

REPORT TO: Planning Committee
MEETING DATE: 3 October 2023
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Note – this application was called off the Scheme of Delegation List by Councillor Collins for the following reason: Due to local concerns raised about the application.

Application No. **23/00680/P**
Proposal Formation of an underpass under the B6368 roadway and associated works
Location **Land West Of Howden Wood
Gifford
East Lothian**

Applicant East Lothian Eggs Ltd
Per Cogeo Planning & Environmental Planning Ltd

RECOMMENDATION Consent Granted

REPORT OF HANDLING

BACKGROUND

This application relates to a section of the B6368 public road located to the west of Howden Wood and approximately 1.7 kilometres to the southeast of East Saltoun, to the road verge on either side of the road and to two areas of agricultural land on either side of the road verge. It is within the countryside, as defined by Policy DC1 of the East Lothian Local Development Plan 2018.

The site is within a Coal Authority Development Low Risk Area. The site is not located within a Special Landscape Area.

The application site is bounded to the north and south by agricultural land that forms a part of Howden Farm. To the southeast are two large poultry buildings that are operated as an

organic free range egg production unit by East Lothian Eggs Limited.

There have been a number of planning permissions granted for poultry buildings with associated smaller buildings and ranges for egg production in various locations at Howden Farm.

In February 2016 planning permission (ref: 15/00541/P) was granted for the erection of a poultry shed on agricultural land to the east side of Howden Wood and some 300 metres to the south of the agricultural buildings of Howden Farm. Planning permission 15/00541/P has been implemented and the poultry shed is in place.

In March 2017 planning permission (ref: 17/00027/P) was granted for an extension to be added to the southern gable elevation of the poultry shed approved by the grant of planning permission 15/00541/P. Planning permission (ref: 17/00027/P) has been implemented and the extension has been constructed.

In June 2019 planning permission (ref: 19/00330/P) was granted for the erection of a poultry building and associated works on land to the south of Howden Wood. That planning permission has been implemented and the poultry shed is in place.

In October 2020, planning permission (ref: 20/00851/P) was granted for a poultry building and associated works to be erected on land to the north of the farm buildings of Howden Farm some 600m to the north of this current application site. That planning permission has been implemented and the poultry building is in place.

In February 2022 Planning permission (ref: 21/01235/P) was granted for the formation of an earth bund to be formed to surround the existing poultry building the subject of planning permission 19/00330/P and the associated buildings and structures. Works to implement planning permission (ref: 21/01235/P) have commenced and are ongoing.

In November 2022 planning permission (ref: 22/00239/P) was granted for a poultry shed to be erected on land to the south east of the poultry building approved by the grant of planning permission 19/00330/P on the southern side of Howden Wood. Works to implement that planning permission have commenced and are ongoing.

In March 2023 planning permission (ref: 22/00952/P) was granted for the erection of a poultry building and associated works on land to the east of Howden Wood. That planning permission remains extant.

PROPOSAL

Planning permission is now sought by East Lothian Eggs Limited for the formation of an underpass beneath a section of the B6368 public road and associated works. The proposed underpass would facilitate the use of an area of agricultural land on the north side of the road as an additional area for the poultry of East Lothian Eggs Limited to roam on. The underpass is for use by poultry housed within the poultry building located to the south of Howden Wood and approved by planning permission Ref: 19/00330/P. It would also be used by the poultry to be housed in the building currently under construction and which was approved by planning permission Ref: 22/00239/P.

Subsequent to the registration of the application agents for the applicant have submitted a drawing titled 'Authorised Site Boundary' providing details of the poultry roaming areas to the north and south of the B6368 road and a drawing ref COG383/APP/004a titled 'Extent of Range Area at Howden Farm' that provides details of fencing to enclose those areas.

For clarification, the fences as proposed are permitted development under The Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended, and do not require planning permission. Use of those areas of agricultural land as range roaming areas does not constitute 'development' and as such does not require planning permission.

Construction of the proposed underpass involves the excavation of a full width section of the B6368 road some 18 meters in length and the installation of twin box concrete culverts at a depth of some 2.8 meters. Each culvert would provide access/egress points some 2.5 meters wide and some 1.5 meters in height that would link the roaming areas to the north and south via earth ramps constructed of aggregate filled gridforce ground reinforcement and a geotextile separation layer. A surface water silt trap would be located to the south of the proposed underpass that would connect to a 1500mm drainage pipe running southeast to a concrete headwall that would outfall into an existing swale.

Proposals further involve reinstatement of the B6368 road subsequent to construction of the proposed underpass. The road carriageway would be constructed of 300mm type 1/6F2 capping layer, 250mm type 1 material sub-base, 150mm dense base, 60mm thick dense binder course and a 40mm thick hot rolled asphalt surface course. Road markings and road studs would be reinstated along with the replacement of a 2 meters wide road verge on either side of the carriageway. It is further proposed that road safety barriers are erected to the north and south of the reinstated carriageway. These barriers would be of an 'armco' type constructed of corrugated steel and some 0.7 meters in height. They would each extend some 30 meters north and some 30 meters south of the proposed underpass.

The works on the south side of the road would result in the loss of a small section of hedgerow and some small trees. However it is proposed that roadside hedges and trees removed during construction works will be replaced.

A Planning Statement has been submitted in support of the application. It informs that the application is submitted on behalf of East Lothian Eggs Ltd, a local agricultural business with an existing free range egg production operation on land at Howden Farm. Due to previous expansions resulting in two poultry buildings that each have a capacity for 32,000 poultry birds, their rural business now has a cumulative capacity of 64,000 free range poultry birds. It advises that the egg production unit is located within a recognised Nitrate Vulnerable Zone and is therefore required to provide a minimum of 40 hectares poultry ranging area that does not include building footprints. It further advises that this can be achieved by providing a roaming area on agricultural land to the south of the B6368 road with underpass access for poultry birds to an additional roaming area on agricultural land to the north of that road.

Further documents submitted in support of the application include a Traffic Management Plan (Cogeo Planning & Environmental Services Ltd, June 2023) and a Stage 2 Road Safety Audit (Wyllie; Lodge, May 2023).

DEVELOPMENT PLAN

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 adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018 (ELLDP).

Policies contained within NPF4 that are relevant to determination of the application consist of Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 5 (Soils), 6 (Forestry, Woodlands and Trees), 13 (Sustainable transport), 14 (Design, quality and place), 22 (Flood Risk and Water Management), and 29 (Rural Development). Also relevant are Policies DC1 (Rural Diversification), DP1 (Landscape Character), DP2 (Design), T2 (General Transport Impact), NH3 (Protection of Local Sites and Areas), NH5 (Biodiversity and Geodiversity Interests including Nationally Protected Species), NH7 (Protecting Soils), NH8 (Trees and Development) and NH11 (Flood Risk) of the ELLDP.

REPRESENTATIONS

One letter of public objection against the application has been received.

The main grounds of objection are:

- i) no details of the extent of the range areas to the north and south of the B6368 are provided within application submissions;
- ii) applicants were aware of range requirements prior to previous expansions of the egg production unit;
- iii) the range area approved by planning permission 22/00239/P extends to 40 hectares and there is no requirement for a further planning application;
- iv) no statement has been provided by applicants on any proposed future expansions;
- v) the proposed underpass would not provide reasonable and adequate access for up to 64,000 hens;
- vi) free range egg production with fewer hens can be undertaken through use of a range area to the south of the B6368; and
- vii) the application should address the future requirements of Howden Eggs Ltd operating from a site to the east of Howden Wood.

The matter of the extent of the range area and its adequacy, there being no requirement for the extended range area, the future expansion plans of the applicant and the future requirements of Howden Eggs Ltd are not matters relevant to the determination of this planning application.

COMMUNITY COUNCIL COMMENTS

Humbie, Bolton, East and West Saltoun Community Council object to the application on the following grounds:

- i) investment in an underpass is not justified by existing egg production operations;
- ii) the cumulative range requirements of the existing complex of sheds is unclear;
- iii) works to construct the proposed underpass would require closure of the B6368 road for at least six working days and divert 1,000 vehicles a day through East Saltoun;
- iv) applicants have not complied with the landscaping requirements of previous grants of planning permission in terms of roadside replanting along the eastern flank of the B6368 road;
- v) the proposed road safety barriers would be visually inappropriate to their rural setting; and
- vi) no evidence exists to indicate that hens will use an underpass to access additional range space.

PLANNING ASSESSMENT

What is proposed in this planning application is for an underpass to link two areas of agricultural land that would be in use as roaming areas for free range poultry which is an agricultural use that accords with the definition of agriculture given in Section 277 of the

Town and Country Planning (Scotland) Act 1997.

Policy 29 of NPF4 states that development proposals that contribute to the viability, sustainability and diversity of rural communities and local rural economy will be supported.

Policy DC1 of the ELLDP supports the principle of development in the countryside where it is for agricultural use.

In that the proposed underpass development is for agricultural use to expand the operation of an existing farming enterprise on land at Howden Farm, the principle of this proposed development in the countryside has an operational requirement for its proposed location. The underpass would facilitate the operation of an existing rural business. This in turn will support the viability, sustainability and diversity of the local rural economy of East Lothian.

On these considerations the proposed underpass and associated works, in principle, does not conflict with Policy 29 of NPF4 and Policy DC1 of the ELLDP.

NPF4 sets out the intent to minimise disturbance to soils from development while the East Lothian Local Plan sets out the Council's aims to reduce adverse impacts on soils, avoid where possible development on prime agricultural land, and consider climate changes impacts of developing certain soil types. In this instance the proposals are directly linked to a rural business and by their layout, design and methods of development minimise the amount of Prime Agricultural Land affected. The proposals do not therefore conflict with Policy 5 of NPF4 and Policy NH7 of the ELLDP.

Policy 14 of NPF4 states that development proposals will be designed to improve the quality of an area whether in urban or rural locations regardless of scale. Policy 29 further states that development proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area.

Policy DP1 of the ELLDP states that new development must be well integrated into its surroundings by responding to and respecting landform. Policy DP2 requires that new development is designed to be appropriate to its location in terms of its positioning, size, form, massing, proportion and scale and use of a limited palette of materials and colours that complement its surroundings

Although the proposed underpass would be a new build element in the landscape of the area it would not lead to an overall change in the use of the site. Therefore and due to its discrete form and appearance and the functional appropriateness of its positioning alongside and beneath the public road the proposed underpass would not be inappropriate to its place and would not appear as a harmfully dominant or intrusive feature. It would be visible in glimpsed views from the B6368 public road but would not harm the character of the surrounding landscape or be visually intrusive or harmfully prominent within its landscape setting.

Similarly, whilst being new build elements in the landscape of the area, the proposed road safety barriers would be of a functional form and appearance appropriate for their setting location. In that locational circumstance, due to their relatively low heights, positioning, form and materials they would not appear as harmfully dominant or intrusive features and would be seen in the context of their road carriageway setting.

The proposals would not have an unacceptably harmful impact on the landscape character of the area. On these matters of design the proposals do not conflict with Policies 14 and 29 of NPF4 and Policies DP1 and DP2 of the ELLDP.

By their nature and their positioning the proposals would not result in any harm to any neighbouring land use or to the privacy and amenity of any neighbouring residents.

The Council's **Senior Environmental Health Officer** has been consulted on the application and has responded no comment.

The Council's **Landscape Policy Officer** has been consulted on the application and has not provided any comments.

The Council's **Roads Services** have been consulted on the proposals. They recommend that prior to the commencement of any development:

- i) details to address matters raised by a Designers Response to the submitted Road Safety Audit are submitted to the planning authority for approval and all works are thereafter carried out in accordance with those approved details.
- ii) proposed roads, cycleways and external roadworks are subject to a Road Safety Audit completed through Stages 3 & 4 and thereafter submitted for the approval of the Planning Authority prior to the implementation of any outcomes arising from them; and
- iii) a Quality Audit is undertaken which considers accessibility and connectivity from the wider transport network and between different elements of the application site

These matters can form a condition attached to a grant of planning permission.

Subject to the above controls, Council Roads Services raise no objection to the application on grounds of road safety.

On these matters the proposals are consistent with NPF4 Policy 13 and Policy T2 of the ELLDP.

The Council's **Road Services (Structures) Manager** advises that the proposed underpass structure is required to be designed to adoptable road standards in accordance with the Design Manual for Roads and Bridges (DMRB) and that it requires formal Approval in Principle with East Lothian Council Road Services (Structures) as Technical Approval Authority. He confirms that the proposed underpass is the subject of a submitted application for Approval in Principle. A condition can reasonably be attached to a grant of planning permission requiring that an Approval in Principle for the proposed underpass structure has been completed to the satisfaction of the Council Roads Services (Structures) prior to the commencement of any part of the proposed development. Subject to the above controls the Council's Roads Services (Structures) Manager raises no objection to the application.

Transport Scotland have been consulted and raise no objection to the application proposals.

The Council's **Senior Engineer (Flood Protection)** raises no objection to the proposals with regards to flood risk. The proposals are therefore consistent with Policy 22 of NPF4 and Policy NH11 of the ELLDP.

The proposals would have a neutral impact in terms of Policies 1 and 2 of NPF4.

The application site is located within a recognised Nitrate Vulnerable Zone and therefore the Scottish Environment Protection Agency (SEPA) have been consulted. SEPA raise no objection to the proposals being satisfied that the proposals will have no impact on groundwater quality associated with the proposed underpass and extended range areas. They confirm that the proposed underpass will provide access for poultry birds to the range

areas that are the subject of a recently-issued Pollution Prevention and Control (PPC) permit.

With regards to Biodiversity, Policy 3 of NPF4 states, among other things, that proposals for local development will include appropriate measures to conserve, restore and enhance biodiversity, in accordance with national and local guidance. Measures should be proportionate to the nature and scale of development.

The application site is directly adjacent to a woodland corridor that is part of the area of ancient woodland known as Howden Wood and is designated as Howden Wood Local Biodiversity Site in the East Lothian Local Development Plan 2018. The Council's **Biodiversity Officer** has undertaken a desk based ecological assessment of the application site and advises that protected and priority species are unlikely to be impacted by the proposals. She advises that whilst the proposals would result in the loss of a small area of woodland habitat, such loss would not significantly impact on the Local Biodiversity Site. She recommends that should planning permission be granted the woodland corridor is maintained and poultry should be prevented from accessing the woodland habitat. She further recommends that details of a biodiversity enhancement scheme to demonstrate the positive effects of the proposals for biodiversity are submitted for planning authority approval prior to the commencement of any development. All of the above matters can form the subject of conditions attached to a grant of planning permission.

Subject to the above controls the Council's Biodiversity Officer raises no objection to the application being satisfied that the proposals do not conflict with NPF4 Policy 3 and Policies NH3 and NH5 of the ELLDP.

NatureScot have been consulted and raise no objection to the application, being satisfied that the proposals do not impact on any protected areas or raise natural heritage issues.

In all of the above considerations, the proposals are consistent with Policies 1, 2, 3, 5, 6, 13, 22 and 29 of NPF4 and Policies DC1, DP1, DP2, T2, NH3, NH5, NH7, NH8 and NH11 of the ELLDP.

In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposals accordance with the Development Plan.

CONDITIONS

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

Reason:

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

- 2 Prior to the commencement of any part of the development hereby approved it shall be demonstrated to the satisfaction of the planning authority that the underpass is designed to adoptable road standards in accordance with the Design Manual for Roads and Bridges (DMRB) and that an Approval in Principle has been granted for the underpass by East Lothian Council Roads Services (Structures) as Technical Approval Authority.

The underpass shall be constructed thereafter in accordance with the Approval in Principle unless otherwise agreed in writing by the planning authority.

Reason:

In the interest of the safety of users of the existing road carriageway.

- 3 Prior to the commencement of the development hereby approved:
- i) Drawings/Details relating to the Designers Response to the submitted Stage 2 Road Safety Audit shall be submitted for the approval of the planning authority approval;
 - ii) The proposed roads, cycleways and external roadworks shall be subject to Road Safety Audit completed through Stages 3 & 4 (Post Opening Audit & Post Opening Audit + 12 months) - The audit process shall be undertaken in accordance with GG119 Road Safety Audits, or as amended by latest version. The findings of the Road Safety Audit shall be submitted for the approval of the Planning Authority prior to the implementation of any outcomes arising from them; and
 - iii) A Quality Audit shall be undertaken which considers accessibility and connectivity from the wider transport network and between different elements of the application site. The Quality Audit should consider all different modes of transport including walking/cycling and the needs of users who are mobility impaired as well as those with visual impairments. The outcomes of the Quality Audit shall be implemented through the detailed design stages and the full audit process completed through the design and implementation stages - including post construction/opening in accordance with a timetable to be agreed with the Planning Authority in advance of any use of any part of the development hereby approved.

Reason:

In the interests of road and pedestrian safety.

- 4 Prior to the commencement of development, details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority. The measures as so approved shall be implemented prior to any use being made of the underpass hereby approved and shall thereafter be retained, unless otherwise approved in writing by the Planning Authority.

Reason:

In the interests of protecting and enhancing biodiversity on the site and within the surrounding area.

- 5 The range areas to be used for poultry free range roaming in association with use of underpass hereby approved shall be limited to those areas shown on the drawing titled 'Authorised Site Boundary' docketed to this planning permission unless otherwise approved in writing by the planning authority.

A 1.2 metres high stock proof fence in accordance with that shown on drawing ref COG383/APP/004a titled 'Extent of Range Area at Howden Farm' and docketed to this planning permission shall be erected around the entirety of the range areas prior to their use in association with the underpass hereby approved and retained and maintained thereafter.

Reason:

In order to conserve the biodiversity of Howden Wood Ancient Woodland.