

Appeal Decision Notice

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Decision by Dan Jackman, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-210-2031
- Site address: Land adjacent to Beveridge Row, Belhaven, Dunbar, East Lothian
- Appeal by Hallam Land Management against the failure of East Lothian Council to issue a decision within the prescribed period
- Application for planning permission in principle 12-00553-PPM dated 13 July 2012
- The development proposed: Residential development, access, open space and associated infrastructure
- Application drawings are listed in schedule 2 at the end of this notice
- Date of hearing and site visit by Reporter: 30 April 2013 and 1 May 2013

Date of appeal decision: 30 April 2014

Decision

I allow the appeal and grant planning permission in principle subject to the 6 conditions listed in schedule 1 at the end of the decision notice. Attention is drawn to the 3 advisory notes at the end of the notice.

Background

1. On 16th October 2013, I issued a Notice of Intention letter (see attached), setting out my reasoning and indicating that I was minded to allow the appeal subject to the 6 conditions listed in schedule 1 below and the signing and registering of an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 between the appellant and the planning authority.
2. The section 75 agreement covering financial contributions for education provision, off site pedestrian links and affordable housing provision was submitted for recording by the General Register of Sasines on 17th April 2014. On 23rd April 2014 I received confirmation from East Lothian Council that they were content for me to issue my decision. I am satisfied that the agreement addresses the matters listed in paragraphs 69 – 78 of the Notice of Intention letter.
3. On 26th January 2014, I received from a nearby resident an e-mail enclosing photographs of water pooling on the site. I address this new matter below.



Reasoning

Drainage and flooding

4. Drainage and flooding matters were discussed at the hearing and addressed in paragraphs 39 – 45 of my Notice of Intentions letter. The local resident argued that the enclosed photographs demonstrated that surface flooding had become more serious since the evidence considered at the hearing. The extent of the surface water and the proximity to the existing residential properties are matters of concern. The developer's untested proposed outline drainage strategy, the necessity for increasing levels on part of the site and predicted increases in sea level due to climate change, all indicate that planning permission in principle should not be granted without a full drainage and flooding assessment being completed.

5. On behalf of the appellant, these arguments are disputed. The pooling of water on an agricultural field after heavy rainfall merely indicates localised areas of impermeability due to compaction and collection of silts. It does not indicate any unmanageable flood risk. Appropriate drainage solutions as part of any development would improve land drainage on the site.

6. I would need compelling alternative technical evidence demonstrating unmanageable flooding and drainage problems to set aside my previous conclusions contained in paragraph 45 of the Notice of Intentions letter. I agree with the appellant, that photographs of pooling water do not of themselves indicate an unmanageable flood risk. The pooling of water is relatively localised. There is no suggestion it is as a result of flooding from a water course or from the sea. Current land drainage patterns are likely to be altered as a result of any development. Conditions 1(h) and 3 are attached to the planning permission in principle to make sure that matters of drainage and flooding are addressed and approved by the relevant authorities as part of the detailed design.

7. I therefore do not find sufficient evidence to alter my previous conclusions. The parties have not drawn my attention to any other relevant matter that has occurred since my Notice of Intention letter. I therefore conclude that I am now able to formally determine the appeal and to grant planning permission in principle subject to the conditions listed in schedule 1 below.

Dan Jackman

Reporter

Schedule 1: List of conditions

1. The submission for approval of matters specified in this condition of this grant of planning permission in principle shall include details of the siting, design and external appearance of the houses, the means of access to it and the means of any enclosure of the boundaries of the site and those details shall accord with the following principles of development for the site:

- (a) there shall be a maximum of 90 housing units. No building shall be higher than two storeys, which may include living accommodation in the roof space;
- (b) the housing units positioned on site in a manner which ensures that windows of them (i) would not overlook windows on adjacent or nearby houses where the distance between those windows is less than 18 metres, and (ii) would not face towards a garden of a neighbouring house within 9 metres of it;
- (c) the layout of the development shall be designed in accordance with Designing Streets the Council's Design Standards for New Housing Areas and Policies C1 and C2 of the adopted East Lothian Local Plan 2008, including open space, the means of vehicle access, parking, turning and provision for pedestrian and cyclist access and movement and the means of enclosure of the boundaries of the site and between housing units;
- (d) details of the layout, size, height and elevations of the proposed housing units and associated infrastructure, including the materials proposed for external finishes of them;
- (e) the housing units provided with private parking spaces and with visitor parking which shall be compliant with the East Lothian Council Parking Standards;
- (f) details of materials to be used for roads, footpaths and other hard surfaces;
- (g) details of a continuous footpath link along the south side of the A1087 to connect to the existing pedestrian network at West Barns; and
- (h) details of existing and proposed site levels

Reason: To enable the Planning Authority to control the development to safeguard against over development of the site and to ensure the development is integrated with its surroundings in the interests of safeguarding the character and appearance of the area, the privacy and amenity of neighbouring residential properties and of future residents of the development; road safety and managing any potential flood risk.

2. No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of the site; tree and

shrub size, species, habitat, siting, planting distances and a programme of planting. It shall include a woodland management plan for the western part of the site. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

3. Prior to the commencement of development, a SUDS scheme shall be submitted to and approved by the Planning Authority, following consultation with the Scottish Environment Protection Agency and Scottish Water, and all work shall be carried out in accordance with the details so approved.

Reason: To ensure adequate protection of the water environment and to manage flood risk from surface water run off.

4. A noise consultants report to include an assessment of: (i) noise from the use of the main east coast rail line and of any impact of such noise on the housing development of the site; and (ii) any mitigation measures considered necessary to achieve satisfactory internal and external noise levels for the occupiers of a residential development of the site, shall be submitted to and approved by the Planning Authority prior to the commencement of development. Any identified mitigation measures shall be fully undertaken prior to the occupation of any housing unit built on the site.

Reason: To ensure that the future occupants of any of the housing units benefit from a satisfactory level of amenity.

5. No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority. The artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

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

6. No development shall take place until a scheme of archaeological evaluation has been submitted to and approved in writing by the planning authority. The approved scheme shall be implemented unless otherwise agreed in writing by the planning authority.

Reason: To ensure that there is an archaeological evaluation of the site and that matters of archaeology are considered during the development.

Schedule 2: Application drawings

Site location plan (drawing ref: A1204L(--))001)
Opportunities and constraints (drawing ref: A1204L(--))002)
Concept masterplan option analysis (drawing ref: A1204L(--))003)
Indicative concept layout (drawing ref: A1204L(--))004)
Indicative concept layout in context (drawing ref: A1204L(--))005)
Outline landscape proposals (drawing ref: A1204L(--))006)

Advisory notes

- 1. Notice of the start of development:** The person carrying out the development must give advance notice in writing to the planning authority of the date when it is intended to start. Failure to do so is a breach of planning control. It could result in the planning authority taking enforcement action. (See sections 27A and 123(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 2. Notice of the completion of the development:** As soon as possible after it is finished, the person who completed the development must write to the planning authority to confirm the position. (See section 27B of the Town and Country Planning (Scotland) Act 1997 (as amended).)
- 3. Display of notice:** A notice must be displayed on or near the site while work is being carried out. The planning authority can provide more information about the form of that notice and where to display it. (See section 27C of the Town and Country Planning (Scotland) Act 1997 Act (as amended) and Schedule 7 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.)

Appeal: Notice of Intention

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- Appeal by Hallam Land Management Limited against the failure of East Lothian Council to issue a decision within the prescribed period
- Application 12-00553-PPM for planning permission in principle dated 13 July 2012.
- The development proposed: Residential development, access, open space and associated infrastructure
- Application drawings are listed in Schedule 2 at the end of this notice
- Date of hearing and site visit by Reporter: 30 April 2013 & 1 May 2013

Date of notice: 16 October 2013

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the 6 conditions listed below, following the signing and registering or recording of a planning obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended), or some suitable alternative arrangement, covering the matters listed in paragraphs 69 - 78

Preliminary Matter

The appellant also made a claim for expenses against the council. The claim for expenses is dealt with in a separate decision notice.

Reasoning

1. The determining issues in this appeal are firstly, whether there is a shortfall in effective allocated housing land sufficient to justify allowing the development of further land. Secondly, if there is a shortfall, whether the proposal can satisfactorily address site specific matters including: development in the countryside; coalescence between Belhaven and West Barns; adequate provision for drainage and prevention of flooding; traffic generation; provision for pedestrians and cyclists; provision of affordable housing; and adequate school capacity, bearing in mind the provisions of the development plan, Scottish Planning Policy and associated guidance published by the council and the Scottish Government.



Development Plan

2. At the time of the hearing, the development plan comprised the Edinburgh and Lothians Structure Plan, approved by the Scottish Ministers in June 2004 and the East Lothian Local Plan, adopted by the council in October 2008.

3. The structure plan sets out an overall housing requirement, including one for East Lothian for the period 2001-2015. It also provided spatial guidance in identifying 6 strategic housing allocations for East Lothian.

4. It is accepted by all parties that the East Lothian Local Plan complied with the terms of the structure plan by identifying in detail the strategic allocations and allocating sufficient land to cover the overall housing requirement. The appeal site is identified as countryside in the adopted local plan.

5. The structure plan also contained Policy HOU 10, which under certain circumstances would permit the release of further land for housing if there was insufficient effective land available.

6. However, on 27th June 2013 the Scottish Ministers approved the Strategic Development Plan for Edinburgh and South East Scotland (SESplan). This replaces the structure plan and now forms part of the development plan. Section 25 of the Town and Country Planning (Scotland) Act 1997 requires me to make my decision in accordance with the development plan unless material considerations indicate otherwise.

7. SESplan sets out the housing requirement for the whole area from 2009 - 2032, in 3 periods. It should be noted that SESplan covers a larger area than the previous structure plan, including the Scottish Borders and parts of Fife.

8. Policy 5, in summary, states that supplementary guidance will be prepared to show the housing requirement for each local development plan for the periods 2009 - 2019 and 2019 - 2024. In the covering letter, the Scottish Ministers expect this exercise to be completed by June 2014.

9. Policy 7 is broadly comparable with the previous structure plan Policy HOU 10. Under the heading *'Maintaining a Five Year Housing Land Supply'* it states:

"Sites for Greenfield housing development proposals either within or outwith the identified strategic development areas may be allocated in the local development plans or granted planning permission to maintain a five years' effective housing land supply, subject to satisfying each of the following criteria:

a) The development will be in keeping with the character of the settlement and local area

b) The development will not undermine green belt objectives; and

c) Any additional infrastructure required as a result of the development is either committed or to be funded by the developer”

10. SESplan defines the East Coast Corridor of East Lothian as a strategic development area and it is clear from the text that Dunbar would be included. The appeal site therefore falls into a strategic development area.

11. The adopted East Lothian Local Plan has policies relating to general land allocations, policies relating to particular land uses or issues and the general development policies that would apply to any development.

12. I consider Policy DC1 to be relevant. As mentioned above, the site is identified as countryside and in short, a residential development would not comply with this designation. Criterion 5(d) of Policy DC1 seeks to minimise the loss of prime agricultural land. I note that the site is not situated within an identified green belt.

13. It was agreed by the appellant and council that the following policies were relevant, INF3, H1, H4, C1, C2, T1 and T2. In summary these policies aim to make sure that a housing development provides for any physical and social infrastructure that is a consequence of it, has good design, provides for affordable housing, provides for open space and play provision, is accessible by public transport and considers any road safety implications.

14. Some of the general development policies are more directly relevant to the consideration of a detailed proposal. The policies that I consider are relevant to the appeal proposal are policies DP1 – landscape and streetscape character, DP 2 – design, DP 15 – sustainable urban drainage systems, DP 16 – flooding and DP20 – pedestrians and cyclists.

15. The East Lothian Local Plan will at some point be replaced by the East Lothian Local Development Plan. Some preliminary work has started and at the hearing the council referred me to the current development plan scheme which envisages adoption by 2015. Until the supplementary guidance mentioned in Policy 5 above is approved, knowing how much new housing land to identify would be difficult. It would seem inevitable that adoption would be delayed by at least a year. Any new site identified would still need to receive planning permission. It is unlikely that any new housing site identified through an approved local development plan could commence construction much before 2017. It is possible that timings could slip even further.

Housing land supply

16. The appellant’s position, in summary, is that there is a serious shortage of effective housing land regionally, for East Lothian and for Dunbar. The previous Policy HOU 10 and now Policy 7 of SESplan would allow the exceptional granting of planning permission for acceptable sites to help address this situation.

17. At the hearing the council argued that there was no shortage of housing land. Completions had been lower than expected and this impacted on the arithmetic of calculating a 5 year supply. However, the reason for the low completions was primarily the general economic situation. In later written submissions, the council acknowledged that the approval of SESplan by Scottish Ministers was a material change in circumstances.

18. Policy 7 is premised by the need to maintain a 5 year effective housing land supply. However, until the supplementary guidance mentioned in Policy 5 is approved, it is not possible to carry out the complete housing land supply calculations. As it currently stands, the development plan does not enable a definitive 5 year housing land supply to be calculated.

19. It would be normal for a strategic development plan to set the housing land requirement for local development plans. It is clearly unfortunate that there is a delay in the case of SESplan. However, I am unaware of any document that would indicate that the Scottish Ministers consider that a delay in addressing housing land supply is acceptable. The general thrust from the Chief Planner's letter dated 29 October 2010, the current Scottish Planning Policy, proposed Scottish Planning Policy and the proposed National Planning Framework 3, is that the matter is addressed as soon as possible and that a 5 year supply must be maintained at all times.

20. The method for calculating a 5 year supply was agreed at the hearing. Completions since 2009 were agreed and it was also agreed that the 2012 housing land audit was the most up to date information on developer intentions. Whilst the development plan does not currently provide a total housing requirement for East Lothian, the housing need and demand assessment prepared on behalf of SESplan (and certified by the Scottish Government as robust and credible) does. This information can be used as a proxy to assess the minimum likely 5 year requirement in order to compare with the latest agreed effective housing supply.

21. Completions and future programming are shown in table 1 below. These figures have been taken from the council's housing land supply and effectiveness paper and the agreed 2012 housing land audit. In table 1, page 182 of the report of the strategic development plan examination, the assessed housing requirement for East Lothian for the period 2009 – 2019 is 5210. As mentioned above, this figure is derived from the housing need and demand assessment and SESplan housing technical note.

Table 1 East Lothian completions and forward programming

Years	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19
Houses	193	481	433	<i>209</i>	<i>298</i>	<i>512</i>	<i>526</i>	<i>519</i>	<i>778</i>	<i>676</i>

Note: completions in bold, forward programming in italics

Agreed five year land supply formula

$$\frac{(\text{Housing land requirement} - \text{Completions})}{\text{Years left to run}} \times 5 = \text{The required 5 year land supply}$$

Where:

Housing land requirement = 5210 (taken from the housing need and demand assessment 2009 - 2019)

Completions = 1107 (i.e. 193 + 481 + 433)

Years left to run = 7 (i.e. 2012/13 – 2018/19)

$$\frac{(5210 - 1107)}{7} \times 5 = 2931$$

22. The 5 year forward programming 2012/13 – 2016/17 shows an effective supply of 2064. There is therefore a shortfall in the 5 year effective supply of housing land of 867 units, which I consider to be significant. I note that there is no dispute between the appellant and council over the above figures and that such an approach is consistent with other appeal decisions mentioned to me. I therefore agree with the appellant that Policy 7 provides the framework for releasing additional housing land from acceptable sites.

23. I accept that the 2012 housing land audit is only a snapshot in time and is already out of date. I am aware that developer intentions can radically change and accurate predictions of the output of a site 4 or 5 years into the future are unlikely.

24. However, at the same time, the actual housing land requirement is likely to be higher than 5210. This is because it does not take into account any potential re-distribution between the different council areas, notably the City of Edinburgh. In addition, it is normal to actually allocate land for a higher number in order to provide flexibility and to comply with the Scottish Government's policy of a generous supply of housing land.

25. I also recognise that housing land supply is not just a matter of applying a simple formula. It is also necessary to look into the reasons for fewer completions. I accept that the economic context is an important factor in determining overall construction activity. I also accept that there were good planning reasons why only a relatively few number of larger sites were part of the previous planning strategy.

26. Nonetheless, the fact remains that insufficient houses are being built to meet acknowledged needs and this has been the case for some time. It is clear to me that the Scottish Ministers expect councils to address this problem proactively and not simply wait in the hope that pre-recession activity levels return.

27. I therefore find that in East Lothian there is currently not a 5 year supply of effective housing land and that an exceptional grant of planning permission may therefore be justified.

Site's effectiveness

28. Although it is not mentioned in Policy 7, it is self evident that if a site is to be exceptionally released, it should be effective itself. The appellant's forward planning estimate is 2014/15 – 18 units, 2015/16 – 27 units, 2016/17 – 23 units and 2017/18 – 22 units. At the hearing the council considered this to be possible but optimistic. Later on it expressed more doubts. I accept that much has still to be done, much of which will be beyond the control of the appellant. An agreement would have to be reached over any planning obligations. The site would have to be sold to a house builder. The new purchaser would have to have a detailed design worked up and the necessary approvals obtained. The timing for all this is uncertain. Nonetheless, even if a start in 2014 was not possible, a start in 2015 or 2016 would still be within an acceptable time frame to address current housing needs.

29. There was a suggestion that granting planning permission for additional land might undermine the chances of development of the existing allocated sites, in particular the Hallhill site in Dunbar. I find no evidence for this. It is clear from the modifications made by Scottish Ministers to SESplan that they do not accept that simply relying on existing allocations is an adequate response. The council has provided me with no specific examples of where infrastructure requirements between the appeal site and Hallhill would conflict.

30. Furthermore, there is evidence that economic activity is picking up. In any event, Dunbar and East Lothian are part of a much larger housing market area. There are already several sites expected to be active at anyone time in East Lothian. I see no good reason to suppose the development of a relatively small site, with modest construction rates, should undermine the activity at any other housing site.

31. I recognise that ultimately, when the site is sold on to a house builder and when a house builder decides when to actually start construction is a commercial decision. Whatever the appellant's evidence at the hearing, there can be no guarantees for any particular building programme. Nonetheless, I consider that on the balance of probabilities, the site can be considered effective and would contribute much needed houses more quickly than waiting for the local development plan process to be followed.

Site specific matters

Countryside

32. As mentioned previously the site is identified as countryside. A residential development of up to 90 houses would not comply with Policy DC 1. Furthermore, the site is grade 2 prime agricultural land. The appellant suggested that the loss of this land would be less important because the field is separated from the main agricultural unit and not all the site would be developed.

33. It is obvious from my site visit and the comments from local residents that the site is actively farmed. If the development were to go ahead then the site would be lost to productive agriculture. Paragraph 97 of Scottish Planning Policy states that development on prime agricultural land should not be permitted unless it is an essential component of the settlement strategy. Paragraph 69 of the draft Scottish Planning Policy has a similar intent.

34. The local residents group also considered that the development of the site would have a detrimental impact on the natural beauty of Belhaven Bay. I agree that Belhaven Bay is an attractive place, which is important for recreation and the general enjoyment of the coast. I cannot agree that a well designed residential development on the appeal site would have any detrimental impact. I consider that the site, if it is seen at all, would be read as part of the general urban area of Dunbar/Belhaven.

Coalescence

35. The council and local residents group argued that the appeal proposal would lead to the coalescence of Belhaven/Dunbar with West Barns. In their view, the separation of communities is important in terms of their character and identity. The remaining gap would be vulnerable to pressure for further development. Design measures could not mitigate this situation. Any tree planting would take many years and the residential development and new access would be seen as an obvious urban extension into the countryside.

36. I agree that physical separation can often be important in retaining the character and identity of communities. However, the proposal will not actually result in the linking of Belhaven/Dunbar with West Barns. Furthermore, the perception of separation is as important as any physical separation. Although the red line of the appeal site would be closer to West Barns, that does not mean that a well designed urban extension has to have urban development up to that point.

37. Alternative design options are available and one such option is shown in the indicative concept layout. I accept that any tree planting would take many years to mature. I also accept that even a well designed residential extension will be read as such. However, based on my site inspection, I do not agree that a well designed residential development will result in any harmful perception of coalescence or harm the current character and identity of either Belhaven or West Barns.

38. If any future proposal was promoted to develop the remaining land, that would have to be considered on its individual merits and in the light of the planning policies prevailing at that time. I do not accept that it is an inevitable consequence of the appeal proposal that Belhaven/Dunbar will coalesce with West Barns.

Drainage and flooding

39. Policies of the development plan, Scottish Planning Policy and numerous other publications all have the clear objective of making sure that new development is not built in areas liable to flood or increase the risk of flooding elsewhere. It is strongly recommended that a holistic approach to the design of water drainage systems is taken.

40. The appeal proposal is an application for planning permission in principle. At the planning permission in principle stage the developer should be able to demonstrate that the site is capable of development. It is not expected of the developer to have a fully worked up design.

41. Part of the site is shown on the Scottish Environment Protection Agency's indicative flood map to be liable to coastal flooding. I have seen photographs of standing water in the fields and on the main road. There are potential limits to the current capacity of the local water treatment works. I am aware that in a flooding situation, the normal operation of drainage systems can be disrupted.

42. However, the appellant is aware of all these matters. They have appointed consulting engineers who have considered these points in a report and in correspondence, including discussions with the Scottish Environment Protection Agency and Scottish Water. They conclude that there is no unmanageable flood risk. They also conclude that foul and surface water drainage solutions are possible. There is therefore no reason why these matters should preclude development.

43. I see no basis for disagreeing with the appellant's consultant. I have seen several letters from the Scottish Environment Protection Agency, so they are obviously aware of the site and its issues. Their advice and comments does not include a recommendation that planning permission in principle should be refused. Scottish Water did not comment on the planning application and flooding and drainage issues are not matters that the council argues are a basis for refusal.

44. Obviously, the detailed design will be considered carefully by the responsible authorities both through the planning process and other regulatory approvals. This is intended to make sure that the issues of flooding and drainage are satisfactorily addressed.

45. I accept that it is possible, upon further investigations that new matters arise or that assumptions the appellant's consulting engineers have used turn out not to be realistic. However, if this were to occur, it might mean that the site is more expensive to develop than hoped, or the site takes longer to build or it means that fewer houses can be built. It could even be a combination of all these eventualities. However, I find no basis for concluding that flooding and drainage matters automatically preclude **any** residential development. I therefore do not consider there to be any conflict with Policies DP 15 and DP 16 of the local plan or other relevant government guidance.

Traffic

46. A number of local residents had concerns about traffic issues. These included the creation of a new access onto a busy road, close to an existing cross road junction with a poor accident record, close to an access for a busy caravan site and with limited visibility at some points. There were also concerns that Beveridge Row may become a rat run, particularly as a secondary access was shown. This road would be unsuitable for traffic and has a dangerous junction with the A1.

47. In addition, West Barns Primary School already experiences traffic congestion problems and new houses with children zoned to that school would exacerbate the problem. There were also concerns that the development would most likely be occupied by commuters to Edinburgh who would be car dependent.

48. On behalf of the appellant a transport assessment has been prepared. This shows that a new access onto the main road can be designed to meet the normal guidelines for visibility and junction spacing. The capacity of the new access has been assessed using information from a national database and widely accepted software models. The report had also been assessed by the council's transport experts. The council had no objections to the traffic elements of the proposal. Unfortunately road traffic accidents do occur. They are more frequent at junctions. I have been presented with no statistical evidence that the development would increase the risk of accidents on the surrounding road network compared to the case without any development.

49. I agree that Beveridge Row and the lane that continues from it is narrow, bendy and in a poor state of repair. In my opinion, it would be unsuitable for any significant increase in traffic. However, it seems unlikely to be an attractive alternative route to most facilities. The secondary access would be for emergency vehicles only and in any case is a matter of detailed design. In any event, if the use of Beveridge Row and the lane became a problem, the council as highway authority has the ability to introduce various traffic management measures.

50. It is not unusual for there to be congestion outside of schools. However, any such problems can be satisfactorily managed by the school and highway authority. It would not be reasonable to restrain residential development on this basis alone.

51. The general aim of Policy T1 is to make sure development is located so that alternative modes of transport other than the car are available. This does not mean that every prospective occupier will make such a choice. The site is close to a bus route, which in the context of a rural area has a reasonable service. There are facilities, including schools that are within reasonable walking distance. Overall, I consider that the information supplied on behalf of the appellant shows that the proposal would comply with Policy T1 and T2.

Pedestrians and cyclists

52. Policy DP 20 states that, *“Development proposals should be designed to make walking and cycling as attractive as possible. Where possible, links should be provided to existing pedestrian and cycle networks and segregated routes should be provided....”*

53. It is obviously desirable that new developments link into existing and planned footpath and cycling routes, particularly to important facilities such as schools. The area of dispute between the council and the appellant relates to potential links to facilities south of the railway line and the new paths to be provided as part of the Hallhill development.

54. I note that the policy refers to “*where possible*”. I agree with the appellant that it is unreasonable to expect a developer to directly provide off site links on land that they do not control and use this inability as a basis for the refusal of planning permission.

55. The normal mechanism in such circumstances is for an appropriate and proportionate financial contribution to be made to the council. The council can then use the money (perhaps from a number of sources) either to improve existing links or to help fund new planned links. I consider this further below under planning obligations. Subject to an agreement over an appropriate financial contribution for related pedestrian and cycle links, I can see no basis for concluding that the appeal proposal breaches Policy DP20.

Affordable Housing and School provision

56. There is no dispute that the requirements of Policy H4 should be met as part of the development. This requires further detailed discussions and is considered again below under planning obligations.

57. There is no dispute that any shortage in existing school capacity has to be addressed under the terms of Policy INF 3. A similar requirement is included in Policy 7 of SESplan. There is a dispute over the scale of financial contributions required and the methodology employed to calculate the additional facilities required and their cost.

58. Subject to further discussions, as I set out below under planning obligations, there is no reason at this stage to believe that an agreement cannot be reached in order that school capacity issues can be addressed as set out in the development plan.

Other matters

59. Some local residents had additional concerns. It was considered that a range of other services, including local shops and health services would not be adequate. There was also a concern about the impact on wildlife and the impact of the new development on the amenities of the adjoining existing properties in Edinburgh Road and Beveridge Row.

60. I would be surprised if a residential development of up to 90 houses had a significant impact on the provision of essential services in the town the size of Dunbar. It is the responsibility of service providers to meet the needs of the local population and I am not aware of any objections from such providers. I note that the lack of provision of local services is not one of the reasons that the council put forward for recommending that I dismiss this appeal.

61. The site is an agricultural field intensively farmed. I do not doubt that local residents have seen bats around their houses and in their gardens. However, it would be surprising if bats used a farmed field for roosting or nesting. I accept the advice of the council's biodiversity officer that the proposal raises no significant issues regarding impact on wildlife or habitat loss.

62. I accept that a residential development on the site would change the outlook and setting for the existing houses in Edinburgh Road and Beveridge Row. However, subject to ensuring a satisfactory design at the detailed stage, there is no reason to suppose this change need be unacceptable.

63. All settlements evolve and grow over time. It is an inevitable consequence of the Scottish Government's housing and planning policies that this is so. Provided the relationship with the existing properties is satisfactorily addressed in the final design, I can see no basis for assuming that the proposal would breach any of the design policies or guidance published by the council or Scottish Government.

Conclusions

64. Overall, I conclude that the proposal is contrary to the provisions of the development plan. The site is prime agricultural land and not allocated for development. As the development plan currently stands, it is not possible to calculate a precise 5 year housing land supply figure in order to apply fully Policy 7 of SESplan.

65. However, as set out in the housing land supply section above, I consider that there are compelling material considerations that indicate there is currently a significant shortage of effective housing land in East Lothian. This shortage is serious enough to justify the exceptional release of new housing land where there are no overriding planning objections.

66. Subject to appropriate conditions and a planning obligation (or similar mechanism) to address affordable housing, offsite pedestrian and cycling provision and school capacity, I find no matter that should automatically preclude development.

67. I accept that granting planning permission outwith the formal development planning process is far from ideal. Adopting such an approach has the obvious disadvantage that there may be better sites elsewhere. It also means it is difficult to identify any cumulative impacts.

68. However, the alternative of waiting for the full local development plan process would most probably mean that for any identified site, actual construction could not occur until 2017 at the earliest. The delay could be much longer than that. I therefore consider that the risks of granting an exceptional planning permission are outweighed by the more likely early construction of much needed houses.

Planning Obligations

69. There is no dispute that the development must address the affordable housing policy, off site provision for pedestrians and cyclists and school provision. There is also agreement that the usual mechanism would be a planning obligation under Section 75 of the Planning Acts. I note that the appellant does not own the land and is likely to sell it on to another house builder. At this stage the precise numbers of dwellings are not known. Any agreement would therefore have to be enforceable against future developers. I

therefore consider that it is necessary for any planning permission in principle to be subject to a planning obligation (or other appropriate legal instrument) covering the above matters.

70. There seems to be agreement regarding the council's affordable housing policy. There is not agreement over the scale of the financial contributions required for the other matters.

71. At the hearing, I was advised that I should indicate the size of the financial contributions. I do not agree. I am not in a position to know the precise cost or full range of acceptable solutions. This can only be resolved by further discussions between the appellant and the council. I consider that more time is required for the appellant and council to understand each others position and any reasons for disagreement. I do not consider that it is reasonable at this stage to conclude that any agreement is impossible.

72. The principles to be followed are clearly set out in circular 3/2012 – Planning Obligations and Good Neighbour Agreements. In the case of off site pedestrian and cycle provision, any contribution must go to improvements or new links that are related to the development. Any costs attributable to the development must be reasonable and proportionate. Improvements to ensure a safe route to the two catchment schools are likely to qualify. Linkages to the south east of the site would need careful justification to comply with the terms of the circular and any proportionate financial contribution is unlikely to be large.

73. In relation to West Barns Primary School, the council can only seek contributions for improvements to facilities that directly follow from the development. My expectation is that further discussions will clarify the assumptions used to calculate the future school population, the implications for class sizes and therefore the needed facilities. On the other hand, the appellant must be realistic about the operational realities of individual schools, particularly those with composite classes and take into account practical site planning factors.

74. In relation to Dunbar Grammar School, the council is already committed to financing an extension to increase capacity because of planned housing development in Dunbar. This extension would allow the development to be accommodated. It is therefore reasonable for the appellant to reimburse a proportionate share of the council's costs. The evidence before me is that the council has satisfactorily received contributions from other developments for similar reasons. There would have to be good reason why a different approach was adopted for the appeal proposal.

75. Finally, I note that it would be open to the appellant to make a unilateral undertaking, setting out the contribution it considered to be reasonable, if agreement between the parties was not possible.

76. I will accordingly defer determination of this appeal for a period of 13 weeks from the date of this notice to enable the relevant planning obligation (under Section 75 of the Town and Country Planning (Scotland) Act 1997 or such other appropriate legal instrument) to be completed and registered or recorded, as the case may be. If by the end of the 13 week

period, a copy of the relevant obligation with evidence of registration or recording has not been submitted to this office, I will consider whether planning permission should be refused or granted without it.

77. At the hearing the local residents group argued that a planning obligation should also cover various road improvements, improved health facilities and support for improved public transport. However, the council is not seeking a contribution for these matters and I have no evidence that they are necessary in order to make the development acceptable. They would not therefore meet the terms of circular 3/2012.

78. The local residents also referred to improvements to the water treatment works. I agree this matter is relevant. However, there is separate legislation defining the obligations upon developers and Scottish Water in relation to water supply and drainage infrastructure. There is therefore a separate mechanism to make sure there is sufficient water and drainage infrastructure in place before any development would commence.

Conditions

79. The council has proposed 5 conditions and these were agreed by the appellant. I consider the proposed conditions to be necessary and comply with the guidance in circular 4/1998 – The use of conditions in planning permission. In practice, no development of this size can be designed without reference to site levels or providing details of associated infrastructure. Any developer would have to liaise with Scottish Water. However, for the avoidance of doubt, I have added a requirement for level details to be submitted and for Scottish Water to be consulted over any sustainable urban drainage scheme. I have also added an archaeological evaluation condition as requested by the council's heritage officer.

80. The local residents proposed a range of additional conditions, some repeating comments made in relation to planning obligations, including: no houses to be built on the area shown on the Scottish Environment Protection Agency indicative flood map; woodland planting (including along the boundaries of the existing houses with the site); development of good quality housing; funding of offsite pedestrian and cycle routes; no development until a joined up plan has been prepared for sea, river and surface water flooding; no additional cost to public service providers for increased use of services (e.g. schools, road, social services etc); development to be completed within 3 years; habitat survey (including for bats); archaeological survey; and no pumping station near houses.

81. Matters of design, landscaping and archaeology are addressed in the proposed conditions. Funding for offsite pedestrian and cycle links are included as a matter for negotiation in the planning obligations.

82. With regard to making sure the development addresses flooding and drainage issues, the suggested conditions require the submission of details for sustainable urban drainage systems. Other design details, for example, proposed site levels would be a more appropriate way of managing flood risk than referring to an indicative map that may not be accurate.

83. It is important to note that the Scottish Environment Protection Agency and Scottish Water would normally be consulted on any detailed submission. Both agencies have their own separate legislative obligations. I am confident that no house would be built unless the responsible authorities (including the council) were completely satisfied that flooding and drainage matters were addressed. The appellant is satisfied that no pumping station would be needed. If this proves incorrect, the design details required by the suggested conditions would adequately cover the design and location of a pumping station.

84. There is no Scottish Government policy support for the hypothesis that new residential development automatically increases costs of providing local services. Neither is there any expectation that as a matter of course, routine costs must be funded by the developer. There is therefore no need for such a condition. The council's biodiversity officer does not consider that there is any requirement for a habitat survey.

85. I do not consider that a condition requiring the development to be completed in 3 years is reasonable or enforceable. I understand the sentiment behind such a condition. However, for all practical purposes a judgement has to be made at the outset whether the appellant's claim that the site is effective is reasonable. As I have found such a claim to be so, I consider that the statutory time limits for submission of details and commencement to be adequate. If in the fullness of time, the appellant's claims about future programming are shown to be unfounded, the council could take that into account in any application for renewal.

Dan Jackman

Reporter

Schedule 1: List of conditions

1. The submission for approval of matters specified in this condition of this grant of planning permission in principle shall include details of the siting, design and external appearance of the houses, the means of access to it and the means of any enclosure of the boundaries of the site and those details shall accord with the following principles of development for the site:

- (a) there shall be a maximum of 90 housing units. No building shall be higher than two storeys, which may include living accommodation in the roof space;
- (b) the housing units positioned on site in a manner which ensures that windows of them (i) would not overlook windows on adjacent or nearby houses where the distance between those windows is less than 18 metres, and (ii) would not face towards a garden of a neighbouring house within 9 metres of it;
- (c) the layout of the development shall be designed in accordance with Designing Streets the Council's Design Standards for New Housing Areas and Policies

C1 and C2 of the adopted East Lothian Local Plan 2008, including open space, the means of vehicle access, parking, turning and provision for pedestrian and cyclist access and movement and the means of enclosure of the boundaries of the site and between housing units;

- (d) details of the layout, size, height and elevations of the proposed housing units and associated infrastructure, including the materials proposed for external finishes of them;
- (e) the housing units provided with private parking spaces and with visitor parking which shall be compliant with the East Lothian Council Parking Standards;
- (f) details of materials to be used for roads, footpaths and other hard surfaces;
- (g) details of a continuous footpath link along the south side of the A1087 to connect to the existing pedestrian network at West Barns; and
- (h) details of existing and proposed site levels

Reason: To enable the Planning Authority to control the development to safeguard against over development of the site and to ensure the development is integrated with its surroundings in the interests of safeguarding the character and appearance of the area, the privacy and amenity of neighbouring residential properties and of future residents of the development; road safety and managing any potential flood risk.

2. No development shall take place until there has been submitted to and approved in writing by the Planning Authority a scheme of landscaping. The scheme shall provide details of: the height and slopes of any mounding on or recontouring of the site; tree and shrub size, species, habitat, siting, planting distances and a programme of planting. It shall include a woodland management plan for the western part of the site. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Planning Authority gives written consent to any variation.

Reason: In order to ensure the implementation of a landscaping scheme to enhance the appearance of the development in the interests of the amenity of the area.

3. Prior to the commencement of development, a SUDS scheme shall be submitted to and approved by the Planning Authority, following consultation with the Scottish Environment Protection Agency and Scottish Water, and all work shall be carried out in accordance with the details so approved.

Reason: To ensure adequate protection of the water environment and to manage flood risk from surface water run off.

4. A noise consultants report to include an assessment of: (i) noise from the use of the main east coast rail line and of any impact of such noise on the housing development of the site; and (ii) any mitigation measures considered necessary to achieve satisfactory internal and external noise levels for the occupiers of a residential development of the site, shall be submitted to and approved by the Planning Authority prior to the commencement of development. Any identified mitigation measures shall be fully undertaken prior to the occupation of any housing unit built on the site.

Reason: To ensure that the future occupants of any of the housing units benefit from a satisfactory level of amenity.

5. No residential unit shall be occupied unless and until details of artwork to be provided on the site or at an alternative location away from the site have been submitted to and approved by the Planning Authority. The artwork as approved shall be provided prior to the occupation of the final residential unit approved for erection on the site.

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

6. No development shall take place until a scheme of archaeological evaluation has been submitted to and approved in writing by the planning authority. The approved scheme shall be implemented unless otherwise agreed in writing by the planning authority.

Reason: To ensure that there is an archaeological evaluation of the site and that matters of archaeology are considered during the development.

Schedule 2: Application drawings

- Site location plan (drawing ref: A1204L(--))001)
- Opportunities and constraints (drawing ref: A1204L(--))002)
- Concept masterplan option analysis (drawing ref: A1204L(--))003)
- Indicative concept layout (drawing ref: A1204L(--))004)
- Indicative concept layout in context (drawing ref: A1204L(--))005)
- Outline landscape proposals (drawing ref: A1204L(--))006)