



DEVELOPMENT MANAGEMENT COMMITTEE

Report by Head of Planning, Economic Development and Regeneration

1 DESCRIPTION

Erection of 6 houses with associated works at Land to the South of Inchcross Park, Inchcross, Bathgate

2 DETAILS

Reference no.	0982/FUL/22	Owner of site	Mr David Cowan
Applicant	Inchcross Developments Ltd	Ward & local members	Bathgate Councillor Pauline Stafford Councillor Harry Cartmill Councillor Tony Pearson Councillor Willie Boyle
Case officer	Matthew Watson	Contact details	01506 283536 matthew.watson@westlothian.gov.uk

Reason for referral to Development Management Committee: Referred by Councillor Boyle

3 RECOMMENDATION

31. Refuse planning permission.

4. DETAILS OF THE PROPOSAL AND BACKGROUND

- 4.1 The application proposes the erection of six houses and associated works. Access is proposed to be taken via Standhill Road.
- 4.2 The site is irregularly shaped and is bound to the south west by the A7066 and to the north by housing at Inchcross Park.
- 4.3 The application site is zoned as open space in the adopted West Lothian Local Development Plan and is covered by a tree preservation order (TPO) (TPO No. 1 1996 – Inchcross House).
- 4.4 The application proposes six detached properties that are two storeys in height with pitched roofs and a gable projection on the front elevation. Two house types are proposed

and both include garages integral to the houses. Proposed material finishes for the walls are roughcast render and stone quoins and grey interlocking tiles for the roofs.

- 4.5 Planning permission has previously been granted for eight houses on this site (ref: 0591/FUL/08) and this permission has until 31 March 2023 to be lawfully implemented. One of the eight houses (Plot 1) has been built under separate permissions (0830/FUL/17 and 1008/FUL/19, as noted below under para 4.7). A further house (plot 2 on the submitted site plan) is proposed to remain unchanged from application 0591/FUL/08, and is not included in the six houses being applied for in this application.
- 4.6 Members should note that the applicant disputes officers revising the description of the application to *“Erection of 6 houses with associated works”*. The application form submitted with the application described the application as *“Vary House types on plots 3,4,5,6,7 and 8 on previously approved planning LIVE_0591_FUL/08”*. It is common practice for planning authorities to revise development descriptions so that they accurately reflect what is proposed. In this instance, the applicant seeks consent from the council to build 6 houses. The fact there is already a consent for houses on the site does not change this. What is proposed is a different scheme to that already consented. It is considered the development description as revised by officers is accurate.

History

- 4.7 The relevant planning history is noted below:
- 0760/FUL/22: Erection of 7 houses with associated works, Withdrawn, 27/09/2022
 - 1008/FUL/19: Erection of house and detached garage with ancillary living accommodation on upper floor (variation to planning permission 0830/FUL/17), Granted, 13/03/2020
 - 0830/FUL/17: Erection of a house and detached garage, Granted, 16/11/2018
 - 0728/FUL/16: Erection of a house and detached garage/workshop, Withdrawn, 27/02/2017
 - 0591/FUL/08: Erection of 8 houses with garages and associated landscaping, Granted, 21/09/2018

EIA Development

- 4.17 The scale and nature of the development is such that it falls within the description of development set out in Class 10 (b) of Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2017 (EIA Regulations).
- 4.18 The proposed development due to its location and characteristics of potential impact, the development does not constitute EIA development.

Equalities Impact

- 4.19 The application has been assessed and has no impact in terms of equalities or human rights.

5. REPRESENTATIONS

5.1 Two objections have been received in relation to the proposed development. The representations are attached to this report.

5.2 A summary of representations is located in the table below.

Comments	Response
<ul style="list-style-type: none"> Impact on privacy 	<ul style="list-style-type: none"> The proposal meets minimum distances for garden lengths in the Residential Development Guide (RDG). Rear to side minimum distances of 12m are largely and any infringements of this distance are minor. The application is acceptable in terms of privacy impact.
<ul style="list-style-type: none"> Impact on wildlife 	<ul style="list-style-type: none"> The applicant has not submitted any ecology information with this application
<ul style="list-style-type: none"> Unclear if existing tree belt is being removed or supplemented If trees are removed there will be a detrimental impact on residential amenity 	<ul style="list-style-type: none"> No tree survey, tree removal and retention plan or tree protection has been submitted. The impact on trees protected by a TPO cannot be determined.

6. CONSULTATIONS

6.1 This is a summary of the consultations received. The full documents are contained in the application file.

Consultee	Objection?	Comments	Planning Response
WLC Arboricultural Officer	Yes	It is essential that a tree survey, a BS5837 assessment in regards to construction and protection of trees and/or any felling or removal plans are required to fully assess this application.	Noted.
WLC Environmental Health	Yes	An updated noise impact assessment is required to be submitted with the application.	Noted.
WLC Flood Risk Management	Yes	No drainage details have been submitted in support of the application. The site is not at risk of flooding.	Noted.
WLC Ecology & Biodiversity	Yes	The developer is required to carry out a preliminary ecological appraisal.	Noted.
WLC Waste Services	Yes	A swept path analysis is required to show bin lorries can safely access, turn and egress the site.	Noted.

		The two visitor parking spaces in the turning area need to be moved as these will cause problems for bin lorries turning.	
WLC Transportation	No	No objection to the application. The access road is required to be 5.5m wide with a 2m footway. A turning area length of 12.5m is required from the channel edge of the access road. A separate road opening permit is required.	Noted.
WLC Education Planning	No	No objection subject to receiving developer contributions towards education infrastructure.	Noted. The relevant education contributions have been secured under the previous permission.
WLC Housing Strategy & Development	No	No objection subject to a commuted sum towards affordable housing being secured.	Noted. A commuted sum towards affordable housing is has been secured under the previous permission.
Coal Authority	Yes	Part of the site falls within the Development High Risk Area. Objects to the proposal as no coal mining risk assessment has been submitted.	Noted.
West of Scotland Archaeology Service	No	Satisfied that no archaeological works are required for this application.	Noted.

7. PLANNING POLICY

- 7.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 7.2 The development plan comprises the Strategic Development Plan for South East Scotland (SESplan) and the West Lothian Local Development Plan, 2018.
- 7.3 The relevant development plan policies are listed below:

Policy	Policy Summary	Assessment	Conform ?
West Lothian Local Development Plan (LDP), 2018	This policy states new housing development within settlement boundaries will be	The proposal is compatible with nearby uses but is designated for open space and does not conform to	In part

HOU 3 Infill/Windfall Housing Developments in Settlements	supported, subject to nine criteria.	other development plan policy and guidance.	
West Lothian LDP HOU 4 Affordable Housing	This policy requires housing sites of over 5 units in Bathgate to contribute to affordable housing.	A commuted sum towards affordable housing is has been secured under the previous permission.	Yes
West Lothian LDP DES 1 Design principles	This policy states that development needs to integrate with its context and the surrounding built form and have an acceptable impact on amenity.	The proposed layout is not acceptable as it has not been demonstrated that bin lorries can safely access, egress and turn within the site.	No
West Lothian LDP ENV 9 Woodlands, Forestry, Trees and Hedgerows	This policy states there is a presumption against development that adversely affects trees, including those covered by a TPO, unless there is a proven locational need and it achieves significant public benefits.	No tree survey has been submitted with the application to determine the impact on trees at the north/north west boundary of the site. The proposal is contrary to ENV 9.	No
West Lothian LDP ENV 20 Species Protection and Enhancement	Development that would affect a species protected by European or UK law will not be permitted unless it meets the four criteria.	No ecology information has been submitted to confirm whether UK or EU protected species will be affected by the development. In the absence of this information, the proposal is contrary to ENV 20.	No
West Lothian LDP ENV 21 Protection of Formal and Informal Open Space	This policy states that proposals which result in a loss of open space will not be supported unless five criteria are met.	The extant permission on the site means a locational justification for the loss of open space has been made. The site is of limited recreational value and the proposal will not undermine connectivity to the wider green network. The proposal complies with ENV 21 (a), (b) and (e). However, no tree or ecology information has been submitted with the application. The proposal is contrary to ENV 21 (c).	In part
West Lothian LDP ENV 32 Archaeology	This policy requires the council to safeguard	The West of Scotland Archaeology Service has confirmed no archaeological	Yes

	archaeological heritage.	works are required for this application.	
West Lothian LDP EMG 3 Sustainable drainage	This policy states drainage proposals need to ensure surface water can be attenuated.	No drainage information has been submitted with the application. In the absence of this information, the proposal is contrary to policy EMG 3.	No
West Lothian LDP EMG 5 Noise	This policy states there is a presumption against development being close to noisy land uses, unless mitigation can be achieved.	The application site is affected by road noise from the A7066. The applicant has not submitted a noise impact assessment with the application. In the absence of this information, it is not possible to determine any required noise mitigation for the development, as well as the details of any mitigation. The proposal is therefore contrary to EMG 5.	No
West Lothian LDP EMG 6 Vacant, Derelict and Contaminated Land	Where it is suspected by the council that a development site may be contaminated, the developer will be required to undertake a site investigation, to the satisfaction of the council.	The applicant has not submitted any site investigation reports. The site is within a Development High Risk Area for coal mining risk and the applicant has not submitted a Coal Mining Risk Assessment. In the absence of this information, the proposal is contrary to EMG 6.	No
West Lothian LDP INF 1 Infrastructure Provision and Developer Obligations	This policy requires developers to enter into a legal agreement to secure developer contributions towards local infrastructure.	The proposal will result in a need for contributions towards affordable housing, education and cemeteries. These have been secured under the previous permission.	Yes
Supplementary Guidance (SG) Residential Development Guide (RDG)	This document requires residential development of under 10 units to accord with the guidance in the RDG relating to small-scale infill residential development in urban areas. The RDG sets stipulations for design	The proposed layout is not acceptable as it has not been demonstrated that bin lorries can safely access, egress and turn within the site. Other matters relating to trees, drainage, noise impact and coal mining risk have not been addressed. The application is contrary to	No

	and layout, trees, drainage, noise impact and coal mining risk	the RDG with regards to these matters.	
SG Planning and Noise	This document sets out detailed requirements for noise and proposed developments.	The application site is affected by road noise from the A7066. The applicant has not submitted a noise impact assessment with the application. In the absence of this information, it is not possible to determine any required noise mitigation for the development, as well as the details of any mitigation. The proposal is therefore contrary to the SG.	No
SG Flooding and Drainage	The SG requires development to be acceptable in terms of flood risk and drainage. All applications of 5 houses or more require to be accompanied by a drainage assessment.	No drainage information has been submitted with the application. In the absence of this information, the proposal is contrary to the SG.	No
SG Affordable Housing	This document requires proposals to accord with the text of the SG.	A commuted sum towards affordable housing is has been secured under the previous permission.	Yes
SG Planning and Education	This document sets out the rates for contributions towards education infrastructure.	The relevant education contributions have been secured under the previous permission.	Yes
SG Cemetery Provision	This document sets out the rate for contributions towards cemetery provision.	Cemetery contributions have been secured under the previous permission.	Yes
Planning Guidance Planning for Nature: Development Management & Wildlife	This document sets out detailed requirements for ecological surveys, appraisals and audits.	No ecology information has been submitted to confirm whether UK or EU protected species will be affected by the development.	No

8. ASSESSMENT

8.1 The determining issues in relation to this application are set out below:

Principle of Development

- 8.2 Policy HOU 3 states residential development is acceptable in principle within settlement boundaries, subject to meeting nine criteria, including the site being compatible with surrounding uses and the character of the area, the physical infrastructure of an area can accommodate the development, the site being accessible by public transport and compliance with LDP policies and planning guidance.
- 8.3 Policy ENV 21 states that proposals which result in a loss of open space will not be supported unless five criteria are met:
- (a) Locational justification
 - (b) The site is of limited recreational value
 - (c) The site is of limited ecological value and loss of trees and wildlife is minimised
 - (d) Comparable open space can be provided at an alternative location
 - (e) Not undermining connectivity and public access to the wider green network
- 8.4 In terms of the principle of development, the proposal is compatible with surrounding uses, which are largely residential properties. The site is not designated for employment uses and is not at significant risk of flooding. Existing physical infrastructure can accommodate the development and contributions can be secured for additional infrastructure needs. The site is not easily accessible by public transport with the nearest bus stop being on Whitburn Road, opposite Birniehill Terrace, 595m the north of the site from its eastern boundary. However, there is an extant planning permission (0591/FUL/08) on the site that can be lawfully implemented until 31 March 2023. As noted above in the table under para 7.3, the proposal does not comply with all other LDP policies and supplementary guidance.
- 8.5 The extant permission (0591/FUL/08) has limited weight given its age but it currently provides a locational justification for the loss of open space under ENV 21 (a) given that it can still be implemented. The site is of little recreational value and connectivity of the wider green network will not be undermined. The proposal complies with ENV 21 (b) and (e). However, the applicant has not submitted any information relating to trees and ecology for officers to assess whether the proposal is compliant with ENV 21 (c). ENV 21 (d) does not apply to this application.
- 8.6 Overall, the proposal is not fully compliant with policies HOU 3 and ENV 21. The previous permission has established that the principle of residential development on this site is currently acceptable but the applicant has not provided sufficient technical information in relation to trees and ecology. This is discussed further below.

Layout and Trees

- 8.7 Policy DES 1 states that development is required to be of a high quality and that poorly designed developments will not be supported. Para 564 of the Residential Development Guide SG states that “Satisfactory vehicular and pedestrian access to the site must be achieved without having an adverse effect on the amenity of existing and proposed residents and road safety”.
- 8.8 Policy ENV 9 states at criterion (a) that “there will be a presumption against development proposals which involve the loss of or damage to...trees (including trees covered by a tree preservation order (TPO))”. Para 246 of the Residential Development Guide SG states

that “Where trees are present on a development site, and/or on an adjacent site, and have the potential to be affected by the proposed development, developers will be required to survey these trees and to provide a detailed arboricultural report and risk assessment”.

- 8.9 Section 159 of the Town and Country Planning (Scotland) Act 1997, as amended, places a duty on planning authorities where in granting planning permission that adequate provision is made for the preservation of trees.
- 8.10 The council’s Waste Services team has assessed the application and requires a swept path analysis to demonstrate that bin lorries can safely access, egress and turn within the site. This information has not been provided by the applicant. Waste Services has also raised concern over the positioning of two visitor parking spaces within the turning area which means it is not possible for bin lorries to turn in this area. Waste Services has requested that these parking spaces be moved elsewhere within the proposed layout.
- 8.11 In the absence of a swept path analysis and the visitor parking spaces within the turning area not being acceptable, the proposal is not a well designed development and satisfactory vehicular access for bin lorries cannot be achieved. The proposal is therefore contrary to LDP Policy DES 1 and the Residential Development Guide SG.
- 8.12 No tree survey and BS5837 assessment of protection of trees during construction have been submitted with the application to determine the impact on trees at the north/north west boundary of the site. It is therefore not possible to determine the impact of the development layout on the root protection areas of these trees that are protected by a TPO, and whether any mitigation is required. The council’s Arboricultural Officer has objected to the application due to this lack of information. In addition, a lack of engineering/ground levels information means an assessment cannot be made as to how ground level changes could affect trees covered by a TPO on the site.
- 8.13 For the reasons above, the proposal is contrary to LDP Policy ENV 9 and the Residential Development Guide SG. The planning authority is not able to meet its duty under the Act as to whether provision can be made for the preservation of trees.
- 8.14 Overall, the proposal does not provide an acceptable layout for bin lorries and no information in relation to ground levels and impact on trees protected by a TPO have been provided. The application is therefore contrary to LDP policies DES 1 and ENV 9, as well as the Residential Development Guide SG.

Technical Studies

- 8.15 It is noted in the table above under para 7.3 that the proposal is contrary to LDP policies ENV 9, ENV 20, EMG 3, EMG 5 and EMG 6, as well as the Flooding and Drainage SG and Planning and Noise SG.
- 8.16 The applicant has not provided the following studies required to assess the application:
 - Tree Survey and BS 5837:2012 Assessment
 - Ecology Survey
 - Drainage Assessment
 - Noise Impact Assessment

- Coal Mining Risk Assessment
- Phase 1 & 2 Site Investigation Reports

- 8.17 Application 0591/FUL/08 was assessed under a previous planning policy regime in the former West Lothian Local Plan, 2009. It was reported to committee in February 2009 and the decision was to grant subject to securing developer contributions. The application was finally granted in September 2018, following the conclusion of a planning obligation that secured the developer contributions.
- 8.18 A significant period of time (14 years) has elapsed since the original assessment of application 0591/FUL/08 and there was little technical information submitted with that application. That permission is still a material consideration but limited weight can be attributed to it given it was granted prior to the current adopted West Lothian LDP.
- 8.19 The applicant disputes this point given its view is that only the house types are changing and this application is a variation. To be clear, the proposal before members is a new planning application and a 'variation' to a previous planning permission that is a material change is a new planning application.
- 8.20 The applicant has included all of the site within the red line boundary, not just the houses, and this includes the road access. Although the applicant argues that the application is to vary house types only, this is a matter of semantics as the applicant is looking to erect six houses on the site and associated works that include the access road.
- 8.21 The effect of granting this planning application would be to grant a new planning permission for the site that could be implemented in isolation or alongside the extant permission.
- 8.22 The applicant wishes to re-design the houses on the site, as the market has changed significantly since 2008. Similarly, planning policy has changed significantly and the requirements for technical information accompanying planning applications has changed, in order for the council as a planning authority to assess applications against development plan policies. The previous permission due to its age is of limited weight and does not outweigh the requirements of current development plan policy.
- 8.23 Given this is a new planning application, and policy requirements have changed significantly since the previous application was assessed, it is justified to request the technical information above.
- 8.24 In the absence of the relevant technical studies, the application is contrary to policies ENV 9, ENV 20, EMG 3, EMG 5 and EMG 6 and the Residential Development Guide, Flooding and Drainage and Planning and Noise SGs, as well as the Planning for Nature Planning Guidance.

9. CONCLUSION AND RECOMMENDATION

- 9.1 In summary, whilst there is an extant planning permission on the site, the proposed development is not acceptable as the layout is unsatisfactory for bin lorries, as well as there being a lack of information relating to impact on trees protected by a TPO, ecology, drainage, noise, coal mining and contaminated land.

- 9.2 Consequently, and in view of the above, it is recommended that planning permission is refused.

10. BACKGROUND REFERENCES & ATTACHMENTS
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- Draft Reasons for Refusal
- Location Plan
- Representations
- Member Referral Form

Plans and site photos are available in the accompanying slide presentation pack.

Craig McCorriston

Head of Planning, Economic Development and Regeneration Date: 18 January 2023

Draft Reasons for Refusal – 0982/FUL/22

1. The applicant has not demonstrated that council refuse collection vehicles can safely access, egress and turn within the application site. In addition, the provision of two visitor parking spaces at the end of a turning head is not acceptable as refuse collection vehicles will not be able to navigate this turn. The proposed development layout is therefore not acceptable.

The proposal is contrary to Policy DES 1 (Design Principles) of the West Lothian Local Development Plan, 2018 and the Residential Development Guide Supplementary Guidance, 2019.

2. The applicant has failed to submit a tree survey, a BS5837:2012 (Trees in Relation to Design, Demolition and Construction) assessment in regards to the protection of trees during construction and tree removal and retention plans for trees on a site that are protected by a tree preservation order.

The council is therefore unable to assess the impact of the proposed development on trees covered by a tree preservation order.

In the absence of this information, the proposal is contrary to Policy ENV 9 (Woodland, Forestry, Trees and Hedgerows) of the West Lothian Local Development Plan, 2018 and the Residential Development Guide Supplementary Guidance, 2019.

3. The applicant has failed to submit an ecological survey/appraisal that demonstrates UK or EU protected species will not be harmed by the proposed development.

In the absence of this information, the proposal is contrary to Policy ENV 20 (Species Protection and Enhancement) of the West Lothian Local Development Plan, 2018, the Residential Development Guide Supplementary Guidance, 2019 and the Planning for Nature: Development Management & Wildlife Planning Guidance, 2020.

4. The applicant has failed to submit a drainage assessment which demonstrates that surface water can be satisfactorily treated and attenuated within the site.

In the absence of this information, the proposal is contrary to Policy EMG 3 (Sustainable Drainage) of the West Lothian Local Development Plan, 2018 and the Flooding and Drainage Supplementary Guidance, 2019 and the Residential Development Guide Supplementary Guidance, 2019.

5. The applicant has failed to submit a noise impact assessment that sets out the impact of road noise on development from the A7066 to the south of the site and whether any measures are needed to mitigate the impact of road noise, as well as the details of any necessary mitigation.

In the absence of this information, the proposal is contrary to Policy EMG 5 (Noise) of the West Lothian Local Development Plan, 2018, the Planning and Noise Supplementary Guidance, 2019 and the Residential Development Guide Supplementary Guidance, 2019.

6. The application site is within a Development High Risk Area for coal mining. The applicant has failed to submit a Coal Mining Risk Assessment that sets out any potential risks from

surface instability and mine gas issues, as well as whether any mitigation measures are required to ensure the site is safe and stable.

The applicant has also not submitted any site investigation reports relating to contaminated land to assess whether any remediation of the site is required.

In the absence of this information, the proposal is contrary to Policy EMG 6 (Vacant, Derelict and Contaminated Land) of the West Lothian Local Development Plan, 2018 and the Residential Development Guide Supplementary Guidance, 2019.



Comments for Planning Application 0982/FUL/22

Application Summary

Application Number: 0982/FUL/22

Address: Land To The South Of Inchcross Park Inchcross Bathgate

Proposal: Erection of 6 houses with associated works

Case Officer: Matthew Watson

Customer Details

Name: Mr Kenny MacDonald

Address: 17 Inchcross Park Bathgate EH48 2HF

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Site plan requires republishing to show the 6 house plan. Current version still shows previous 7 house plan.

We have considered the proposed plans and have concerns as to the impact on our privacy as a direct result of the erection of these homes.

From the plans the proposed houses would be immediately adjacent to our property and it is not clear whether the existing tree belt will be maintained and indeed supplemented - we would require further clarity on this point. The existing tree belt consists of tall well established trees which would give some privacy between existing houses and the proposed development. These trees also sustain local wildlife , along with providing additional environmental benefits.

There would be a considerable detrimental impact if these trees were removed. It is of paramount importance to us that any proposed new houses do not impinged on the quality of life we experience.

Notwithstanding the point above in relation to the tree belt, the garden areas of the proposed new houses will back on to our own property. This causes concern given the likely relative proximity to our own outside area, with the potential for a significant loss of privacy.

Comments for Planning Application 0982/FUL/22

Application Summary

Application Number: 0982/FUL/22

Address: Land To The South Of Inchcross Park Inchcross Bathgate

Proposal: Erection of 6 houses with associated works

Case Officer: Matthew Watson

Customer Details

Name: Mr Anthony Boyle

Address: 22 Inchcross Parl Bathgate EH48 2HF

Comment Details

Commenter Type: Neighbour

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Please update and publish this amended site plan. This is still showing a proposed seven house development and not the published six.

PROPOSED DELEGATED PLANNING DECISIONS

☒ LOCAL MEMBER REFERRAL REQUEST ☒

In accordance with standing orders members wishing a planning application to be heard at the Development Management Committee have to either represent the ward in which the application site is located or be chair of Development Management Committee and complete and return this form to Development Management within 7 days and by 12 Noon.

The planning application details are available for inspection within the Planning & Building Standards web site by clicking on the link below.

<https://planning.westlothian.gov.uk/publicaccess/>

<u>Application Details</u>	<u>Reason For Referral Request</u> (please tick ✓)
<p>Application Reference Number</p> <p>0982/FUL/22</p> <p>Site Address</p> <p>Land To The South Of Inchcross Park, Inchcross, Bathgate, , (Grid Ref: 305280,667171)</p> <p>Title of Application</p> <p>Erection of 6 houses with associated works</p> <p>Member's Name</p> <p>Cllr Willie Boyle</p> <p>Date : 23/12/22</p>	<p>Applicant Request..... ✓</p> <p>Constituent Request..... <input type="checkbox"/></p> <p>Other (please specify)..... <input type="checkbox"/></p>