 February 2016

BY: Depute Chief Executive
(Partnerships and Community Services)

SUBJECT: Application for Planning Permission for Consideration

Note - this application was called off the Scheme of Delegation List by Councillor McMillan for the following reason: to allow the committee to discuss the interpretation of DC1 in terms of impact, proximity etc. as expressed in the report.

Application No. **15/00541/P**

Proposal Erection of poultry building

Location **Howden Farm
Gifford
East Lothian
EH41 4JS**

Applicant Douglas Scott

Per JTS (Construction) Ltd

RECOMMENDATION Consent Granted

PLANNING ASSESSMENT

This application relates to a part of the agricultural land of Howden Farm, in a countryside location to the west of the village of Gifford. The application site is situated some 300m metres to the south of the existing agricultural steading and other agricultural buildings of Howden Farm and some 330 metres to the southwest of the residential properties of Howden Cottages. It is some 0.15 hectares in area.

The site is bounded to the north by other agricultural land with the B6368 public road and Howden Farm and Howden Cottages beyond, to the east by agricultural land with the residential property of Muirwood some 350 metres to the northeast, to the west by Howden Wood and to the south by agricultural land. On the agricultural land to the north is an existing agricultural building subject to planning permission REF 10/00680/P.

Planning permission is sought for the erection on the application site of a poultry shed and for associated works including the formation of an access and of a swale. The proposals would also require the erection of fencing to surround a free range roaming area. For clarity, the fence and swale as proposed are categorised as permitted development under The Town and Country Planning (General Permitted Development)

(Scotland) Amendment Order 2011, and so do not form the subject of the determination of this application. In addition, the use of the agricultural field as a free range roaming area does not constitute a change in use as it would remain in agricultural use, and as such does not form the subject of the determination of this application. The site would be accessed directly from an existing access that has been formed in the north roadside boundary to serve the agricultural building to the north of the site.

The proposed chicken shed would be rectangular in shape and would measure some 92.5 metres in length, 16.0 metres in width and some 5.34 metres in height from ground level to the ridge of its pitched roof. It would be constructed of composite panel cladding. The ridge of the roof would be punctuated by four ventilation extracts, each some 1 metres in height. These would be spaced at regular intervals on the ridge. Three ventilation fans would be installed in its north elevation and three large roller shutter doors would be formed in that elevation. Thirty air vents, three pedestrian access doors and one roller shutter door would be formed in its west elevation. A further thirty air vents, two pedestrian access doors and thirty pop vents would be formed in its east elevation. On part of the land directly adjacent to the right hand side of the west elevation, two feed storage bins would be erected. The feed storage bins would each be some 5.4 metres high.

The roof and walls of the proposed chicken shed would all be clad with composite panels, to be finished in 'Juniper' green. The feed storage bins would also be finished in 'Juniper' green. No colour has been specified for the roller shutter doors, feed bins or other openings.

A vehicular access to the road at the north of the site would be formed via a hardcore track that would join onto the existing agricultural building at the northern edge of the proposed site. The site would be enclosed by a 2.0 metres high stock proof wire and timber post fence with similar gates to allow access.

The proposed development would be used for a free range chicken egg laying operation. At any one time some 16,000 hens would be housed with the poultry shed. The production cycle for birds would last 13 months, with eggs to be collected 3 times weekly. The proposed operation would be run by the applicant, Howden Farm.

Supporting noise, dust, odour, light, and water contamination plans have been submitted subsequent to the application being registered.

Subsequent to the registration of the application, revised drawings showing amendment of the location of the proposed building in relation to Howden Wood, along with details of tree planting, swale and fencing have been submitted.

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 are Policy 1B (The Spatial Strategy: Development Principles) of the approved South East Scotland Strategic Development Plan (SESplan) and Policies DC1 (Development in the Countryside and Undeveloped Coast), DP1 (Landscape and Streetscape Character), DP2 (Design), DP14 (Trees on or Adjacent to Development Sites), T2 (General Transport Impact) and NH3 (Important Local Biodiversity Sites) of the adopted East Lothian Local Plan 2008.

Thirty written objections have been received. The grounds of objection are as follows:

- i. The setting of Bankrugg will be negatively affected due to the visual impact of the proposed development together with its elevated position
- ii. There is an insufficient specific information submitted with regards to noise levels
- iii. Concerns have been expressed over foul drainage and effluent entering the local water bodies
- iv. The description of the proposal is vague
- v. An Environmental Impact Assessment should have been carried out.
- vi. The proposal constitutes a departure from policy DP1 of the adopted East Lothian Local Plan 2008
- vii. Concerns have been expressed over light pollution to nearby houses
- viii. The information provided in management plans is not site specific and is inconsistent
- ix. The proposed screening to be planted to the east will be too low, will take a long time to become mature and will not be effective
- x. Concerns have been expressed over smell from the proposed swale
- xi. Nearby property values will decrease
- xii. Concerns have been expressed over expansion of the farm should approval be granted
- xiii. Concerns have been expressed over impact on local wildlife, including badgers and bats
- xiv. There has been no notification or neighbourhood consultation
- xv. There will be detrimental impact on road safety due to increased traffic
- xvi. Concerns have been expressed over how dead birds will be disposed of
- xvii. A separate application should be considered for the running of a poultry business
- xviii. Any manure being transported will be malodorous
- xix. Concerns have been expressed over effects upon the health of local residents due to caustic odours
- xx. There is no information submitted with regards to a complaints procedure
- xxi. The poultry shed is directly up wind of residents and therefore will exacerbate any nuisance odours
- xxii. Due to the design of the building, malodour will be directed towards neighbours
- xxiii. Concerns have been expressed over the proximity of the free range roaming area to nearby residential properties and associated noise and smell
- xxiv. No surveys or analysis of odour or air pollution have been carried out
- xxv. Concerns have been expressed over biosecurity along with no information submitted with respect to a possible outbreak of avian flu
- xxvi. The proposal contravenes the Scottish Government Code of Good Practice
- xxvii. There is no information regarding the monitoring of dust/noise/light pollution and who will be responsible for ensuring it is adhered to
- xxviii. The proposal will set a precedent for further development of a similar nature in the area
- xxix. The management plans are poorly justified in terms of 'likelihood of impact'
- xxx. A lack of supporting documents, namely 'How to comply- Intensive Farming'
- xxxi. Litter being stored in trailers outside will be malodorous
- xxxii. Management plans are not compiled by a competent authority.

Humbie, East and West Saltoun and Bolton Community Council, as a consultee, neither objects to nor supports the proposed poultry shed development.

The community council state that they are in principle, supportive of the applicants wish to diversify in order to secure an alternative source of income, and that this is essential to the long term survival of East Lothian's farming community. However, they consider that the necessary reassurance that measures will be put in place to ensure there is no

unacceptable noise or odour nuisance from the proposed development has not been provided. The community council were unable to find existing examples of egg production units within 400m of residential properties and therefore has been unable to reassure itself that the measures proposed in the supporting management plans will be sufficient to protect the adjacent residential properties from any emissions of odour and noise nuisance.

In respect of some of the points raised by objectors and the Community Council the following responses are given.

The drawings and other documentation submitted with the application subsequent to registration are an accurate and sufficient basis to enable a full planning assessment to be made of the development proposal.

The proposed development is below the threshold (60,000 hens) at which such an operation would be a form of development categorised as a Schedule 1 development by the Environmental Impact Assessment (Scotland) Regulations 2011. As the proposed development is for an Intensive Livestock Installation exceeding 500 square metres in floorspace it falls under Schedule 2 of these Regulations. East Lothian Council has issued a screening opinion for this proposed development to the effect that as a Schedule 2 development the proposal is unlikely to have such significant effects on the environment that an Environmental Impact Assessment is required. Consequently the proposed development is not the subject of an Environmental Impact Assessment. That specific screening opinion relates to a pre-application proposal put to the Council by the applicant for the siting of the chicken shed development. The details of the application registered remain the same.

The proposed development by its site area of less than 2 hectares and floor space of less than 5000 square metres is a local development type as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009. There are no statutory requirements for pre-application public consultation for a local development type proposal. The application was validated, registered and subject to neighbour notification by the Council, all in accordance with statutory requirements. The application was advertised as a Bad Neighbour Development (BND) in the local press and by site notice for a period of 21 days from 18/09/2015 to 09/10/2015.

The swale would be used to collect rainwater run-off from the roof of the proposed chicken shed, and as such would not contain any effluence. The inclusion of a swale for this purpose would be in line with guidance contained in the Scottish Environment Protection Agency's (SEPA) guidance document entitled 'Prevention of Environmental Pollution from Agricultural Activity (PEPFAA) Code'. The developer would require to comply with the relevant SEPA drainage regulations and requirements. In respect of the use of the proposed poultry shed, it is below the 40,000 bird threshold requiring a SEPA permit. As such, matters of noise, dust and odour require to be regulated by the Council's Environmental Health Service.

A perceived reduction in nearby property values as a consequence of a proposed development is not a material planning consideration in the determination of this application.

Were planning permission to be granted for the proposed chicken shed development, a subsequent extension to the development would require to be the subject of an application for planning permission and thus subject to the control of the Council as Planning Authority.

The methods of managing risks of infection and avian flu, as well as disposal of dead birds are controlled by legislation other than planning legislation and are not material planning considerations in the determination of this application.

What is proposed in this planning application is an agricultural use in accordance with the definition of agriculture given in Section 277 of the Town and Country Planning (Scotland) Act 1997.

In that the proposed chicken sheds development is for agricultural use in the operation of an existing farming enterprise at Howden Farm the principle of this proposed development in the countryside at Howden Farm has an operational requirement for its proposed location. On this consideration the proposed development, in principle, complies with Policy 1B of the approved South East Scotland Strategic Development Plan (SESplan) and Policy DC1 of the adopted East Lothian Local Plan 2008.

Part 5 of Policy DC1 of the adopted East Lothian Local Plan 2008 requires that, where acceptable in principle, development should thereafter be compatible with its surroundings, minimise landscape impact, have no significant adverse impact on nearby uses, minimise the loss of prime agricultural land and suitable access and infrastructure is or can be made available.

Only some 0.15 hectares of agricultural land would be used for the development. Moreover, the application site would still be an agricultural use of the land. On this consideration the proposed development does not conflict with Part 5 of Policy DC1 of the adopted East Lothian Local Plan 2008.

The proposed chicken shed would be a new build element in the landscape of the area. The proposed feed bins, as part of this new build element would be higher than the ridges of the proposed chicken sheds by some 1.0 metres. However, the buildings and silos would be positioned adjacent to the existing modern farm building under ownership of Howden Farm, subject of planning permission (REF 10/00680/P). It would be a modern agricultural building set in the context of a local landscape of agricultural fields and buildings. It would not be unusually high for a modern agricultural building. In views of the site from the east, and long distance views from the south the proposed building would be viewed in conjunction with that existing building and against Howden Wood. From the north and west views of the building would be screened by changes in land levels and by intervening trees and woodland of Howden Wood. Due to the high hedgerows along the public roads in the locality such longer views would often be glimpsed views only. In such a setting the proposed poultry shed would not visually impose itself on its surroundings, including residential uses.

So positioned and designed the proposed poultry shed and feed bins would be an integral built form of agricultural buildings and structures functionally and positionally related to the existing farm operation and related buildings owned by Howden Farm. By this, the context of their landscape setting and by their size, height, materials and proposed colours they would not be untypical for their countryside location and would not be harmfully incongruous or obtrusive features. They would be in keeping with and would not be visually harmful to the character and appearance of this part of the East Lothian countryside.

On matters of landscape and visual impact, the Council's Landscape Projects Officer raises no objection to the proposals. It is observed that given its dark green colour and long low nature, the building will be in scale with the surrounding land use. In addition it is noted that the visual impact of the proposed building and fencing would be greatly reduced by the existing stone boundary to the east and south of the site, along with the

woodland and woodland strips to the north and west. At the request of the Landscape Projects Officer, drawings submitted subsequent to registration show the relocation of the proposed hardcore access track along the west side of the proposed building, at a minimum distance of 1.5 metres away from the strip of woodland to the west known as Howden Wood. The Landscape Projects Officer is now satisfied that the built development will not harm this important woodland strip. In response to a similar request the applicant submitted a scheme of planting within the range area of the proposed development, which would serve to provide a screening effect for the proposed building. This scheme of planting is supported by the Landscape Projects Officer and can be made the subject of conditions on the grant of planning permission.

No details are given of lighting for the site. Given its proposed countryside location and relative to houses in the area, the Council's Environmental Protection Manager states that the design and construction of any proposed artificial lighting should take account of the Guidance contained within Annex 1 to Appendix 2 of Scottish Government Guidance to Accompany the Statutory Nuisance Provisions of the Public Health etc (Scotland) Act 2008. In order to minimise the possibility of loss of amenity for occupiers of residential properties in the area from potential light pollution, the Environmental Protection Manager recommends that light trespass (into windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), not exceed 5 between the hours of 0700-2300 and not exceed 1 between the hours of 2300-0700.

These recommendations can be made the subject of conditions on the grant of planning permission.

Subject to the above controls of planting and lighting the proposed development, on these considerations of landscape and visual impact is, as relevant, consistent with Policies DC1 (Part 5), DP1 and DP2 of the adopted East Lothian Local Plan 2008.

The Council's Roads Services raise no objection to the proposed development but recommends that the first 15 metres of the new access track be hard formed to prevent loose material from entering the road. In addition it is recommended that a Construction Method Statement to minimise the impact of construction activity be submitted to the Planning Authority, prior to commencement of development.

These recommendations can be made the subject of conditions on the grant of planning permission.

Subject to these recommendations being met through conditions of a grant of planning permission, the proposed development is consistent with Part 5 of Policy DC1 and Policy T2 of the adopted East Lothian Local Plan 2008.

The application site is not in close proximity to any predominantly residential areas defined by Policy ENV1 of the adopted East Lothian Local Plan 2008. There are, however, residential properties in the area of the site.

The proposed poultry shed building would be some 280 metres to the south west of the residential property of Muirwood, the residential property closest to the application site and 330 metres to the southwest of the residential properties of Howden Cottages. It would be some 315 metres away from the houses of Miandall and Struie. It would be some 363 metres at a minimum south west of the group of houses that consist of 2 Bankrugg Farm Cottage, Bankrugg House, Howburn House, The Storehouse, The Granary, The Old Dairy, Newhall and Bankrugg Farmhouse.

Composite panel construction would be used for the walls and roofs of the proposed poultry shed. The Noise Risk Assessment and Management Plan submitted with the application has been the subject of detailed discussions with officers of the Council's Environmental Protection service. The Environmental Protection Manager raises no objection in respect of noise from the operation of the proposed development.

In order to minimise the possibility of loss of amenity for occupiers of nearby residential properties due to operational plant or machinery noise the Environmental Protection Manager recommends that:

- (i) the noise rating level, measured as LArTr of noise associated with any plant or equipment within the proposed building, when measured 3.5 metres from the facade of any neighbouring residential property, be no more than 10 dB(A) above the background noise level LA90T, all in accordance with BS 4142:1997 Method for rating industrial noise affecting mixed residential and industrial areas; and
- (ii) any plant or equipment within the proposed building be designed and constructed so that noise emanating from there not exceed Noise Rating Curve NR20 at any octave band frequency when measured within any neighbouring residential property, assuming windows open at least 50 mm.

These recommendations and a requirement to operate in accordance with the Noise Management Plan, can be made the subject of conditions on the grant of planning permission.

In terms of nuisance odours, Paragraph 13.14 of the Scottish Government publication the Scottish Executive Code of Good Practice, Prevention of Environmental Pollution from Agricultural Activity states that; "When designing new buildings, consider their siting in relation to residential accommodation, and avoid sites within 400m of such developments. Where possible, sites downwind of residential areas should be chosen."

With regard to this Government guidance the material consideration is whether or not the siting of the proposed chicken sheds development less than 400 metres from the nearest residential properties in the locality would result in odour emissions having a harmful impact on the amenity of residents of those properties.

The Council's Environmental Protection Manager raises no objection to the proposed development in respect of potential odours from the operation of the proposed development.

In order to minimise the possibility of loss of amenity for occupiers of nearby residential properties due to associated odours, the Environmental Protection Manager recommends that an appropriate Odour Management Plan (OMP) be implemented from the time of commencement of operation of the chicken shed development. If odour issues were to arise, the Environmental Protection team would investigate. That team has existing powers under Statutory Nuisance regime to deal with any odour nuisance. The applicant has subsequently submitted an OMP which satisfies the requirements of the Environmental Protection Manager.

The Environmental Protection Manager therefore raises no objection to the proposed chicken sheds development in respect of the potential impact of odour emissions.

The operation of the development in accordance with the approved Odour Management Plan can be made the subject of conditions on the grant of planning permission.

Complaints from local residents are likely if dust becomes apparent at their homes. Visible dust on window sills, the paintwork of cars, on washing hanging out to dry, and on vegetation will be a source of annoyance.

The Environmental Protection Manager raises no objection to the proposed chicken shed development in respect of potential dust emissions. He advises that the imposition of a condition on the grant of planning permission requiring the implementation of a dust management plan, the details of which should be subject to the prior approval of the Planning Authority, would be sufficient control. The applicant has subsequently submitted a Dust Management Plan which satisfies the requirements of the Environmental Protection Manager.

The operation of the development in accordance with the approved Dust Management Plan can be made the subject of conditions on the grant of planning permission.

Subject to the above controls, the proposed development would not, through impacts of odour emissions and air quality, noise, or dust, be harmful to the amenity of the occupants of nearby residential properties it is consistent with Policies DC1 (Part 5) of the adopted East Lothian Local Plan 2008.

The application site is directly adjacent to the area of ancient woodland known as Howden Wood. Initially the Council's Biodiversity Officer raised concerns over the use of adjoining woodland as part of the free-range chicken area. He advises that the woodland contains various 'ancient woodland indicators' (plants that are known to represent long-established and so 'better quality' woodlands). He adds that chickens will progressively erode the vegetation of the woodland through scratching and pecking should they be free to enter, resulting in a significant negative impact not only on woodland ground flora but also on other wildlife communities in the wood. He therefore recommended that chickens must be actively excluded from the woodland. Subsequently the applicant submitted updated drawings showing the addition of a wire fence to be erected around the perimeter of the free range area. The details submitted satisfy the requirements of the Biodiversity Officer subject to a condition of any planning permission that the fence be erected prior to the shed being used for housing chickens, in order to protect the biodiversity of the woodland.

These recommendations can be made the subject of conditions on the grant of planning permission.

The Biodiversity Officer advises that Bats are highly likely to be present in this area, potentially roosting in the wood, but certainly roosting in nearby buildings and foraging along the woodland edge. He advises, however, that the proposal will not have any impact on the local bat population, adding that the building will not remove roosting potential and there would not be a negative impact on invertebrate (bat food) availability.

The Biodiversity Officer advises that upon inspection no badger setts were to be found nearby to the application site, and therefore the proposals are unlikely to have any impact upon badgers.

On these considerations of natural heritage and biodiversity the proposed development would not conflict with Policy NH3 of the East Lothian Local Plan 2008 or with Scottish Planning Policy.

CONDITIONS:

- 1 All planting comprised in the "Tree planting specification – Planting stock requirement" schedule docketed to this planning permission shall be carried out in the first planting and seeding season following the completion of the building and any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason:

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

- 2 No external lighting shall be installed within the application site unless in accordance with details of it submitted to and approved in advance by the Planning Authority. Any such lighting shall be positioned and designed to ensure that no light from within the site spills beyond the boundaries of the site and shall meet the following requirement:

Light Trespass (into windows) of neighbouring residential properties, measured as Vertical Illuminance in Lux, (Ev), shall not exceed 5 between the hours of 0700-2300 and shall not exceed 1 between the hours of 2300-0700.

Reason:

In order to minimise the possibility of loss of amenity for occupiers of residential properties in the area due to light pollution.

- 3 The noise rating level, measured as LArTr of noise associated with any plant or equipment within the proposed building, when measured 3.5 metres from the facade of any neighbouring residential property, shall be no more than 10 dB(A) above the background noise level LA90T, all in accordance with BS 4142:1997 Method for rating industrial noise affecting mixed residential and industrial areas; and

(ii) any plant or equipment within the proposed building shall be designed and constructed so that noise emanating from there shall not exceed Noise Rating Curve NR20 at any octave band frequency when measured within any neighbouring residential property, assuming windows open at least 50 mm.

Reason:

In order to minimise the possibility of loss of amenity for occupiers of residential properties in the area due to operational plant or machinery noise.

- 4 The poultry shed hereby approved shall be operated in strict accordance with the Noise, Odour and Dust Management Plans docketed to this planning permission, unless otherwise approved by the Planning Authority.

Reason:

In the interests of the amenity of residents of the area.

- 5 No use shall be made of the access hereby approved unless and until the first 15 metres of the access onto the public road of the B6368 has been hardsurfaced to prevent loose materials entering the public road and thereafter shall remain hard surfaced.

Reason:

In the interests of road safety.

- 6 A Construction Method Statement to minimise the impact of construction activity on the amenity of the area shall be submitted to and approved by the Planning Authority prior to the commencement of development. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic and shall include hours of construction work.

Reason:

In the interests of road safety.

- 7 Prior to the chicken shed development hereby approved being brought into operation, the 2 metres high stock proof fencing as indicated on the plans docketed to this planning permission shall be installed in accordance with those plans and thereafter will be retained for the duration of the poultry shed operation .

Reason:

In order to protect the biodiversity of the area of ancient woodland known as Howden Wood from erosion through scratching and pecking of free range chickens.