



MINUTES OF THE MEETING OF THE PLANNING COMMITTEE

TUESDAY 3 OCTOBER 2023
VIA A DIGITAL MEETING FACILITY

Committee Members Present:

Councillor N Hampshire (Convener)
Councillor L Allan
Councillor C Cassini
Councillor D Collins
Councillor J Findlay
Councillor A Forrest
Councillor N Gilbert
Councillor C McGinn
Councillor S McIntosh
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
Ms W Taylor, Head of Housing
Mr D Taylor, Planner
Mr C Grilli, Service Manager – Governance
Ms P Gray, Communications Adviser
Mr J Canty, Transportation Planning Officer
Mr G McLeod, Transportation Planning Officer
Mr A Hussain, Transportation Planning Officer
Ms M Haddow, Transportation Planning Officer
Mr R Yates, Transportation Planning Officer
Mr A Hunter, Structures Officer – Roads

Clerk:

Ms B Crichton

Visitors Present/Addressing the Committee:

Item 3: Mr T Laird
Item 4: Mr D Anderson and Mr M Scott

Apologies:

Councillor K McLeod

Declarations of Interest:

Item 3: Councillor Forrest due to having worked with constituents involved in the application.

Item 4: Councillor McMillan, due to having worked with the applicant's family business on matters of economic development.

1. MINUTES OF PLANNING COMMITTEE MEETING, 22 AUGUST 2023

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

2. MINUTES FOR NOTING

a. LOCAL REVIEW BODY (PLANNING), 15 JUNE 2023

The Committee agreed to note the minutes.

b. LOCAL REVIEW BODY (PLANNING), 20 JULY 2023

The Committee agreed to note the minutes.

Sederunt: Councillor Forrest left the meeting.

3. PLANNING APPLICATION NO. 22/00812/P – ERECTION OF SHEDS, GREENHOUSE AND FENCING (PART RETROSPECTIVE), 68 WHITECRAIG ROAD, WHITECRAIG

A report was submitted in relation to Planning Application No. 22/00812/P. Emma Taylor, Team Manager – Planning Delivery, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Members. Responding to questions from Councillor McGinn, Ms Taylor advised that the bin store and decking area were within the fenced area of the garden, but were considered to be moveable structures and did not require planning permission. She advised that officers had last visited two or three weeks previously to check the garden from the roadside.

The Convener reported that the path under discussion had been blocked by several items when Members had made a site visit, and asked what action could be taken to ensure the path remained clear to allow the tenant at 70 Whitecraig Road to access their garden. Wendy McGuire, Head of Housing, said that plans had been sent to the applicant, Mr Laird, marking what was in the lease agreements, and making clear that the path was a mutual path for use by both Mr Laird at 68 Whitecraig Road and the neighbour at no. 70. The letter had stated that the path must be cleared to allow the neighbour access to their garden. She advised that the Area Manager had visited several times to raise concern about the blocked path. She had written to legal colleagues for advice on next steps should the blocking continue, as the applicant was in breach of his tenancy agreement.

Responding to questions from Councillor Collins, Ms Taylor advised that the new gates opened inwards and would not cause further impeding of the footpath. Ms McGuire added that Mr Laird was also required to seek landlord permission to make any alterations; she had been unaware of the timber gates under discussion and would check whether permission had been granted. Ms Taylor advised that the gates within the fencing were not part of the planning application and officers had only become aware of these gates at the site visit the previous day.

Mr Laird, applicant, spoke to his application. He said that the path being referred to as the communal path was not communal. He said he had tried to use the proper legal channels to seek permission for the works. He said the hut and the car port were already in situ before he moved into the property. He said the gates at the driveway were to enable access for his car to the garden. He said his neighbours had been offered a gate on two separate occasions. Mr Laird said he had designed his garden to allow his partner access to his car to accommodate his disability needs. He claimed that if neighbours were allowed access through his garden, they would continue to harass his partner. He said he had laid the pathway down for his own use. He considered that planning permission was not needed for a hut or a fence within a garden, and noted that neighbours did not have planning permission for their fences. He reiterated that the pathway was his own and said the garden design would stay as per his drawings. He said he was not breaking his tenancy agreement, and said the only shared pathway to which his neighbours were entitled access was the path running under the windows for service use. He was extremely unhappy that the council sought to allow his neighbour access to the path he had put down, and reiterated that he would not allow his neighbours to walk through his garden. He said that the council should give his neighbours a gate to be able to access their own garden, and said that he would block the pathway to stop neighbours using the path.

Councillor McGinn noted the conflict over the path and the gate at the end. He felt it was clear that the construction within the garden was permissible, but to grant permission to all aspects of the application would deny the tenant at no. 70 access to their garden. He noted that officers had checked and had made clear that the path was a communal pathway, but noted that Mr Laird was unwilling to accept this. He felt that the response would have to be robust if Mr Laird decided to continue blocking the pathway; Councillor McGinn was keen for officers to follow this up.

Councillor Allan asked whether there was any grey area as to the ownership of the path. The Convener responded that the Head of Housing had made clear that the path was for communal use and the tenant at no. 70 also had a right of access over the path.

Councillor Collins noted that there had been a tarmac path with slabs back in 2011, and asked about the ownership of the gate, which appeared to be part of the neighbour's fence. The Convener noted that the officer recommendation was that this part of the application be refused 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.

The Convener reminded Committee Members that the scope of the discussion was only around the structures to which the application referred. He highlighted the officer recommendation for approval for the sheds and greenhouse, and said that issues relating to the path were separate to the planning application.

The Convener then moved to a roll call on the officer recommendation to grant consent, with the condition to refuse consent for the replacement of the gate at the end of the path. Members unanimously supported the officer recommendation.

Decision

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

- 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.

Sederunt: *Councillor Forrest re-joined the meeting and Councillor McMillan left the meeting.*

4. PLANNING APPLICATION NO. 23/00680/P – FORMATION OF AN UNDERPASS UNDER THE B6368 ROADWAY AND ASSOCIATED WORKS – LAND WEST OF HOWDEN WOOD, GIFFORD

A report was submitted in relation to Planning Application No. 23/00680/P. David Taylor, Planner, presented the report, highlighting the salient points. The report recommendation was to grant consent.

Officers responded to questions from Members. Councillor McIntosh asked why the application had not been made as part of a previous application for an additional hen shed. Mr Taylor advised that SEPA required the extended roaming area on the nitrogen vulnerable area (NVZ). He suggested that the applicant may not have been aware of the requirement for the extended roaming area when the previous application had been made. Regarding the traffic impact on East Saltoun during construction, Mr Taylor advised that a traffic impact assessment had been submitted, and Road Services colleagues had been satisfied with the findings. He advised that there would also be a requirement for the application of a temporary traffic regulation order (TRO) for a temporary road closure to facilitate the proposed development. The impact of any proposed diversion routes would be assessed prior to the granting of any TTRO.

The Convener noted that the development would drop significantly below road level and asked if there was potential for flooding. Mr Taylor responded that the proposals had been discussed with the Senior Engineer – Flooding, and there was a new silt trap proposed within the underpass which would connect to an existing outfall to the southeast of the south roaming area. The Senior Engineer – Flooding was satisfied that surface water and drainage had been taken care of within the application.

Dave Anderson, applicant's agent, spoke to the application. Michael Scott, applicant, was also present. Mr Anderson confirmed that the reason the underpass had not been included in the previous application for an additional hen shed had been due to the Scottish Government's free range egg requirements and the applicant not having been aware of the requirement for the further roaming ground. He advised that detailed traffic modelling had been undertaken in respect to the application. He acknowledged the comments from the community council regarding volume of traffic, and reported that the applicant had been working with the Roads Services. He felt that everything had been done to keep disruption to a minimum over a relatively short period of time.

Responding to questions from Councillor Collins, Mr Anderson advised that there would be no feed and water on the other side of the range, as feed was kept within the sheds. Mr Scott advised that there was no deep litter system in place, and that muck belts were run weekly. He advised that muck was dried on the belt to lower emissions before being exported off site for use at other farms.

Councillor Cassini asked about landscaping requirements along the eastern flank of the road. Mr Anderson advised that Scottish Power had erected an overhead line at the entranceway to the road, so it was not possible to plant underneath this. He also advised that the wider landscaping conditions were part of previous planning consents and were still to be implemented.

Responding to questions from Councillor McIntosh, Mr Anderson clarified that the hen shed application and the current application were separate, and the additional shed was already in operation. He confirmed that eggs currently being sold were not being advertised as being free range due to the requirements for roaming not currently being met. Mr Anderson thought that the figure of 1000 additional vehicles per day travelling through East Saltoun had come from a previous model. He said the figures were not disputed, but said extensive discussions had taken place with Roads Services and officers were comfortable with this increase for a short period of time. Councillor McIntosh also asked about ground cover in the area the hens would be roaming. Mr Anderson said the applicant was aware that planting would provide the hens with cover and was good for hen welfare as well as biodiversity. He said this could not be agreed with the Scottish Government and with the purchaser of the eggs until it could be confirmed where the planting could take place. He highlighted that the landscape officer had requested reinstatement of certain planting. He said that decisions on planting could not be made as there was not currently access to the ranging area.

Responding to questions from Councillor Findlay, Mr Anderson advised that hens were self-regulating, so would come back to the sheds to feed and roost. He advised that the underpass would not be of suitable size for use by vehicles or people.

Responding to further questions from Councillor Collins, Mr Anderson said that the size of ranging area was usually dictated by NVZ requirements; in this case, 40 hectares of ranging area was required, but the NVZ requirements also specified the distance the hens were allowed to travel to access the ranging area.

Councillor Collins said she had called the application following concerns from locals over the disruption caused by construction traffic. She felt that the discussion had helped to alleviate those concerns. She felt that the NVZ figures tied in and was happy to support the application after hearing the applicant's explanations.

Councillor McIntosh still had questions over how much the hens would use the further roaming area and felt there was to be quite significant disruption caused by the construction. She questioned whether the application constituted best use of the land, but felt that answers had been thorough and understood why consumers wished to buy free range eggs. She would support the application. Councillor Collins responded that the hens would use the extra space to explore additional feed, grass, and insects the land would offer.

The Convener then moved to a roll call on the officer recommendation to grant consent, and Members unanimously supported the officer recommendation.

Decision

Planning Committee agreed to grant the application, 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 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.

Signed

Councillor Norman Hampshire
Convener of the Planning Committee