

REPORT TO: Planning Committee

MEETING DATE: 14 January 2025

BY: Executive Director – Place

SUBJECT: Application for Planning Permission for Consideration

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Note: *This application has been called off the Scheme of Delegation List by Councillor Allan for the following reasons:* This application raises issues around the development of a building that may be of interest due to its location and potential use, and I feel this would benefit from a Planning Committee discussion.

Application No. **24/00629/P**

Proposal Alterations and change of use of building to form holiday let and associated works

Location **Vacant Building Adjacent to 2nd and 3rd Green of
Kilspindie Golf Course
Aberlady
East Lothian**

Applicant Wemyss & March Estate

Per APT Planning & Development

RECOMMENDATION Application Refused

REPORT OF HANDLING

PROPOSAL

This application relates to a vacant stone building located immediately adjacent to the Kilspindie Golf Course and which sits directly on the coastal wall within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. The site bounds the Firth of Forth Special Protection Area and Firth of Forth Ramsar area which lie immediately to the north and extends within the Aberlady Bay Nature Reserve. The building is also located within the North Berwick to Seton Sands Coast Special Landscape Area with the building

also being located within two areas of constrained coast, the application building being located within the Seton Sands, Longniddry bents, Gosford constrained coast and the area of land to the immediate north of the building (where it is proposed the building be extended) within the Aberlady constrained coast. The building is not listed as being of special architectural or historic importance and is not located within a conservation area.

Through this application planning permission is sought for the alterations and change of use of the existing vacant stone building with pan-tiled clad roof, last in use as a bird watchers hide, to a holiday let for overnight stays. The building is proposed to be extended to the north with the formation of a cantilevered balcony which would extend into the area defined as the Aberlady constrained coast.

A Design and Access Statement has been submitted in support of the application which states that: "The proposal explores the restoration and conversion of the old bird hide at Kilspindie into seasonal holiday let accommodation. The bird hide itself is a small stone built single room structure with a red clay pan-tiled roof. The building sits directly on the coastal wall which has evidence of modern repairs and restabilising. The shelter has been historically restored and used by bird watchers as a hide due to the narrow slot window running along the north wall where you get a view of Aberlady Bay. The building is now in a state of disrepair and in great need of attention. The dramatic coastal setting creates a particularly special opportunity to create a very unique holiday let within this tiny structure, which can really connect its guest with the surrounding context. There is currently no vehicular access road to the site and it is most easily reached on foot along the headland from Kilspindie Golf Club. However it can be accessed via golf buggy. The property is orientated on a largely North - South orientation, therefore whilst the rear of the proposal maximises views across the Firth of Forth it is primarily North facing. There is scope to create a cantilevered balcony to the rear of the property which will benefit more from the late evening sun. Whilst there are no surrounding properties, the building is bounded to the south by Kilspindie Golf Course and to the north is a public beach, therefore privacy and overlooking will need to be carefully considered with the design of the scheme. The hide is located at the edge of the small cliff above an existing sea wall, which has been reinforced with concrete. The building should be fully converted to create a modern and unique experience for its guests. The connection with the surrounding landscape is key and inspiration should be taken from the buildings former use and the dramatic setting. The coastal elevation should be opened up to allow views and access to an external space, possibly a cantilevered balcony. Guests will arrive to the site from the east, where they will park in the overflow car park at Kilspindie Clubhouse. From here they will walk on foot or travel via golf buggy along the existing grass access track to the Hideaway. Given the sites sensitive location in Special Landscape Area 26, our proposal strives to maintain as much of the buildings original fabric as possible. Whilst the existing structure is uninhabitable, and in a deteriorating condition, the building has a distinct charm which we feel is important to maintain. We are proposing minimal intervention to the exterior of the property, with all existing openings being reused where possible. Where new openings are to be created or altered, we are proposing this be done in a contemporary manner, clearly distinguishing old from new. We believe that the proposed scheme will not have an adverse impact on the setting and feel that it would be an improvement on the current structure which is

progressively deteriorating. We are proposing that access to the property is to remain as existing, with the main way of accessing the property being on foot around the headland to the north of the golf course. To maximise views to the north across the Firth of Forth we have proposed dropping the sill of the existing slot window and replacing it with sliding doors onto a cantilevered balcony. As overlooking from the golf course is a consideration we are proposing that part of the existing entrance opening is infilled to create a narrow and dramatic entrance that retains the properties sense of privacy. A very simple and natural palette of materials have been selected that compliment the existing materials, in addition to being robust to withstand the elements from the North Sea. The accommodation will operate seasonally, closing over the winter months. We are proposing that four, ground mounted solar PV panels are installed to the east of the property. The visual impact of these will be minimised by mounting the panels in 'Landscape' format. A light protective netting will also be required to protect the panels from being damaged by golf balls. The battery bank for the PV and potable batteries will be housed in a weatherproof enclosure on a concrete plinth against the south west façade of the building. There is no means of collecting waste from the property and therefore it will need to be taken to Kilspindie Clubhouse elsewhere for disposal. Adequate storage for the collection and sorting of waste and recycling will be incorporated into the design to help assist with its disposal.

In conclusion, we believe the proposal offers a sensitive and subtle refurbishment of the existing building that will help to enhance this section of coastline. The sustainable and minimalist approach being taken retains much of the original buildings fabric and charm. The lean-to housing the renewable energy batteries and inverters has been designed to minimise the impact on the existing structure, re-purposing the excavated stone from the existing hideaway where possible."

Also submitted in support of the application is an 'Update Report: Ecological Appraisal of redevelopment proposals on the Old Bird Hide, Kilspindie Golf Course, Aberlady, East Lothian July 2024' along with a previous 'Ecological Appraisal of redevelopment proposals on the Old Bird Hide, Kilspindie Golf Course, Aberlady, East Lothian, June 2021'.

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.

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 3 (Biodiversity), 4 (Natural Places), 9 (Brownfield, vacant and derelict land and empty buildings), 10 (Coastal Development), 13 (Sustainable Transport), 22 (Flood risk and water management) 23 (Health and Safety), 29 (Rural Development) and 30 (Tourism) of NPF4 and Policies DC1 (Rural Diversification), DC6 (Development in Coastal Areas), DC9 (Special Landscape Areas), DP1 (Landscape Character), DP2 (Design), DP5 (Extensions and alterations to Existing

Buildings), NH1 (Protection of Internationally Designated Sites (RAMSAR)), NH3 (Protection of Local Sites and Areas), NH5 (Biodiversity and Geodiversity Interests, including Nationally Protected Species), NH11 (Flood Risk), (T1 (Development Location and Accessibility) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

Also material to the determination of the application is supplementary Planning Guidance (SPG) on 'Countryside and Coast' adopted by the Council on 29 October 2019 and 'Special Landscape Areas' adopted by the Council on 30 October 2019. The SPG expands on policies DC1 and DC9 that are set out in the East Lothian Local Development Plan 2018 and it provides policy guidance on development within areas designated as countryside and within Special Landscape Areas.

REPRESENTATIONS

A total of 56 letters of written representation have been received to the application. Of these representations, 54 object to the application. The remaining two representations make comment on the application.

The main grounds of objection are summarised as:

- i) Environmental damage and impact on flora, fauna, wildlife, birds and natural habitat through noise increased movement to and from building during construction works;
- ii) Environmental impact on flora, fauna, wildlife, birds and natural habitat through noise, light pollution, increased movement to and from building by guests and services when in use as a holiday let;
- iii) Increased risk with the potential for oil and diesel spillage in a protected wildlife environment during the construction programme and heightening risk to human waste spillage into a protected area; Introduction of foul water drainage for sewage water, shower water, dishwater etc potential to pollute the surrounding area and no doubt the run off will be discharged into the Firth of Forth;
- iv) Incompatible with golf course - Kilspindie Golf is a world renowned historic golf course; no sense in creating holiday accommodation on a golf course with no access other than over the golf course; access would cause increased activity across the golf course and possibly danger from golf balls; use of building as a holiday let would impact significantly on users of the golf course with the potential for noise from these residents both when in situ and when moving to and from building; great concern for the safety of the occupiers of the property which is situated in front of and very slightly to the right of the third tee. Golf balls played from this tee are travelling at their maximum velocity as they pass the building and anyone unexpectedly exiting its front door at the same time as a ball is hit would be at risk of serious injury. Further, wayward shots aimed at the second green, especially when hit into a strong westerly wind, regularly strike, land near or fly over the bird hide; It would be extremely detrimental to the golf course should the solution be to remove the teeing areas or even the green. This is a historic golf course and it has no opportunity to move holes due to the very close proximity of Craighielaw Golf Course with which it shares some of its perimeters; there does not appear to have been any consideration given in the application to the health and

safety implications of the change in use of the building to a holiday let; months of disruption through noise, movement and activity would impact golfers and visiting parties from around the world during building and construction; the proposed commercial building in such a well-established golf course could damage the reputation of the golf course irreparably; no practical reason for people to stay there it is clearly a money making project and would have a detrimental effect on one of the world's most beautiful and historical golf courses; having a holiday let in the middle of a golf course would be very disruptive and almost impossible for a healthy functioning club to deal with; to put accommodation in the boundaries of the golf course raises health and safety issues to any potential occupants one only has to look at the changes made at the 9th hole to protect a property that isn't even in the boundaries of the course, objector foresees similar issues if this goes ahead;

v) Location and access - the building is wholly unsuitable for a holiday let; The 'track' that's expected to provide access for construction and potential renters barely exists. It's a partial, disjointed and uneven line through the grass that's barely wide enough for one person's feet. The only real route to the hut is over the golf course, which would be impractical and dangerous for all concerned; Access via the beach will entail clambering up to the development over steep ground which is partially washed away in bad weather and in addition access via the beach will disturb wildlife both birds and seals;

vi) Health and Safety - In the event of an emergency services incident, for example a fire or injury access will be hazardous and treacherous to Fire Service and Ambulance at any time but especially in hours of darkness; In this regard an objector states the reliance on burning wood (for cooking and heating) in an area that gets tinder dry in the summer and has no access for emergency services such as fire engines would also be very dangerous; Why would anyone even consider designing a building to be used as a living space almost directly in front of a golf course teeing ground? The front door positioning means that visitors will be stepping straight out into the direct line of golf shots from the third tees, these are drives which can be moving at over 100mph with a hard object, which can cause serious injury or even death. These tees are not even shown on the plans; The application includes a lot of photographs but none that show the juxtaposition of the third tee and the hide; There are no windows on either the hide's south or east elevations so occupants will have to exit the building before they can see whether or not golfers are on the tee and by that time it may well be too late;

vii) Solar panels separate from the development will be an ugly addition to the pristine views and environment;

viii) Impact relating to the disturbance of the flora and fauna both in the short and long term. This is a significant issue in times where the Council has been very vociferous in its apparent concerns for the local environment in declaring a climate emergency in recent times;

ix) Area indicated for guests to park in the overflow car park of the Golf Club is currently closed at 6pm to stop people parking there overnight i.e. camper vans etc so there is a security risk if this car park would require to be open for residents;

x) Objector disagrees that this adds to the area e.g. eco, tourism, etc., as mentioned in the application, in fact objector believes that this really destroys the uniqueness of the area and coastline - the very reason people (locals and visitors alike) visit the area (not just the golf course). A real concern is the management of the property and the expected disruption to the tranquillity of the area;

xi) This proposed building would have a hugely detrimental impact on an

otherwise pristine stretch of the east Lothian coastline, with associated effect on local wildlife. These would be both direct with the effect of a more developed building and indirect in terms of feeding/breeding patterns. These effects would be enhanced by the increase in traffic and other activities in the immediate area, the adjacent golf course would also suffer negative impact;

xii) Objectors allege that the fact that the planning application was made with no prior consultation with the golf club suggest contempt for the golf course and its members;

xiii) Contrary to Policy DC6 - Aberlady point is designated as Constrained Coast (Map 4). ELDP states that new coastal development should be generally avoided in "generally undeveloped areas". Objector states that the Aberlady Point Constrained Coast is not intensively developed and has qualities of remoteness. This is despite the proximity of the golf course and its intensive management. The development of a tourist let is not dependent on it requiring a coastal location, no matter how desirable it may be, therefore it does not meet Policy DC6;

xiv) Contrary to Policy DC9 - Policy DC9 states that any development must accord with special landscape are guidance, including not harming coastal character or qualities of an area unless public benefits outweigh harm. Objector sates it is impossible to see any public benefits of this private holiday let that could outweigh its negative impacts;

xv) The siting of a holiday let here is clearly inappropriate, insensitive and harmful to the natural setting and landscape character of this historically undeveloped, uninhabited, public and protected coastal margin. Objector alleges it would be the first inhabited building of any kind on the water's edge, not just of Aberlady Bay but the entire stretch between Seton Sands and North Berwick. It would represent a negative intrusion and private zone of exclusion on the open coastal margin of Aberlady Bay for the first time, setting an alarming precedent;

xvi) Light Pollution - The proposal plans to install internal and external lighting. Being an undeveloped stretch of coastline, objector alleges that this area is traditionally a dark area with no light pollution emitted between Kilspindie and Green Craig on the 2km coastal stretch. The updated ecological appraisal acknowledges that "there will inevitably be some light escaping from the building." (p.13.Table 4). The recommended mitigation measures include black-out blinds and "dark sky rules" but enforcing or policing these rules will be unlikely given the location of the site. Indeed, 2.22 of the Scottish Government's document 'Short term lets: planning guidance for hosts and operators document on holiday-lets' (2021) states: "the high turnover of guests in short-term lets requires new people to learn and observe proper behaviours and increases the chance of some people wilfully or negligently failing to behave appropriately." Therefore, the mitigation measures are not secure and there is significant likelihood of light emission, especially onto the beach and the bay, through the proposed large windows on the north of the building. Light would also escape from the glazed entrance door. External lights, even if pointing downward or shielded, would inevitably illuminate the exterior of the building, becoming an obvious and jarring light source on this characteristically dark coast; Objector states it would seem rather optimistic to assume overnight visitors would always abide by advice to keep light levels down so there is a significant risk to night-time darkness;

xvii) Biodiversity and Natural Environment - The Updated Ecological Appraisal states that seals "likely" haul out 250-300m away from the hide on the sandbank across the channel. Objector states that this is indeed true but the statement omits

the fact that seals have long been recorded to haul out directly on the beach below the bird hide and on the rocks less than 50 metres away, including during pupping. The impacts from unprecedented building works noise - especially the rock excavation needed for the foul water treatment tank - on seals and other wildlife therefore cannot be said to be "highly unlikely". Rather, the development poses significant potential and unknown adverse risk which must be seriously considered. Of course, the area is often passed by golfers and walkers during the day and evening. But it is not disturbed at night and not by continuous occupancy at this site. This proposal creates an additional and unnecessary pressure, particularly with a balcony, lights, noise, wood smoke, and external cooking, in a natural and wild environment;

xviii) Flooding - Objector alleges that on a severe north easterly gale the property is entirely overtopped with waves and could well be a danger for guests staying there.

COMMUNITY COUNCIL

None.

PLANNING ASSESSMENT

The proposed scheme of development is for the alteration and change of use of the existing vacant former bird hide building to a holiday let.

It is proposed that the existing building be altered to facilitate its change of use from a bird watchers hide to a holiday let for overnight accommodation. The alterations proposed comprise of:

- i) The formation of a cantilevered balcony on the north elevation of the building;
 - ii) The formation of a new opening on the north elevation and the installation of a three panel, triple glazed alu-clad sliding door to enable access from the building onto the balcony;
 - iii) New insulated timber roof with pantiles to match existing;
 - iv) Ground to be regarded to allow for creation of level threshold and to provide access to plant store;
 - v) Installation of a flue for a log burning stove within the north facing roof slope;
 - vi) Installation of a high level triple glazed alu-clad slot window within the north elevation;
 - vii) Erection of a timber clad weatherproof enclosure with stone ends and pantile roof on concrete plinth for PV batteries and associated plant on the west elevation;
 - viii) Siting of 4 ground mounted solar PV panels (measuring some 6.95 metres long, some 0.9 metres in height and some 0.64 metres in depth) with wooden posts with fence wire supporting nylon protective net pegged at ground level;
- It is stated that that access to the building would remain as existing, with the main way of accessing the property being on foot around the headland to the north of the golf course.

The application site is located within the countryside of East Lothian as defined by

Policy DC1 of the ELLDP. Policy 29 of NPF4 states that development proposals that contribute to the viability, sustainability and diversity of rural communities and the local rural economy will be supported, though proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area. Policy 30 of NPF4 supports development proposals for new or extended tourist facilities or accommodation, including caravan and camping sites, in locations identified in the LDP.

Policy DC1 of the ELLDP 2018 states that development in the countryside, including changes of use will be supported in principle where it is for:

- a) agriculture, horticulture, forestry, infrastructure or countryside recreation; or
- b) other businesses that have an operational requirement for a countryside location, including tourism and leisure uses.

The supporting text of this Policy states that new businesses may also seek to establish in East Lothian's countryside and coast, including tourism uses that could diversify the local economy.

The use of the application building as a holiday let for overnight accommodation is a tourism and leisure use. Whilst such holiday letting accommodation use could be accommodated within an urban area, this type of holiday letting accommodation would serve to provide accommodation for tourists wishing to benefit from a stay in the East Lothian countryside. The proposed holiday let would be within easy reach of popular East Lothian attractions and towns. The use of the building as a holiday let for overnight accommodation use, would not in principle be contrary to Policies 29 or 30 of NPF4 and Policy DC1 of the ELDP.

However, Policy 30 of NPF4 also states that 'a) Development proposals for new or extended tourist facilities or accommodation, including caravan and camping sites, in locations identified in the LDP, will be supported.' In this regard the application site is not identified or allocated in the ELDP for tourist accommodation. The application building and site are located within a wider area identified as constrained coast within the countryside and within a special landscape area within the ELDP.

Also relevant to this specific application are Policy 30 of NPF4 parts 'b) proposals for tourism related development will take into account: (i) the contribution made to the local economy; (ii) compatibility with the surrounding area in terms of the nature and scale of the activity and impacts of increased visitors; (v) accessibility for disabled people; (vi) measures taken to minimise carbon emissions; (vii) opportunities to provide access to the natural environment; 'e) development proposals for the reuse of existing buildings for short term holiday letting will not be supported where the proposal will result in; (i) An unacceptable impact on local amenity or the character of a neighbourhood or area.

With regards to the contribution made to the local economy, the **Council's Economic Development Service Manager** has been consulted on the application and advises he supports the proposal for the change of use of the building to a

short term holiday let as such the proposal would in principle be consistent with Policy 30 Of NPF4 part (b) (i). The proposal would also provide access for guests to stay in the natural environment by being located within the constrained coast and countryside and as such the proposal would in principle be consistent with Policy 30 of NPF4 part (b) (vii).

However, the proposed holiday let in terms of Policy 30 of NPF4 must also be assessed in terms of part (b) (ii) compatibility with the surrounding area and part (e) (i) impact on the amenity/character of the area. Given the buildings location the surrounding area includes 2 active golf courses, a special landscape area, and protected sites of nature importance including the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA and Aberlady Bay Nature Reserve which all contribute to attracting tourists to the area.

Additionally, Policy DC1 of the ELDP also states that proposals must also satisfy the terms of Policy NH1 and other relevant plan policies including Policy DC6.

Policy NH1 states that development proposals unconnected to the conservation management of a Natura 2000 or Ramsar site, that are assessed by the competent authority as likely to have a significant effect on the integrity of a Natura 2000 or Ramsar site (including proposals outwith the boundary of the designated site) will be subject to Appropriate Assessment. Applicants for such development must provide any information requested by the competent authority to enable it to carry out the Appropriate Assessment, including any project specific information and masterplan. Where the Appropriate Assessment cannot rule out adverse effects upon the integrity of a Natura 2000 or Ramsar site, the proposal will only be permitted where: a) there are imperative reasons of over-riding public interest and there are no alternative solutions; and b) compensatory measures are provided to ensure that the overall coherence of the Natura 2000 network is protected. Candidate Natura 2000 sites will be treated as if they were already designated.

Policy DC6 states that development proposals in the coastal area will be assessed against the relevant qualities of the coastal area in addition to all other relevant Plan policies. Where it is proposed on the:

- o Developed Coast it will be supported in principle if it complies with other relevant Plan policies;
- o Constrained Coast it will only be supported if it requires a coastal location;
- o Unspoiled Coast it will only be supported if there is an established need for the development and a specific need for that particular coastal location.

Coastal developments are likely to be subject to Habitats Regulation Appraisal (unless these are directly related to the management of the nature conservation interests of the Natura 2000 sites). Where a development proposal has a likely significant effect on a Natura 2000 or a Ramsar site either alone or in combination with other plans or projects then proposals must be accompanied by project specific information to inform an Appropriate Assessment. This will allow the competent authority to complete an Appropriate Assessment to determine if there are any adverse effects on the integrity of a Natura 2000 or Ramsar site. The siting and design of new development must respect the qualities of the particular coastal location.

Given the application building's location immediately adjacent to the internationally important sites, NatureScot as statutory body, has been consulted on the application and provided an initial consultation response stating that the proposal could affect internationally important natural heritage interests and as such NatureScot provided a holding objection to the proposal until further information be provided by the applicant/agent.

NatureScot stated in their response that this proposal is likely to have a significant effect on wintering and roosting birds in the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA. Consequently, East Lothian Council, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interests. This assessment should include an appraisal of the following: The effect of the construction and operation of the development in relation to disturbance of qualifying species, to ensure that no significant disturbance of these species occurs, and the integrity of the sites are maintained.

One of the conservation objectives for both the Firth of Forth SPA and the Outer Firth of Forth and St Andrew's Bay Complex SPA is to avoid significant disturbance to qualifying species. On the basis of the information provided within the original Ecological Appraisal (June 2021) current Ecological Appraisal (July 2024), and supporting design and construction information, NatureScot consider that there is insufficient site-specific information to tell us enough about the importance of this particular stretch of the coast for the qualifying species - for example in relation to roosts - to conclude that there is no adverse effects on site integrity.

NatureScot advised that this area is likely to be used by SPA qualifiers, such as Eiders who may be susceptible to disturbance during breeding and moult, (mid-April - mid September), with particular sensitivity in July and August, when construction would usually occur to reduce effects on overwintering birds. Breeding and overwintering birds may also be disturbed during the occupation and servicing of the property, particularly with the addition of the balcony to the property. NatureScot therefore stated they need to see additional survey data to be able to advice ELC competently.

The Firth of Forth SPA is also notified as a Site of Special Scientific Interest (SSSI) at this location - located c.4m from the development. Any issues raised in relation to this designation will be fully addressed as part of the consideration of the respective European sites.

In addition to consulting NatureScot, under the Habitat Regulations, East Lothian Council as competent authority must consider whether any planning application will have a 'likely significant effect' on a European site. The competent authority, with advice from NatureScot (NS), will only provide planning permission when an application can be shown to have no adverse effects on a European site's integrity through Habitats Regulations Appraisal (HRA).

The Habitats Regulations Appraisal (HRA) needs to consider all European sites that may be affected by a project. The proposed scheme of development is directly

adjacent to the Firth of Forth SPA and Ramsar site and as such there is potential connectivity between this proposed development and the Firth of Forth SPA and Ramsar site and therefore HRA is required.

This proposal is not connected with the conservation management of any European site, and therefore must be subject to HRA. NatureScot have provided advice on whether they consider the proposal to have a likely significant effect on the qualifying interests for each of the sites, which informs the screening. Where a likely significant effect cannot be ruled out for a European site, an Appropriate Assessment is required. In this case there is clear connectivity of this proposal with a European site where likely significant effects (LSE) have been identified and as such this proposal must therefore be subject to appropriate assessment.

The required Appropriate Assessment has been undertaken by the **Council's Biodiversity Officer** as part of the determination process of this application. The outcome of the Appropriate Assessment is that potential likely significant effects on the features designated as part of the Firth of Forth SPA and Ramsar site, have been assessed with consideration of the potential risks associated with disturbance to waterfowl and seabirds (through visual and noise impacts). The HRA test is whether the project will have an adverse effect on the integrity of any International/European site in the light of the conservation objectives for the qualifying interest features detailed within this Appropriate Assessment. In conclusion, the Council's Biodiversity Officer advises that even with the securing of mitigation measures provided by the applicant to be in place, the proposed scheme of development is considered to have risk of undermining the conservation objectives and/or having an adverse effect on the integrity of the designated site identified. Therefore, the Council's Biodiversity Officer advises that this application cannot be supported on biodiversity grounds and would be contrary to Policies 3 and 4 of NPF4 and Policy NH1 of the ELDP.

Both NatureScot's initial consultation response advising of their holding objection and the Council's Biodiversity Officer's Appropriate Assessment advising that this application cannot be supported on biodiversity grounds were forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised and attempt to demonstrate that the proposed scheme of development could be undertaken without having likely significant effects on the features designated as part of the Firth of Forth SPA and Ramsar site.

While during the determination period, the agent submitted a letter in attempt to address various matters raised by various consultees in their consultation responses; this letter provided minimal information in response to the matters raised by both NatureScot and the Council's Biodiversity Officer.

Both NatureScot and the Council's Biodiversity Officer were re-consulted on the application and the agents letter forwarded to them. NatureScot provided a further consultation response which stated that while this development is small scale, its localised impact on the specific SPA features during construction or operation may not be, especially given the robust protection SPAs receive. Accordingly, NatureScot state that their advice remains unchanged, and they maintain their

holding objection to the application.

Similarly, the Council's Biodiversity Officer has also provided a further consultation response which states that there is no additional information provided within this document (the agent's letter) that goes towards addressing the concerns previously raised in the Appropriate Assessment with respect to the negative impact of the application on the Firth of Forth Special Protection Area. Therefore, the Council's Biodiversity Officer advises that her previous position remains unchanged, as it has not been demonstrated that the proposed scheme of development could be undertaken without harm to the protected site and as such this application cannot be supported on biodiversity grounds, and would be contrary to Policies 3 and 4 of NPF4 and Policy NH1 of the ELDP.

While the application site is located within the countryside as defined by Policy DC1 of the ELDP, it is also located within a coastal area which is defined as constrained coast.

Policy DC6 of the ELDP states that development proposal in the coastal area will be assessed against the relevant qualities of the coastal area in addition to all other relevant Plan policies. Where development is proposed on the constrained coast it will only be supported if it requires a coastal location. The siting and design of new development must respect the qualities of the particular coastal location.

The proposed scheme of development is for alterations to the existing former bird hut building to form a holiday let. A holiday let by its nature does not require a coastal location; while it may be attractive it is not a requirement or necessity, and there are many holiday lets both within East Lothian and beyond that operate successfully without being located on the coast.

In determining whether a proposal requires a coastal location, paragraph 1.27 of the Countryside and Coast Supplementary Planning Guidance (SPG) states that 'it is for the applicant to justify to the planning authority clearly why a coastal location is required. The planning authority will consider only the requirement that the proposal has for a coastal location. This would normally mean a functional relationship between land and sea. The Council will therefore not consider the desire of the applicant to find a location for a proposal that could be located elsewhere but the site they have chosen (or that is available) is in the Constrained Coast. The Council will also not normally consider that a proposal has to be on the Constrained Coast because it is the only land the applicant owns. A clear link between the proposed use and the coast or sea is required. The Council will therefore not normally take into account: that the land is the only or most suitable land for the proposed use that the applicant owns or controls unless that use has a relationship with the sea or coast; the desire to make an economic return on land the applicant owns; the desire to provide a particular facility of a general sort, even if there are no other available sites; the desirability of the proposal having a view of the sea where the requirement is for an attractive view rather than the need to see the sea as such - for example a dolphin-watching facility or bird-watching hide would require a sea view, where a residential care home or café would not.'

In this case for the change of use of the former bird hide building to a holiday let,

the applicant/agent has not provided any justification as to why a coastal location is required for the proposed holiday let, other than saying it is the building's unique location which makes it attractive as a holiday let. As such, given that a holiday let by its nature does not require either a coastal location or sea view only that it would be a desirable quality, it is considered that the proposal is contrary to Policy DC6 of the ELDP.

Given the application building is located within the North Berwick to Seton Sands Special Landscape Area (SLA), the **Council's Landscape Officer** has been consulted on the application. The Council's Landscape Officer provided an initial consultation response advising that guidelines for development have been included within the Statement of Importance for the SLA to ensure retention of the special qualities and features of the SLA.

The Council's Landscape Officer advises that there are three guidelines that appear to be of most relevance to this application:

'G. Any proposed development must not harm the sense of naturalness and wildness qualities of the area.

H. Any proposed development must not detrimentally impact on bird habitats. Birdlife is important to the area and development or management that harms it is unlikely to be approved because of SPA status of much of the area.

I. Any proposed development must not harm the night-time darkness of those areas of the coast that are currently darker; Gosford Bay to Craigielaw and Gullane Bents to Broad Sands.'

The Council's Landscape Officer advises that the proposal to introduce large windows on the northern elevation of the building opening onto an external balcony will introduce activity, busyness, and light into the area. Although only a small development within a wider area, it will impact on the naturalness and wildness qualities of the area. People will be coming and going to stay in the property but also to clean and manage the property between stays. NatureScot have concerns that the proposal is likely to have a significant effect on wintering and roosting birds in the Firth of Forth SPA and the Outer Firth of Forth and St Andrews Bay Complex SPA. The proposal will introduce a light source where there is currently none in an area identified as being a darker area of coast. Accordingly, the Council's Landscape Officer advises the proposal does not accord with the three Guidelines for Development within the SLA as noted above and therefore is contrary to Policy DC9 of the ELDP.

The initial consultation response from the Council's Landscape Officer was forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised. During the determination period the agent submitted a letter in attempt to address various matters raised including those of the Council's Landscape Officer and the Council's Landscape Officer was reconsulted and provided a further consultation response. The Council's Landscape Officer's further consultation response stated that while she agrees with the applicant's statement that the building is a very small property and that it is already present. However, it is currently a bird hide which by its very nature aims to be an inconspicuous building with no lighting. The proposal will introduce an additional light source into this area. This area has been specifically identified

as a darker area within the wider Special Landscape Area. Guideline for Development I within the Statement of Importance for the North Berwick to Seton Sands Special Landscape Area states that, "Any proposed development must not harm the night-time darkness of those areas of the coast that are currently darker; Gosford Bay to Craigielaw and Gullane Bents to Broad Sands".

The Council's Landscape Officer advises that the applicant has not addressed the requirement for a coastal location for development within the constrained coast and as such her initial consultation response remains and the application is contrary to Policy DC9 of the ELDP.

The existing building is a small stone building with clay pantiled roof with minimal openings consisting of a narrow long opening with timber shutter on the north elevation, which affords a viewing area of the birds and wildlife within the Aberlady Bay Nature Reserve and within the protected area to the north and a double timber sliding door and opening within the south elevation. There are no openings within the west or east elevations. The building currently has no electricity or lighting. The building is long established in its countryside coastal location and is part of the character and appearance of the area. The building is currently in a dilapidated state of repair and has been historically used as an informal bird watchers' hide where ornithologists can sit unobserved and without disturbing the birds or wildlife which frequent the Aberlady Bay Nature Reserve and protected area to the north. Given the building's location on the sea wall and immediately adjacent to the golf course, with no formal means of access to it and no means of lighting, during the hours of darkness and overnight the building is not used.

It is proposed that the building be altered to facilitate its use as a holiday let for overnight accommodation. As such, it is proposed that the building would become a destination accommodation for guests to reside in, which would result in a considerable intensification of use of the building 24hrs a day. To facilitate the proposed change of use of the building it is proposed that internal alterations be undertaken, which by their nature do not require planning permission, to create a holiday let unit which would consist of a shower room and a room which would serve as a studio type bedroom/living room/kitchen.

The proposed external alterations to the building to facilitate the proposed change of use to a holiday let primarily consist of alterations to the north elevation of the building facing onto the Aberlady Bay Nature Reserve and protected area to the north. It is proposed that the existing narrow long opening with timber shutter on the north elevation be enlarged to form a new door opening which would contain a new three-panel, triple-glazed alu-clad sliding door. It is proposed that this new triple-glazed door would enable access to a new cantilevered balcony which is proposed to be formed along the entire length of the north elevation of the building facing onto Aberlady Bay Nature Reserve and the protected area to the north. It is also proposed that a high-level triple-glazed alu-clad window be formed within the north elevation to serve the proposed shower room. It is proposed that the existing double timber sliding door within the south elevation be removed and the opening be enclosed with a new triple glazed alu-clad entrance door. It is proposed that a small extension be added to the west elevation of the building in the form of an enclosure with a mono pitch pantile roof with the west elevation of the extension

clad in timber and the north and south elevations finished in stone. It is also proposed that a flue be installed in the north facing roof slope of the building which is to serve a wood burning stove, which would be installed within the building.

The proposed alterations to the building itself are fairly minor in scale and are generally in keeping with the character and scale of the existing building such that they would be consistent with Policy DP5 of the ELDP. However, the proposed alterations together with the proposed change of use of the building to a holiday let would result in an intensification of use of the building both during the day and overnight, within the hours of darkness, and an intensification of movement both to and from the building by not only guests but also cleaning/maintenance staff, etc. It is proposed that the building would be provided with electricity which is to be provided by four ground-mounted solar PV panels and PV batteries. As such, the proposed holiday let would have internal lighting, which, given the proposed three-pane, triple-glazed sliding door and new high-level window proposed within the north elevation (which would serve the living area and shower room respectively) and the proposed glazed entrance door on the north elevation (which would serve the living area), light pollution would be omitted from the building both to the north onto Aberlady Bay and the protected area and to the south onto Kilspindie Golf Course. While the proposed formation of the new cantilevered balcony along the entire length of the north elevation of the building would provide a new external useable area to the north of the building overlooking the Aberlady Bay and the protected area.

These matters were raised with the agent who responded, stating, 'The building is already present on this stretch of coastline. It is a very small property. The only real additional visual impact would be in the evening when there may be negligible light spill from the property. This would be a pin-prick in the wider landscape of the Special Landscape Area with many other light and visual impact sources in close proximity (both Kilspindie and Craighielaw clubhouse being immediate examples as well as the substantial detached houses at Craighielaw). The applicant will incorporate low-intensity lighting both in terms of brightness, positioning and direction to ensure minimal light spillage. It would add to the attraction of the property whilst also reducing what limited visual impact there may be. However, the property is so small that this will not be a major concern. The lighting system will be low wattage supplied by a 12v battery system. There will be no external lights on the beach side of the property.' With regards to the impact of the proposed balcony the agent stated, 'The accommodation will only ever be occupied by a maximum of two people. The potential disturbance would be no greater than having windows that open out onto the north elevation. The customer guide would request due care and attention in terms of loud music, etc. but in reality this would not be a problem to a wider area that already experiences considerable noise, activity and visual changes through the golf course and walkers/dog walkers over a much wider area. Proportionately, this would be a tiny area that would/may experience very occasional noise impacts, and these would be over an extremely limited area.'

The provision of the proposed external balcony on the north elevation of the building along with the proposed three-pane-glazed sliding doors which would provide access to it, together with the proposed intensification and use of the building for overnight accommodation, would result in a completely different

relationship of the existing unlit bird hide building to Aberlady Bay, the Protected Area, the SLA, and the constrained coast, as would the proposed glazed door within the south elevation. Such that the cumulative impact of the proposed impact of the proposed alternations to the building together with the proposed change of use and intensification of use of the building would not accord with the guidelines for development within the SLA and as such the proposal is contrary to Policy 30 of NPF4 part (b) (ii) and (e) (i), Policy DC9 of the ELDP. There is no public benefit of the development which would outweigh the adverse impacts of it.

The proposed siting of four ground-mounted solar PV panels (measuring some 6.95 metres long, some 0.9 metres in height, and some 0.64 metres in depth) with wooden posts with fence wire supporting nylon protective net pegged at ground level to the east of the building would be visually prominent in the immediate locality of this part of the constrained coast and protected landscape area and from the Kilspindie Golf Course. With the exception of the existing historical bird hide building, there is no built form of development immediately adjacent to this area of constrained coastline, and as such, they would be an incongruous feature not in keeping with the special landscape character of the area; as such they would be contrary to Policy DC9 of the ELDP.

Given the building sits directly on the coastal wall, the Scottish Environment Protection Agency (SEPA) have been consulted on the application. SEPA provided an initial consultation response advising that the building is located immediately adjacent to an area at risk of flooding from the sea based on the SEPA Future Flood Maps. SEPA state that the development proposal is to convert an existing structure that currently serves as a bird hide building into holiday accommodation which they consider would increase the land use vulnerability in this case from Water Compatible to Most Vulnerable, if the development was granted consent and completed. In their initial consultation response, SEPA advised that the information supplied with the planning application was insufficient to allow them to determine the potential impacts in relation to flood risk and as such requested that further topographical data be provided by the applicant/agent to confirm the current and proposed floor level of the structure in an attempt to address the matter of flooding. As such, SEPA advised that their initial consultation response was a holding objection unless it can be demonstrated by the applicant/agent that the proposed scheme of development, including the proposed change of use of the building, could be undertaken without increasing the vulnerability of the building to flooding. SEPA's initial consultation response stated that if the planning authority was not minded to request this information, or the applicant does not provide it, then SEPA's representation should be considered as an objection.

SEPA's initial consultation response was forwarded to the agent to allow the opportunity for the applicant/agent to submit additional information to address the matters raised and attempt to demonstrate that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

While during the determination period the agent submitted a letter in attempt to address various matters raised by various consultees in their consultation responses, this letter provided no information in response to the matters raised by

SEPA and their holding objection, and as such did not make any attempt to provide additional information or demonstrate that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

SEPA was re-consulted on the application and the agent's letter forwarded to them. SEPA provided a further consultation response stating that they cannot see any details in the agent's submission which relate to SEPA's requirements issued under their initial consultation response. Consequently, SEPA advised their response remains unchanged, and an objection to the application as it has not been demonstrated that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding.

The **Council's Flooding Protection Officer** advises that the main risk to the proposed development is coastal flood risk. While he does not oppose the application on the grounds of flood risk, he recommends that as access and egress to the development may also be affected by flood waters, should approval be given, the applicant signs up to receive flood warnings from SEPA. Likewise, emergency responders would require access to and from the property in case of emergency. It would also be advisable for the applicant to develop an evacuation plan for the building during times of flood warning.

The proposed scheme of development including the proposed change of use of the building from a bird watchers' hide to a holiday let providing overnight tourist accommodation would increase the flooding vulnerability of the building. It has not been demonstrated by the applicant/agent that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding, as such, the proposed scheme of development is contrary to Policy 22 of NPF4 and NH11 of the ELDP. Additionally, it has not been demonstrated that occupiers of the proposed holiday let would not be at risk from safety hazards in the form of flooding, contrary to Policy 23 of NPF4.

It is stated in the submitted Design and Access Statement that 'there is currently no vehicular access road to the building and it is most easily reached on foot along the headland from Kilspindie Golf Club. However, it can be accessed via golf buggy.' While it is indicated on the submitted drawings that a 'track' exists, there is no formal path or right of way providing access to the building; access by foot is either over the Kilspindie Golf Course or via the beach and headland. During the determination period of the application, clarification was sought from the agent as to how guests, including disabled guests, would access the proposed holiday let building.

During the determination period, the agent submitted a letter in attempt to address various matters raised and consultation responses. This letter stated that with regards to parking and access 'guests will check in at Craighielaw Golf Club, they will then be taken by golf buggy to the property. The 'chauffeur' will be a member of the Craighielaw golf team and well versed in ensuring appropriate access across two active golf courses. The straight-line distance is approximately 500m. There will be no option to retain or permanently park a golf buggy at the accommodation - purely a drop-off and collect service (and therefore very infrequent). Assuming they have arrived by car (train and bus is an option), cars can either be left at

Craigielaw Golf Club or if they want to move their car to a closer spot, the overflow car park at Kilspindie Golf Club is closer to the accommodation. The additional vehicle will not cause any capacity issues at either location. It is possible that the accommodation will not be suitable for disabled customers. Its unique location and small size will mean it is not suitable for those with limited mobility or with children and/or pets.'

As such it is proposed that guests on check in and check out would be driven by golf buggy over two active golf courses (Craigielaw and Kilspindie), with guests' own vehicles being required to be parked some distance from the proposed holiday let building either within the car park at Craigielaw Golf Club to the south or within the overflow car park at Kilspindie Golf Club to the east both which are approximately 500 metres away. While during the duration of their stay guests wishing to leave or return to the building would be required to make their own way on foot to and from the building which would either require walking over two active golf courses, should they head towards Craigielaw Golf Course or across Kilspindie Golf Course, or along the beach headland should they head to the east towards Kilspindie Golf Club to access Aberlady or Gullane or bus stops in the village. There would be no vehicular access provided to the building for any vehicles including guests, servicing of the holiday let (cleaning/maintenance), all of which would require to traverse the active golf courses. There would also be no vehicular access for emergency service vehicles directly to the building. It has also been noted and raised with the agent that the application site the subject of this application does not include either Craigielaw Golf Club or its car park rather the application site includes part of the overflow car park at Kilspindie Golf Club and an area of land from it to the application building detailed as a 'track'. This matter was raised with the agent during the determination period.

With there being no direct vehicular access or formal pedestrian access to the building, the agent has stated that 'it is possible that the proposed holiday let will not be suitable for disabled guests' contrary to Policy 30 of NP4 4 part (b) (v) accessibility for disabled people.

Given the building's location, the only way of accessing it is either over two active golf courses or via the headland to the east or over Kilspindie Golf Course. Related to this is Policy 23 of NPF4 the policy intent of which is to protect people and places from environmental harm, mitigate risks arising from safety hazards and encourage, promote and facilitate development that improves health and wellbeing. Given the building requires to be accessed over active golf courses, there would be an intensification of movements to and from the building over the golf courses which would present a safety hazard, increasing the risk of people (non-golfers) being hit by golf balls. This is quite different to members of the public who may choose to informally walk on the golf course or headland with the proposal promoting a specific holiday let accommodation as a destination which will generate increased pedestrian movement at this specific location and in the immediate area. Additionally, with the building being located immediately adjacent to Kilspindie Golf Course, the 3rd tee and 2nd green in particular, with the main entrance to the proposed holiday let being directly onto the golf course, the proposal would present an increased safety hazard of guests being struck by wayward golf balls. As such, it is considered that the proposed holiday let, given its

location, would increase the safety hazard of the immediately adjacent active golf courses by generating additional movements, contrary to Policy 23 of NPF4.

The **Council's Road Services** have been consulted on the application and advise that as noted on the location plan, guests will arrive to the site from the East, where they will park in the overflow car park at Kilspindie Clubhouse. From here they will walk on foot or travel via golf buggy along the existing grass access track to the Hideaway". Road Services state that this is the only location drawing submitted Drg. 22092 FE(02) rev 01, indicating the intended route to the facility. Road Services state during the determination process they queried the suitability of the existing foot path to access the proposed development, the path was uneven, of varying widths, overgrown in areas, the route left the golf course onto the beach and returned to the golf course due to the location of the 2nd tee. Road Services state that this route would not accommodate a golf buggy and would be hazardous to navigate in poor light conditions; as such, the proposed route is unsuitable to service this facility without further modifications. Road Services advise that after receiving a revised method statement describing how the facility will be operated and maintained, additional access provision was proposed via Craighelaw Golf Clubhouse. However, no further drawings indicating the proposed access track routes and track details from Craighelaw and Kilspindie to accommodate pedestrian, golf buggy and emergency 'blue' light service access to the proposed facility have been submitted and as such without it having been demonstrated that the proposed holiday let is capable of being accessed conveniently and safely on foot, by cycle, by public transport or by private vehicle, Road Services cannot support the proposed scheme of development. As such, the proposal is contrary to Policy T1 of the ELDP.

Scottish Water as a consultee on the application raise no objection to it.

In conclusion, the proposed scheme of development is not in accordance with the Development Plan and there are no material planning considerations that outweigh the fact that the proposed scheme of development is not in accordance with the Development Plan.

REASONS FOR REFUSAL:

- 1 It has not been demonstrated that the proposed scheme of development could be undertaken without undermining the conservation objectives and/or having an adverse effect on the integrity of the designated Firth of Forth SPA (also a Site of Special Scientific Interest (SSSI)) and the Outer Firth of Forth and St Andrew's Bay Complex SPA contrary to Policies 3 and 4 of NPF4 and Policies NH1 and DC1 of the ELDP.
- 2 The proposed scheme of development would not accord with the guidelines for development within the Special Landscape Area and as such the proposal is contrary to Policy 30 of NPF4 part (b) (ii) and (e) (i), and Policies DC1, DC6 and DC9 of the ELDP.
- 3 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the vulnerability of the building to flooding as such the proposed scheme of development is contrary to Policy 22 of NPF4 and NH11 of the ELDP.
- 4 It has not been demonstrated that the proposed scheme of development could be undertaken without increasing the safety hazard to guests from flooding and having to traverse active golf courses contrary to Policy 23 of NPF4.

- 5 The proposed scheme of development would not be located on a site capable of being conveniently and safely accessed on foot, by cycle, by public transport or by private vehicle contrary to Policy T1 of the ELDP.