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Decision by Elspeth Cook, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-210-2064
- Site address: Land to north of Foreshot Terrace, Dirleton, EH39 5DR
- Appeal by Muir Homes Ltd against the decision by East Lothian Council
- Application for planning permission 16/00710/PM dated 26 August 2016 refused by notice dated 16 August 2017.
- The development proposed: Erection of 24 houses with associated works.
- Date of site visit by Reporter: 17 November 2017

Date of appeal decision: 31 January 2018

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## Decision

I dismiss the appeal and refuse planning permission.

## Preliminary

In parallel with this decision, I have issued a separate appeal decision (PPA-210-2063) relating to the provision of sustainable drainage infrastructure (and landscaping) associated with the housing proposed within this appeal.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. I must also have special regard to the desirability of preserving the setting of nearby listed buildings and pay special attention to the desirability of preserving or enhancing the character or appearance of the Dirleton Conservation Area, in accordance with sections 59(1) and 64(1) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

2. The development plan is comprised of the South East Scotland Strategic Development Plan 2013 (SESplan) and the East Lothian Local Plan 2008 (ELLP). Although the current development plan remains the starting point for the decision, I am aware that the local plan is more than 5 years old. In this case the presumption in favour of sustainable development as set out in paragraph 33 of Scottish Planning Policy 2014 (SPP) is a material consideration. I have also considered whether the current housing land supply position or the emerging East Lothian Local Development Plan 2016 (LDP) are material considerations that merit setting aside the terms of development plan. The main issues in this appeal are therefore:-



- the principle of development in the countryside;
- the current housing land supply;
- the impact on the conservation area and the setting of listed buildings;
- other site specific considerations;
- the emerging local development plan;
- the education infrastructure provision and;
- the presumption in favour of sustainable development.

### Principle of development in the countryside

3. The ELLP identifies a settlement boundary for Dirleton and this appeal site is located outwith, but abutting, this boundary on land identified as countryside. It is an undeveloped greenfield site and is not allocated for residential development. I consider the relevant ELLP policy governing housing development on this site to be DC1 (Development in the Countryside and Undeveloped Coast). As this development of 24 houses is unrelated to agriculture, horticulture, forestry or other countryside recreation uses I find that DC1 would not support this form of housing in the countryside.

4. SESplan Policy 6 (Housing Land Flexibility) requires each local authority to maintain a 5 year effective housing land supply at all times. SESplan policy 7 (Maintaining a Five Year Housing Land Supply) states that councils “may” grant planning permission on greenfield sites to maintain the 5 year supply. The council interprets the use of the word “may” as offering a choice on whether to apply the policy, however the appellant interprets the word as allowing planning authorities to grant permission. I consider the latter to be the appropriate interpretation. If there is a short fall within the 5 year supply SESplan Policy 7 would be relevant and this leads me to consider the housing land supply position in more detail below.

### Housing Land Supply

5. The SESplan and the Supplementary Guidance on Housing Land set out the targets for the provision of housing within the plan area. SESplan Policy 5 (Housing Land Requirements) indicates that sufficient housing land for up to 107,545 houses is expected for the plan period 2009 to 2024. East Lothian is expected to deliver a total of 10,050 units over two periods: 6250 between 2009 to 2019 and 3800 between 2019 to 2024. There have been 3064 house completions in East Lothian since 2009 which leaves a remaining requirement of 3,186 units in the SESplan period to 2019. The allocated housing sites within the current East Lothian Local Plan 2008 (ELLP) are unable to meet the SESplan housing land requirements and all parties are in agreement on this point.

6. The SPP also expects that at least a 5-year supply of effective housing land should be provided at all times. It explains that it is the housing land audit that is critical to assessing effective land supply. PAN 2/2010, Affordable Housing and Housing land Audits, indicates that an audit has two functions. Firstly to demonstrate the availability of sufficient effective land to meet the requirement for a continuous 5-year supply; and secondly to provide a snapshot of the amount of land available for the construction of housing at any particular time. Draft delivery advice intended to replace PAN 2/2010 was withdrawn on 1 December 2017.

7. Up until September 2017 the council was using a 2015 Housing Land Audit augmented by figures derived from a draft 2016 audit to inform its policy review and decision making. The council's evidence from a 2016 committee report on housing land supply issues indicates a shortfall of between 1,393 and 1,660 homes in the 5 year supply; the variation being attributed to sites which had recently obtained planning permission. These documents underpinned the assessment of the land supply at the point when this planning application was determined by the council. At that time all parties agreed there was a shortfall in the 5 year supply. As a result the council indicated that its own non-statutory guidance Housing Land Supply: Interim Planning Guidance, which offered criteria for the assessment of new housing sites to meet the 5 year supply would also be relevant.
8. A new Housing Land Audit however was agreed by Homes for Scotland in September 2017 and data derived from this document has been presented as part of the council's appeal submission. It now indicates there is a 6.17 year supply; a surplus of land for 1284 homes. The 2017 audit provides the most up to date position on land supply matters and I have accepted this new information as a material consideration. The council is now relying on this information to assert that SESplan Policy 7 and its own Interim Planning Guidance would not apply.
9. The appellant however questions the housing land supply calculation and specifically the 2017 audit. Firstly, the appellant questions the inclusion in the housing land audit of the proposed new housing sites set out in the LDP. The SPP indicates that the housing land requirement can be drawn from both effective sites and those "expected to become effective in the plan period" and this may include proposed new land allocations. PAN 2/2010 also supports the inclusion of "land identified for housing in proposed local development plans". I find it is therefore reasonable for the Housing Land Audit 2017 to include the proposed LDP sites as part of the effective supply at this time.
10. I also consider that the scope of this appeal cannot extend to determining the effectiveness, or otherwise, of sites within the 2017 audit including the proposed LDP site at Dirleton. PAN 2/2010 indicates that if a proposed LDP site is rejected after the examination process it should be removed from subsequent audits and I accept there is a risk that the effective supply as set out in the audit may need to change after the examination. Until the outcome of the examination is known I do not consider it would be appropriate for me to make an assumption about which sites, currently within the 2017 housing land audit, would remain in the replacement plan.
11. Secondly, the appellant questions the projected completion rates in the 2017 audit. The average completion rate based on the 2009 to 2017 figures is 383 units per annum, with a peak of 599 units in 2017. The 2017 audit envisages the completion of 684 units in 2017/18 peaking at 1804 units in 20/21; an average of 1,330 units per annum over the next 5 years. Even if this significant increase in completions proves difficult to sustain I cannot disregard that they are part of an agreed audit. I have not been advised that concerns regarding any of the sites or the assumptions within the document remain unresolved. In these circumstances I do not consider it appropriate for me to apply the appellant's alternative completion rates to the calculation of the 5 year effective supply.
12. Thirdly, the appellant places importance on the expected failure to deliver 3186 homes before the end of the SESplan period 2009 to 2019, believing this shortfall merits

the release of additional housing sites and also questions the council's handling of this shortfall in the audit. It is generally accepted that there is no set methodology for calculating housing land supply. Such matters remain a policy matter for the Scottish Government. The council has confirmed that the overall SESplan housing land requirement still underpins the proposed LDP figures and in turn these have informed the 2017 audit. I accept there is a shortfall in the delivery of housing units up until 2019 however the emphasis within SESplan policy 7 is on the current 5 year supply up until 2022.

13. I have also considered the likelihood that this site for 24 houses would contribute any significant housing numbers by 2019. The council refers to expected lead in times of around 18 to 24 months which are derived from Homes for Scotland procedural advice. On this basis the council expects the first completions to take place after 2019. The appellant believes the first completions could be delivered by late 2018 or early 2019. Even if some houses were deliverable by 2019, due to the small numbers of houses in total here I do not consider this fact alone to be sufficient to justify the approval of planning permission.

14. In summary, I find the SPP and PAN 2/2010 indicate that the housing land audit should be treated as the most up to date evidence on which to monitor housing land supply. I therefore find the 2017 Housing land Audit and the 6.17 year effective housing supply arising from this to be the most appropriate and up to date evidence I can rely on in assessing the 5 year supply. Whilst there is evidence that completions are lagging behind that anticipated by 2019 the current audit does not evidence a shortfall in the 5 year supply. Consequently I find the terms of SESplan policy 7 are not engaged. It follows that I need not consider the various site specific criteria contained within the council's own policy entitled Housing land Supply: Interim Guidance. In any event even if there were a conclusive shortfall in the housing land supply, policy 7 would also rely on the proposals being in keeping with the character of the settlement and local area as considered below.

#### Impact on the conservation area and the setting of listed buildings

15. I consider ELLP policies ENV3 (Listed Buildings) and ENV4 (Development in Conservation Areas) to be relevant to these matters. Policy ENV3 seeks to protect the setting of listed buildings and policy ENV4 addresses the impact of development in conservation areas.

16. I do not consider the proximity or orientation of the proposed houses behind the Category B Listed Building, Cedar Grove, or the nature of the junction improvements at its entrance would significantly interfere with its setting. Nor would there be any impact on another Category B Listed Building, Oatfield, which is located to west of the appeal site. Due to the nature of the intervening buildings and trees, the development of the site does not impinge on any important views or the historic skyline of the Category A listed building and scheduled ancient monument at Dirleton Castle. I find the development would comply with ELLP Policy ENV3.

17. In assessing the impact of this development on the character and appearance of the Dirleton Conservation Area I have had regard to the Character Statement set within the 2008 ELLP. Unusually the boundary of the conservation area encloses not just the buildings in the village but the open fields lying to the north, south and east of the village.

The Character Statement highlights the fact that this undeveloped land is an integral part of the character of the area.

18. The appellant has submitted a number of supporting documents relating to the design and impacts from the development. I consider the most significant of these to be the design and access statement and the landscape design statement along with the drawings showing landscape proposals, storey heights, external finishes and boundary markers.

19. The design and access statement sets out an intention to provide a “new development with its own identity” but one that is a “distinctive integral part” of Dirleton village. I find it significant that the stated purpose of the appellant’s design and access statement is to create a design solution that would “contribute to the overall setting” of the conservation area rather than one that would preserve or enhance the character and appearance of the conservation area as required by the Act. The statement analyses national and ELLP policy but without reference the Character Statement for Dirleton or any policies or guidance governing development in conservation areas. I have therefore no evidence that the final house designs and layout have been derived from a proper analysis of the conservation area character. There are no diagrams or sketches demonstrating an understanding of the form of the village or the architecture within. Earlier versions of the layouts within Appendix 3 of the Pre-application Consultation Report are not referred to. I find this omission within the design process has led to design and layout choices that are not appropriate for this particular conservation area.

20. The appellant considers the site to be an infill development between two developed strips of land running north to south perpendicular to Main Street giving little credence to the Character Statement which indicates that any development of these open fields would adversely affect the conservation area. I have considered this issue and find that the character and appearance of the conservation area, on the northern edge of the village, is derived from the fingers of built development extending northwards and the undeveloped land in between. By closing off the gap between the fingers of development an important part of the undeveloped conservation area would be lost. The development would not therefore preserve the character or appearance of the conservation area.

21. The materials proposed include the concrete roof tiles, reconstituted stone products and timber screen fences. These do not reflect the prevailing traditional materials in the village as listed in the Character Statement. Recent new housing in the village, on the whole, incorporates traditional materials rather than their modern equivalents. On the basis of the external finishes proposed I do not consider the development would appear or function as a “distinctive integral part” of the village. The development would not therefore enhance the character or appearance of the conservation area.

22. The Landscape Design Statement considers the landscape setting of the village and the character of the conservation area. It states that the proposed development would have a “dispersed, irregular character that is consistent with the detached villas north of Main Road”. I do not find the proposed group of similar houses planned around a central open space demonstrates the irregular character that is described in the landscape statement.

23. The document concludes that a “slight impact” on the conservation area is anticipated and that the effect would be of “minor” significance. The northern boundary (the

30m woodland strip within the separate application), is described as a robust settlement edge that is also expected to “limit views”. I consider the undeveloped open agricultural land to contribute to the character of the conservation area and the landscape. Losing this area to development would not “preserve” the character and appearance of the conservation area. Introducing a 30 m wide woodland to screen it would therefore have a greater impact than that described in the Landscape Design Statement.

24. The assessment of the landscape and conservation area impacts described above rely heavily on the proposed woodland planting. The northern boundary of the housing behind the woodland is to be enclosed by timber fencing. This fence would remain exposed while the woodland matures and this may take some considerable time. Therefore the woodland strip, which is crucial to the anticipated “slight impact”, would not be effective in the short to medium term. The northern boundary would be characterised by the timber fencing and the rear of the houses set behind it. I consider this short to medium term impact on the conservation area to have a detrimental impact on the character of the conservation area.

25. For the above reasons I find the development would not preserve or enhance the character or appearance of the conservation area and would also not comply with policy ENV4 of the ELLP.

#### Other Site Specific Considerations

26. I consider ELLP Policies H1 (Housing Quality and Design), DP1 (Landscape and Street Character), DP2 (Design), C1 (Minimum Open Space), DP14 (Trees on or Adjacent to Development sites), DP13 (Biodiversity and Development Sites), T1 (Development Location and Accessibility), T2 (General Transport Impact) and H4 (Affordable Housing) to be the most relevant in this case.

27. The concerns regarding the design and layout of the development within the conservation area also impact on design and landscape impacts. Policy H1 requires new housing to meet the other development quality and design policies within the ELLP. DP1 seeks to protect the landscape or streetscape by ensuring development is well integrated into its surroundings and DP2 sets out a range of 8 design expectations for new development.

28. I find the landscape impacts of this development are intrinsically linked to the conservation area impacts. The negative impacts I have identified above arising from the infill between the fingers of development, the creation of the woodland strip enclosing the development and the exposed timber fencing would impact negatively on the landscape setting of the village. I agree with the council’s description of the development as encroaching “into the undeveloped countryside in a conspicuous and incongruous manner”. I find the development would not comply with policy DP1.

29. I have also considered the various elements of policy DP2 with regard to the design and layout of the development. Open space provision is centrally located and would meet the space requirements of policy C1. The road layout connects to the surrounding network and a direct pedestrian link to the north can be achieved. Appropriate provision has been made for private garden ground and the proposed planting and boundary fencing would

protect the privacy of both existing and proposed houses. The development would address sunlight and daylight considerations though I consider the existing protected mature trees at Foreshot Terrace would have some impact on the south facing gardens immediately adjacent. The benefit of retaining these trees however outweighs the sunlight or daylight impacts that may arise.

30. I find the development overall, however, would be inward facing; hidden behind built development, existing woodland and the proposed woodland. There would be little inter-visibility or interaction between the new houses and the existing streets within the village. I do not therefore find the development would meet the parts of policy DP2 that expect development to contribute a sense of place or maximise the linkages to the surrounding area. The development would also not be 'appropriate to its location' due to the conservation area concerns listed above.

31. I have considered the impacts of the development on the existing mature trees especially those protected by a tree preservation order. I find the route of the proposed footpath through to Foreshot Terrace and the positioning of the buildings reflect the Tree Survey and Arboricultural report and the associated tree protection measures. The development, subject to appropriate conditions, would be able to comply with Policy DP14 (Trees on or Adjacent to Development sites).

32. I have considered the impacts of the development on the ecological considerations and I have had regard to the appellant's Ecological Assessment. The fields lying to the north of the village are used by migrating geese and the council's ecologist is satisfied that the amount of land lost to development would not have any significant impact on the land available for this purpose. I find the limited felling of the mature trees and tree management works proposed are unlikely to impact significantly on any wildlife habitats and that appropriate arrangements are proposed to address the bird nesting season. The development, subject to appropriate conditions, would be able to comply with policy DP13.

33. I have considered the various submissions regarding the transport infrastructure and I find that the road network serving Dirleton, and Ware Road itself, can accommodate this scale of development (albeit subject to localised improvements and financial contributions to off-site improvements in the wider network). The village is served by good transport links including a regular bus service to a settlement offering access to mainline railway services. I find the development would therefore comply with policies T1 and T2.

34. Although provided for within a separate application, the development is clearly intended to be served by a sustainable drainage facility thus it is capable of meeting the flood risk and water management expectations relating to new housing development.

35. Appropriate provision has been made for affordable housing within the development and, subject to appropriate controls over the nature of this, the development would be able to comply with policy H4.

36. In summary, there are many positive elements relating to the proposed development however these are not sufficient to outweigh my concerns regarding the placemaking expectations for this site. I have also considered the Council's policy Design Standards for New Housing Areas 2008; national guidance set out in Designing Streets and PAN 67

Housing Quality which I find support my concerns regard the design and layout of development. It would not therefore comply with ELLP policies H1, DP1 and DP2.

### Emerging Local Development Plan

37 The proposed East Lothian Local Development Plan 2016 (LDP) has now been presented for examination by the Scottish Ministers. The council states that limited weight should be applied to the LDP until the outcome of the examination is known. I agree that at this stage less weight can be attributed to the plan where representations are under consideration. The plan preparation is now at an advanced stage and in making my decision I have taken in account a number of key elements of the plan as set out below.

38. The LDP contains a number of new housing sites intended to address the SESplan housing land requirement from 2009 to 2024 and beyond. The new allocations, which do not include the appeal site, have informed the 2017 housing land audit which I have considered to be a key determining factor in the application of SESplan policy 7.

39. The LDP proposes the same settlement boundary for the northern edge of Dirleton. It retains policies which seek to control housing development outwith this boundary. I find policy DC4 which restricts housing in the countryside and policy DC8 which restricts development in the countryside around towns would not support the appeal proposals.

40. No changes are proposed to the boundary of the conservation area and the LDP retains policies that seek to govern the form of development within these areas and to protect the setting of listed buildings; policies CH1 and CH2.

41. A new housing site at Dirleton, Castlemains, NK11, is proposed and representations regarding this site are part of the examination. Indeed the appeal site is also the subject of a representation. The council's non-statutory guidance Housing Land Supply: Interim Planning Guidance indicates an intention to support the early release of the new LDP housing sites if a shortfall in the 5 year effective supply occurs. The council however indicates that less weight would be given to those sites that are subject to representations under consideration at the examination of the LDP. I find the same caution should apply to this site where the appellant is seeking to have it included within the LDP.

42. The Castlemains site is located on land within the undeveloped part of the Dirleton Conservation Area. The appellant has indicated that such an allocation has established a precedent supporting development within the undeveloped parts of the conservation area. I do not intend to assess the merits of the Castlemains site which is a matter for the LDP examination. However, as site selection is based on a wide range of factors, I do not consider the proposed allocation at Castlemains has established a presumption in favour of developing all the fields around the village that lie within the conservation area.

43. Elements of the LDP have assisted in my consideration of this case however I do not find it provides any justification for the approval of this development contrary to the terms of the development plan.

### Education Infrastructure

44. Although I have found the housing land supply position and the physical characteristics of the development to be the main determining factors here I have given some consideration to the education infrastructure issue. All parties agree there is a solution to secondary education provision. However if this development proceeded the council indicates that all remaining capacity in the Dirleton Primary School would be diverted from the proposed LDP site (Castlemains) to the appeal site. The council also advise that there is no expansion potential at the school.

45. ELLP policy INF3 and LDP policy DEL1 seek to ensure developers make appropriate provision for infrastructure. The details of how that may be achieved are currently set out in the council's Draft Development Contributions Framework. I note that there are no plans to increase capacity at Dirleton Primary School and that the proposed allocation at Castlemains would not require to make any contribution to primary school infrastructure.

46 As the distribution of proposed housing sites throughout LDP is determined by its spatial strategy I find that a favourable decision on this issue may prejudice the examination of the LDP. The Castlemains site and the appeal site are part of the examination and the limited capacity at Dirleton Primary School may have been a factor in the scale of development proposed in the LDP. The number of houses, and therefore pupils is small, however a favourable decision here (diverting capacity from a proposed LDP site) has potential implications for the evolving LDP policy and the wider spatial strategy of the plan.

### Presumption in favour of sustainable development

47. Sustainable development is defined by the SPP as "development which meets the needs of the present without compromising the ability of future generations to meet their needs". The assessment of sustainability entails the consideration of the proposal against a group of principles set out at paragraph 29 of the SPP.

48. For the reasons set out in preceding paragraphs I find the proposed development would not meet 4 of these principles. It would not protect the historic environment; it would not protect the natural heritage with regard to landscape; it would not contribute to good placemaking and; it would not, at this time, be capable of addressing education infrastructure constraints.

49. The development does however demonstrate that the other principles relating to the consideration of climate change (flood risk); the delivery of accessible housing, business and leisure facilities and; the provision for health and wellbeing could be met. I am satisfied that there would be an economic benefit to local businesses and community facilities. No evidence has been presented that this small development would impact on air, soil or water quality and other issues of residential amenity have been considered within the design and layout.

50. This is a low density development but it reflects the low densities within the village and there would be limited loss of agricultural land. In these particular circumstances I find that the development would represent the efficient and sustainable use of land and

infrastructure. The reduction of waste or promotion of resource recovery is not directly relevant to this housing development.

51. Although the development could meet several of the principles of sustainable development I do not find this to be sufficient to outweigh the four key principles of sustainable development it fails to meet. The presumption in favour of development established by the SPP would not justify the approval of this development.

### Other matters

52. A large number of objections and two letters of support were submitted with regard to this development. I have considered the issues raised as part of my assessment set out above.

### Conclusions

53. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan. As evidenced by the 2017 Housing Land Audit, the SESplan would not provide any support for the release of this greenfield site outwith the settlement boundary. In addition I have found the design and landscape impacts of the proposed development would not comply with the development plan and would not preserve or enhance the character and appearance of the conservation area. As the Local Plan is more than 5 years old I have considered the terms of the SPP and I find that it would not meet all the principles of sustainable development. I have considered all the other matters raised, but there are no other material considerations which would lead me to alter my conclusions.

*Elspeth Cook*

Reporter