



Town and Country Planning (Scotland) Act 1997 Appeal: Notice of Intention

Notice of Intention by Gordon S Reid, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-400-2163
- Site address: land to west of Napier Avenue, Bathgate, EH48 1DL
- Appeal by TM Land Purchases Limited against the decision by West Lothian Council
- Application for planning permission in principle 1177/P/22 dated 16 December 2022 refused by notice dated 23 January 2024
- The development proposed: residential development with associated works
- Application drawings: listed in schedule
- Date of site visit by Reporter: 9 April 2024

Date of notice: 9 May 2024

Notice of Intention

For the reasons given below I am minded to allow the appeal and grant planning permission in principle subject to the conditions listed at the end of this notice, following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement, covering the matters listed in paragraph 31.

Preliminary matters

The nature and scale of the proposed development is such that it falls within the description of development set out in Class 10(b) 'urban development projects' of column 1 of the table in Schedule 2 to The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. The council did not issue a formal screening opinion and therefore a screening direction in accordance with regulation 13 of the 2017 regulations was carried out. The screening direction was issued on 8 March 2024 and concluded that the proposal was not EIA development for the purposes of the 2017 regulations.

A claim was made by the appellant for expenses in the course of the appeal. I will give a decision on the claim for expenses at the same time as I give the final decision on the appeal.

Reasoning

1. I am required to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. The development plan consists of National Planning Framework 4 (NPF4) and the West Lothian Local Development Plan 2018 (LDP) including its supplementary guidance (SG).

2. Having regard to the provisions of the development plan, the determining issues in this appeal are the principle of development, effects on protected species and impact of the proposed access.

Principle of development

3. The appeal proposal is located on land allocated in the LDP as site H-BA 5 for 10 residential units. Appendix 2 (schedule of housing sites and site delivery requirements) of the LDP advises that although the site is some 3.2 hectares in area, its development potential is restricted to 10 residential units due to the need to address capacity issues at Bathgate Academy. The council advise that the capacity issues at Bathgate Academy have been addressed and that this is no longer a reason for restricting the number of units on this site. Appendix 2 does not advise of any other constraints that would require limiting the development of this site to only 10 residential units.

4. Concerns are raised by the council and in representations in relation to the overdevelopment of the site based on the number of units shown on the appellant's illustrative layout. Whilst the appellant has submitted an illustrative layout, the description of the appeal proposal does not include and therefore seek approval for a specific number of units for the site at this time. The appellant states that the actual number of units will be determined through the consideration of the detailed site layout carried out through the approval of matters specified in conditions. Through the discharge of matters specified in conditions any constraints within the site (ground levels, sloping nature of the site, mature trees) would be fully assessed and taken into account in the consideration and approval of the layout by the council. In terms of the appropriate density, the SG for residential development which sets out guidance in relation to appropriate densities for new sites would also be taken into account.

5. I am satisfied that the total number of units to be accommodated within the appeal site can be appropriately determined through the approval of matters specified in conditions by the council. Therefore, I do not consider that the potential for overdevelopment of the site would warrant refusal of the appeal proposal. In addition, I found at my visit that the site is within a convenient walk to Bathgate town centre and would link into existing active travel networks including the nearby rail station.

6. Therefore, I find that the principle of residential development on this allocated site accords with the provisions of NPF4 policy 16 a) (quality homes) and policy 15 (local living and 20 minute neighbourhoods) and LDP policy HOU 1 (allocated housing sites).

Effects on protected species

7. The appeal site is not covered by any local or national designations in relation to wildlife, trees, biodiversity or open space. However, concerns have been raised by the council and in representations in relation to the potential impact on protected species from the appeal proposal and to the timing of some of the surveys in the appellant's ecological appraisal. The appellant's preliminary ecological appraisal concludes there is no evidence of protected species (including badgers) within the appeal site. Some potential for bat roosting in the mature beech trees along the northern boundary was identified. However, this would only be affected if works to the trees were to be undertaken or the trees removed. No other potential effects on protected species were identified by the appraisal.

8. In terms of European Protected Species, the appellant's appraisal recommended that if works were to be carried out to the trees a climbing survey by a licenced bat ecologist

and erection of bat boxes within these trees should be undertaken. It was also recommended that with regard to breeding birds, all vegetation clearance should be out with the breeding season and that the appeal proposal should include suitable hedgehog habitat. The appellant has advised in its Biodiversity Statement that the mature beech trees along the northern boundary would be retained with further planting to reinforce the biodiversity of this area.

9. The council's non-statutory Planning for Nature Guidance (Development Management & Wildlife) 2020 acknowledges that surveys cannot always be carried out at the most appropriate time but that as long as recognition is taken of this in the appraisal process then subject to these limitations the findings can be considered to be acceptable. I am satisfied that the appellant's appraisal makes accommodation for the timing limitations and this was also accepted by the council's ecology officer. Overall, I consider that there is no substantive evidence before me to demonstrate that the findings of the appellant's appraisal are not reasonable in this instance.

10. Overall, I am satisfied that the preliminary ecological appraisal has been carried out in accordance with the council's non-statutory Planning for Nature Guidance (Development Management & Wildlife) 2020. In addition, I find that subject to conditions in relation to the retention of the mature trees and precautionary wildlife protection measures there would be no adverse effect on protected species or other wildlife within the site.

11. The appellant's Biodiversity Statement sets out the proposed biodiversity protection and enhancement measures and concludes that the appeal proposal would be delivered in parallel with nature benefits including enhancement of existing woodland/tree line features and incorporation of artificial rest sites for protected and priority species. Further enhancement measures would include the creation of grassland and wetland features to create 'homes for nature' along with new resting sites for bats which will benefit from newly created species-rich habitats.

12. Overall, I am satisfied that the necessary steps have been taken by the appellant to identify the presence of protected species affected by the proposal and to fully consider the potential impacts on them prior to the determining of the appeal proposal. In addition, appropriate mitigation and enhancement measures have also been proposed. Therefore, I find that the appeal proposal, subject to appropriate conditions, accords with the provisions of NPF4 policies 3 (biodiversity) and 4 (natural places) and LDP policy ENV 20 (species protection and enhancement).

Impact of proposed access

13. Concerns were raised by the council and in representations that the proposed access arrangements, for a larger number of houses than allocated in the LDP, would not be appropriate. In addition, it is contended that the resultant increased level of traffic would have an adverse effect on the amenity of residents in the surrounding area (including Crosshill Drive) in relation to traffic impact, road safety and parking.

14. LDP Appendix 2 under the transportation heading states that the appeal site is to be accessed from Glebe Road with a secondary emergency vehicle access from Wallace Road. The appellant contends that the proposed access arrangements accord with the requirements as set out in Appendix 2 of the LDP. The council's transport section raised no concerns in relation to the principle of the proposed access arrangements subject to detailed matters being agreed through conditions.

15. I observed at my visit and from the submitted illustrations that the proposed access into the appeal site would include a short single lane section of road, due to the limited space between the boundaries of two existing properties. The appellant advises that a priority system for traffic would be required at this part of the access. The remainder of Napier Avenue and the surrounding road network appear to me to be of a standard suitable to accommodate some level of additional traffic generated by residential development at the appeal site. The emergency access arrangements onto Wallace Road also appear to me to be suitable and would link into the surrounding road network. Despite the concerns raised I have no substantive evidence before me to demonstrate that there are any technical issues with regard to the layout or capacity of the existing road network that would prohibit the accommodation of some level of additional traffic.

16. In the absence of the specific numbers of houses to be developed and the related assessment of the impacts of the additional traffic onto the surrounding road network, it is not possible at this stage for me to fully determine what, if any, potential adverse effects might occur. As indicated above the final house numbers and the details of the layout would be determined through the approval of matters specified in conditions. As part of this process an assessment of the detailed proposed access arrangements and the capacity of the surrounding network to accommodate additional traffic would be carried out. I am satisfied that the concerns regarding the proposed access arrangements and any potential adverse effects on the surrounding road network and residential amenity would be fully considered and addressed by the council through that process.

17. I find that the appeal proposal, subject to appropriate conditions, accords with LDP policy TRAN 1 (transport infrastructure).

Developer contributions

18. As the appeal proposal is for a residential use, LDP policies HOU 4 (affordable housing) and INF 1 (infrastructure provision and developer obligations) and NPF4 policy 18 (infrastructure first) are relevant. Both NPF4 policy 18 and LDP policy INF 1 require developers to mitigate the impacts of development on infrastructure. The specific requirements for developer contributions are set out in the council's adopted supplementary guidance in relation to affordable housing, residential development, planning and education, cemetery provision and public art.

19. The council advise that in accordance with the provisions of LDP policy HOU 4 and its related SG the appellant should provide 15% of the total number of units as affordable housing. Whether the contribution takes place on-site or is a commuted sum will be dependent on the final number of units determined through the approval of matters specified in conditions. The appellant has agreed to make the required contribution.

20. In accordance with the relevant SG a financial contribution towards the provision of primary and denominational secondary education, play area/open space, cemetery provision and public art is also sought by the council. The appellant has agreed to make the required level of financial contribution in relation to these matters.

21. Concerns were raised in representations in relation to potential impacts on healthcare provision and the need for contributions for future facilities. The council advises that there is no policy requirement in the LDP for the delivery of healthcare facilities in relation to the appeal proposal and there is no SG in place requiring contributions for healthcare infrastructure.

22. Subject to a section 75 obligation for the required contributions, I am satisfied that the appeal proposal accords with the relevant policy requirements for infrastructure provision and affordable housing. Accordingly, I find that the appeal proposal complies with NPF4 policy 18 and LDP policies HOU 4 and INF 1.

Other development plan matters

23. Based on the submitted evidence and the responses from consultees, I am satisfied that subject to appropriate conditions the appeal proposal would accord with the relevant policies of the LDP and NPF4 in relation to climate mitigation and adaption; ecology and biodiversity; forestry woodland and trees; flood risk and water management; sustainable drainage; archaeology; air quality; and, contaminated land.

Compliance with the development plan

24. Overall, I am satisfied that the appeal proposal is acceptable in principle and, subject to appropriate conditions and the completion of a section 75 planning obligation, accords with the relevant provisions of the development plan.

Material considerations

25. There were no objections raised by any of the consultees to the appeal proposal subject to the imposition of appropriate conditions and securing a planning obligation for primary and denominational secondary education, affordable housing, play area/open space, cemetery provision and public art.

26. A total of 67 representations including one from Bathgate Community Council were received to the appeal proposal raising concerns in terms of it not being in accordance with the LDP site capacity/density; loss of greenspace and environmental impact; impact on wildlife; traffic, access, road safety and parking; impact on education provision; drainage impacts; and, impact on healthcare facilities. I am satisfied that these matters have been appropriately addressed in my above consideration of the appeal proposal against the relevant provisions of the development plan.

27. Concerns raised in relation to residential amenity would be addressed by the council in the consideration of the detailed design and layout of the appeal proposal as part of the discharge of matters specified in conditions. To address the concerns in relation to the potential of adverse effects from construction noise, I have imposed a condition as requested by the council. The matters of subsidence; loss of views; and, impact on house prices are not material planning considerations.

28. I note the concerns raised regarding the land related to the former site of the Bathgate World War I memorial and the issues of common good and ownership. Whilst I recognise these are important matters for the local community, they are not valid material planning considerations. Therefore, it is not possible to take these matters into account in the determination of this planning appeal.

29. Overall, I am of the view that there are no material considerations that would justify setting aside the provisions of the development plan.

Conditions and planning obligation

30. Draft conditions have been provided by the council which it requests be imposed on planning permission, if granted. The appellant accepts the conditions as proposed by the council. I find that subject to minor wording amendments the proposed conditions are appropriate.

31. On the basis of my above considerations, I find that a planning obligation restricting or regulating the development or use of the land should be completed in order to secure affordable housing and financial contributions towards primary and denominational secondary education, play area/open space, cemetery provision and public art. I will accordingly defer determination of this appeal for a period of up to 12 weeks to enable the relevant planning obligation (either an agreement with the planning authority or a unilateral obligation by the appellant under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement as may be agreed by the parties) to be completed and registered or recorded, as the case may be. If, by the end of the 12 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 in principle should be refused or granted without a planning obligation.

Conclusion

32. Accordingly, I find for the reasons set out above, and subject to appropriate planning conditions and a planning obligation, that the proposal complies with the provisions of the development plan and there are no material considerations that would justify the refusal of planning permission. I have considered all other matters raised but there are none that would alter my decision.

Gordon S Reid
Reporter

List of conditions

1. The development to which this permission in principle relates shall be begun no later than the expiration of five years beginning with the date of grant of this permission.

Reason: section 59 of the Town and Country Planning (Scotland) Act 1997 requires a condition to be attached to planning permission in principle limiting its duration. Five years is the default period set by law and there is no material reason indicating that a different period should be set.

2. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority. No work shall begin until the written approval of the authority has been given, and the development shall be carried out in accordance with that approval:

a) The layout and design of the site including all existing and proposed buildings and other structures, roads, footways, footpaths, cycle tracks, pedestrian and cycle crossings, car and cycle parking, electric vehicle charging points, boundary enclosures, open space, foul drainage, surface water drainage.

b) Plans, sections and elevations of all buildings and the type and colour of all external materials.

- c) Existing and proposed ground levels and proposed finished floor levels and sections through the site, detailing areas of the site in particular where the ground level is proposed to be raised or lowered and by what degree.
- d) Hard and soft landscaping details, including details of the design of any public open spaces; the location of all proposed new trees, hedges and shrubs; a schedule of plants to comprise species, plant size and proposed number/density.
- e) A tree removal plan showing trees proposed to be removed. A tree protection plan, in accordance with British Standard 5837:2012, for any retained trees within the boundary of the site, and details of proposed tree works and mitigation measures where necessary, which ensure that no buildings lie within a minimum 11.5 metres of the crown spread of any trees. Any trees proposed to be removed shall be replanted on a minimum one for one basis.
- f) Updated drainage assessment and a drainage strategy which fully details the treatment and attenuation of surface water. The drainage assessment shall comply with the provisions of the council's supplementary guidance on flooding and drainage and be independently verified.
- g) A schedule of remedial works required to the culvert proposed to be connected to as part of the surface water drainage for the site.
- h) A phase 2 contaminated land site investigation report including interpretive report and remediation strategy and subsequent verification report where necessary.
- i) Full details of the proposed biodiversity enhancements measures for the site.
- j) Further climbing surveys for bats where tree works are proposed.
- k) A construction and environmental management plan.
- l). Programme of archaeological works.

Reason: to ensure that the matters referred to are given full consideration.

3. The residential development hereby approved shall be designed in accordance with the council's supplementary guidance: residential development guide with a mix of house types. Mainstream market housing shall include a variety of house types and include the use of bungalows, terraced, semi-detached and detached houses throughout the site.

Reason: to ensure an innovative design of development which caters for a broad spectrum of mainstream market home owners from first time buyers to retired individuals.

4. The details submitted under condition 2 a) above shall include the following:

- i. Where off-street parking is provided, one in every six residential units shall have an active ready to use electric vehicle charging point (7kw) located either in a garage or in close proximity to a dedicated car parking place within the driveway of the property and connected to the domestic electricity supply via a dedicated circuit. For all other residential units with off-street parking, passive provision (cabling and individual fuse boxes) shall be

provided to enable easy conversion to an active charging point should demand manifest itself.

- ii. For on-street parking, one in every six spaces shall have a fully connected, active and ready to use electric vehicle charging point (7kw). Electric vehicle parking spaces should be counted as part of the overall car parking provision and not in addition to it.
- iii. Details of who will be responsible for managing and maintaining charging infrastructure, including details of managing access to charging spaces and arrangements for paying for the electricity used during charging.

Thereafter the development shall be carried out in accordance with the details as approved.

Reason: to enable full consideration to be given to those details which have yet to be submitted, in the interests of ensuring the provision of electric vehicle charging.

5. The details submitted under conditions 2 a) and f) above shall include a 6 metre buffer from the watercourse at the east of the site to the nearest structure, inclusive of boundary fencing.

Reason: to minimise the effects of surface water and diffuse pollution on the water environment.

6. The details submitted under condition 2 f) shall include an updated drainage assessment with a scheme for sustainable drainage (SUDS) and surface water treatment that shall be developed in accordance with the Water Assessment & Drainage Assessment Guide (published by SUDS Working Party) and the SUDS Manual C753 (published by CIRIA) for the written approval of the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Reason: to minimise the effects of surface water and diffuse pollution on the water environment.

7. The details submitted under condition 2 g) shall include full details of remedial works required to the culvert to the south of the site to enable a surface water drainage connection and timescales for the works to be carried out. Thereafter the development shall be implemented in accordance with the details as approved.

Reason: to minimise the effects of surface water and diffuse pollution on the water environment.

8. The details submitted under condition 2 h) shall include the following:

Part 1

Prior to any work beginning on site a contaminated land site investigation and risk assessment must be completed and a written report submitted to and approved in writing by the planning authority. The site investigation and risk assessment must be undertaken by suitably qualified, experienced and competent persons. The written report of the findings must include:

- i. a phase 2 report incorporating a survey of the extent, scale and nature of contamination, and an updated conceptual model of the site;

- ii. an assessment of the potential risks; and,
- iii. an appraisal of remedial options, and proposal of the preferred options.

This must be conducted in accordance with the Environment Agency's Contaminated Land Report 11, Model Procedures for the Management of Land Contamination, CLR11.

If it is concluded by the written report that remediation of the site is not required, and this is approved in writing by the planning authority, then Parts 2 and 3 of this condition can be disregarded.

Part 2

Prior to any work beginning on site, a detailed remediation statement to bring the site to a condition suitable for the intended use by removing unacceptable risks to all relevant and statutory receptors, must be submitted to and approved in writing by the planning authority. The remediation statement must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The remediation statement must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land following development.

Part 3

The approved remediation statement must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out the agreed remediation. The planning authority must be given two weeks written notification of the commencement of the remediation works.

Following completion of the measures identified in the approved remediation statement, a verification report that demonstrates the effectiveness of the remediation carried out must be prepared. The verification report must be submitted to and approved in writing by the planning authority prior to commencement of the new use of the land.

Following completion of measures identified in the approved remediation statement, a verification report must be prepared in accordance with the requirements of condition 1, which is subject to the approval in writing of the planning authority. Work shall not recommence on site until the verification report has been approved in writing by the planning authority.

Reason: to ensure that the site is fully assessed for ground contamination and remediated in accordance with the council's requirements and to ensure the application site is suitable for the end use as a residential development site.

9. The following restrictions shall apply to the construction of the development:

Noise (construction)

- Any work required to implement this planning permission that is audible within any adjacent noise sensitive receptor or its curtilage shall be carried out only between the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 on a Saturday and at no time on a Sunday. This includes deliveries and operation of on-site vehicles and equipment.

- No generators shall be audible within any residential properties between the hours of 2100 and 0800.

Noise (vehicles/plant)

- All site vehicles (other than delivery vehicles) where practicable shall be fitted with non-tonal broadband reversing alarms.
- Heavy goods vehicles shall not arrive or leave the site except between the hours of 0800 and 1800 Monday to Friday and 0800 and 1300 on a Saturday. No heavy goods vehicles shall arrive or leave the site on a Sunday.

Vibration (construction)

- Where piling or other significant vibration works are likely during construction which may be perceptible in other premises, measures must be in place (including hours of operation) to monitor the degree of vibration created and to demonstrate best practice. Prior to any piling or other significant vibration works taking place, a scheme to minimise and monitor vibration affecting sensitive properties shall be submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Site compound

- The development shall not begin until the location and dimensions of any site compound have been submitted to and approved in writing by the planning authority. Thereafter the development shall be implemented in accordance with the details as approved.

Waste

- Effective facilities for the storage of refuse, building debris and packaging shall be provided on site. The facilities shall be specifically designed to prevent refuse, building debris and packaging from being blown off site. Any debris blown or spilled from the site onto surrounding land shall be cleared on a weekly basis. For the purposes of this condition, it shall be assumed that refuse, debris and packaging on surrounding land has originated from the site if it is of the same or similar character to items used or present on the site.

Wheel cleaning

- All construction vehicles leaving the site shall do so in a manner that does not cause the deposition of mud or other deleterious material on surrounding roads. Such steps shall include the cleaning of the wheels and undercarriage of each vehicle where necessary and the provision of road sweeping equipment.

Reason: in the interests of visual and environmental amenity.

Schedule of drawings

Location plan 21065 – P01A

Existing site plan 21065 – P03

Indicative site plan 21065 – P02C