

REPORT TO: Planning Committee

MEETING DATE: 4 March 2025

BY: Executive Director for 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 Jardine for the following reason: Due to local concerns.*

Application No. **24/00660/P**

Proposal Change of use of agricultural land and outbuildings to use as a dog exercise park and dog day care business (Retrospective)

Location **Thornfield
Thorntonloch
Innerwick
East Lothian**

Applicant Harry's Hounding Around

Per Planning Solutions Edinburgh

RECOMMENDATION Granted Permission

REPORT OF HANDLING

PROPOSAL

This application relates to an area of agricultural land at Thorntonloch which is situated within the countryside as defined by Policy DC1 of the adopted East Lothian Local Development Plan 2018. It is positioned immediately to the north side of the main east coast railway line and some 280 metres to the south of the A1 Trunk Road. The application site measures some 1.14 hectares.

In February 2009 planning permission was refused retrospectively for the change of use of agricultural land for the siting of a mobile home including the formation of domestic garden ground and associated hardstanding area. This application related to an area of land that comprises part of the western area of the application site. The refusal of this planning application was subsequently appealed at Local

Review Body in July 2013 however this appeal was dismissed.

In May 2023 planning application (Ref: 23/00292/P) was submitted for the retrospective change the existing use of the land from agricultural to land use for exercising dogs as part of a dog day care business. The applicant for that application was 'The Fast and The Furriest Dog Playcare'. It has since been confirmed in writing that business no longer operates from the application site and that planning application is therefore to be withdrawn.

Planning permission is now sought retrospectively for the change of use of agricultural land to a dog day care and dog exercise business. The business is known as 'Harry's Hounding Around'.

The area the subject of the retrospective change of use has an area of some 1.14 hectares. The site is accessed via a gate from the road to the southwest and the submitted drawings indicate an area of parking for 4 vehicles within the southwest section of the application site. The areas that are used for dog exercise are fenced off with post and mesh fencing. This fencing is 1.8 metres in height however, 0.3 metres of this facing is stated to be below ground and therefore the visible height of this fencing is 1.5 metres.

The application site currently contains 3 outbuildings and two hardstanding parking areas, all of which are subject to the retrospective change of use.

The timber outbuilding to the northeast of the parking area ('Outbuilding 1') is single storey in height and has a pitched roof with a canopy overhang. Outbuilding 1 has a length of 7.5 metres; a width of 4.7 metres and a height of 3.2 metres, when measured at its highest point.

Outbuilding 1 is predominantly of timber construction with a plastic and metal corrugated roof with associated plastic rainwater goods.

The outbuilding to the far east of the site ('Outbuilding 2') is single storey in height and has a mono-pitched roof. Outbuilding 2 has a length of 4.5 metres; a width of 4.2 metres and has a height of 2.7 metres, when measured at its highest point. Outbuilding 2 is predominantly of timber construction with a pitched felt covered roof.

The timber outbuilding to the southeast of the parking area ('Outbuilding 3') is single storey in height and has a flat roof. Outbuilding 3 has a length and width of 2.5 metres and a height of 2.1 metres. Outbuilding 3 is predominantly of timber construction with a pitched felt roof and is enclosed by a high timber post and wire fence with associated access.

A supporting statement submitted with the application informs that the application site was chosen as it offered a quiet rural setting only a few miles from Dunbar. The provides the dogs with a generous amount of openspace which fits in well with the business ethos. The site already has deer fencing which provides an additional barrier dividing the fields into separate areas where the dogs can run freely without disturbing wildlife or escaping onto nearby roads. The change of use would not result in a substantial increase in the number of vehicle movements to the site.

Three or four vans will arrive on site at 9am and leave the site at 1pm Monday to Friday. Under no circumstances will customers ever be expected to drop dogs off at the site. All dogs faeces will be collected and composted in small portable wormeris strtelgically placed on the site.

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

Policies 1 (Tackling the climate and nature crises), 2 (Climate mitigation and adaptation), 5 (Soils) and 29 (Rural Development) of NPF4 and Policies DC1 (Rural Diversification), DP1 (Landscape Character), DP2 (Design), NH11 (Flood Risk) and T2 (General Transport Impact) of the adopted East Lothian Local Development Plan 2018 are relevant to the determination of the application.

The applicants' submission notes the number of dogs on-site are limited to 55 per day to allow space for each dog.

REPRESENTATIONS

One public letter of objection has been received in relation to the application. In summary, the main grounds of objection are:

- i) The objector notes the statement made in the applicants' submission that states there are three small buildings on the site and one was primarily used as a dog shelter is untrue. The double stables was used to keep horses, the open fronted shelter at the east end was the field shelter for sheep and the small shed with mesh enclosure to the south, next to the railway, was a chicken shed. According to the objector no part of the application site was ever used for dog walking;
- ii) The objector notes the statement made in the applicants' submission that states the site already has deer fencing is untrue. The objector notes the fencing in place is plastic mesh cable tied to spindle sticks, which the dogs often chew through;
- iii) The objector also notes the statement made in the applicants' submission that states dogs can roam freely without disturbing wildlife is untrue. The objector notes there are 2 heron pairs that frequent the application site. However, as soon as vans/dogs start to arrive on the site these herons fly off;
- iv) The objector also notes the statement made in the applicants' submission that states the buildings have provided valuable shelter for dogs in inclement weather is untrue as the previous occupier of the site did not keep dogs in the buildings and neither do the dog walkers. The objector notes the dog walkers sit in

the stables whilst the dogs run around;

v) The objector also notes the statement made in the applicants' submission that states three/four vans arrive on site at 10am. The objector notes they have observed five vans appear between the hours of 09:30 and 11:00 with additional van movements noted between 07:00 and 09:00 and also between 13:30 - 17:00;

vi) The objector notes vans often stop in the middle of the road whilst the gates to the site are opened/closed. This forces other cars to go into the middle of the road, into oncoming traffic to navigate the bend and bridge;

vii) The objector notes that despite the applicants submission stating there are no vehicle movements during the weekend they have observed the site being used at weekends;

viii) The applicant has allegedly tipped over 100 tons of stone into the field that was used for horses and sheep. Then packed it down to provide a parking area for the vans, situated in front of the stables. The objector notes they do not see this area marked on the submitted plans;

ix) The applicants' submission notes the perimeter fencing used at the site is deer fencing. However, the objector states this is not deer fencing, it is a thin plastic mesh for wall climbing plants, cable tied to thin sticks and the objector also notes the fencing is falling apart and does not stop dogs digging under it and escaping;

x) The objector notes the fencing is not actually 1 metre below the surface but instead has been cable tied to the existing stock fence;

xi) The objector notes the field has flooded 5 times to their knowledge and on each of these occasions the water came beyond the stables and totally swamped the field shelter towards the East. The most recent flooding episodes were in 2009, 2012, 2018 and 2019;

xii) The objector notes there have been several occasions where the dog faeces disposal boxes have been left out for weeks on end at the gate. Several locals who walk their dogs along this road comment on the smell;

xiii) The objector believes the proposal does not comply with Policies DC1 of the adopted East Lothian Local Development Plan 2018;

xiv) With regards to Policy T2 the objector notes the vans arrive at the site from Peebles and West Linton noting only one/two of the clients are local. The objector queries how this can be acceptable during a climate emergency;

xv) The objector notes the dogs can be in the van for 2 hours or more and raises issues from an animal welfare point of view and has provided a screenshot that allegedly confirms the vans can hold 25-30 dogs each;

xvi) The objector notes there are trees along the burn and on the fence lines and railway banking however the applicant has noted on their application form that

there are no trees;

xvii) The objector believes dogs are stuck in vans for hours and the exercise they receive is chaotic and uncontrolled. The objector notes a local vet has treated numerous dogs from the business;

xviii) The objector states the number of dogs on the site could be up to 125 dogs a day and the noise is not acceptable, furthermore this number of dogs is uncontrollable;

xix) The objector queries if the business were to expand how many dogs may be on the site;

xx) The objector notes the testimonials provided as part of the applicants' submission appear fake;

xxi) In addition to the herons, the objector notes there may be a badger set within the site and additionally rabbits used to use it to frequent the site but since the business has been in operation they have not been seen;

xxii) The objector notes the running of this business has negatively impacted on their mental health; and

xxiii) If the application is approved then this will result in the complete loss of amenity for the objector.

In relation to the above, comments raising inaccuracy with a statement made in the applicants' submission relating to the historic use of the outbuildings and the current use of these outbuildings as shelters for dogs being untrue are not a material consideration in the determination of this planning application.

The comments raising issues with the construction/type of fencing and dogs damaging this fencing is not a material consideration in the determination of this planning application.

The comments relating to the alleged disturbance of wildlife will be assessed further in this report by way of the Biodiversity Officers' consultation response.

The comments relating to vans arriving/leaving the site out with the hours of operation can be controlled by way of a condition attached to any grant of planning permission which will condition the hours of operation of the business.

With regards to the comments noting vans stop in the middle of the road before accessing the site, the **Council's Road Services** have been consulted on the application and their comments are noted further in this report.

With regards to the area being used for parking vans not being shown on the submitted drawings, this area is shown on drawing number 1.

The comments received in relation to the site flooding will be addressed by the

consultation response from SEPA further in this report.

The comments received in relation to the dog waste disposal boxes being left at the gate to the site is not a material planning consideration in the determination of this planning application.

The comments received which raise concerns of dog safety/welfare are not material planning consideration in the determination of this planning application.

With regards to the comment noting that the application form does not state there are trees adjacent to the application site, whilst true, this omission does not necessarily prevent the determination of the application.

The expansion of the site by way of increasing the land used for the dog exercise business would be subject to a further planning application should the applicant wish to expand. Any such planning application would be determined on its own merits.

With regards to the concerns raised around the legitimacy of the testimonials submitted as part of the application, this is not a material planning consideration in the determination of this planning application.

PLANNING ASSESSMENT

The provision of a dog exercise and day-care facilities is a use that requires an area of land large enough to facilitate that use. Such an area of land is unlikely to be found within an existing settlement but is more likely to be found in the countryside. Therefore as this use has an operational requirement for this countryside location the principle of the use is not contrary to Policy DC1 of the adopted East Lothian Local Development Plan 2018.

The application site is within a location suited to the proposed dog exercise and day-care facilities. This use would not result in the loss of a significant area of prime agricultural land. Furthermore, if this planning application was granted, it could at a later date be reversed and the land easily returned to agricultural use given there is no new development proposed.

The site is enclosed and sectioned into areas by some 1.8 metre high fencing with 0.3 metres of this fencing being situated below ground. As noted earlier in this report the visual appearance of this fencing is viewed as some 1.5 metres in height. The application site is accessed by a wooden gate, which opens inwards into the application site and is accessed from the road to the west. This provides access to a gravel section of the site which then leads to a further gate with fencing which provides access to the dog exercise/day-care area. The application site contains 3 existing outbuildings. The parking area used by the operators of the site is situated to the south of outbuilding 1. However, the section of land which is accessed off the road to the west would also be capable of parking vehicles given its size. All works are retrospective.

The fencing, gates and outbuildings are all relatively minor in size, when compared

to the area of land in which they are sited on. They are of a design and appearance reflective of their countryside setting. Therefore, it is not inappropriate for its countryside setting and does not harm the character of the landscape of the area.

The site is sufficiently distanced from neighbouring residential properties to ensure the use of the site does not allow for any harmful overlooking or loss of sunlight or daylight as a result of the three outbuildings.

The neighbouring residential property to the north is situated some 127 metres from the application site whilst the neighbouring residential property to the east is situated some 152 metres from the application site.

The **Council's Environmental Health Officer** has been consulted on the application. The Council's Environmental Health Officer states they have significant concerns regarding noise arising from the dogs on site impacting upon the amenity of nearby residential properties, particularly in the evenings and at weekends when neighbours may be enjoying the use of external amenity areas within their own properties.

The Council's Environmental Health Officer goes on to state evidence submitted by an objector indicates barking dogs are an issue and management of noise associated with barking will need to be addressed by the applicant as a matter of urgency. The severity of any noise impact upon amenity will ultimately depend upon the behaviour/characteristics of the individual dogs using the facility. Noise at any given time on any given day may vary and levels will be subjective. However, with previous applications for dog walking/boarding developments, effective management of the facility, combined with compliance with the undernoted recommended conditions, should minimise any loss of amenity.

The Council's Environmental Health Officer recommends a temporary grant of planning permission for a period of 1 year from the date of consent to allow any complaints that may arise due to noise to be monitored and assessed. Furthermore, it is recommended that conditions to control the hours of operation, number of dogs on site at any one time and the requirement for the submission and implementation of a noise management plan to minimise the impacts of noise from dog barking arising from the use of the site be imposed upon any grant of planning permission.

With regards to the number of dogs permitted on-site at any one time, the applicants' submission notes the number of dogs on-site are limited to 55 per day to allow space for each dog. The Council's Environmental Health Officer advises the number of dogs on-site should be limited to 55 in order to prevent expansion, in the interest of the amenity of neighbouring residential properties and the surrounding area. This could reasonably be made a condition upon any grant of planning permission and would allow the Council's Environmental Health team to monitor the situation over the period of temporary consent. Subject to that condition, the proposal would not lead to a harmful loss of amenity to any neighbouring residential properties.

With regards to Policy T2 of the adopted East Lothian Local Development Plan the

Council's Road Services have been consulted on the application and note the site is currently in use and the site uses an existing access onto the U214 unclassified road. The access is located near a bend and a bridge underpass beneath the East Coast main railway line. Therefore, the visibility to the south/southwest is restricted and the road is relatively narrow but vehicle speeds will be reduced because of the road alignment in the vicinity of the access. Subsequent to the submission of a revised site plan which accurately reflects the parking areas on-site the Council's Roads Services are content there is sufficient space within the application site for vehicles to turn around and exit onto the road in a forward gear. Therefore, the Council's Road Services advise they do not object to this planning application.

The **Council's Biodiversity Officer** has been consulted on the application and notes the change of use of this agricultural land is unlikely to result in a significant disturbance to local wildlife and in particular heron, due to the availability of alternative suitable habitat in the vicinity. Furthermore, the Council's Biodiversity Officer states the change of use does not have a significant impact on the Local Biodiversity Site (Thornton Burn) given the fencing to the perimeter of the application site and in general supports the creation of dog care/exercise spaces on agricultural land as this can contribute to a reduction in disturbance of wildlife. However, it is requested by the Council's Biodiversity Officer that the applicant provide biodiversity enhancement within the application site, that can reasonably be made a condition to any grant of planning permission.

SEPA have been consulted on the application and advise they do not consider the proposals to increase the land use vulnerability and note that the footprint of the buildings will remain the same and as such raise no objection.

The **Council's Flooding Officer** has been consulted on the application and confirms that SEPA's Flood Hazard Mapping indicates that the site is at risk from a flood event with a return period of 1 in 200 years. That is the 0.5% annual risk of a flood occurring in any one year. The flood maps show increased fluvial flood risk from the Thornton Burn to the north boundary of the site. The Council's Flooding Officer notes from the location plan that the land used for dogs at the north and west of the site lies within the risk area. There have been reports of flooding in this area in 2009, 2012, 2018 and 2019, which have resulted in the evacuation of the livestock that previously resided in these fields. Notwithstanding the above, due to the nature of the application, the Council's Flooding Officer raises no objection on the grounds of flood risk.

Network Rail have been consulted on the application and advise it will have no impact on railway infrastructure and therefore has no objection with regards to this application.

Transport Scotland have been consulted on the application and advise they raise no objection.

The **Council's Emergency Planning Department** have been consulted on the application and have contacted the agent directly to arrange being added to the Torness calendar distribution and other procedures associated with that.

The **Council's Landscape Department** have been consulted on the application however no response was received.

The **Council's Access Officer** has been consulted on the application and advises there are no public rights or ways or informal paths running through the area and the surrounding area does not contain a large number of residential properties. As such the Council's Access Officer advises it is unlikely there would be demand for anyone to want to access or walk through the application site. As such, the Council's Access Officer advises he raises no objection to this application.

Given the above considerations and subject to the aforementioned condition the retrospective change of use and development are consistent with Policies 1, 2, 5, and 29 of NPF4 and Policies DC1, DP1, DP2, NH11 and T2 of the adopted East Lothian Local Development Plan 2018. 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 their accordance with the Development Plan.

CONDITIONS:

- 1 The use of the dog walking area shall be for a temporary period of one year from the date of any grant of consent to allow any complaints that may arise due to noise to be monitored and assessed.

Reason:

In order to protect the amenity of nearby residential properties.

- 2 The external dog walking area shall only be used between 0800-1800 hours on any day. The dog walking area shall not be operated at any other time.

Reason:

In order to protect the amenity of nearby residential properties.

- 3 The total number of dogs permitted on-site at any one time, including dogs housed in other temporary accommodation such as a vehicle or shelter, shall be limited to 55 dogs.

Reason:

In order to protect the amenity of nearby residential properties.

- 4 Within 2 months of the date of this decision notice a Noise Management Plan shall be submitted to and approved by the Planning Authority. The Noise Management Plan will outline the measures to be taken to minimise the impacts of noise from dog barking arising from the use of the proposed dog walking area. The measures outlined in the Noise Management Plan shall thereafter be implemented in accordance with the details so approved.

Reason:

In order to protect the amenity of nearby residential properties.

- 5 Details of measures to protect and enhance biodiversity on the application site shall be submitted to and approved by the Planning Authority within 2 months of the date of this decision. The measures as so approved shall be implemented 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.