



## NOTICE OF THE MEETING OF THE PLANNING COMMITTEE

**TUESDAY 3 OCTOBER 2023, 10.00am  
VIA A DIGITAL MEETING FACILITY**

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### Agenda of Business

#### Apologies

#### Declarations of Interest

*Members should declare any financial and non-financial interests they have in the items of business for consideration, identifying the relevant agenda item and the nature of their interest.*

1. Minutes for Approval – Planning Committee, 22 August 2023 (**pages 1-12**)
2. Minutes for Noting
  - a. Local Review Body (Planning), 15 June 2023 (**pages 13-24**)
  - b. Local Review Body (Planning), 20 July 2023 (**pages 25-36**)
3. Planning application no. 22/00812/P – Erection of sheds, greenhouse and fencing (Part Retrospective), 68 Whitecraig Road, Whitecraig (**pages 37-42**)  
**Note** – *this application was called off the Scheme of Delegation List by Councillor Forrest for the following reason: Due to the concerns raised in the community with me over the size of this structure, I feel that the matter would benefit from a full discussion at the Planning Committee.*
4. Planning application no. 23/00680/P – Formation of an underpass under the B6368 roadway and associated works – Land West of Howden Wood, Gifford (**pages 43-50**)  
**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.*

**Monica Patterson  
Chief Executive  
John Muir House  
Haddington**

**26 September 2023**

*Planning applications can be viewed on the Council's website within Planning Online at:*

<http://www.eastlothian.gov.uk/site/scripts/documents.php?categoryID=200192>

*Planning Committee reports can be viewed on the Council's website within the Committee Pages at:*

[https://www.eastlothian.gov.uk/meetings/committee/7/planning\\_committee](https://www.eastlothian.gov.uk/meetings/committee/7/planning_committee)

*Planning Committee meetings can be viewed on the Council's website within the Committee Pages at:*

<https://eastlothian.public-i.tv/core/portal/webcasts>





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

**TUESDAY 22 AUGUST 2023  
VIA A DIGITAL MEETING FACILITY**

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**Committee Members Present:**

Councillor N Hampshire (Convener)  
Councillor L Allan  
Councillor D Collins  
Councillor J Findlay  
Councillor A Forrest  
Councillor N Gilbert  
Councillor S McIntosh  
Councillor K McLeod  
Councillor J McMillan  
Councillor C Yorkston

**Other Councillors Present:**

None

**Council Officials Present:**

Mr K Dingwall, Service Manager – Planning  
Ms E Taylor, Team Manager – Planning Delivery  
Mr C Grilli, Service Manager – Governance  
Ms P Gray, Communications Adviser  
Mr J Canty, Transportation Planning Officer  
Mr G McLeod, Transportation Planning Officer  
Ms L Hunter, Senior Roads Officer  
Mr A Hussain, Transportation Planning Officer  
Mr I Chalmers, Senior Engineer – Flood Protection

**Clerk:**

Ms B Crichton

**Visitors Present/Addressing the Committee:**

Item 2: Mr T Thomas, Mr C Hall, Ms P Swan, and Ms J Bell

Item 3: Mr S Hindson

Item 4: Mr I Hunt

**Apologies:**

Councillor C Cassini  
Councillor C McGinn

**Declarations of Interest:**

Item 2: Councillor Hampshire, due to being a trustee of a trust who would be a developer contribution beneficiary.

**1. MINUTES OF PLANNING COMMITTEE MEETING, 6 JUNE 2023**

The minutes were agreed as an accurate record of the meeting.

*Sederunt: Councillor Hampshire left the meeting, and Councillor McMillan took over as Convener.*

**2. FURTHER REPORT OF HANDLING OF PLANNING APPLICATION NO. 21/00997/PM – ERECTION OF 78 HOUSES, GOLF CLUBHOUSE, GOLF RELATED FACILITIES INCLUDING DRIVING RANGE, SHORT COURSE, PRACTICE AREA AND ASSOCIATED WORKS – DUNBAR GOLF CLUB, EAST LINKS ROAD, DUNBAR**

A further report of handling was submitted in relation to Planning Application No. 21/00997/PM. Keith Dingwall, Service Manager - Planning, presented the report, highlighting the salient points. The application was brought back before the Planning Committee for assessment in line with new National Planning Framework 4 (NPF4). The recommendation was to grant consent.

Responding to a question from Councillor McLeod, Mr Dingwall advised that sports pitch changing pavilions would be at Hallhill North. He referred to the Local Development Plan (LDP) inset map site DR3 allocated for open space for pitch provision; he said there was an intention for a planning application to come forward with the detail of this sports pitch provision in the future.

Responding to a question from Councillor Findlay, Mr Dingwall said that NPF4 had a policy which allowed the planning authority to require artworks in suitable circumstances, and it was felt that an artwork was justified in this development. Generally it would be for the applicant to propose artworks, and the planning authority would make relevant consultations before coming to a decision.

Councillor McIntosh asked why it had been deemed that affordable housing was not required as part of this development, given the strict nature of NPF4 Policy 16's requirement for 25% affordable housing unless there were specified circumstances. Mr Dingwall said that one such circumstance under the LDP which did not require affordable housing was if the application was for an 'enabling development'. The proposed housing was to enable development of the golf course infrastructure. It had been considered by Planning Committee previously that affordable housing was not required in this instance and this remained the position of the planning authority.

Tony Thomas spoke to the application. He highlighted the planning report's conclusion that there were no additional implications as a result of the adoption of NPF4 and said that proposals did accord with NPF4 policies. He gave examples of how the proposals created sustainable, liveable, and productive places, including: reuse of the existing clubhouse site; the planting programme; use of sustainable construction methods; the quality of new homes; and through delivery of economic benefits. He advised of gas-free parts of the development, including the new clubhouse and many of the proposed homes, and installation of hybrid intelligent heating systems in those homes which were not gas-free. He advised that these homes had suitably-sized piping for conversion to be heated only by air source heat pumps in the future. He said proposed planting would improve the existing mix of habitats and seek to enhance biodiversity across the site. He summarised that the economic, environmental, and community benefits of the new clubhouse and enhanced golf facilities justified the enabling development of the new homes, and said the housing development would be in keeping with other housing developments in the area. He highlighted letters of support for the application.

He said that the existing clubhouse no longer met golfer expectations, and the new clubhouse would enhance the club's reputation and bring economic benefits. He also drew attention to contributions and upgrades that would be made through the Section 75 agreement, and work the club had undertaken with schools and other groups.

Councillor McIntosh asked about heating of the homes. Mr Thomas confirmed that 60 of the homes would have the hybrid solution using gas, air source heat pumps, and solar panels. The intelligent heating system determined the most efficient use of power creation and would switch automatically. Councillor McIntosh questioned the continued use of gas, and Mr Thomas responded that the comfort and expectations of customers had to be considered; he said there was still a perception amongst housebuilders that customers liked having a gas boiler. Councillor McIntosh responded that housebuilders should be doing more to challenge these expectations.

Councillor McMillan asked for further information on improvements being made to transport links. Mr Thomas said contributions were made to the wider transport network through the Section 75 agreement, and specified works at Old Craighall.

Christopher Hall spoke against the application on behalf of the residents of Roxburgh Park. He noted the legal weight of NPF4 and its greater focus on the climate emergency. He drew attention to various NPF4 policies and commented on them. He said building the executive villas would change the coastline's character forever. He said that residents at the east end of Dunbar would have to use a car to access a green space unless they were members of the golf club. He felt small greens and play parks within the housing estate were not suitable alternatives; any suggestion the development would enhance public access to green space was disingenuous. He said that replacement of a wild area with the monoculture of a golf course was against the NPF4 principal to restore and better connect biodiversity. He felt that the enabling development argument was very thin, as there was no access to the clubhouse or facilities except for paying members or visitors and some school children given tuition. He said the development would reduce the town's flood risk resilience, and highlighted an acknowledgement in the risk assessment that there would be flooding issues for some of the houses in severe storms. He noted the club's 10-year waiting list, meaning there was no opportunity for growth, and felt visitors would be unlikely to venture beyond the golf course. He said there was no extra draw for tourists since there would be no hotel. He concluded that the application did not meet the policies of NPF4 and should be refused.

Alasdair Swan spoke against the application on behalf of Dunbar Community Council (DCC). He noted that many residents were unhappy with the proposals. He said that Scottish ministers could not have intended that tokenism would be enough to meet the ambitious criteria of NPF4, as DCC considered that the proposals failed to meet the criteria of 20 of the 23 relevant policies. He said that the scheme and its house types, the lack of a comprehensive renewables plan for all 78 houses, and site itself, did not point to there being due consideration of the climate and nature crises. He highlighted the 15 hectares of land being lost at the deer park, with a resultant loss of habitat for wildlife and valued land for walking space. He said that only a small part of the site would be brown field. The development also encroached on the coastal belt for the construction of 18 executive homes which met none of the needs of the blue economy. He found no evidence to suggest that the house designs had been adapted to meet the zero-waste requirements of Policy 12, and he noted that the development would not be within a 20-minute neighbourhood bubble. He noted also the lack of recreational pathways and green spaces would result in a loss of amenity for residents. He also highlighted that the development did not meet housing needs for younger and older people, or for those with additional support needs. He said that the capacity of health services had not been considered. He summarised that the proposed houses were out of scale on the shore, and contributed nothing to local living. DCC considered that approval of the application would set the compliance bar very low for NPF4 as it believed the proposals to be in conflict with the majority of NPF4 policies.

Jacque Bell spoke against the application on behalf of West Barns Community Council (WBCC). She advised that WBCC remained opposed to proposals for executive housing to enable development at the golf club, which was recommended for approval despite the level of public objection. She noted issue with the long term viability of the golf course due to coastal flooding, and said that 18 of the houses were proposed to be situated on a site which could be waterlogged. She also noted a history on the land of slippage and sink holes. She said that sewage and drainage were of major concern, and highlighted issue at the newest Robertson development. She said that deer were already under pressure in the area, and the development would contribute to this. She said that the designs did not consider housing urgently needed within communities. She said that the housing being outwith a 20-minute neighbourhood bubble would increase the use of cars. She asked Members to reject the proposal, and to put the environment and green space for the community first.

**Sederunt:** *Councillor Collins joined the meeting.*

The Convener moved to comments, and Councillor McLeod said that Dunbar Golf Club had a first class golf course with second rate facilities. He was fully supportive of the application, but said he may take a different approach if further applications were to come in.

Councillor Gilbert said he had had sufficient doubts to vote against the application when it was first heard, and the additional scrutiny against NPF4 had increased those doubts.

Councillor McIntosh agreed with the Mr Hall's statement that it was important that NPF4 was not only a tick box exercise. She felt there was too large a gap between the proposals and what NPF4 required. She was particularly concerned about the loss of access to a green space for local residents, and about flooding. She had become aware that flood assessments did not take erosion into account, and it looked likely that this coastline would change through erosion, and felt that it was not sensible or viable to put 17 houses on this area of land. She also felt that installing gas in houses did not give due weight to the climate crisis.

Councillor Allan did not agree that approval of this application would be a 'carte blanche' for other applications being assessed against NPF4, and thought that the Planning Committee would continue to consider applications on a case-by-case basis. Councillor Findlay agreed with Councillor Allan, and felt that the economic benefits would be significant.

Councillor Collins supported the application. She felt there would be significant economic benefit to the tourism and hospitality industries in Dunbar, and local children would also benefit from the proposals.

Councillor McMillan thought that objectors had put forward strong arguments, but felt that their points had been addressed in officers' comments in the report. He highlighted Policy 29, encouraging rural economic activity and diversification whilst ensuring that the distinctive character of the rural area was guarded and enhanced, and felt the proposals would encourage economic activity through enhancement of the golf facilities. He thought the development would enhance the community of Dunbar economically, socially, and culturally, and he would support the application.

Councillor McMillan then moved to a roll call on the officer recommendation to grant consent. Votes were cast as follows:

For:	8	(Councillors McMillan, Allan, Collins, Findlay, Findlay, Forrest, McLeod, and Yorkston)
Against:	2	(Councillors Gilbert and McIntosh)
Abstentions:	0	

## Decision

The Planning Committee agreed to grant the application, subject to the following:

1. the 31 conditions listed in the original Planning Assessment Report of 4 October 2022, as well as the addition of the officer recommended condition requiring the development to begin before the expiration of three years from the date of planning permission granted agreed by Planning Committee at the meeting of 4 October 2022;
2. an additional condition (condition 33) requiring the submission and approval of the detail of the provision of artwork; and
3. the satisfactory conclusion of an Agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997, or some other legal agreement designed to secure from the applicant:
  - (i) a financial contribution of a total of £643,890 towards the provision of additional accommodation at Dunbar Primary Lower School (John Muir Campus), Dunbar Primary Upper School (Lochend Campus) and Dunbar Grammar School;
  - (ii) a financial contribution to the Council of £2,658 for transport improvements to Old Craighall Junction, Salters Road Interchange, Bankton Interchange, Musselburgh town centre improvements and Tranent town centre improvements;
  - (iii) a financial contribution to the Council of £25,714 towards the provision of signalling the junction of Queens Road and Spott Road, Dunbar;
  - (iv) a financial contribution to the Council of £76,424.40 towards the provision of a full size grass community sports pitch and changing facilities; and
  - (v) a control on the phasing of the proposed development on the following terms:
    - (1) No work shall commence on any of the houses approved in this planning permission unless and until development of the Clubhouse and the Clubhouse Car Park has commenced to the satisfaction of the Council.
    - (2) The occupancy of more than 22 houses is prohibited until the (1) Commencement of Development of the Golf Academy and Driving Range; and (2) the completion of the Clubhouse and car park to a building shell extent, which building shell extent includes being wind and watertight (roof, walls and windows), the extent is to be agreed with the Council.
    - (3) The Commencement of Development of the Green-Keepers maintenance facility building and the short hole golf course and practice area shall be no later than the Occupation of the forty fifth (45) house.
    - (4) The Commencement of Development of any of the houses on the Existing Clubhouse Site (shown as Site 2 on the application drawings) is prohibited until the construction of the Clubhouse and the Car Park and the Golf Academy and the Driving Range are completed all to the satisfaction of the Council.
    - (5) No houses shall be occupied at the Existing Clubhouse Site (shown as Site 2 on the application drawings) until after the completion of the Green-Keepers maintenance facility building to the satisfaction of the Council.
    - (6) No more than Nine (9) houses erected at the Existing Clubhouse Site (shown as Site 2 on the application drawings) shall be occupied until the construction of the short hole golf course and practice area have been completed to the satisfaction of the Council.
4. That in accordance with the Council's policy on time limits for completion of planning agreements it is recommended that the decision should also be that in the event of the Section 75 Agreement not having been executed by the applicant, the landowner and any other relevant

party within six months of the decision taken on this application, the application shall then be refused for the reason that without the developer contributions and phasing control to be secured by the Agreement the proposed development is unacceptable due to a lack of sufficient school capacity at Dunbar Primary Lower School (John Muir Campus), Dunbar Primary Upper School (Lochend Campus) and Dunbar Grammar School, a lack of roads and transport infrastructure improvements, a lack of new sports pitches and changing accommodation and a lack of control to ensure delivery of the golf club facilities the enabling housing is proposed to deliver, contrary to, as applicable, Policy 18 of NPF4, Proposals CF1 and ED6 and Policies DEL1, T32 and DC5 of the adopted East Lothian Local Development Plan 2018.

*Additional Condition*

1. Unless otherwise agreed in writing by the Planning Authority, no residential unit shall be occupied and no use shall be made of the new golf clubhouse or any of the new golf related facilities unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority. The details shall include a timetable for the provision of the artwork.

The artwork shall thereafter be provided in accordance with the details and timetable so approved.

Reason:

To ensure that artwork is provided in the interest of the visual amenity of the locality or the wider area.

*Sederunt: Councillor Hampshire re-joined the meeting.*

**3. PLANNING APPLICATION NO. 22/01416/AMM – APPROVAL OF MATTERS SPECIFIED IN CONDITION 1 OF PLANNING CONSENT 21/00290/PPM - RELATING TO THE SUBSTATION DEVELOPMENT ZONE AND THE TEMPORARY CONSTRUCTION COMPOUND DEVELOPMENT ZONE, LAND AT EDINBURGH ROAD, COCKENZIE**

A report was submitted in relation to Planning Application No. 22/01416/AMM. Mr Dingwall presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Members. Councillor Yorkston raised that there had been local concern over the development taking place at the other side of Edinburgh Road. He sought confirmation that the traffic from this proposed development would not use either East Lorimer Place or Edinburgh Road during the construction process, but would instead use the internal private road. Mr Dingwall was aware of concerns regarding traffic to the Inchcape development and had asked enforcement officer to get in touch with the developers. He knew that there was a desire to use the private service road where possible. Liz Hunter, Roads Officer, added that the original planning application indicated that all construction traffic would reach the site via the private service road through the Cockenzie Power Station site. A construction traffic management plan had been received relating to the original application, which suggested a change of access approach to use local roads rather than the private service road. Officers had requested that this be reviewed and that the private service road only be used for construction traffic.

Councillor Gilbert asked questions about the size and timing of the development in relation to the Inchcape development. Mr Dingwall would take these questions offline, but stressed that this application had to be considered on its own merits. Simon Hindson of SSE added that there was no fixed timeframe for starting work on the site, but thought there would not be



significant overlap with the Inchcape development. He advised that the construction traffic management plan was under review to minimise the cumulative impact on the community.

Mr Hindson then gave his presentation. He advised that the tallest building on the site would be 12.45m, and pointed out the various buildings on a site map. He provided information about the 36 wind turbines 66km off the East Lothian coast which would connect into the new substation at Cockenzie. The development was considered as nationally important infrastructure under the provisions of NPF4. He noted the design principals used to influence the development's integration within the site; the planning permission in principle had limited the building height to 18m, but he said the tallest building at 12.45m would be 10m shorter than the adjacent Scottish Power substation and would be commensurate with the tallest Inchcape building. He said that the smaller structures rather than one large building would break up the mass of buildings on the site, and advised that the site would be levelled and the buildings cut into the landform to set the buildings down. The buildings would also be set back from Edinburgh Road, and the electrical infrastructure would be hidden from the majority of people. He also described the planting, which would provide screening and enhance biodiversity. Lighting would be motion activated and low wattage to avoid impact on nearby properties, and noise would be within consented limits. He noted the condition requiring buildings to have a gradation of colour from dark to light, and said the developer was happy to work with officers on final arrangements. He showed images to illustrate the graded colours, the screening impact of the land, and the size of the development next to the Scottish Power substation. He said that the officer recommendations were welcomed.

Councillor Yorkston raised concern about the planting being on only one side of the service road, which would not provide adequate screening if travelling from Cockenzie to Prestonpans. Mr Hindson explained that this was because the developer did not control the land on the other side of the service road.

The Convener asked whether more than 36 turbines could be fed into this facility. Mr Hindson advised that the developer had a grid connection offer of up to 500 megawatts for the site, and the Section 36 consent was for 36 turbines with a maximum capacity of 500 megawatts. Therefore, further turbines would need a different group connection and Section 36 consent from Marine Scotland.

Councillor Yorkston was fully supportive of the application and was happy to see the size of the development not using its entire permitted allocation in terms of height and footprint. He would vote to approve the application.

Councillor McMillan welcomed earlier comments relating to transport and noise for local residents. Residents had raised concern with him about the amount of traffic, and he hoped that every effort would be made to minimise disruption. He would support the application.

The Convener noted that the development represented another piece of national infrastructure coming to East Lothian. Renewable energy from offshore wind required onshore infrastructure. He appreciated that the majority of equipment had been put into buildings, and welcomed the two-tone colour. He said that the planting would also be appreciated by the local community, and would support the application.

The Convener moved to a roll call vote on the report recommendation to grant consent, and Members unanimously voted to grant the application.

## **Decision**

The Planning Committee granted planning permission, subject to the undernoted conditions:

- 1 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the substation buildings shown in relation to the finished ground levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 2 Notwithstanding that which is stated on the drawings docketed to this approval of matters specified in conditions permission, a detailed specification of the external finishes (including the colours) of the exterior cladding, doors, rainwater goods, external staircases and external building services of all the substation buildings hereby approved (the GIS building, control building, harmonic filter building and STATCOM building) shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development.

Thereafter the external finishes (including the colours) used in the construction of all the substation buildings shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

**4. PLANNING APPLICATION NO. 22/01333/PM – ERECTION OF 49 HOUSES, 4 FLATS AND ASSOCIATED WORKS – LAND TO THE SOUTH OF DAVIDS WAY, LETHAM, HADDINGTON**

A report was submitted in relation to Planning Application No. 22/01333/PM. Mr Dingwall presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Members. Councillor McIntosh asked whether there was a pavement all the way around the road that circled the houses under discussion, and spoke of the potential for accidents on new build estates where minor roads had no pavements. The Convener noted that the model where the carriageway was also a footway was used widely and seemed to work. Councillor McIntosh thought that the design standards required separate pavements, and was content if this development had a separate pavement to the carriageway.

Councillor Forrest asked about the difference the addition of seven houses made to sizes of the plots. Ian Hunt, applicant's agent, responded that the houses had been made smaller. The 5- and 4-bedroom houses had been very wide, and the width had been condensed. The depth of gardens was still 9-12m along the plots, and overlooking and overshadowing distances were maintained throughout the site. The main difference was bringing in 2-bedroom terraced houses to replace 3-bedroom semi-detached houses to intensify the use of the land.

Councillor Forrest welcomed the social housing coming forward. Councillor McIntosh welcomed replacement of 3-bedroom houses with 2-bedroom houses, as there was a lack of

2-bedroom houses in the area. She was also impressed with the entirely gas-free central heating and hoped that CALA and other housing developers would follow suit.

Councillor McMillan welcomed the application and particularly the house types. He also thought that safety and work to connect paths and cycle paths had to remain at the forefront in consideration of future developments.

The Convener then moved to a roll call vote on the officer recommendation to grant consent, and Members unanimously voted to approve the application.

## **DECISION**

The Planning Committee granted planning permission, subject to the following 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 No development shall take place on site unless and until final site setting out details have been submitted to and approved by the Planning Authority.

The above mentioned details shall include a final site setting-out drawing to a scale of not less than 1:200, giving:

- a. the position within the application site of all elements of the proposed development and position of adjoining land and buildings;
- b. finished ground and floor levels of the development relative to existing ground levels of the site and of adjoining land and building(s). The levels shall be shown in relation to an Ordnance Bench Mark or Temporary Bench Mark from which the Planning Authority can take measurements and shall be shown on the drawing; and
- c. the ridge height of the proposed shown in relation to the finished ground and floor levels on the site.

Reason:

To enable the Planning Authority to control the development of the site in the interests of the amenity of the area.

- 3 Notwithstanding that which is stated on the drawings docketed to this planning permission, a detailed specification of all external finishes of the houses of the proposed development shall be submitted to and approved by the Planning Authority prior to the use of the finishes in the development. The external finishes of the houses shall be in accordance with a co-ordinated scheme of materials and colours that shall be submitted to and approved in advance by the Planning Authority. This co-ordinated scheme shall in detail promote render as the predominant finish to the walls of the houses, with a use of more than one render colour and with a strongly contrasting difference in the colours such that they will not each be of a light colour. The render colours shall have due regard to the finishes of other residential properties in Haddington. However, some use of reconstituted stone would be acceptable providing it is limited to a distinctively complete feature of the houses, respectful of their design integrity. All such materials used in the construction of the houses and flats shall conform to the details so approved.

Reason:

To ensure the development is of a satisfactory appearance in the interest of the amenity of the locality.

- 4 A timetable for the provision of the erection of the boundary enclosures for the rear gardens of the houses hereby approved shall be submitted to and approved in advance by the Planning

Authority and development shall thereafter be carried out in full accordance with the timetable so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To ensure the satisfactory provision of the boundary enclosures in the interest of safeguarding the privacy and amenity of future residents of the development and residential properties nearby.

- 5 Prior to any site development works a suitable Geo-Environmental Assessment must be carried out, with the Report(s) being submitted to the Planning Authority for approval. It should include details of the following:

- (i) A Preliminary Investigation incorporating a Phase I Desk Study (including site reconnaissance, development of a conceptual model and an initial risk assessment);
- (ii) A Ground Investigation comprising a survey of the extent, scale and nature of contamination, and an updated conceptual model of the site. It is required if the Desk Study has indicated that the site is potentially contaminated and the degree and nature of the contamination warrants further investigation;
- (iii) An appraisal of the remediation methods available and proposal of the preferred option(s).

The site investigation and risk assessment must be undertaken by suitably qualified, experienced and competent persons and must be conducted in accordance with the Environment Agency's Contaminated Land Report 11, Model Procedures for the Management of Land Contamination, CLR11.

If it is concluded by the written report that remediation of the site is not required, then Parts (a) and (b) of this Condition can be disregarded.

(a) Prior to any works beginning on site (and where risks have been identified), a detailed Remediation Statement should be produced that shows the site is to be brought to a condition suitable for the intended use by the removal of unacceptable risks to all relevant and statutory receptors. The Statement should detail all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. It should also ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development. The Statement must be submitted to the Planning Authority for approval.

(b) Following completion of the measures identified in the approved Remediation Statement, a Validation Report should be submitted that demonstrates the effectiveness of the remediation carried out. It must be approved by the Planning Authority prior to commencement of the new use of the land.

In the event of the presence of any previously unsuspected or unforeseen contamination of the land of the application site being found, development shall not begin, or shall cease to continue, until further investigations have been carried out to determine if any additional remediation measures are required.

Reason:

To ensure that the site is clear of contamination and that remediation works are acceptable.

- 6 The flatted building hereby approved shall be provided with communal drying green space in accordance with the details shown for such space on drawing number PL(01) Revision E titled 'Site Plan Phase 2A'. The communal drying green space shall be formed and made available for use prior to the occupation of the flats on plots 210, 211, 212 and 213, and shall thereafter be retained and available for such use unless otherwise approved in writing by the Planning Authority.

Reason:

In the interest of the amenity of the neighbouring residential properties and to minimise the environmental impact of the development.

- 7 Prior to the occupation of the flats hereby approved, the bin storage facilities for those flats as shown on docketed drawing number PL(01) Revision E titled 'Site Plan Phase 2A' shall be formed and made available for use.

Reason:

To ensure adequate provision for refuse/recycling storages and in the interest of the visual amenity of the area.

- 8 All new planting, seeding and turfing as detailed on drawing numbers MMLM2 104.22 SL-01 Revision C, MMLM2 104.22 SL-02 Revision A and MMLM2 104.22 SL-03 Revision A docketed to this planning permission shall be carried out in the first planting season (between November and February) following the completion of the development hereby approved. Any new trees, shrubs, plants or hedging 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 and to enhance the biodiversity of the site.

- 9 Prior to commencement of development hereby approved a Surface Water Management Plan (SWMP) for the site shall be submitted to and approved by the Planning Authority. The SWMP shall include details on how surface water and attenuation water on site will be managed and shall demonstrate that the level of protection to be attenuated will ensure that there will be no flooding at a 1 in 200 year plus climate change flood event.

The development shall thereafter be carried out in strict accordance with the Surface Water Management Plan and details so approved, unless otherwise agreed in writing with the Planning Authority.

Reason:

To ensure that development is not at risk from flooding, there is no increase in flood risk elsewhere and appropriate long-term maintenance arrangements are in place.

- 10 The residential scheme of development shall comply with the following transportation requirements:

(i) all roads and paths shall conform to East Lothian Council Standards for Development Roads and, in particular, all paths and footways shall have a maximum longitudinal gradients of 5%;

(ii) driveways shall have minimum dimensions of 6 metres by 3 metres. Double driveways shall have minimum dimensions of 5 metres width by 6 metres length or 3 metres width by 11 m length. Pedestrian ramps to houses may encroach by up to 300mm on the width (but not the length) provided they are no greater than 150mm in height above the adjacent driveway surface;

(iii) within private parking areas, the minimum dimensions of a single parking space shall be 2.5 metres by 5 metres. All visitor parking spaces within these areas shall be clearly marked for visitors with the remaining private parking spaces allocated to individual dwellings;

(iv) all prospectively adoptable parking bays (i.e. that will form part of the public road) shall have minimum dimensions of 2.5 metres by 6 metres. This can be reduced to a minimum length of 5 metres on the proviso that there is adequate road space to manoeuvre in adjacent to the parking bay;

(v) vehicle accesses to private parking areas (i.e. other than driveways) shall be via a reinforced footway crossing. Within private parking areas, the minimum dimensions of a single parking space shall be 2.5m by 5 metres. The circulation lane should be 6 metres wide for nose-in parking - a narrower lane is acceptable for echelon parking;

(vi) all path and footway connections from a zone under construction to the existing settlement shall be constructed to an adoptable standard before the occupation of any units in that particular zone;

(vii) prior to commencement of development, a Factoring Plan shall be submitted clearly indicating the different responsibilities for long-term maintenance including: private and shared private areas, factored areas, and prospectively adoptable roads; and

(viii) a Travel Information Pack with information for residents to encourage use of sustainable modes of transport such as trains, buses, cycling and walking shall be submitted to and approved by the Planning Authority prior to construction commencing. The Travel Information Pack will include local bus and train timetables, local cycling and walking maps, information on bike hire/car sharing, and shall include details of how it will be distributed to residents.

Reason:

In the interests of pedestrian and road safety.

- 11 Prior to the commencement of development, a Construction Method Statement to minimise the impact of construction activity on the safety and amenity of the area shall be submitted to and approved by the Planning Authority. Construction access to the site will not be permitted via the Knox Place junction onto West Road or via Clerkington Road/Park Lane'. The Construction Method Statement shall recommend mitigation measures to control noise, dust, construction traffic (including parking, routes to/from site and delivery times) and shall include hours of construction work.

The recommendations of the Construction Method Statement shall be implemented prior to the commencement of development. Development shall thereafter be undertaken in accordance with the details so approved, unless otherwise approved in writing by the Planning Authority.

Reason:

To minimise the impact of construction activity in the interests of the amenity of the area.

- 12 No work shall be carried out on the site unless and until an effective vehicle wheel washing facility has been installed in accordance with details to be submitted to and approved by the Planning Authority prior to its installation. Such facility shall be retained in working order and used such that no vehicle shall leave the site carrying earth and mud in their wheels in such a quantity which causes a nuisance or hazard on the road system in the locality.

Reason

In the interests of road safety.

- 13 Prior to the commencement of development, details of the provision of new car charging points and infrastructure for them shall be submitted to and approved in writing by the Planning Authority. At least one dedicated EV charging point shall be provided per dwelling, unless otherwise agreed in writing by the Planning Authority.

The details shall include a timetable for implementation and confirmation of applicant engagement with electricity providers to ensure that the entire electricity supply infrastructure will have sufficient capacity to enable all charge points to operate simultaneously at maximum rated power or via a load management system.

Development shall thereafter be carried out in accordance with the details so approved.

Reason:

To minimise the environmental impact of the development.

- 14 Prior to the commencement of development, a report on the actions to be taken to reduce the Carbon Emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable technology for all new buildings where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

Reason:

To minimise the environmental impact of the development.

Signed .....

Councillor Norman Hampshire  
Convener of the Planning Committee



**MINUTES OF THE MEETING OF THE  
LOCAL REVIEW BODY**

**2A**

**THURSDAY 15 JUNE 2023  
VIA THE DIGITAL MEETINGS SYSTEM**

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**Committee Members Present:**

Councillor D Collins (Chair)  
Councillor S McIntosh  
Councillor J McMillan

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Mr M Mackowiak, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

None

**Declarations of Interest**

None

## **Introductory Statement by the Legal Adviser**

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning applications before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine an application today.

The Legal Adviser then invited nominations to chair the meeting. Councillors McMillan and McIntosh indicated that they would be content for Councillor Collins to chair the Local Review Body (LRB) on this occasion.

### **1. PLANNING APPLICATION NO. 22/01125/P: ERECTION OF GARDEN ROOM AND FORMATION OF DECKED AREA (RETROSPECTIVE) 14 RHODES COTTAGES, LIME GROVE, NORTH BERWICK EH39 5NL**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the first case related to application no. 22/01125/P: a review of the decision to refuse retrospective planning permission for the erection of garden room and formation of decked area at 14 Rhodes Cottages, Lime Grove, North Berwick. He provided details of the site and surroundings, confirming that although the property was not within a conservation area, it was however listed as being of special architectural or historic interest (Category B) as part of a group of properties at 7-14 Rhodes Farm Cottages. He then outlined the size and specification of the garden room and decked area referred to in the application.

The Planning Adviser stated that when the application was considered the development plan for East Lothian consisted of the approved South East Scotland and Strategic Development Plan (SESplan) and the adopted East Lothian Local Development Plan (LDP) 2018. There were no relevant policies of the approved SESplan relevant to the determination of this application. However, policies CH1 (Listed Buildings), and DP2 (Design) of the LDP 2018 were relevant to the determination of the application. Also material to its determination was Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, Scottish Ministers' policy on the historic environment as given in The Historic Environment Policy for Scotland (HEPS): April 2019 and Scottish Planning Policy (SPP) 2014. However, he reminded members that the SPP 2014 now no longer applied due to the approval of the National Planning Framework 4 (NPF4) on the 13<sup>th</sup> February 2023.

He then reviewed the planning case officer's report of handling which had accurately summarised five objections received to this application. The main grounds of objection were:

- (i) The garden room was too large and overwhelmed the garden and the adjacent cottage. The design of the garden room had no relationship with the vernacular architecture of the B listed cottages;
- (ii) The difference in ground levels meant the decking sat at a higher level and would allow for overlooking;
- (iii) The garden room was in open view from the Glen Golf Course and obscured the view of the end of the cottage;
- (iv) The garden room cut out light to the communal path;



- (v) It had been built to use as a holiday let;
- (vi) The building blocked light into neighbouring windows.

In his report, the case officer had noted that the building did not have a bathroom or kitchen and as such could not be used as separate accommodation to the house at present. Furthermore, the use of the garden room as a holiday let would require planning permission. Any application submitted would be assessed and determined on its own merits in accordance with the development plan unless material planning considerations indicated otherwise. After conducting a thorough planning assessment, the case officer concluded that the proposal did not comply with Policy CH1 (Listed Buildings) and Policy DP2 (Design) of the adopted LDP. Planning permission was therefore refused for the reasons set out in the original decision notice and the Planning Adviser outlined these reasons to members.

He then reiterated his earlier point that the SPP 2014 no longer applied following the approval of the NPF4 in February 2023. As a result, NPF4 Policy 7 Historic Assets and Places was now relevant to the determination of this application. Policy 7a, stated that development proposals with a potentially significant impact on historic assets or places would be accompanied by an assessment which was based on an understanding of the cultural significance of the historic asset and/or place. The assessment should identify the likely visual or physical impact of any proposals for change, including cumulative effects and provide a sound basis for managing the impacts of change. Proposals should also be informed by national policy and guidance on managing change in the historic environment, and information held within Historic Environment Records. The Planning Adviser concluded that there was no incompatibility between Policy 7 of NPF4 and Policy CH1 (Listed Buildings) of the current LDP.

The Planning Adviser then summarised the submission provided by the applicant which aimed to address the main objections to this application. The applicant stated:

1. The garden room was only marginally bigger than the room that was previously there. The area of decking had not increased at all.
2. The garden room did not obscure the view of the end of the cottages. Indeed from the 2nd fairway on the golf course the only building that obscured the view of the cottages was one built by the applicant's next door neighbour.
3. The garden room was in keeping with the building the applicant demolished and various other buildings within the Rhodes Cottages neighbouring buildings.
4. The garden room did not affect any light going into the applicant's neighbour's windows.
5. The garden room was never built to be a holiday let and will never be used as such. It is a seating area for leisure use of the owners of the cottage.
6. The trees were never cut back to enable construction. The applicant trimmed the trees recently in conjunction with their neighbours to cut back on pigeon droppings in the garden.
7. No one had used the room as yet and there would never be rowdy behaviour or unpleasant smells as had been suggested.
8. When the cottage was purchased it was in a state of disrepair and the garden room and associated decking were not fit for purpose. The applicant apologised for not seeking planning, stating that it was an oversight on their part. The applicant's builders did not realise planning was required due to the size of the outbuilding and that they were replacing what was already there with something similar in size.

9. There were a number of garden rooms/buildings within the Rhodes Cottages neighbouring buildings which were of a similar form and structure plus the garden room was not in a Conservation Area.
10. The applicant indicates that they have invested a considerable amount in building this garden room and associated landscaping which has been considerably improved and would respectfully suggest that you reconsider the decision taken by East Lothian Council Planning.
11. The garden room height is 2500mm and has an area less than 30 sq. m. in line with Planning guidelines.

The Planning Adviser concluded his presentation by summarising the further representation against the planning appeal, which had raised similar points to those previously summarised in the case officer report. He also reminded members that they had the option of seeking further information, if necessary.

The Planning Adviser responded to questions from Members. He confirmed that the garden room appeared to be higher than the 2.5 metres stated by the applicant. However, regardless of its size, it would require planning permission as the cottage was a Listed Building and the garden room would not be covered by permitted development rights. He advised that he had been unable to locate any planning applications for similar structures on neighbouring properties and that there had been numerous objections to this planning application. Replying to a question from the Chair, the Planning Adviser said that any application must be considered on its own merits due to the adjacent Listed Building, and he would not wish to speculate on the likely size of structure that might be permissible on this site.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor McIntosh said that the site visit had been very helpful in viewing the garden room against the setting of the Listed Buildings and their architecture. She found the garden room to be unsympathetic to the surrounding built environment and quite dominant; particularly when its height was compared to the height and slope of the roofs of the cottages. She considered it to be harmful to the architectural heritage of the Listed Buildings.

Councillor McMillan echoed his colleague's remarks and noted the very detailed report and reasons for refusal, all of which were emphasised when viewing the site. He commented on the location and character of the cottages and said that, in his view, the garden room was completely out of keeping with its surroundings. He noted the objections raised and that the applicant's submission gave no clear reason why the garden room should be considered suitable within this site. After reviewing all of the evidence, he concluded that the planning case officer had been right to refuse this application.

The Chair agreed with both her colleagues. She said that the size and scale of the garden room was inappropriate and did not fit with the architecture of the cottages. She also noted that during the site visit it had been clear that the structure blocked light to the neighbouring cottage windows and garden. Furthermore, the raised decking area would allow overlooking and would result in a loss of privacy for neighbours. While not used as a holiday let itself, she noted that the garden room was available for use by anyone

staying at the cottage and this would result in strangers looking into the neighbouring garden. She therefore agreed with the officer's original decision to refuse planning permission.

The members of the LRB confirmed their decision via roll call vote and agreed that the reasons for refusal were as set out in the original decision notice.

## **Decision**

The ELLRB agreed, unanimously, to refuse planning permission for the reasons set out in the original decision notice.

## **2. PLANNING APPLICATION NO. 22/01120/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS AT LAND WEST OF HOPRIG MAINS FARMHOUSE, GLADSMUIR, MACMERRY, EAST LOTHIAN**

The Chair noted the absence of a report from the rural and agricultural adviser, as highlighted by the planning officer, and asked members if they were minded to consider the application without this information.

Councillor McMillan asked if the Planning Adviser could confirm whether the report had been received. He said that having read the papers and visited the site, he was not sure that he could make a determination on the application without this important external evidence. He expressed his regret that this report was not yet available and suggested that efforts be made to secure this significant piece of evidence within the next 10 days.

The Planning Adviser informed members that the Council's Planning Service Manager had contacted the consultant who had confirmed that their report would be submitted within the next couple of weeks and, in any case, by the end of June. The Planning Adviser stated that, in his view, this report was required not just to consider the application but also to respond to earlier comments made by applicant's agent, who questioned the previous report prepared by the rural and agricultural adviser. He suggested that the applicant should have the opportunity to review the report, as well as the LRB members reviewing it as part of their further consideration of the application

The Legal Adviser informed the LRB members that, if they did not consider themselves able to make a determination today, the application should be adjourned pending receipt of the report. The date of the reconvened meeting would be set once the report was received and the applicant would be notified of today's outcome and the future meeting date. He added that, once the report had been received, the LRB members could consider whether, and how, the applicant should be given the opportunity to make further representation. This option was within the discretion of the LRB.

The Chair agreed that 10 days for receipt of the rural and agricultural consultant report seemed a reasonable timescale, and proposed the adjournment of the application pending receipt of this information.

Councillor McMillan welcomed the procedural advice from the Legal Adviser. He said it was incumbent on the consultant to provide their report as soon as possible, and that LRB reconvene as soon as possible.

Councillor McIntosh agreed with the proposal to adjourn pending receipt of the consultant's report.

In reply to a question from the Clerk, the Legal Adviser confirmed that the timing of the reconvened meeting would be subject to the applicant being given the opportunity to review the report.

The members of the LRB agreed to adjourn the application pending receipt of the report by the rural and agricultural adviser. The LRB would reconvene on a date to be agreed. This decision was confirmed by roll call vote.

### **Decision**

The ELLRB agreed, unanimously, to adjourn the application pending receipt of the report by the rural and agricultural adviser.

### **3. PLANNING APPLICATION NO. 22/01201/P: ERECTION OF 1 HOUSE AND ASSOCIATED WORKS AT LAND ADJACENT TO FORMER WILLOW RISE, STENTON, EAST LoTHIAN**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed members that the second case related to application no. 22/01201/P: a review of the decision to refuse planning permission for the erection of 1 house and associated works on the land adjacent to former Willow Rise, Whittingehame. The application site was located to the east of Whittingehame House – a category A Listed Building - and was within the Whittingehame House Designed Landscape. The application was submitted on 18<sup>th</sup> November 2022 and the decision to refuse it was issued on 20<sup>th</sup> January 2023.

He noted that the planning case officer's report of handling had accurately described the site, its surroundings, and the proposed house with its associated infrastructure. The case officer had also set out the planning history of the adjoining site which was known as Willow Rise (formerly the Old Schoolmasters House). The Planning Adviser provided a detailed summary of that site's planning history, including previous applications and an enforcement investigation. He advised that in June 2020, planning permission was refused for application 20/00169/P - the erection of 1 house, triple garage and associated work on the site of the former Old School Master's House (now known as Willow Rise), Whittingehame. This refusal was appealed to the Scottish Government and, in January 2021, the appeal was allowed and planning permission was granted for the proposed house and associated works. In making the decision, the Reporter had acknowledged that the proposed house did not accord with Policy DC3 of the adopted East Lothian Local Development Plan 2018, as there was not a house on the site at the time the application was made. However, the fact that there had previously been a house on the site and therefore the site was a brownfield site together with the benefit of removing unsightly structures from the site which was within a designed landscape were sufficient material considerations that justified overturning the refusal of planning permission. The works on the consented house had since commenced and the planning permission remained live.

The Planning Adviser explained that the application under consideration – 22/01201/P - had been made by the same applicant that submitted planning application 20/00169/P. The site boundary partially overlapped the south boundary of the site, the subject of planning permission 20/00169/P, in two small areas. However, the house and triple garage were located out with the boundary of the current application site. The proposed house would be located approx. 70 meters away from the north eastern corner of the

site that was approved in 2021. The site of application 22/01201/P was considerably larger than the site of application 20/000169/P and measured approximately 193m in depth (east to west) and 131m in width at it widest. The site narrowed to 21.5m on the west boundary where it met the road.

He then turned to the relevant planning policies as outlined in the case officer's report of handling, namely: Policies DC1 (Rural Diversification), DC3 (Replacement Dwelling in the Countryside), DC4 (New Build Housing in the Countryside), DC5 (Housing as Enabling Development), DC9 (Special Landscape Areas), CH1 (Listed Buildings), CH6 (Garden and Designed Landscapes), DP2 (Design), T2 (General Transport Impact), NH7: Protecting Soils, NH8 (Trees and Development) and NH10: SUDS of the adopted East Lothian Local Development Plan 2018. Section 59 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Scottish Government's policy on development affecting a listed building given in Scottish Planning Policy: June 2014. The case officer also considered the HES guidance: Managing Change 'Setting' as relevant in the determination of the application, along with the Special Landscape Areas SPG of the adopted East Lothian Local Development Plan 2018.

In his original report, the case officer had acknowledged that Revised Draft National Planning Framework 4 (NPF4) had been published by the Scottish Government on 8<sup>th</sup> November 2022, and that it must be approved by the Scottish Parliament before it could be adopted by Scottish Ministers. The existing National Planning Framework 3 and Scottish Planning Policy 2014 would remain in place until NPF4 had been adopted by Scottish Ministers. The Planning Adviser reminded members that NPF4 was adopted on 13<sup>th</sup> February 2023. However, this application had been refused on 20<sup>th</sup> January 2023; prior to the commencement of NPF4.

In his report, the planning case officer had summarised 16 letters in support of the application and one comment received from a member of the public. He had also included a detailed summary of comments submitted by Historic Environment Scotland (HES) who were the statutory consultees for category A listed buildings. The HES submission had raised a number of concerns about the harmful impacts of the proposed new house on the historic parkland and the setting of the category A listed Whittingehame House. Consequently, HES had objected to the application considering it to be harmful to the setting of Whittingehame House; and having a significant adverse impact on the Whittingehame Inventory garden and designed landscape.

The Planning Adviser confirmed that the application had been refused for the reasons set out in the decision notice and he outlined these reasons for members.

He then summarised the very detailed appeal submission provided by the applicant. This submission highlighted that the applicant disagreed with the reasons for refusal of planning permission. It also stated that the application was processed without due consideration of all the available evidence and was unbalanced in terms of material considerations. The submission stated that the Council had used SPP 2014 as its reference point in relation to the adopted Local Development Plan 2018 policies, and as a material consideration in its own right as part of this decision. However, transitional arrangements issued by the Chief Planner confirmed that SPP 2014 was no longer Scottish Planning Policy, and its provisions were therefore nullified. The applicant also noted that the Council had taken no account of NPF4.

For clarity, the Planning Adviser highlighted that the Chief Planner's letter stated "NPF3 and SPP 2014 will no longer represent Scottish Ministers' planning policy and should not therefore form the basis for, or be a consideration to be taken into account, when determining planning applications on or after 13<sup>th</sup> February."

The applicant's submission went on to provide a rebuttal of all 7 reasons for refusal. The applicant also referred to NPF4 and a number of its policies which, in his opinion, the proposal complied with. The planning case officer had also provided a further assessment of NPF4. The Planning Adviser summarised the arguments put forward by both the applicant and case officer in relation to the key policies highlighted, which were:

- Policy 9 - Brownfield, Vacant and Derelict Land
- Policy 17 - Rural Homes
- Policy 29 - Rural Development
- Policy 4 – Natural Places
- Policy 5 – Soils
- Policy 6 – Forestry, Woodland and Trees

It noted that the applicant had not addressed Policy 7 – Historic Assets and Places.

The applicant's submission also included additional letters of support from three companies involved in the previous work on the site. These letters included further information regarding the sequence of the historic work on the site of the Old Schoolmasters House, ground condition and drainage on the said site, and quality of agricultural land on the site.

The Planning Adviser concluded his summary of the case by outlining the revised reasons for refusal set out in the planning case officer's additional statement. The original seven reasons for refusal, with the exception of condition 5, were considered appropriate and had been amended to take account of now adopted NPF4 policies where appropriate. The original reason 5, relating to prime agricultural land, was replaced with a reason relating to NPF4 Policy 5 Soils. Reasons 8-10 were in addition and required in relation to NPF4 Policy 3 (Biodiversity), Policy 13 (Sustainable transport part b), Policy 15 Local Living and 20 minute neighbourhoods and Policy 16 Quality homes, part F.

The Planning Adviser also reminded members that they had the option of seeking further information.

The Planning Adviser responded to questions from Councillor McIntosh. He confirmed that the planning permission for application 20/00169/P on the adjacent site remained live and, should this application be granted, there was the possibility of having two houses with 2 triple garages on these sites. He added that there was no mechanism to revoke the previous planning permission and confirmed that the replacement of a previous dwelling related to application 20/00169/P and not the application before the LRB today.

Replying to a question from Councillor McMillan, the Legal Adviser confirmed that it was for the LRB members to decide whether they required any additional representations. The statement by the applicant 'reserving the right' was, in the view of the Legal Adviser, to cover himself should he be asked to provide further information. The Legal Adviser reminded the LRB members that the information they must use to reach their decision on the application was the information that was available to the planning officer at the time of his decision, subject to any material changes that may have occurred in the interim; the adoption of NPF4 was one such example. However, he pointed to the Planning Adviser's presentation which had included a detailed review of the impacts of NPF4. He reiterated that it was for the LRB members to be satisfied that they had sufficient information to determine the application.

The Chair asked her colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor McMillan said that members had been presented with a large amount of evidence, of which the site visit had been a key part. He disagreed with the applicant's assessment of the policies within NPF4 as they related to community need and sustainable, viable development. He noted the references, in both the planning officer's and applicant's submissions, to local characteristics and said that these had been demonstrated very clearly during the site visit and were worth protecting. He expressed disappointment that planning permission had been granted for the other site but noted that the house on that site would be less prominent and less visible. He agreed with the views of Historic Environment Scotland (HES) that allowing a new build, modern house in this location would destroy the historic and local characteristics of the site and surroundings, and that what was proposed was simply not in the right place. He was satisfied that the terms of NPF4 had been fully considered, and he fully supported the officer's refusal of planning permission.

Councillor McIntosh agreed with Councillor McMillan. She had found the site visit constructive in showing the characteristics of both sites. She noted the pastoral character of the location and the idyllic views, as well as important heritage which, in her view, should be preserved. She said that due weight should be given to the comments and objections raised by HES, particularly in relation to potential damage to the roots of the historic trees. She considered that the applicant's only justification - that this proposal constituted a replacement dwelling - did not stand up to logic, as there was already permission for a replacement build on the adjacent site and preparatory work had begun. For these and other reasons, she supported the planning officer's decision.

The Chair said that her comments would relate mainly to aspects of NPF4. She was of the view that there had never been a dwelling on the proposed site and therefore what was proposed was a new build rather than a replacement. Furthermore, the location of the site was agricultural land and since the 1940s had been used to grow cereals and to graze livestock. She noted that the eucalyptus trees, only 4 of which remained from planting in the 1880s, had adapted to their surroundings over time and had been given their own genus. Such unique trees required protection; the plans to put a driveway over the roots would crush them and destroy the trees. She considered that the proposals within the application were not complementary to the existing architecture of Whittingehame House; and that the site itself was in the countryside rather than part of a settlement. For all these reasons and those stated by colleagues, she supported the planning officer's refusal of the application.

The members of the LRB confirmed their decision via roll call vote. They also confirmed that the reasons for refusal should be those contained in the original decision notice, as amended by the Planning Adviser.

## **Decision**

The ELLRB agreed, unanimously, to dismiss the appeal and to refuse planning permission for the reasons set out below:

1. The application site is greenfield land in a natural state, is not allocated for development in the LPD nor is it supported by policies in the LDP. There is no building on this site and there has never been a dwelling on this site therefore there can be no

replacement dwelling. As no case has been made for the proposed house to meet an agriculture, horticulture or forestry need. No other operational need has been advanced to justify the erection of a house on the application site in this countryside location, the proposal is not for enabling development and is not a replacement dwelling in the countryside therefore the proposal is contrary to Policies DC1, DC3 and DC4 of the adopted East Lothian Local Development Plan 2018 and NPF4 policies Policy 9 Brownfield, vacant and derelict land and empty buildings part b) and all parts of Policy 17 Rural homes.

**2.** The proposed development would have an unacceptable adverse impact on the historic interest of the parkland which forms an integral part of the setting of the category A listed Whittingehame House. As a form of development that would be harmful to the setting of the Category A Listed building the proposed house, triple garage and associated works is contrary to section 59 of the Planning (Listed Buildings and Conservation Areas Act) 1997, Policy CH1: Listed Buildings of the adopted East Lothian Local Development Plan 2018, NPF4 Policy 7 c) and Historic Environment Scotland Managing Change in the Historic Environment guidance notes relating to 'Setting'.

**3.** The proposal would have a significant negative impact on the Inventory Garden and designed landscape and the parkland setting of the house. Therefore, the proposal is contrary to Policy CH6: Gardens and Designed Landscapes of the adopted Development East Lothian Local Plan 2018 and NPF4 Policy 7 i).

**4.** The proposal would harm the parkland landscape character of the area and conflicts with guidelines within the Statement of Importance for Whittingehame to Deuchrie Special Landscape Area (SLA 8). The development is not located to minimise the adverse impacts on the landscape and there are no public benefits which outweigh this consideration. The loss of 1.75ha of countryside to residential use will unacceptably harm the natural environment. The proposed development, by nature of its location within Whittingehame to Deuchrie Special Landscape Area, its siting, design, materials and size would harm the estate and the wider landscape. There are no social, environmental or economic benefits which outweigh this conclusion. The proposal is therefore contrary to Policy DC9: Special Landscape Areas and Policy DP1: Landscape Character of the adopted East Lothian Local Development Plan 2018 and NPF4 Policy 4 Natural Places parts a) and d).

**5.** Policy NPF4 Policy 5 a) supports development which is in accordance with the mitigation hierarchy by first avoiding and then minimising the amount of disturbance to soils on undeveloped land. The mitigation hierarchy requires development to avoid, minimise, restore and offset the impact on soil. The proposal develops the whole site, does not include any restoration or offsetting of impact, and is therefore contrary to NPF4 Policy 5 Soils part a).

**6.** The current proposed driveway route is unacceptable in respect of adverse impact on trees as it will lead to damage to their roots leading to damage to their health and structural stability and ultimately the historic parkland trees would be lost. The proposal is contrary to Policies NH8: Trees and Development of the adopted East Lothian Local Development Plan 2018 and NPF4 Policy 6 Forestry, woodland and trees part b).

**7.** The overall appearance of the house is of a large modern house designed without reference to its historic context. This design would be more appropriate within a modern housing estate and fails to understand the context of the designed landscape and the built structures within the Whittingehame estate. In this context the proposed house is inappropriate to its setting and out of keeping with its surroundings contrary to Policies



DP1 and DP2 of the adopted East Lothian Local Development Plan 2018 and Policy 14 Design, quality and place a), b) and c).

**8.** The proposal does not accord with a number of spatial and environmental policies within the LDP and NPF4 and is not a sustainable form of development or in a suitable location to mitigate the climate impact. The proposal would significantly harm the natural environment and is contrary to NPF4 policy 1 and NPF4 policy 2 a).

**9.** The proposal includes a large house, large garaging and extensive driveway and roundabout and proposes to change the use of the entire 1.75ha of greenfield to residential use. The proposal is contrary to NPF4 policy 3 which requires biodiversity enhancements and a nature based solution amongst other considerations.

**10.** The application site is outwith the existing settlements and is not served by a public road, segregated cycle route or adopted footway. NPF4 and the LDP seek to locate new dwellings in locations which encourage local living and interconnectivity, active travel to local services including public transport. The occupants and visitors to the dwelling will be reliant upon vehicular access and this is not in accordance with Policy 13 Sustainable transport part b), Policy 15 Local Living and 20 minute neighbourhoods and Policy 16 Quality homes part f)

Signed .....

Councillor Donna Collins  
Chair of Local Review Body (Planning)





**MINUTES OF THE MEETING OF THE  
LOCAL REVIEW BODY**

**THURSDAY 20 JULY 2023  
VIA THE DIGITAL MEETINGS SYSTEM**

**2B**

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**Committee Members Present:**

Councillor J Findlay (Chair)  
Councillor L Allan  
Councillor A Forrest

**Advisers to the Local Review Body:**

Mr C Grilli, Legal Adviser to the LRB  
Ms J Squires, Planning Adviser to the LRB

**Clerk:**

Ms F Currie, Committees Officer

**Apologies:**

None

**Declarations of Interest**

None

### **Introductory Statement by the Legal Adviser**

The Legal Adviser outlined the procedure for the Local Review Body to reach a decision on the planning applications before it and reminded them that further advice would be provided on procedure, should they conclude they did not have enough information to determine an application today.

The Legal Adviser then invited nominations to chair the meeting. Councillors Allan and Forrest indicated that they would be content for Councillor Findlay to chair the Local Review Body (LRB) on this occasion.

#### **1. PLANNING APPLICATION NO. 22/01273/P: ERECTION OF FENCE (RETROSPECTIVE), VIEWFIELD, HUNTLAW ROAD, PENCAITLAND EH34 5AG**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that the first case related to application no. 22/01273/P; a review of the decision to refuse retrospective planning permission for the erection of a fence at Viewfield, Huntlaw Road, Pencaitland. She provided details of the application and its site and surroundings.

The Planning Adviser reminded Members that the application must be determined in accordance with the development plan unless material considerations indicated otherwise. The development plan at the time of the application consisted of the South East Scotland Strategic Development Plan (SESPlan) and the adopted East Lothian Local Development Plan (the LDP), with National Planning Framework 4 (NPF4) being a material consideration. The development plan now consisted of the LDP and NPF4, which came into force in February 2023.

She noted that no representations were made by the public on this application and that the Council's Road Services team were consulted and had no objections.

She then summarised the relevant planning policies, which were: LDP Policy RCA1 – Residential Character and Amenity; LDP Policy DP1 - Landscape Character and LDP Policy DP2 – Design (part 1) and (part 3).

In their report, the planning case officer had noted that the house and fence were visible from Huntlaw Road, and also Lempockwells Road, a route out of Pencaitland to the south. Due to its height, close boarded form, and roadside positioning the fencing was considered much more prominent and imposing in character than the enclosures of other front gardens in this part of Huntlaw Road. As a result, it was not considered to be appropriate to its setting and was out of keeping with the other boundary treatments, contrary to Policy DP2. It was further considered that the fencing would set a harmful precedent for allowing the addition of similar forms of fencing in this residential area.

The application was therefore refused for two reasons. The first being that the fence was not appropriate its setting and is harmful to the character and appearance of the area contrary to Policy DP2 of the LDP, and secondly would set a harmful precedent, also contrary to LDP Policy DP2.

The applicant, in their original application, stated that before erecting the fence they removed a substantial hedge. They had supplied photographs of the hedge, which showed it to be about the same height as the lighting column in front of the house. The applicant stated that they built the fence to protect their award winning dogs from theft, and to prevent them jumping out of the garden. The applicant stated that the fence gave their neighbours a better outlook and more light. The applicant noted that a laurel hedge and climbing plants had been planted.

The case officer had provided their views on the effect of the adoption of NPF4 subsequent to their determination of the application. They considered that Policy 16 Quality Places applied. The case officer considered the proposal would not comply with Policy 16g of NPF4, as it detrimentally affected the character of the house and the surrounding area.

The Planning Adviser agreed with the case officer in considering that the fence was contrary to LDP Policy DP2; as firstly it was not appropriate to its location due to its height and form; secondly its positioning due to how it sat behind the existing wall as there were then two separate boundary features of different appearance, and thirdly contrary to usual practice the fence posts were on the outer side of the fence which was unattractive and did not help to provide a sense of welcome, safety and security.

Policy DP1 Landscape character required development to be well integrated into its surroundings. As noted earlier, although there was a diversity of boundary treatments in the area, they were unified by their height of around 1m or lower. The Planning Adviser also agreed with the case officer that the fence was not appropriate to its location contrary to DP2; and that it was not consistent with NPF4 Policy 16g as the case officer had set out.

The Planning Adviser then considered the applicant's appeal submission which argued that the case officer did not take sufficient account of the planting of laurel and climbers. A photograph had been submitted showing laurel, which was evergreen and shade tolerant, planted between the wall and the hedge. While this could grow to cover the fence, the fence would be visible in the surrounding area throughout such a growth period. The available growing space between the fence and the edge of the footway was narrow and it could not be certain that the hedge would grow or survive. The hedge may never therefore obscure the fence. In those circumstances, if consent were granted, it would not be reasonable to seek removal of the fence.

However, should the Members be minded to allow this appeal, she recommended a condition requiring a landscaping plan to be submitted for approval by the planning authority within 2 months of consent being issued as planting may improve the appearance of the proposal.

As part of their submission, it was noted that the applicant had also stated that the fence was an improvement on the previous substantial hedge. As this hedge had now been removed, whether or not the fence was an improvement was not a material consideration. Similarly, the needs of the dogs was not a material consideration.

The Planning Officer concluded that she considered the proposal contrary to LDP Policies DP1 and DP2, and NPF4 Policy 16. Furthermore, she did not consider there were any material considerations which would indicate that planning permission should be determined other than in accordance with the development plan.

The Planning Adviser concluded her presentation by reminding Members that it was open to them to refuse the application for the same reasons as set out in the original

decision or for other reasons; to grant the application in whole or in part; or to grant the application with conditions.

The Planning Adviser responded to a question from the Chair. She confirmed that a condition could be added to planning permission, if granted, requiring a hedge or climbers to be planted and maintained to improve the appearance of the fence.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest said that the site visit had been very helpful, as had the photographs provided. He was concerned that the fence extended beyond the end of the house, although he noted that it appeared well built and mainly took in the rear garden. He said he had seen fences elsewhere which fully encircled a house and garden resulting in the property looking like a fortress. He was of the view that to grant planning permission in this case would set an unhelpful precedent and he was therefore minded to refuse the application.

Councillor Allan felt that a case-by-case approach was appropriate here, although she understood the need for a uniform policy. She noted that the fence would be hidden by foliage after a short period of time and would not be out of place, as there were hedges of differing heights close by. While she acknowledged that, at present, the fence did have an impact, she felt it would blend in reasonably well when covered by foliage. She was minded to go against the decision of the case officer and to grant planning permission.

The Chair said he could understand why the case officer had reached their decision. However, he felt it was important to note that if the hedge was grown up it would cover the fence. It was also important to note that there had been no objections from neighbours. While he was minded to grant planning permission, he would like to make it a condition that the hedge was planted and grown up to at least the height of the fence. He sought further advice from the Planning Adviser on this point.

The Planning Adviser confirmed that it would be valid to add a condition asking the application to plant a hedge and seek to grow it to the height of the fence. Whether this planting would be successful was unknown. She added that it would not be appropriate to enforce removal of the fence, if the landscaping failed.

Councillor Allan confirmed that she would support the addition of a landscaping condition.

Councillor Forrest indicated that he opposed both the application and the suggested condition.

The members of the LRB confirmed their decision via roll call vote.

## **Decision**

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following condition:

1. No later than 2 months after the issue of this consent, a Landscaping Scheme shall be submitted to the Planning Authority for approval. The aim of this scheme will be to

obscure the fence from views from Huntlaw Road using suitable species of climbing plants and evergreen shrubs. The Landscaping Scheme must include full details of all shrub and climber species with siting and planting distances, and a maintenance plan. Thereafter the Landscaping Scheme shall be implemented unless otherwise agreed by the Planning Authority. Should the landscaping fail to achieve its aim of obscuring the fence within three years of the issue of this consent, or after this fail so that the aim is no longer achieved, within two months of a request by the planning authority, a revised Landscaping Scheme shall be submitted for approval of the planning authority and thereafter implemented.

The approved Landscaping Scheme shall thereafter be maintained as approved unless otherwise agreed by the Planning Authority.

*Reason*

*To ensure establishment of landscaping to avoid adverse impact on the character and amenity of Huntlaw Road that would otherwise arise from the erection of the fence.*

*Meeting Note: There were three brief breaks in connection affecting officers and Members during Item 2.*

**2. PLANNING APPLICATION NO. 23/00081/P: ERECTION OF CAR WASH FACILITIES AND ASSOCIATED WORKS, LAND AT FORMER OAK TREE SERVICES, HADDINGTON, EAST LoTHIAN**

The Chair invited the Planning Adviser, who had had no involvement in the original decision, to present a summary of the planning policy considerations in this case.

The Planning Adviser informed Members that this case related to application no. 23/00081/P; a review of the decision to refuse planning permission for the erection of car wash facilities and associated works on land at the former Oak Tree Services, Haddington. She provided details of the application and its proposed site and surroundings.

She reminded Members that planning applications should be determined in accordance with the development plan for the area unless material considerations indicated otherwise. The development plan for the area consisted of the East Lothian Local Development Plan and National Planning Framework 4.

She noted that two letters of representation were received to the planning application, one objection and one comment. Responses to the application were also received from the Council's Roads Services, Environmental Health, Landscape, and Flooding, as well as from Transport Scotland.

The Planning Adviser summarised these responses. Roads Services had not supported the proposal as they considered it would have a negative impact on road safety due to drivers from the west turning into the site and drivers queuing from the east. In addition, as the major part of the site was part of the adopted road network the applicant would require a Stopping Up Order which was unlikely to be supported by Roads Services due to the road safety concerns raised.

Environmental Health had raised concerns about emission of spray from the site. The Landscape Officer had sought protection for trees on site, avoidance of use of spiny hedging species and a condition to prevent advertising boards. They had also sought re-

location of the buildings noting that the retail park was designed to minimise visual impact on this view which the officer considered important.

The Planning Adviser then summarised the planning case officer's assessment of the application against planning policy. They had noted that the proposal was located in the countryside and was not of a type that was supported by Policy DC1 of the LDP as there was no operational requirement for a countryside location, nor NPF4 Policy 26 as it had not been shown there were no suitable alternative business or employment sites. They found some support for the proposal in NPF4 Policy 29 which sought to encourage rural economic activity. However, they did not find that it met that policy's requirements on design, as they considered the site was an attractive gateway into Haddington, and the proposal would detract from its character. They also considered it contrary to LDP Policies DP1 and DP2 on Landscape Character and design. Due to its effect on road safety, they considered it contrary to Policy T2 of the LDP.

The proposal was therefore refused for the reasons given in the Decision Notice, namely principle of the use, siting and design, and road safety.

The Planning Adviser then turned to the applicant's Review Statement in which they stated that this was an ideal location for this use as it was, in their view, a dilapidated brownfield site on the fringe of the recently completed Haddington Retail Park. The use would not conflict with any surrounding land use, nor were there any nearby houses. The business would benefit from customers to the retail park, hospital and others. The statement added that existing customers travelled from Haddington to Dunbar which was not very sustainable. Addressing the reasons for refusal, the applicant stated that no one would conclude that this site was located in the countryside. Policy DC1 and Policy 26 should be put to one side and the benefits of the proposal considered. The service was needed, would provide jobs and contribute to local living.

The applicant did not consider the site an attractive green gateway site into Haddington due to its characteristics. The retail park had already compromised the sense of arrival. The proposal was in keeping with the character of the area as it backed onto a filling station. The proposals would improve the existing site and its landscaping would aid its integration into the area.

The applicant considered that the site could be accessed safely, referring to their submitted Transport Statement. This stated that the road was not at capacity and the increase in volume of cars would be negligible. The location next to the roundabout was not considered problematic as traffic was slow and sightlines sufficient. Queuing traffic was unlikely as the site was long and people would not join the queue if the wait was that long. The applicant would agree to a road safety audit as a condition of permission to allay concerns and, if necessary, install mitigation. They considered that signage and land arrangements could be implemented to ensure this was enforced.

The applicant stated that there had been strong support in the area for this proposal, and provided an appendix of numerous comments made to an article in the East Lothian Courier on Facebook, mostly supportive. However, the Planning Adviser observed that these should not be afforded the same status as representations made to the planning application as there was no way to verify them.

The Planning Adviser agreed that the policies applied by the case officer were relevant. In addition, she considered that NPF4 Policies 1, 2, 3 and 14 should also have been considered and set out her reasoning for this. She noted that the applicant had not provided a systematic assessment of how the proposal was designed and sited to minimise lifecycle greenhouse gas emissions, nor how biodiversity had been enhanced.



It was therefore not clear that the requirements of this policy had been met. It was the Planning Service's current practice to address greenhouse gas emissions by use of a condition requiring a report and subsequent implementation. She considered that it would also be possible to secure biodiversity enhancements through a condition of any planning permission in this case.

The Planning Adviser considered the reasons given for refusal to be the determining issues with this application. As to the principle of the use, this use was not acceptable under DC1 or Policy 26, though Policy 29 gave some support. For the second reason for refusal, she agreed that the site was part of an important gateway into Haddington and that this proposal did not meet design policies, including NPF Policy 14. The Road Services officer did not support the application on road safety grounds, having considered the Transport Statement, and she would defer to their expertise in this matter.

As a sui generis use, the need for a serviced car wash in Haddington had not been considered through the development plan. This was therefore a material consideration. She do not consider that this outweighed the provisions of the development plan.

The Planning Adviser concluded her presentation by noting that the case officer had provided suggested conditions which should be applied should the Members wish to allow the appeal; and these conditions were, in her view, appropriate. In addition, she recommended a condition to secure biodiversity enhancement and the Council's standard condition on carbon emissions, as previously mentioned. She would also recommend a condition requiring a Road Safety Audit, as the applicant had offered.

The Planning Adviser responded to questions from Members. She advised that Road Services could not provide any mitigation measures for vehicles turning left out of the site or turning left into the site and queueing on the A199. Road Services had provided no comment on whether they could enforce a right hand turn into/out of the site. The Road Services officer had commented on driver decisions and conflict and had indicated that it would not be possible to design the entrance in a way to prevent drivers entering/exiting the 'wrong' way.

The Planning Adviser confirmed that, while site layout drawings had been submitted for the rear of the site, these were not available to view. She added that any enforcement issues would be for colleagues within Planning Enforcement to determine but, at present, there were no enforcement cases ongoing against the applicant. She agreed that it would be reasonable to add a condition on signage requesting that waiting drivers switch off their engines, and perhaps asking the operator to report on this aspect.

The Legal Adviser indicated that enforcing such a condition and the applicant's ability to monitor drivers and report back could be a challenge. He was also not convinced that signage would achieve what the Members intended.

The Chair asked about a condition asking for a structural survey in relation to the bund. In reply to further questions, the Planning Adviser said it had not been demonstrated through the application that the bund was capable of withstanding the operations and the Council's Flooding & Structures officer had not commented on this aspect. Planning permission should not be granted if Members were in any doubt about this. However, a condition could be added to planning permission asking for work to be done to ensure the stability of the bund. She indicated that whether any such work on the bund would require access from neighbouring land, and therefore permission from the landowner, would be a question for a civil engineer.

The Chair asked his colleagues to confirm that they had attended the site visit and if they were satisfied that they had sufficient information before them to determine the application. They confirmed this to be the case.

The Chair then invited Members to give their views on the application.

Councillor Forrest said the site visit had been very helpful. He did not think the site was wrong for the purpose (of a car wash) but he had concerns about how drivers would enter/exit the site. From a road safety point of view, he did not think the site was appropriate and for this reason he would be not be supporting application.

Councillor Allan said she was also concerned about road safety but felt that the design of the entrance/exit would address these problems. The proposal would provide a local service for people currently having to travel to Dunbar and would take some of the traffic away by keeping the service local. While she would be interested in the view of a civil engineer, she felt the issues could be resolved and she was minded to support the application.

The Chair said he did not consider the site to be a countryside location and he felt that the entrance into Haddington had already been spoiled. He acknowledged the concerns about road safety but noted that there were a number of places, such as the Jet station on the Haddington bypass, where the right turn into the site seems to work well. He felt that signage regarding switching off engines and a structural survey should be conditions of planning permission but he was minded to support the application.

The Legal Adviser reminded Members that the Planning Adviser had indicated that if they felt that a structural survey was required, they should not grant planning permission today but adjourn for this further information to be provided by the applicant. The Planning Adviser clarified that it would depend on whether Members felt that it would be possible to be done. If they were unsure if it was possible, they should adjourn. If they felt it would be possible but needed to know how it would be done, then they could grant planning permission subject to conditions.

The members of the LRB confirmed their decision on the application via roll call vote. The also considered the questions of conditions in some detail and agreed the addition of a number of conditions, with wording to be confirmed by the Planning Adviser, in consultation with the Legal Adviser.

## **Decision**

The ELLRB agreed, by majority, to uphold the appeal and to grant planning permission subject to the following conditions:

- 1: Commencement  
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: Glazed panels  
Prior to any use being made of the of car wash facility hereby approved its north boundary shall be fully enclosed by glazed panels, other than for vehicle access and egress points. Details of the height, physical form and positioning of the glazed panels shall be submitted to and approved by the Planning Authority prior to their erection and the erected glazed

panels shall be in accordance with the details so approved. Thereafter the glazed panels shall remain in place unless otherwise approved by the Planning Authority.

*Reason: To prevent spray from use of the proposed car wash facility entering the public road and footpath of the A199 Road in the interests of pedestrian and road safety.*

3: Visibility splay

The proposed access shall be laid out in accordance with details approved in writing by the Planning Authority prior to any development commencing. A visibility splay of 4.5 metres by 90 metres shall be provided and maintained on the eastern side of the proposed access such that there shall be no obstruction to visibility above a height of 1.05 metres measured from the adjacent carriageway level within the area defined below:-

- a) A line 4.5 metres long measured along the access road from the nearside edge of the main road carriageway.
- b) A line 90 metres long measured along the nearside edge of the main road carriageway from the centre of the access road in both directions.
- c) A straight line joining the termination of the above two lines.

Visibility from a point 2.5 metres from the A199 at the site egress to the exit road centreline of the Oak Tree roundabout shall be maintained.

*Reason: In the interests of road safety.*

4: Road Safety Audit

The proposed access roads, footways, cycleways and any related external roadworks shall be subject to an independent Road Safety Audit within 1 year of operation commencing. The extent of the audit shall include the Oak Tree Roundabout given its proximity to the proposal site as the proposed access and egress will introduce interactions with and to it. This process must be completed through Stages 2, 3 & 4 (Detailed Design, Post Opening Audit and 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 scope and timing of matters to be considered within Road Safety Audit shall be agreed with the planning authority in advance and prior to undertaking the audit.

*Reason: in the interests of road safety*

5: Tree protection

The area of existing trees detailed on the 'Block Plan' drawing numbered AL(0)100 shall be retained on the site.

No development shall take place on site until temporary protective fencing in accordance with Figure 2 of British Standard 5837\_2012 "Trees in relation to design, demolition and construction" has been installed, approved by the arboriculturist and confirmed in writing by the Planning Authority. The fencing must be fixed in to the ground to withstand accidental impact from machinery, erected prior to site start and retained on site and intact through to completion of development. The position of this fencing shall be positioned outwith the Root Protection Area (RPA) as defined by BS5837:2012 for all trees retained on and adjacent to the site, and approved in writing by the Planning Authority.

All weather notices should be erected on said fencing with words such as "Construction exclusion zone - Keep out". Within the fenced off areas creating the Construction Exclusion Zones the following prohibitions must apply:-

- \_ No vehicular or plant access
- \_ No raising or lowering of the existing ground level
- \_ No mechanical digging or scraping
- \_ No storage of temporary buildings, plant, equipment, materials or soil
- \_ No hand digging
- \_ No lighting of fires

\_ No handling discharge or spillage of any chemical substance, including cement washings

Planning of site operations should take sufficient account of wide loads, tall loads and plant with booms, jibs and counterweights (including drilling rigs), in order that they can operate without coming into contact with retained trees.

*Reason*

*To safeguard trees important to the wider amenity of the area*

6: Scheme of Landscaping

Prior to the commencement of development a scheme of landscaping shall be submitted to and approved in writing by the Planning Authority which shall include full details of all new tree and shrub sizes, species, habitat, siting, planting distances and a programme of planting within the application site. Thereafter the scheme of landscaping shall be carried out in accordance with that approved landscaping scheme unless otherwise agreed by the Planning Authority.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the completion of the development or occupation of any house hereby approved, whichever is the sooner. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar species and final size, unless the Planning Authority gives written consent to any variation.

*Reason*

*To ensure establishment of a landscape scheme that improves the amenity and biodiversity of the area.*

7: Biodiversity

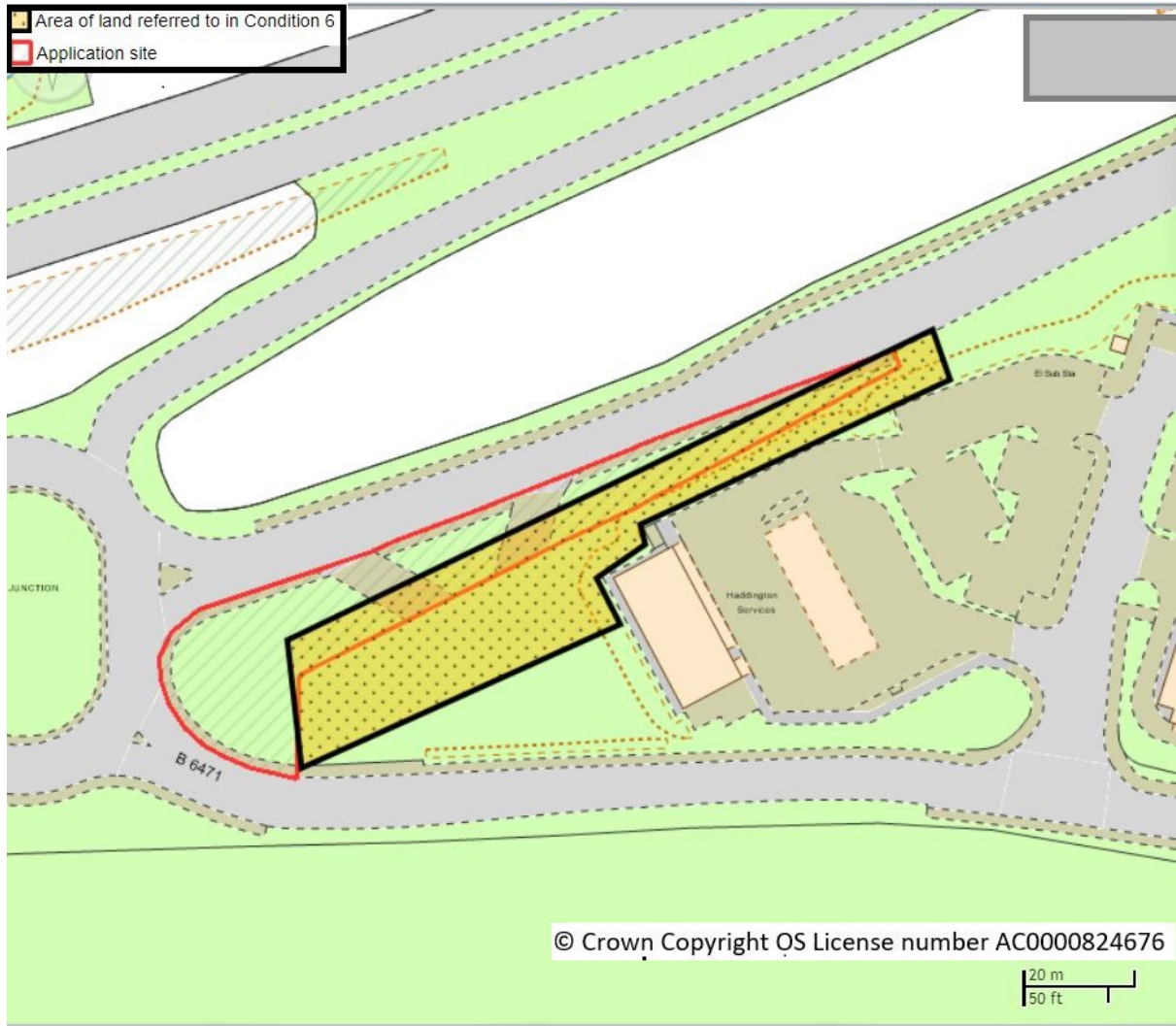
Prior to the commencement of development, the developer shall submit for approval in writing by the Planning Authority, details on the proposed Biodiversity Enhancement scheme for the site. Thereafter, no development shall take place except in strict accordance with the approved scheme.

*Reason: to secure biodiversity enhancement in compliance with National Planning Framework 4 Policy 3.*

8: Land stability

No development shall take place unless a report has been submitted to and approved by the planning authority to demonstrate that the formation and operation of the car wash will not compromise the stability of the land to the south of the site, marked in orange and dotted black on the plan below.

*Reason: to ensure the development does not affect the stability of land to the south.*



9: Climate

Prior to the commencement of development, a report on the actions to be taken to reduce the carbon emissions from the build and from the completed development shall be submitted to and approved in writing by the Planning Authority. This shall include the provision of renewable energy for all new buildings where feasible and appropriate in design terms. The details shall include a timetable for implementation. Development shall thereafter be carried out in accordance with the report so approved.

*Reason: to minimise the environmental impact of the development*

10: Signage

No development shall take place until a plan showing signage requesting car drivers to switch off their engines while waiting for the car wash has been submitted to an approved by the planning authority. This signage shall be installed prior to the opening of the proposal to customers, and thereafter maintained as approved, unless otherwise agreed by the planning authority.

*Reason: to seek to avoid unnecessary energy use.*

Signed .....

Councillor Jeremy Findlay  
Chair of Local Review Body (Planning)

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

**3**

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*Note – this application was called off the Scheme of Delegation List by Councillor Forrest for the following reason: Due to the concerns raised in the community with me over the size of this structure, I feel that the matter would benefit from a full discussion at the Planning Committee.*

Application No. **22/00812/P**  
Proposal Erection of sheds, greenhouse and fencing (Part Retrospective)  
Location **68 Whitecraig Road  
Whitecraig  
East Lothian  
EH21 8ND**

Applicant Mr Thomas Laird  
Per Camerons Strachan Yuill Architects

**RECOMMENDATION** Consent Granted

## **REPORT OF HANDLING**

### **PROPOSAL**

This application relates to the rear garden of a ground floor flat within a 4 in a block flatted building that is located within a predominantly residential area as defined by Policy RCA1 of the adopted East Lothian Local Development Plan 2018. It is within the Battle of Pinkie Historic Battlefield.

The rear garden of the flat is bounded to the northwest by the rear garden of 70 Whitecraig Road, an upper flat within the same 4 in the block, to the northeast by a communal path that runs along the northeast side of the applicant's rear garden, between it and the public road. To the southwest is another neighbouring garden and to the southeast is the public road.

Planning permission is sought retrospectively for two sheds and a greenhouse building that have been erected within the rear garden of the flatted property and for fences and a gate that have also been erected in the rear garden.

The two shed and greenhouse buildings have been laid out in an 'L' shape configuration within the garden. The greenhouse is some 1.9m in width and some 1.9m in length and sits within the northwest corner of the garden, some 0.1m from the fences that enclose the northwest and southwest boundaries of the garden. The smaller of the two sheds is some 1.8m in length and some 4.6m in width and sits adjacent to the south east side of the greenhouse building. The larger shed is some 3m in width and some 4.6m in length and attaches to the southeast side of that smaller shed. Each of the structures are some 2.1 metres in height to the ridge of their roofs.

The greenhouse element has been constructed from clear corrugated polycarbonate sheeting within a timber frame while the remaining sheds are constructed from painted horizontal timber cladding panels with a felt roof.

The fences and gate that have been erected comprise: (i) a 5.7m length of 1.9m high timber fence that has been erected along part of the northwest (rear) boundary of the garden between the applicant's garden and the garden of 70 Whitecraig Road, (ii) a 1.8m high fence that has been erected along the west edge of the communal path and which separates that path from the applicant's rear garden. That fence runs along the edge of the communal path for some 7m in a southerly direction and then turns 90 degrees west to run parallel with the rear elevation of the flatted building for another 3.6m and (iii) a 1.8m timber gate and side panel that have been erected between the rear elevation of the flatted building and that fence running parallel with the rear elevation of the flatted building.

Planning permission is also sought for the replacement of the gate at the northeastern end of the fence that encloses the northwest boundary of the rear garden with a section of 1.9m high timber fence. That gate is positioned between the fence that has been erected to enclose the northeast boundary of the applicant's garden and the lower metal railings that enclose the northeastern edge of the communal path and allows access for the occupants of 70 Whitecraig Road - the upper flat within the 4 in a block - into their rear garden from the communal path.

It is also understood that a bin store and decking area have been installed within the garden of the property. However, the applicant has confirmed that the bin store is a moveable structure and the decking area is not a permanent structure and is removed and stored elsewhere within the site when not in use. Accordingly, these elements do not require the benefit of planning permission.

## **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 approved National Planning Framework 4 (NPF4) which was adopted by The Scottish Government on the 13th February 2023 and the adopted East Lothian Local Development Plan 2018.

The relevant policies contained within the National Planning Framework 4 are Policies 7 (Historic assets and places), 14 (Design, quality and place) and 16 (Quality Homes). Policies CH5 (Battlefields), DP2 (Design) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are also relevant to the determination



of the application.

## **REPRESENTATIONS**

Two letters of objection have been submitted from the same objector in respect of the application. The main grounds of objections include:

- o Inaccuracies in the submitted drawings which fail to show the communal access path and gate to adjacent garden;
- o The communal access path to the neighbouring garden being constantly blocked up by the applicant.

The matter of the inconsistencies of the drawings was raised with the applicant. He maintains that the path that the objector refers to as a communal path is not a communal path and that the objector has no right of access over it to enter this garden – being the garden of 70 Whitecraig Road. However, East Lothian Council Housing Service who are the landlords of the applicant's property have confirmed that the path is a communal path and should be retained as such to allow the occupants of 70 Whitecraig Road continued access to their rear garden without having to leave the property and use the public road to do so.

The matter of the communal path being constantly blocked is not a matter relevant to the determination of this planning application.

## **PLANNING ASSESSMENT**

The sheds and greenhouse structures, fencing and gate that have been erected within the rear garden are visible from the public road to the northeast of the property. These are of a modest design to reflect their domestic purpose and are of a form, size and scale reflective of other outbuildings and fencing typically seen in rear gardens throughout the area. In this locational circumstance and by virtue of their architectural form, size, scale, materials and positioning the sheds and greenhouse structures, fencing and gate that have already been erected are appropriate to their setting and are not out of keeping with their surroundings. They are not harmful to the character and appearance of this part of Whitecraig. They are not an overdevelopment of the garden of the property.

The sheds and greenhouse structures and fencing also do not detrimentally impact on the character or appearance of the Battle of Pinkie Historic Battlefield.

With regards to neighbouring amenity, in assessing whether or not the development results in overlooking and loss of privacy to other residential properties it is the practice of the Council as planning authority to apply the general rule of a 9 metre separation between the windows on the proposed house and the garden boundary of neighbouring residential properties and an 18m separation between directly facing windows, if they are not adequately screened.

In this regard, while glazed opening feature within the elevations of the sheds and greenhouse structures, the garden of the applicant is completely enclosed on all boundaries fencing that is at least some 1.8m in height. Accordingly, this mitigates against the loss of amenity by way of overlooking to all surrounding properties.

"Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice" by P.J. Littlefair gives guidance on the impact of a proposed development on the daylight and sunlight received by neighbouring properties.

In this instance given the siting and orientation of the outbuildings and fence and their modest scale, they do not result in the loss of sunlight or daylight to any neighbouring residential properties.

The Council's **Senior Environmental Protection Officer** has been consulted on the application. They have responded to confirm that they have no comments to make on the application. Accordingly no objection has been raised.

The Council's **Road Services** have been consulted on the application. They have responded to confirm that they have no objection to the proposal.

On these considerations, the sheds, greenhouse and fences that have been erected are consistent with Policies 7 (Historic assets and places), 14 (Design, quality and place) and 16 (Quality Homes) of NPF4 and Policies CH5 (Battlefields), DP2 (Design) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018.

The applicant proposes to remove the existing 1.8m high timber gate that is located at the end of the communal path to the northeast of the applicant's garden and to replace it with a section of 1.9m high close boarded fence.

The gate proposed for removal gives the occupants of 70 Whitecraig Road access to their rear garden via the communal path between the northeast side of the applicant's rear garden and the lower metal railings that bounds the public road.

The applicant disputes that the path is a communal path and therefore intends to replace that timber gate with a fence. Such replacement of the gate would prevent the occupants of 70 Whitecraig Road from entering their rear garden from the communal path. If the gate was to be removed access to the garden of 70 Whitecraig Road would be from the public roads, via the existing vehicular access gates that are in the metal railings that enclose the road side boundary of the rear gardens.

East Lothian Council Housing Service are the landlords of the applicant's property. The **Service Manager Community Housing and Homelessness** has advised that the path in dispute is a communal path and that the gate should be retained to allow the occupants of 70 Whitecraig Road continued access to their rear garden without having to leave the property and use the public road.

Therefore to safeguard the residential amenity of the occupants of 70 Whitecraig Road and to ensure continued access to their rear garden without having to use the public road, it shall be made a condition of any grant of planning permission for the sheds, greenhouse, fences and gate that have already been erected, that the replacement of the gate at the end of the communal path between the applicant's garden and the garden of 70 Whitecraig Road with a section of fence be refused planning permission.

Subject to the imposition of that planning control the other components of this application - the sheds, greenhouse, fences and gate - that have already been erected are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh their accordance with the Development Plan.

**CONDITION:**

- 1 Planning permission is not granted for the replacement of the existing timber gate at the northwest end of the communal path, between the applicant's garden and the garden of no. 70 Whitecraig Road, with a section of fence.

Reason for Refusal:

To safeguard the residential amenity of the occupants of no. 70 Whitecraig Road and to ensure continued access to their rear garden without having to use the public road.



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

**4**

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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.