

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 9TH DECEMBER, 2019

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the TRAINING ROOM, OLD SCHOOL BUILDING, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS TD6 0SA on MONDAY, 9TH DECEMBER, 2019 at 10.00 AM

J. J. WILKINSON,  
Clerk to the Council,

2 December 2019

BUSINESS	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<b>Minute.</b> (Pages 3 - 18)  Minute of Meeting of 4 November 2019 to be approved and signed by the Chairman. (Copy attached.)
5.	<b>Applications.</b>  Consider the following applications for planning permission:-  (a) <b>Hartree House, Hartree, Biggar - 19/01116/FUL</b> (Pages 19 - 32) Change of use from dwellinghouse to hotel. (Copy attached.)
	(b) <b>Former Kelso High School, Bowmont Street, Kelso - 19/01244/FUL &amp; 19/01245/LBC</b> (Pages 33 - 56)  19/01244/FUL : Change of use of main school building and alterations to form 34 No. extra care flats with associated communal areas and erection of 47 No. dwellinghouses and associated infrastructure 19/01245/LBC : Demolition of teaching block, games hall, music block and dining hall and partial demolition of main building and alterations to form 34 No. extra care residential flats with associated communal areas. (Copy attached.)
6.	<b>Tree Preservation Order SBC 57 Haig House, Princes Street, Hawick</b> (Pages 57 - 104)  Consider report by Service Director Regulatory Services. (Copy attached.)

7.	<b>Appeals and Reviews.</b> (Pages 105 - 108)  Consider report by Service Director Regulatory Services. (Copy attached.)
8.	<b>Any Other Items Previously Circulated.</b>
9.	<b>Any Other Items which the Chairman Decides are Urgent.</b>

**NOTE**

Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Members are reminded that any decisions taken by the Planning and Building Standards Committee are quasi judicial in nature. Legislation , case law and the Councillors Code of Conduct require that Members :

- Need to ensure a fair proper hearing
- Must avoid any impression of bias in relation to the statutory decision making process
- Must take no account of irrelevant matters
- Must not prejudge an application,
- Must not formulate a final view on an application until all available information is to hand and has been duly considered at the relevant meeting
- Must avoid any occasion for suspicion and any appearance of improper conduct
- Must not come with a pre prepared statement which already has a conclusion

**Membership of Committee:-** Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, S. Hamilton, H. Laing, S. Mountford, C. Ramage and E. Small

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**SCOTTISH BORDERS COUNCIL  
PLANNING AND BUILDING STANDARDS COMMITTEE**

MINUTE of Meeting of the PLANNING AND BUILDING STANDARDS COMMITTEE held in Council Headquarters, Newtown St Boswells on Monday, 4 November 2019 at 10.00 am

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Present:- Councillors T. Miers (Chairman), S. Aitchison, A. Anderson, J. A. Fullarton, S. Hamilton, S. Mountford, C. Ramage and E. Small.

Apologies:- Councillor H. Laing.

In Attendance:- Planning and Development Standards Manager, Lead Planning Officer (B. Fotheringham), Lead Roads Planning Officer, Solicitor (E. Moir), Democratic Services Team Leader, Democratic Services Officer (F. Henderson).

1. **MINUTE.**  
There had been circulated copies of the Minute of the Meeting held on 7 October 2019.

**DECISION**

**APPROVED for signature by the Chairman.**

2. **DECLARATION OF INTEREST.**  
Councillor Ramage declared an interest in application 19/00947/FUL in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.
3. **APPLICATIONS.**  
There had been circulated copies of reports by the Service Director Regulatory Services on applications for planning permission requiring consideration by the Committee.

**DECISION**

**DEALT with the applications as detailed in Appendix I to this Minute.**

4. **TOWN CENTRE CORE ACTIVITY AREA PILOT STUDY**  
With reference to paragraph 1 of the Minute of 16 July 2018, there had been circulated copies of a report by the Service Director Regulatory Services which informed the Committee of any impacts the Pilot Study had in the determining of planning applications within the trial period. The report explained that the primary purpose of the study was to examine ways to revitalise and reinvigorate the town centres of Hawick and Galashiels by adding more flexibility to policy ED4 (Core Activities in Town Centres) within the adopted Local Development Plan (LDP) 2016. In essence the study had recommended the removal of the core activity area in Hawick. It also recommended the retention of the core activity area in Galashiels whilst proposing a wider and more flexible range of uses which could be supported. The study also set out policy guidance relating to policy ED4 to be applied more broadly within other core activity areas within Scottish Borders towns' i.e. Galashiels, Peebles, Kelso, Melrose, Jedburgh, Selkirk, Eyemouth and Duns. As the Pilot Study proposed to remove the core activity area from Hawick this would not be relevant to Hawick. The guidance stated that if premises had been vacant for 6 months and evidence was submitted which confirmed it had been adequately advertised for a substantial period of that time, then that would carry weight in the decision making process. Policy ED4 also made reference to the need to give consideration of any "significant positive contribution" in

relation to proposals within the core activity. The study expanded upon examples of what were considered to be factors determining “significant positive contribution”. In order to monitor the impacts of the recommended courses of action it was considered the study should operate as a Pilot Study for a trial period of one year. This allowed the opportunity to draw conclusions as to the success or otherwise of these amendments and also allowed the findings to be brought forward and considered for incorporation into the proposed new Local Development Plan. All planning applications submitted within core activity areas of town centres within the Scottish Borders were noted within the 1 year Pilot Study period from 17<sup>th</sup> July 2018 to 17<sup>th</sup> July 2019. In total 15 applications were submitted within the trial period. Although this was a relatively low number it was noted that many changes of uses of premises could take place without the need for planning permission. The 2019 footfall studies were also shared with Members. Members voiced concerns about the downward spiral in town centre shopping coupled with parking issues and were advised by the Principal Officer, Plans, Research, Environment that the policy allowed for flexibility to try and encourage town centre businesses.

#### **DECISION**

#### **AGREED to:**

- (a) Note the findings of the Pilot Study – which were summarised in Appendix B to the report; and**
- (b) extend the Pilot Study period until the new Town Centre Retail Policy was confirmed in the new Local Development Plan.**

#### **5. DRAFT SUPPLEMENTARY PLANNING GUIDANCE: SUSTAINABLE URBAN DRAINAGE SYSTEMS (SUDS)**

There had been circulated copies of a report by the Service Director Regulatory Services which sought approval of the Draft Supplementary Planning Guidance on Sustainable Urban Drainage Systems (SUDS), which, if approved would become a material consideration in the determination of planning applications. The aim of the new Supplementary Planning Guidance was to support the effective implementation of Local Development Plan Policies PMD1–Sustainability, IS8 - Flooding and IS9 – Waste Water Treatment Standards and Sustainable Urban Drainage. It also aimed to give more awareness to interested parties of the various SUDS requirements to be incorporated within planning applications. It was proposed that the Draft Supplementary Planning Guidance was subject to public consultation for a period of 12 weeks. Following consultation, it was intended that if substantive comments were received a report would be brought back to the Planning and Building Standards Committee to seek final agreement. The Members welcomed the report which explained in detail, the purpose of SUDS and gave an example of what a good SUDS looked like. Members welcomed the report and the Principal Officer, Plans, Research, Environment answered members questions.

#### **DECISION**

#### **AGREED to:**

- a) Use of the document as a Draft Supplementary Planning Guidance on Sustainable Urban Drainage (Appendix A) to be used as a basis for public consultation.**
- b) Delegate authority to the Chief Planning Officer to approve the final document as Supplementary Planning Guidance if there were no substantive comments arising from the public consultation.**

**6. APPEALS AND REVIEWS.**

There had been circulated copies of a briefing note by the Chief Planning Officer on Appeals to the Scottish Ministers and Local Reviews.

**DECISION**

**NOTED** that:-

**(a) there remained 2 appeals outstanding in respect of :-**

- (i) Land West of Whitslaid (Barrel Law), Selkirk; and**
- (ii) Land North West of Gilston Farm, Heriot**

**(b) Review requests had been received in respect of**

- (i) Replacement windows at 5 -1 Sandbed, Hawick – 19/00203/FUL;**
- (ii) Erection of dwellinghouse and agricultural building on Land North East of Hoprigshiel Farmhouse, Cockburnspath – 19/00590/FUL; and**
- (iii) Erection of dwellinghouse on Land North East of Maxton House, St Boswells – 19/01178/PPP**

**(c) the decision of the Appointed Officer had been upheld in respect of Erection of dwellinghouse and detached garage(approval of all matters specified in conditions 18/01256/PPP) on Land South East of Dundas Cottage, Selkirk – 18/00521/AMC**

**(d) there remained no reviews previously reported on which decisions were still awaited when the report was prepared on 28<sup>th</sup> October 2019.**

**(e) there remained 3 S36 PLI's previously reported on which decisions were still awaited when the report was prepared on 28<sup>th</sup> October 2019. These related to**

<ul style="list-style-type: none"><li>• Fallago Rig 1, Longformacus</li><li>• Crystal Rigg Wind Farm, Cranshaws, Duns</li></ul>	<ul style="list-style-type: none"><li>• Fallago Rig 2, Longformacus</li><li>•</li></ul>
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*The meeting concluded at 1.10 p.m.*

**APPENDIX I**  
**APPLICATION FOR PLANNING PERMISSION**

<b><u>Reference</u></b>	<b><u>Nature of Development</u></b>	<b><u>Location</u></b>
18/01620/FUL	Erection of poultry building and associated works mixed use development	Hutton Hall Barns Hutton

Decision: Approved subject to the following conditions:

**Conditions**

1. The development hereby approved shall not be carried out other than in complete accordance with the plans and specifications approved by the Planning Authority, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. Notwithstanding the details supplied in support of the planning application, no development shall commence until a Landscape Management Plan has first been submitted to and approved in writing by the Planning Authority. The Plan shall include:
  - a) An updated landscape plan for the development.
  - b) A management plan for the woodland associated with the development hereby permitted to ensure that, in future, all planting is managed in good silvicultural order to remain fit for purpose, including thinning and maintenance. The Plan shall include a programme for the on-going maintenance and protection of all planting, during the first five years of implementation.
  - b) Confirmation that any trees or plants provided for landscaping that die or are removed or damaged for whatever reason within the period from commencement of the development to a date five years after the completion of the development shall be replaced in the next planting season with others of the same size and species.  
The approved Landscape Management Plan shall be implemented in accordance with the approved details, supervised by a qualified arboricultural consultant, before the end of the first planting season following commencement of operation of the poultry unit hereby permitted. Documentation which demonstrates compliance shall be submitted by the developer to the Planning Authority on an annual basis for a five-year period.  
Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated and that planting is properly implemented and maintained.
3. All planting, seeding or turfing comprised in the approved Landscape Management Plan agreed under condition 2 shall be carried out in the first planting and seeding seasons following the occupation or completion of the development hereby permitted, whichever is the sooner, and the Planning Authority shall be advised once works are completed. All planting, seeding and turfing shall be maintained thereafter in accordance with the approved Landscape Management Plan and replaced as may be necessary for a period of five years from the date of completion of the planting, seeding or turfing.  
Reason: To ensure that the proposed planting is carried out as approved.
4. Notwithstanding the details supplied in support of the planning application, no development shall commence until further details of the proposed screening mounds, including additional screening mounds to the north east corner of the poultry building hereby approved, have first been submitted to and approved in writing by the Planning Authority. Thereafter, the agreed

screening mounds shall be fully formed prior to the occupation of the building, and shall be so retained thereafter in perpetuity, unless otherwise agreed by the Planning Authority.  
Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated.

4. No development shall commence until:
  - i. details of materials to be used on all exterior surfaces of the development hereby permitted have been submitted to and approved in writing by the Planning Authority;
  - ii. details of the design and siting of external food storage bins/ silos, water tanks and manure collection equipment/ hoppers have been submitted to and approved in writing by the Planning Authority; and
  - iii. design proposals for the placement of photovoltaic panels and security lighting have been submitted to and approved in writing by the Planning Authority.

Thereafter, the development shall be undertaken wholly in accordance with the approved details.

Reason: To ensure that the landscape and visual impacts of the development hereby permitted are adequately mitigated.

5. No development shall commence until a Construction and Environmental Management Plan (CEMP) has first been submitted to and approved in writing by the Planning Authority in consultation with the Scottish Environment Protection Agency. The CEMP shall cover the periods of site clearance and preparation, the erection of the building hereby approved and the formation of associated tracks, earth mounds and hard landscaping works. The CEMP shall include: the standards outlined in *British Standard 42020 : 2013 – Biodiversity Code of Practice for Planning and Development*; details of a Construction SUDS; and a method statement detailing measures to control sediment runoff during the period of construction to comply with General Binding Rule 10 of the Controlled Activities Regulations. Thereafter, construction works shall only be commenced and progressed in accordance with the approved details. The provisions of the approved plan shall be operated and maintained throughout the period of construction.

Reason: To protect the Cabby Burn, the Whiteadder Water and the River Tweed from the adverse effects of sediment runoff during construction.

6. No development shall commence until details of an operational sustainable drainage scheme (SUDS), which shall include a maintenance plan for the scheme, have been submitted to and approved in writing by the Planning Authority in consultation with SEPA. Thereafter, the agreed scheme shall be implemented in full and operational prior to the occupation of the development.

Reason: To ensure adequate protection of the water environment from surface water runoff.

7. The development hereby approved shall at all times be operated in compliance with the nuisance management plan titled 'Operational Plan' (dated December 2018) unless otherwise agreed by the Planning Authority.

Reason: To ensure that the operation of the poultry building hereby approved has no unacceptable impacts upon the amenity of the surrounding area or upon the amenity of any neighbouring residential properties, by ensuring that all potential sources of nuisance are appropriately managed and controlled.

8. No development shall commence until a Species Protection Plan for otter, badger and breeding birds has first been submitted to and approved in writing by the Planning Authority. No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with the approved Species Protection Plan for breeding birds and which incorporates provision for a pre-development supplementary survey and mitigation plan. No development shall be undertaken except in accordance approved Species Protection Plan.

Reason: To protect the ecological interests in accordance with Local Development Plan policies EP1, EP2 and EP3.

9. Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within all noise sensitive properties (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2.  
Reason: To protect the residential amenity of residential properties.
10. All plant and machinery shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.  
Reason: To protect the residential amenity of residential properties.
11. During construction and operation all vehicle movements to and from the development hereby permitted shall be within the hours of 07:00 to 22:00 on any day unless in cases of emergency.  
Reason: To safeguard the amenity of the area, including surrounding residential properties.

#### Informatics

1. The applicant is invited to consider engaging the Planning Authority in pre-application discussions prior to the submission of any further poultry building planning applications, or should further such buildings be envisaged.
2. The applicant should be aware that flooding can occur from other sources including run-off from surrounding land, blocked road drains, surcharging sewers and blocked bridges and culverts. The Flood Risk Officer recommends that the developer utilises water resilient materials and construction methods as appropriate, and reviews the Online Planning Advice on Flood Risk.
3. Details of SEPA's regulatory requirements and good practice advice for the applicant can be found on the [Regulations section](#) of SEPA's website. If you are unable to find the advice you need for a specific regulatory matter, please contact a member of the regulatory services team in your local SEPA office at: Burnbrae, Mossilee Road, Galashiels, TD11 1NF, tel 01896 754797 or Intensive Agriculture Team at [intensiveagriculture@sepa.org.uk](mailto:intensiveagriculture@sepa.org.uk)
4. The applicant is advised that a license may be required under the Controlled Activities Regulations if the access track over the existing burn crossing requires to be upgraded.

#### VOTE

*Councillor Miers, seconded by Councillor Small, moved that the application be approved as per the Officer recommendation.*

*Councillor Fullarton, seconded by Councillor Aitchison moved as an amendment that the application be refused.*

*On a show of hands Members voted as follows:-*

*Motion - 6 votes*

*Amendment - 2 votes*

*The Motion was accordingly carried.*

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/00947/FUL	Erection of two dwellinghouses	Land South West of West Lodge Minto

Decision: Approved subject to a legal agreement and the following conditions and informatics:  
Conditions

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority, unless otherwise agreed by the Planning Authority.  
Reason: To ensure that the development is carried out in accordance with the approved details.
2. The development hereby approved shall only be carried out in strict accordance with details of the materials to be used on the external walls and roof of the proposed building(s), which shall first have been submitted to and approved in writing by the Planning Authority, unless otherwise agreed by the Planning Authority.  
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
3. The roofing material shall be natural slate. A slate sample shall be made available for the prior approval of the Planning Authority, and thereafter, the development shall be completed using the approved material.  
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
4. No development shall commence until details of the design and finish of windows and doors have first been submitted to and approved in writing by the Planning Authority. The development to be completed wholly in accordance with the approved details thereafter.  
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
5. Prior to the commencement of development, the finish and colour of all external joinery and rainwater goods shall be agreed in writing with the Planning Authority. The development to be completed wholly in accordance with the approved details thereafter. Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
6. The frames of the Solar PV panels hereby approved shall be coloured non-reflective black or dark grey.  
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
7. No development shall commence until precise details, including materials, of all boundary treatments have first been submitted to and approved by the Planning Authority. The development shall be completed wholly in accordance with the approved details thereafter.  
Reason: To ensure a satisfactory form of development which contributes appropriately to its setting.
8. Prior to the occupation of the first dwellinghouse hereby approved, visibility splays of 2.4m x 42m must be provided in either direction at the junction with the public road and thereafter, minimum junction visibility splays of 2.4m x 42m shall be retained in perpetuity. Reason: To ensure the development hereby approved is served by an acceptable form of access.

9 No development shall commence until a revised site plan showing an amended parking layout has first been submitted to and approved in writing by the planning authority. The revised plan must show satisfactory parking and turning for two vehicles, excluding garages, within the curtilage of each plot. Once approved, the respective parking and turning shall be provided before each associated dwellinghouse is occupied and be retained thereafter in perpetuity.

Reason: To ensure the development hereby approved is served by adequate parking at all times.

10 No development shall take place except in strict accordance with a scheme of soft landscaping works, which shall first have been submitted to and approved in writing by the Planning Authority, and shall include (as appropriate):

- i indication of existing trees, shrubs and hedges to be removed, those to be retained and, in the case of damage, proposals for their restoration;
- ii location of new trees, shrubs, hedges and grassed areas; iii. schedule of plants to comprise species, plant sizes and proposed numbers/density; iv. programme for completion and subsequent maintenance.

Reason: To enable the proper form and layout of the development and the effective assimilation of the development into its wider surroundings.

11 All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and shall be maintained thereafter and replaced as may be necessary for a period of two years from the date of completion of the planting, seeding or turfing.

Reason: To ensure that the proposed landscaping is carried out as approved.

12 No trees within the application site shall be felled, lopped, lifted or disturbed in any way without the prior written consent of the Planning Authority.

Reason: The existing tree(s) represent an important visual feature which the Planning Authority considered should be substantially maintained.

13 Prior to the commencement of the development hereby approved, a detailed 'Method Statement' in relation to all works within the Root Protection Area (RPA) of retained trees shall be submitted to and approved in writing by the Planning Authority.

Specific issues to be dealt with in the Method Statement:

- a) A scaled plan and section (s), where relevant, showing the position, size, RPA, species and unique identification reference of each retained tree affected by the works and including details of the extent and nature of all works within the RPA of retained trees.
- b) A written statement detailing the proposed works including hand digging, use of filter cloth, timber edging, cellular ground reinforcement, porous surfaces etc. as relevant.
- c) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.
- d) A specification for ground protection within tree protection zones.
- e) Arboricultural supervision and inspection by a suitably qualified tree specialist. The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality.

- 14 The developer shall give notice to the planning authority once the approved landscaping works have been completed.  
Reason: To allow the planning authority to inspect the works, in order to ensure that the works have been carried out as approved.
- 15 There shall be no excavation or raising or lowering of levels within the root protection area of retained trees, unless otherwise agreed in writing by the Planning Authority.  
Reason: To ensure that the trees to be retained will not be damaged during demolition or construction.
- 16 No development shall commence until a report has been submitted to and approved in writing by the Planning Authority that the public mains water supply is available to serve this site. Prior to the occupation of the building(s), written confirmation shall be provided for the written approval of the Planning Authority that the development has been connected to the public mains water supply.  
Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.
- 17 No water supply other than the public mains shall be used to supply the Development without the written agreement of the Planning Authority.  
Reason: To ensure that the Development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.
- 18 No development should commence until the applicant has provided evidence that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition  
Reason: To ensure that the development does not have a detrimental effect on amenity and public health.
- 19 No development shall be undertaken during the breeding bird season (March to August), unless in strict compliance with a Species Protection Plan for breeding birds, including provision for pre-development supplementary survey, that shall be submitted to and approved in writing by the Planning Authority.  
Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.
- 20 Bin stances shall be provided in accordance with details that have first been submitted to and approved in writing by the planning authority. The houses hereby approved shall not be occupied until bin stances are provided in accordance with the approved details. Reason: To ensure visually sympathetic storage of bins
- 21 No development shall commence until a surface water drainage layout, in addition to means of its future maintenance, has first been submitted to and approved in writing by the Planning Authority. The development shall be serviced in accordance with the approved details  
Reason: To ensure the development can be adequately serviced.

## Informatics

- 1 Private drainage systems often cause public health problems when no clear responsibility or access rights exist for maintaining the system in a working condition. Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law. The applicant should satisfy themselves that the maintenance duties on each dwelling served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.
- 2 If the stove has an output of more than 45kw, the applicant should contact the Council's Environmental Health Service and provide further information in order that a screening assessment can be carried out. Stove installations can cause smoke and odour complaints and any Building and Planning Consents for the installation do not indemnify the applicant in respect of nuisance action. In the event of nuisance action being taken there is no guarantee that remedial work will be granted a Building Warrant/Planning Permission, including changes to the height and position of the flue.
- 3 The access to the site from the public road to be constructed as a service layby to my standard specification DC3. The initial 5 metres of the shared driveway beyond the rear of the service lay-by to be a minimum of 5.5 metres wide to allow two vehicles to pass and surfaced to the same specification.
- 4 Only contractors first approved by the Council may work within the public road boundary.
- 5 The promoted Minto Hills path in the Paths around Hawick booklet is described from Denholm and the route shown is the route on the maps below. The full booklet may be accessed from the council website [www.scotborders.gov.uk/walking](http://www.scotborders.gov.uk/walking)
6. The applicant is reminded that, under the Conservation Regulations (Natural Habitats & c.) 1994 (as amended) it is an offence to deliberately or recklessly damage or destroy a breeding site or resting place of bats (whether or not deliberately or recklessly), capture, injure or kill a bat, harass a bat or group of bats, disturb a bat in a roost (any structure or place it uses for shelter or protection), disturb a bat while it is rearing or otherwise caring for its young, obstruct access to a bat roost or otherwise deny an animal use of a roost, disturb a bat in a manner or in circumstances likely to significantly affect the local distribution or abundance of the species, disturb a bat in a manner or in circumstances likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young.

In the event that bats are discovered following the commencement of works, works should stop immediately and the developer must contact SNH (tel: 01896-756652 or 01463 725 364) for further guidance. Works can only recommence by following any guidance given by SNH. The developer and all contractors to be made aware of accepted standard procedures of working with bats at [www.bats.org.uk](http://www.bats.org.uk). Further information and articles available at:

VOTE

*Councillor Fullarton, seconded by Councillor Hamilton, moved that the application be approved as per the Officer recommendation.*

*Councillor Miers, seconded by Councillor Aitchison moved as an amendment that the application be refused on the grounds of policy PMD5(b) and (d).*

*On a show of hands Members voted as follows:-*

*Motion - 5 votes*

*Amendment - 2 votes*

*The Motion was accordingly carried.*

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/01142/FUL	Erection of general purpose agricultural/ Equestrian building (retrospective)	Land West of Old Greenlaw Farmhouse Greenlaw

Decision : Approved subject to the following conditions and informatives:

Conditions:

- 1 The equestrian use hereby approved shall be used only for private (domestic) use for purposes incidental to the enjoyment of Old Greenlaw Farmhouse, Greenlaw, Duns, TD10 6UP as a dwellinghouse and the building shall not at any time, be operated in whole or in part, as (or within) the premises of an equestrian business without the express grant of planning permission from the Planning Authority.  
Reason: To enable the Planning Authority to consider the implications of any subsequent commercial equestrian enterprise on the amenities of the area.
- 2 Any noise emitted by plant and machinery used on the premises will not exceed Noise Rating Curve NR20 between the hours of 2300 – 0700 and NR 30 at all other times when measured within the nearest noise sensitive dwelling (windows can be open for ventilation). The noise emanating from any plant and machinery used on the premises should not contain any discernible tonal component. Tonality shall be determined with reference to BS 7445-2  
Reason: To protect the residential amenity of nearby properties.
- 3 All plant and machinery shall be maintained and serviced in accordance with the manufacturer's instructions so as to stay in compliance with the aforementioned noise limits.  
Reason: To protect the residential amenity of nearby properties.

Informatives:

1 Stable Waste

During the use of the stable block, it is likely that refuse/waste materials (i.e. manure/soiled hay) will be produced on the site as a consequence. Therefore, it must be ensured that all such waste materials are not stored on site or disposed of in any manner (for example, burning) which would give rise to Statutory Nuisance conditions developing at neighbouring properties to the site.

2 Riding establishment

The Riding Establishments Act 1964 defines a Riding Establishment as "the carrying on of a business of keeping horses to let them out on hire for riding, or for use in providing instruction in riding for payment, or both, " and requires such businesses to be licensed by the Local Authority.

If the applicant intends the stables to operate as a riding establishment in the future, the premises will need to be licensed. Current conditions of licence are discussed alongside health and safety issues applicable to the trade, within the CIEH publication Health and safety guidance for inspections of horse riding establishments and livery yards. A free copy may be downloaded from [www.cieh.org/policy/inspections\\_horse\\_livery.html](http://www.cieh.org/policy/inspections_horse_livery.html). Hardcopies may be purchased from CIEH Tel. 020 7827 5821.

Further information about the required standards is available from SBC's Regulatory Services, Environmental Health Team  
Riding Establishment application forms are available from SBC's, Licensing Team.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
18/01540/FUL	Erection of 13 No dwellinghouses and associated infrastructure	Land South and West of Swinton Primary School

Decision: Approved subject to a legal agreement covering developer contributions and the following conditions:

1. The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans and specifications approved by the Planning Authority.

Reason: To ensure that the development is carried out in accordance with the approved details.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (or any subsequent order amending or re-enacting that Order), no fence, gate, wall or other means of enclosure shall be erected on the eastern boundary of Plots 1-5, on the northern boundary of Plot 1, or on the eastern boundary of Plot 26, unless an application for planning permission in that behalf is first submitted to and approved.

Reason: To control boundary treatment on plots 1-5 and plot 26 which, if unrestricted, may detract from the overall setting of the development hereby permitted.

3. No development shall commence, (notwithstanding the details provided in the approved drawings) until a revised and augmented scheme of hard and soft landscaping (incorporating details of layout, location, species, a planting schedule including planting numbers and density, implementation date(s) and future maintenance of all new planting and communal open space within the site) has first been submitted to and approved in writing by the Planning Authority. The scheme of hard and soft landscaping shall include:

- a) planting of two single oak trees, evenly spaced between oaks 886 and 887;
- b) reinforcement of roadside hedging along the eastern boundaries of plots 1 to 5;
- c) details for communal and private planting and details for tree and hedge planting along the southern boundary of the site;
- d) reconfiguration of hedging around car parking on plots 1-3 to improve visibility;
- e) relocation of plot 2 car parking to western corner of the plot;
- f) widening of the footpath to the north of Plot 1 to 2.4m.
- g) planting proposals around the SUDS detention basin.

Thereafter, the development shall be carried out and maintained wholly in accordance with the agreed scheme of hard and soft landscaping.

Reason: To achieve an acceptable landscape scheme for the development; to ensure safe parking arrangements for plots 1-3; discrete parking for plot 2; and adequate pedestrian provision for the footpath to the north of Plot 1.

4. No development shall commence, (notwithstanding the details provided in the approved drawings), until a revised and augmented scheme of boundary treatments (walls and fencing) has first been submitted to and approved in writing by the Planning Authority. The scheme shall be based on site plan AT2775 L(-1)102 Revision C and shall include the layout/ route of all existing and proposed walls and fencing, and their detailed design, height and materials. No facing brick shall be proposed and no timber fencing shall be included to the east of dwellinghouses on Plots 1-5, to the north of Plot 1, or on the eastern boundary of Plot 26. All boundary treatments within the application site shall accord with the approved scheme.

Reason: Further information is required to achieve an acceptable boundary treatment scheme for the site.

5. No development shall commence until the Tree Protection Plan AT2775 L(-1)005 has been amended to include protection for the hedge along the eastern boundary of the site. Prior to and throughout the construction period of the development hereby approved, protective fencing shall be erected in accordance with BS5837:12 and the agreed Tree and Hedge Protection Plan. No works shall be carried out within the protected areas without the written approval of the Planning Authority and any excavations within these areas shall be hand-dug.  
Reason: To protect trees and hedging on or close to the site.
6. No trees within the application site shall be felled, lopped, lifted or disturbed in any way without the prior written consent of the Planning Authority.  
Reason: The existing trees represent an important visual feature which the Planning Authority considered should be substantially maintained.
7. Prior to the commencement of development, a schedule (including samples where required by the Planning Authority) of the external materials, finishes and colours of all dwellinghouses shall be submitted to and approved in writing by the Planning Authority, notwithstanding references to materials finishes and colours on the approved drawings. The development shall be completed in accordance with the approved schedule of materials, finishes and colours.  
Reason: The materials and colours require further consideration to ensure they are visually sympathetic to the surrounding area.
8. Prior to the commencement of development, a revised east gable elevation drawing for House Type K – Plot 7 shall be submitted to the Planning Authority for written approval. Thereafter, the dwellinghouse on Plot 7 shall be erected only in complete accordance with the approved details.  
Reason: To ensure suitable visual interest is achieved at the entry to the approved development.
9. No development shall commence until further details of proposed levels within the site have first been submitted to, and approved in writing by, the Planning Authority. These details shall include existing and proposed ground, road and other hardstanding levels; proposed house and finished floor levels and surface water flow paths. The levels shall relate to a fixed, off-site datum point. Thereafter, the development shall be carried out in accordance with the approved details and the dwellinghouses hereby approved shall be orientated to accord with the site plan hereby approved.  
Reason: To ensure levels within the site achieve a sympathetic visual appearance and make satisfactory provision for surface water drainage, and to ensure the dwellinghouses are orientated in accordance the approved site plan.
10. No development shall commence until details of surface water drainage (including maintenance arrangements) have been submitted to and approved in writing by the Planning Authority. Thereafter, the development shall be carried out wholly in accordance with the agreed details.  
Reason: to control surface water drainage and control flood risk.
11. No development shall commence until written evidence on behalf of Scottish Water to confirm that mains water and foul drainage systems shall be made available to serve the development has been submitted to the Planning Authority for written agreement. Thereafter, the development shall be serviced in accordance with the approved details.  
Reason: To ensure the development can be adequately serviced.
12. No development shall commence until a scheme of details has been submitted to and approved in writing by the Planning Authority for the upgrade to an adoptable standard of the

section of Core Path 73 within the application site boundary. Thereafter, unless otherwise agreed in writing with the Planning Authority, the section of Core Path within the application site boundary shall be upgraded to an adoptable standard in full accordance with the agreed details before the first dwellinghouse hereby approved is occupied.

Reason: To ensure the development benefits from adequate pedestrian connectivity.

13. Throughout the construction period of the approved development, Core Path 73 shall remain open and unobstructed, unless temporary rerouting is provided in accordance with details which have received the prior written approval of the Planning Authority.

Reason: to prevent access across Core Path 73 being obstructed during construction.

14. No development shall commence until a revised site plan and scheme of details has been submitted to and approved in writing by the Planning Authority covering:

- a. an amended vehicular junction with the A6112 to avoid the RPA for tree 888;
- b. the extension of street lighting and the 30mph speed limit infrastructure on the A6112 to the south of the site entrance;
- c. a new footway between the site and the school entrance from the A6112;
- d. details of surfacing materials for roads, footpaths and parking;
- e. a timescale for delivering (a) to (c).

Thereafter, the roads, streetlighting, speed limit infrastructure, footpaths and parking spaces/areas indicated on the agreed revised site plan shall be constructed or otherwise delivered in full accordance with the agreed revised site plan, the agreed surfacing materials details, and the timetable for delivery under (e), all unless otherwise agreed in writing by the Planning Authority.

Reason: To ensure that the proposed development is laid out in a proper manner with adequate provision for traffic and pedestrians; in the interests of visual amenity; to reduce the risk of harm to the mature oak tree (no. 888) close to the junction with the A6112; to ensure the site has adequate pedestrian and vehicular connectivity; and to ensure the existing infrastructure is extended to serve the site to provide safe access and egress.

15. No development shall commence until a phasing programme for the development has been submitted to and approved by the Planning Authority. This shall include all buildings, roads, footpaths, and water, foul and surface water drainage services. Thereafter, development shall only be carried out in accordance with the approved phasing programme.

Reason: To ensure the development is carried out in a manner which ensures that occupied residential units are provided with necessary infrastructure and services.

16. The two units hereby approved on plots 9 and 10 shall meet the definition of "affordable housing" as set out in the adopted Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance "Affordable Housing" 2015 and shall only be occupied in accordance with arrangements (to include details of terms of occupation and period of availability) which shall first have been submitted to and approved in writing by the Planning Authority prior to development commencing.

Reason: The permission has been granted subject to the provision of two units for affordable housing.

17. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (ClfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all

recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

18. No development shall commence during the breeding bird season (March to August inclusive), unless in strict compliance with a Species Protection Plan for breeding birds that shall be submitted to and approved in writing by the Planning Authority.
- Reason: to protecting breeding birds.

#### Information for the applicant

1. Care should be taken to protect the water environment and to follow SEPA's standard regulatory advice in relation to good practice in development.
2. Opportunities exist to enhance the habitat network and support local biodiversity through planting native species of local provenance.
3. The applicant should be aware that in accepting the road layout for Phase 2, the Planning Authority does not make any determination as to its suitability for the previously proposed mixed uses on the site or the house plots and footprints shown indicatively on the site plan hereby approved.
4. The site roads and footpaths require the benefit of Road Construction Consent. The applicant is reminded that a Road Bond requires to be in place prior to any house building works commencing on site.
5. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.
6. The development of this site requires the provision of complimentary uses reflecting the mixed use nature of the allocation (MSWIN002) and should include consideration of community facilities such as playing fields and village hall. The development hereby approved does not include community facilities however there is an opportunity to provide these complementary facilities on land to the north of the application site within Well Field (Housing Allocation BSW2B). The applicant should be aware that if the community facilities are not delivered on the land at Well Field then they must be delivered on the remainder of the mixed use allocation (MSWIN002).

#### NOTE

Mr Earnshaw, Resident spoke against the application.

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/01253/S36	Variation to height of turbine T16 from 125m to 145m blade to tip	Land North of Nether Monynut Cottage Cockburnspath

Decision: APPROVED that the Council indicate to the Scottish Government that it does not object to application 19/01253/S36 to vary the height of turbine T16 from 125m to 145m blade to tip, subject to the imposition of the variations proposed within Annex A of the Environmental Report dated June 2019 and the imposition of the relevant conditions and informative notes of the original consent which remain necessary to adequately control this development.

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**SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**  
**9 DECEMBER 2019**  
**APPLICATION FOR PLANNING PERMISSION**

**ITEM:** **REFERENCE NUMBER:** 19/01116/FUL

**OFFICER:** Ranald Dods  
**WARD:** Tweeddale West  
**PROPOSAL:** Change of use from dwellinghouse to hotel  
**SITE:** Hartree House, Hartree, Biggar  
**APPLICANT:** Mr Michael Goddard  
**AGENT:** Burrell Design Studios

**PLANNING PROCESSING AGREEMENT:** A planning processing agreement is in place until 16 December 2019.

#### **SITE DESCRIPTION**

Hartree House is a large detached property within extensive grounds located approximately 1.5km south of Biggar. The property is category C listed and was added to the statutory list in 1977. It is mainly a Victorian mansion which incorporates an earlier Georgian house dating from around 1790. There are more recent additions including a new orangery which is nearing completion.

Hartree House has had a number of uses over the years including as a hotel and is now operating as a private dwellinghouse. The grounds are not within the areas identified by SEPA as being subject to flooding although the site does lie within the Tweedsmuir Uplands special landscape area (SLA) and the locally designated Hartree House designed landscape.

Hartree House is accessed by two private access drives to the north and south of the property via the minor public road to Biggar. Private garden grounds are located to the west between the house and the minor public road, with agricultural land beyond. To the north and east of the site are fields in agricultural use and to the south is a small cluster of 11 residential properties known as Hartree Square. Hartree Square is also served by the southern access serving the House.

#### **PROPOSED DEVELOPMENT**

The application seeks consent for a change of use of the property from a house (class 9) to a hotel (class 7). The drawings indicate that only minor internal changes are proposed. In this instance, the changes are of such a minor nature that listed building consent is not required. No changes are proposed to the exterior of the building.

The proposal would provide a maximum of 10 guest bedrooms within the House. There is no indication within the supporting information submitted by the applicant that there is any intention of having more than 10 guest bedrooms, with the maximum number of occupants being 20.

## PLANNING HISTORY

Set out below is the planning history associated with the site.

99/01129/LBC	internal alterations, removal of fire escape catwalks and installation of velux rooflight	granted	18 Oct 99
00/01108/COU	change of use from hotel (class 7) to dwellinghouse (class 9)	granted	15 Sep 00
07/01511/FUL	erection of garage block	granted	28 Sep 07
08/01964/FUL	alterations and extension to dwellinghouse	granted	27 Jan 09
08/01966/LBC	internal and external alterations to dwellinghouse	granted	27 Jan 09
11/00209/LBCNN	external alterations to dwellinghouse and demolition of outbuilding	granted	15 Aug 11
11/00319/FUL	formation of pond, creation of bund and infilling of paddock	granted	5 Jul 11
11/00456/FUL	erection of detached garage/store	granted	17 Jun 11
11/01467/FUL	formation of terracing and landscaping and erection of boundary fence	granted	6 Jan 12
11/01468/LBCNN	erection of garden wall	granted	5 Jan 12
11/01176/FUL	alterations and extension to dwellinghouse	granted	30 Nov 11
11/01177/LBCNN	alterations and extension to dwellinghouse	granted	30 Nov 11
12/00521/FUL	erection of detached garage / store	refused	21 Jun 12
12/01539/LBCNN	internal and external alterations	granted	15 Feb 13
14/00317/LBCNN	internal and external alterations	granted	12 May 14
14/00318/FUL	alterations and extension to dwellinghouse	granted	13 May 14
16/00408/LBC	internal alterations	granted	8 Jun 16
16/00865/FUL	part change of use of dwellinghouse and garden ground to wedding venue and erection of marquees	granted	9 Jan 17

Appeals relating to site:

17/00012/COND	appeal against conditions imposed on 16/00865/FUL	appeal upheld	28 Jun 17
DPEA ref			
PPA-140-2058			

The following applications were submitted but subsequently withdrawn:

08/01675/FUL	alterations and extension to dwellinghouse
08/01676/LBC	internal and external alterations
08/01687/LBC	Installation of internal wheelchair lift, handrail at kitchen entrance and access ramp at annex entrance

## **REPRESENTATION SUMMARY**

At the time of writing, 10 letters of objection had been submitted directly from 7 separate households in connection with this application. Of those, more than 5 were received before the expiry of the statutory period and that has triggered referral to the Planning and Building Standards Committee under the Council's Scheme of Delegation. Additionally, although not a statutory consultee on the proposal, SEPA initially objected although that was subsequently withdrawn.

A letter of support was also submitted by Biggar Community Council. That community council advised that they consulted the local community to gauge views on the proposals. They received 39 comments, of which 25 were in favour, 12 were neutral and two objected. In light of the responses received, the community council wrote in support of the proposal.

Several additional general comments have been submitted throughout the processing of this application.

The material grounds, as they relate to this application, contained in representations are summarised below. Copies of all representations relating to the application are available for members to view in full on *Public Access*.

- Planning history
- Road safety
- Increased traffic
- Access
- Impact on amenity
- Privacy
- Drainage
- Water supply
- Flooding
- Noise

The applicant made a submission in response to the points raised by objectors. This is available to view in full on *Public Access*.

## **APPLICANTS' SUPPORTING INFORMATION**

The applicant has submitted a supporting statement. That sets out the history of the house and outlines the proposal. It states clearly that additional activities within the proposed hotel will include small corporate or family functions, catering for which will

be provided by outside caterers. The hotel will not be open for casual visitors or non-residents. The applicant also submitted a transport statement in support of the application. The statement concludes that the majority of traffic will access the hotel from the west access drive with only deliveries and refuse collections using the shared east access. The report is available in full for Members to view on Public Access.

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Roads Planning Service (RPS):** RPS commented initially that Hartree House was previously used as a hotel, therefore it is hard to argue against the principle of this application. They noted that the information submitted in support of this application did not include a Transport Statement (TS). That was subsequently submitted and then assessed by RPS.

The TS confirms that the route for staff and patrons associated with the proposed hotel would be via the western access, which was the access to the hotel previously. It is worth noting that the change of use to a hotel will create 10 bedrooms, which is 16 rooms fewer than the previous use as a hotel. Space for parking is noted on the proposed parking layout shown on drawing L(90)02 Rev A and further overflow car park is shown on drawing L(90) 01 Rev B. RPS is content with the amount of parking available to users of the hotel and for any functions being held within the grounds.

Access to the rear of the hotel, via the southern entrance, is to be used for deliveries and service vehicles. RPS note the objections relating to the use of the southern access although it is noted that this private access is already used for refuse collection, deliveries etc. for Hartree House and the neighbouring properties. The likely additional vehicles required to service a 10 bedroom hotel is unlikely to have a significant impact on the short communal section of the private access.

In terms of access from the wider road network, arguably the two main routes to the development site are via roads within the boundary of South Lanarkshire Council (SLC), namely "Hartree Entries Road" and the unclassified road from Biggar which passes Boghall Farm and the Rugby Club. RPS discussed this with SLC roads planning service who raised no concerns over the potential additional traffic movements on their network as a direct result of this proposed development.

Access for larger vehicles utilising the main entrance will be able to access/exit the development site only via Hartree Entries Road due to the restrictive geometry of the main entrance, the geometry of which and the presence of the gate piers do not permit two way movements in the bellmouth. RPS requires a passing place to be installed within the grounds of Hartree House, near the gate piers, to allow vehicles refuge should traffic movements conflict within the bellmouth area.

RPS has no objection in principle to Hartree House returning to a hotel, given the reduced number of bedrooms from when it previously operated as a hotel. A condition is suggested.

**Economic Development:** No objection as the proposed change of use fits with the Scottish Borders Tourism Strategy 2013-2020 strategic targets by: Ensuring the regions accommodation offerings are in direct relation to consumer demands and where opportunities are available, act as an attractor of demand in themselves; increasing volume of overnight visitors; increasing overnight visitor spend; providing employment.

**Environmental Health:** No objection, subject to conditions.

### **Other Consultees**

**Scottish Water:** No objection although it is advised that the applicant should be aware that the response from Scottish Water (SW) does not confirm that the development can currently be serviced. SW advises that there is currently sufficient capacity in the Coulter Water Treatment Works but that further investigations may be required once a formal connection application is made to them. The nearest public water main is approximately 1.2km from the site. SW does not hold records of public SW waste water infrastructure within the vicinity. The applicant is advised to investigate private treatment options.

### **DEVELOPMENT PLAN POLICIES:**

#### **Scottish Borders Local Development Plan 2016**

- PMD2 Quality standards
- ED7 Business, tourism and leisure developments in the countryside
- HD3 Protection of residential amenity
- EP5 Special landscape areas
- EP7 Listed buildings
- EP10 Gardens and designed landscapes
- EP13 Trees, woodlands and hedgerows
- IS7 Parking provision and standards

### **OTHER PLANNING CONSIDERATIONS**

#### **Supplementary Planning Guidance:**

- Local Landscape Designations 2012
- Waste Management 2015

#### **KEY PLANNING ISSUES:**

The key planning issues with this application are whether the proposed change of use will comply with the relevant Local Development Plan policies particularly in relation to business, tourism and leisure developments in the countryside and the protection of residential amenity.

### **ASSESSMENT OF APPLICATION:**

#### **Policy Implications**

The application site is currently occupied as a house and therefore falls within Class 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order. The application is made to change the use to a hotel, which falls within Class 7 (Hotels and Hostels).

Policy ED7 - Business, tourism and leisure developments in the countryside, states that proposals for business, tourism or leisure development in the countryside will be approved, provided that, amongst other things, the development is to be used directly for leisure, recreation or tourism appropriate to a countryside location and, where relevant, it is in accordance with the Scottish Borders Tourism Strategy and Action

Plan. It is clear that the proposed use as a hotel will comply with the general support given by policy ED7.

In addition the policy sets out that the following criteria will also be considered when assessing an application:

- a) the development must respect the amenity and character of the surrounding area;
- b) the development must have no significant adverse impact on nearby uses, particularly housing;
- c) where a new building is proposed, the developer will be required to provide evidence that no appropriate existing building or brownfield site is available and where conversion of an existing building of architectural merit is proposed, evidence that the building is capable of conversion without substantial demolition and rebuilding;
- d) the impact of the expansion or intensification of uses, where the use and scale of development are appropriate to the rural character of the area;
- e) the development meets all other siting and design criteria in accordance with policy PMD2 and;
- f) the development must take account of accessibility considerations in accordance with Policy IS4.

Against this policy, criteria a), b), d), e) and f) are relevant. As no external works are proposed and use and scale of the development are appropriate to the area, the character of the area will not be affected. In terms of amenity, the change of use proposed in this application is unlikely to have a significant adverse impact on nearby existing uses although this will be discussed later in this report

Several objections have been made on the grounds of noise disturbance but those relate to the existing permission, 16/00865/FUL for the part change of use of dwellinghouse and garden ground to a wedding venue, rather than on the change of use of the house to a hotel. Setting aside the issues associated with that permission and considering purely the change of use as proposed in the current application, it is difficult to argue that the change of use to a hotel will be detrimental to the amenity and character of the surrounding area. Notwithstanding that, Environmental Health has suggested conditions relating to noise from events held within the proposed hotel.

What may be an issue is the increased demand on the water supply from the hotel use which is likely to have an impact on the houses to the south of Hartree House. This aspect is considered later in this report.

An issue of access to the hotel has been raised in representations. Accessibility is referred to in PMD2. Similarly, it is also a consideration in relation to criterion f). Access is given consideration later in this report.

### **Residential Amenity**

As noted above, many of the representations have cited noise from the existing canvas structures to the north west of the building as a reason for objection. It must be borne in mind that the current application is for a change of use from a house to a hotel and, therefore, is distinct from the permission granted in 2017 (16/00865/FUL). This application is not, therefore, an opportunity to revisit the principle of that permission.

Whilst the submitted drawings and the supporting statement do not indicate that any of the rooms within the building will be used for functions, the possibility cannot be excluded and noise arising from such events could be detrimental to residential

amenity. To take account of that, conditions are recommended by Environmental Health.

Bearing in mind that the house was previously used as a hotel and this application seeks consent to revert the house back to a hotel, albeit with a much reduced number of bedrooms, it is reasonable to assume that any impacts on the residential amenity of nearby houses will be tolerable. Noise levels can be controlled by condition and any statutory noise nuisance complaints can be covered by Environmental Health legislation. It is considered that the proposed change of use is compliant with Policy HD3 – Protection of Residential Amenity.

### **Landscape**

The application site is located within the Tweedsmuir Uplands special landscape area (SLA) and the locally designated Hartree House designed landscape. As the proposed change of use will not result in any new buildings being erected or significant loss of trees, the development will not be detrimental to the objectives or overall integrity of the SLA or the locally designated designed garden. The proposals will comply with Policies EP5 and EP10.

### **Trees**

The applicant submitted an amended plans showing a revised parking layout. Although the principal parking area will be to the front of the building, there is also an additional parking area indicated to the north of the main drive. There are several trees within that area but those are not covered by a tree preservation order. Whilst it may be possible to introduce parking within that area, perhaps, no details are provided of how the parking will be formed, the potential impact on the trees and any mitigation measures to reduce the impact. It is recommended that conditions relating to trees are imposed requiring the submission and approval of details for the additional parking and for the access tracks to that parking. This will ensure that the loss of trees will be minimal and that trees proposed for retention will be offered protection in accordance with current standards.

### **Listed Building**

As only a minor internal changes are proposed (the installation of a fire door on the second floor), it was agreed that listed building consent would not be required. The proposed change of use and the minor internal alteration will have a neutral impact on the character and appearance of the listed building and will not be contrary to the aims of Policy EP7.

### **Roads**

Members will note that the RPS does not object to the principle of the proposed change of use given the reduced number of bedrooms from when the property previously operated as a hotel. The proposal includes a revised parking layout and shows 17 parking bays to the front of the building as well as three accessible bays and two staff parking bays to the rear. The additional parking to the north of the drive includes 30 car parking spaces and 3 bays for buses. The parking proposal is considered sufficient for the proposed change of use. The applicant submitted a Transport Statement (TS) in response to a consultation response from RPS. The TS was assessed and found to be acceptable although a condition requiring the provision of a passing place on the main drive was suggested.

The comments relating to the use of the southern access made in representations have been noted and taken into consideration. The applicant has stated that the principal access to the hotel will be the northern one with the southern access being used for deliveries and service vehicles. Whilst RPS notes the objections relating to the use of the southern access, this is a private access which is already used for refuse collection, deliveries etc. for both Hartree House and the neighbouring properties. It is unlikely that there will be a significant impact on the short communal section of the private access from additional vehicles required to service a 10 bedroom hotel. The application form states that there are no proposals for a new altered vehicle access to or from a public road.

The neighbouring authority, SLC, did not require to be consulted as the proposal does not affect land within that area. RPS did, however, discuss the proposal informally with the SLC roads authority to ascertain if there were any constraints on the road network within SLC. No concerns were raised over the potential additional traffic movements on their network as a direct result of this proposed change of use.

Access for larger vehicles utilising the main entrance will be able to access/exit the development site only via the road directly west of the main access, known as "Hartree Entries Road", due to the restrictive geometry of the main entrance. The geometry and the presence of the gate piers does not permit two way movements in the bellmouth. RPS requires a passing place to be installed within the grounds of Hartree House, near the gate piers, to allow vehicles refuge should vehicle movement's conflict within the bellmouth area. A condition is recommended in that regard.

## **Services**

There is sufficient space to the rear of the building for the storage of waste and recycling containers. The southern access is currently used by vehicles servicing Hartree House and the properties in Hartree Square and RPS consider that this route is suitable for vehicles servicing a 10 bedroom hotel.

The application states that no connection is required to the public water supply network and that no new or altered water supply or drainage arrangements are required. The property is served by a private water supply and foul drainage system, both of which have been in operation for some time. Ideally, a property of this size operating as a hotel would be connected to the public water supply and public drainage system but Scottish Water has confirmed that whilst there is sufficient capacity within the water treatments works, the nearest connect to the public water supply is 1.2km away. Furthermore, there is no public drainage infrastructure within the vicinity to which the hotel can connect. Given the lack of infrastructure locally, the hotel is required to be served by a private water supply and private drainage system.

The existing dwellings at Hartree Square are also served by the same private water supply and Members will note that there have been numerous comments from the residents regarding loss of water pressure. The proposed hotel is not required to connect to a new supply, however, existing users of this existing private supply should be compromised. In light of those concerns, and in order to ensure existing users continue to receive a wholesome and plentiful supply of water, a condition is recommended.

Members will note that SEPA submitted a representation (they were not a formal consultee) in the form of an objection on the grounds that there appeared to be a change in the pollutant loading from the sewage discharge. The applicant has responded confirming that the private drainage system was initially designed to provide

for 26 hotel bedrooms. The applicant has also confirmed that he received authorisation from SEPA in 2008 to discharge sewage effluent, which has first been treated by means of a septic tank, with a population equivalent not exceeding 26 persons. As the current proposals seek consent for a change of use to a hotel with only 10 rooms and a population equivalent of 20 persons, this will be less than the authorised resident equivalent of 26. Discussions have taken place and SEPA confirm that the CAR (controlled activities) authorisation remains valid. Since the population equivalent authorised previously is not being exceeded, SEPA have confirmed their acceptance of the proposed private drainage arrangements. It will be for Building Standards to ensure that the other requirements of the private drainage arrangements are being complied with.

## **CONCLUSION**

The proposed change of use back to a hotel is acceptable and will provide tourist accommodation consistent with the requirements of planning policy and the Scottish Borders Tourism Strategy 2013-2020 strategic targets. The proposals do not raise any issues in relation to landscape, access, water supply or drainage that cannot be controlled by suitably worded conditions. The proposed change of use will accord with the relevant provisions of the Local Development Plan 2016 and supplementary planning guidance and there are no material considerations that would justify a departure from these provisions.

## **RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:**

I recommend that the application is approved, subject to the schedule of conditions and informative set out below:

### Conditions:

1. No development shall commence until a report by a suitably qualified person has been submitted to and approved in writing by the planning authority, demonstrating the provision of an adequate water supply to the development in terms of quality and quantity and the impacts on surrounding supplies or properties. The report must also detail all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties in the locality and which may be affected by the development. The provisions of the approved report shall be implemented prior to the change of use hereby approved taking place.

Reason: To ensure that the development is adequately serviced with a sufficient supply of wholesome water and there are no unacceptable impacts upon the amenity of any neighbouring properties.

2. The hotel hereby approved shall not be brought into operation until the drainage system has been fully implemented and written evidence has been provided for approval by the planning authority that arrangements are in place to ensure that the private drainage system will be maintained in a serviceable condition. All surface water drainage shall comply with the SUDS manual.

Reason: To ensure that the development does not have a detrimental effect on amenity and public health.

3. No development shall commence until further details of the proposed parking area north of drive and accesses thereto, shown on approved drawing L(90)01 revision B, have first been submitted to and approved in writing by the planning authority. Details shall include: the trees to be retained; the trees to be removed;

the proposed layout; methods of demarcation of parking bays; the construction make-up of the parking area and access routes.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To give full consideration to those details yet to be submitted and to protect and enhance the appearance and character of the site and locality.

4. No development shall commence until a detailed 'method statement' in relation to all works within the root protection area (RPA) of retained trees has been submitted to and approved in writing by the planning authority. Specific issues to be dealt with in the method statement:

- a) a scaled plan showing the position, size, RPA, species and unique identification reference of each retained tree affected by the works and including details of the extent and nature of all works within the RPA of retained trees;
- b) a written statement detailing the proposed works including hand digging, use of filter cloth, timber edging, cellular ground reinforcement, porous surfaces etc. as relevant;
- c) a specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing;
- d) a specification for ground protection within tree protection zones.

The development thereafter shall be implemented in strict accordance with the approved details.

Reason: To ensure that the trees to be retained will not be damaged during construction operations and to protect and enhance the appearance and character of the site and locality.

5. The hotel hereby approved shall not be brought into operation until a passing place has first been installed on the main access track to the east of the gated (northern) entrance, identified on drawing L(90)01, revision B. The precise location of the passing place shall be agreed on site with the planning authority.

Reason: To minimise the potential for conflicting traffic movements at the western entrance to Hartree House, in the interest of road safety.

6. No development shall take place until a scheme of mitigation of noise, arising from events or functions held within the hotel, has first been submitted to and approved in writing by the planning authority. The hotel shall not be brought into use until the developer has confirmed in writing to the planning authority that the measures in the approved scheme of mitigation of noise have been fully implemented or, as required, put in place.

Reason: To protect local residents from noise arising from events or functions held within the hotel.

7. No music - either amplified or otherwise - and no amplified sound (including speech) shall be played after midnight.

Reason: To protect local residents from noise arising from events or functions held within the hotel.

Informatics:

1. Private Drainage System

Private drainage systems often impact on amenity and cause other problems when no clear responsibility or access rights exist for maintaining the system in a working condition.

Problems can also arise when new properties connect into an existing system and the rights and duties have not been set down in law. To discharge the condition relating to the private drainage arrangements, the developer should produce documentary evidence that the maintenance duties on each unit served by the system have been clearly established by way of a binding legal agreement. Access rights should also be specified.

2. Passing Place

In order to comply with condition 5, the passing place should be formed in accordance with the council's standard passing place drawing DC-1 or as otherwise agreed in writing with the planning authority. Drawing DC-1 can be obtained from the Roads Planning Service.

DRAWING NUMBERS

L(90)01 rev B – Location plan  
2 of 12 – Existing plans  
3 of 12 – Existing plans  
4 of 12 – Existing plans  
5 of 12 – Existing plans  
6 of 12 – Existing elevations  
7 of 12 – Existing elevations  
8 of 12 – Proposed plans  
9 of 12 – Proposed plans  
10 of 12 – Proposed plans  
11 of 12 – Proposed plans  
L(90)02 rev A – Proposed site plan

**Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

**Author(s)**

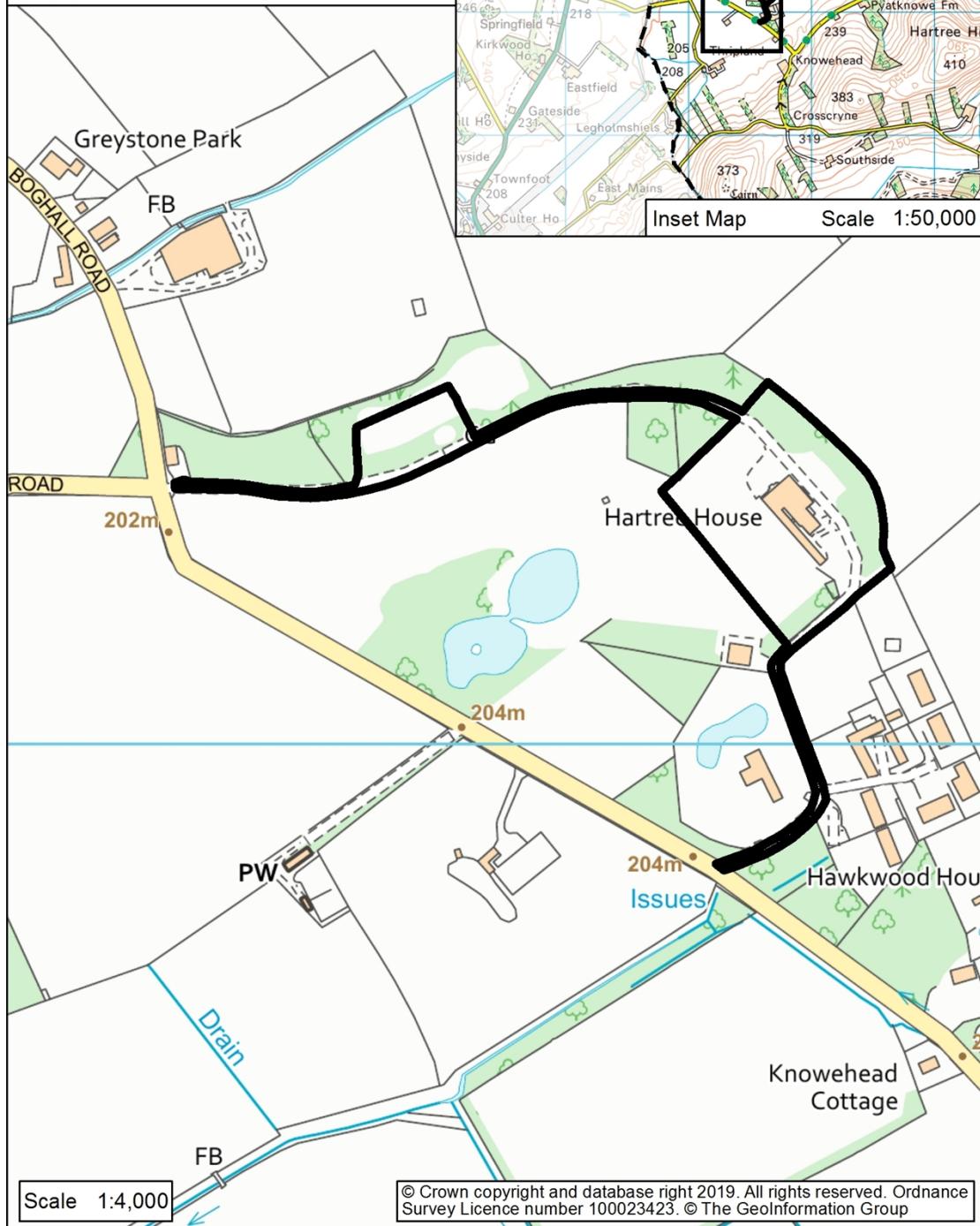
Name	Designation
Ranald Dods	Planning Officer





19/01116/FUL

Hartree House  
Hartree  
Biggar



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**SCOTTISH BORDERS COUNCIL**  
**PLANNING AND BUILDING STANDARDS COMMITTEE**  
**9 DECEMBER 2019**

**APPLICATIONS FOR PLANNING PERMISSION AND LISTED BUILDING  
CONSENT**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 19/01244/FUL & 19/01245/LBC
<b>OFFICER:</b>	Mr C Miller
<b>WARD:</b>	Kelso and District
<b>PROPOSAL:</b>	19/01244/FUL : Change of use of main school building and alterations to form 34 No. extra care flats with associated communal areas and erection of 47 No. dwellinghouses and associated infrastructure 19/01245/LBC : Demolition of teaching block, games hall, music block and dining hall and partial demolition of main building and alterations to form 34 No. extra care residential flats with associated communal areas
<b>SITE:</b>	Former Kelso High School, Bowmont Street, Kelso
<b>APPLICANT:</b>	M & J Ballantyne
<b>AGENT:</b>	Aitken Turnbull Architects Ltd

**PLANNING PROCESSING AGREEMENT**

There is no Agreement in place, the processing period for the listed building consent having expired on 24 October 2019. The processing period for the full application does not expire until 24 December.

**SITE DESCRIPTION**

The site is located in the north-western part of Kelso and consists of the former Kelso High School and grounds, a Category B Listed Building. The site comprises of 2.5 Hectares and lies between areas of housing at Inchmead Crescent to the north, Bowmont Street to the south-west and Poynder Place to the south-east. Current vehicular accesses lead in from Bowmont Street and from the car park at Orchard Park to the north-west. Several pedestrian accesses also lead into the site from Inchmead Crescent and from the neighbouring rugby ground to the north-east. The site lies immediately outwith the boundary of Kelso Conservation Area which follows Bowmont Street.

The main school building within the site dates from 1939 with a major extension in the 1960s and further extensions and additions since then, including a canteen, teaching block, assembly hall, music department and all-weather sports pitch. There are also areas of trees within the site, most notably at the central and southern boundaries of the site and to the rear of the houses in Poynder Place.

The site is identified and allocated in the Local Development Plan as a redevelopment opportunity RKELS002, stating a variety of uses may be appropriate and listing a series of site requirements including retention of the main listed school building, main gates, other structures and trees.

## **PROPOSED DEVELOPMENT**

The applications are submitted as a full and associated listed building consent applications to seek selective demolitions and conversion of the former High School building into 34 Extra-Care flatted units and to develop 47 private dwellinghouses within the remainder of the site. Although the numbers of Extra-Care units seem to have increased by one following submission of revised plans, there were errors in numbering on the original floor plans and the new plans now include a door number for the guest accommodation – intended for visitors and not for Extra-Care. The proposal is, therefore, still for 34 Extra-Care units.

The demolitions include removal of all extensions and free-standing buildings, stripping the building back to its 1939 original L-shaped core and adding a first floor to the extension to the rear of the main entrance tower. This would retain the main and principal SE elevation, towers, stairwells and gate piers.

The retained building would be painted white and all windows would be replaced in the same pattern and openings, but in dark grey aluminium. The rear extension would be clad in dark grey panels on its upper walls. Landscaped areas would be formed to the front of the former school between the towers and in the internal courtyard to the rear. Main corridors and room partitions would be re-used with window film to obscure floor partitions from the outside. The Extra-Care units will be supplied with an access and parking areas to the rear and at the main front entrance to the building.

The tenure and nature of the Extra-Care units are described in submissions from the agent and Eildon Housing Association. These provide self-contained flats for rent which are specially designed to support older people to live as independently as possible in their own homes in a safe and secure community setting. Support will be provided by a staff team who will be available 24 hours a day. Assistance with personal care, meal preparation, laundry and shopping can also be provided. Eildon Housing Association have confirmed that all residential units within the redeveloped former High School main building will meet the definition of affordable housing, as set out in the adopted Local Development Plan 2016 and Supplementary Planning Guidance. This has been confirmed by the Council's Housing Strategy Officer.

The new development proposes 47 dwellinghouses around the former school building, 12 of the units being single storey along the main open frontage of the former school. Two areas of semi-detached and terraced two storey housing lie to the north-east and south-west of the former school. All housing is designed with hipped slated roofs, white rendered walls and dark grey timber windows. The houses have all been designed with an art-deco element to them, incorporating bay windows, curved projections and stepped recessed door entrances. Six houses will present a building line frontage to Bowmont Street.

The main vehicular access to the site will be from the existing access on Bowmont Street. This access will form a loop around the retained High School building and provide a secondary vehicular link onto the car park at Orchard Park. The roadway will have narrowed sections and Tegula surfacing at junctions. A number of communal parking areas are also proposed although curtilage parking also features for the single storey houses and some of the two storey housing at the south-western end of the site. Landscaped open space is preserved in front of the former High School entrance and along the tree-lined rear of the Poynder Place houses.

The application is classed as a 'Major' development under the Hierarchy of Developments (Scotland) Regulations 2009. The applicants publicised and held a

public event prior to the application being submitted, as well as consultation with Kelso and District Community Council.

The outcome of the public consultation exercise has been reported in a Pre-Application Consultation Report submitted with the application. The requirements of the Development Management Procedure (Scotland) Regulations 2013 have been satisfied.

In addition to the plans and drawings, there is also a Design and Access Statement submitted in support of the applications.

## PLANNING HISTORY

There has been a series planning consents relating to the High School since 1993, including building extensions, an all-weather playing surface, floodlighting, CCTV and broadband dishes.

## CONSULTATION RESPONSES:

### 19/01244/FUL

#### Scottish Borders Council Consultees

**Roads Planning:** Initially responded that a Transport Statement was required together with a meeting to explore issues, including a vehicular link to Inchmead Crescent and internal connectivity. Following the meeting and submission of a Transport Statement, no objections to the application.

Noted, from the Transport Statement, a slight deficiency at the Bowmont Street junction but accepts the position due to lower speeds, on-street parking, accident history and previous use of the junction.

Notes in the amended plans that a vehicular link to Inchmead Crescent, whilst preferable, is outwith the control of the applicant and they have been unable to reach agreement on the acquisition of the land. The plan is still accepted as it now incorporates a link at the westerly end of the former school building and, a larger deviation between plots 13 and 25 which helps to calm traffic. Swept path analysis has highlighted a number of areas where revisions are required to the layout, controlled by condition.

The overall layout provides a well-connected, naturally calmed street layout broadly in line with the principles of Designing Streets although agrees with the Landscape Architect that there is an opportunity to create a square in front of the main entrance to the old school with the use of a high quality block.

Considers there to be ample parking provision well spread throughout the site with extra parking available nearby, both on street and in the public car park to the rear of Orchard Park, if required. The site is also on a bus route which will assist in supporting more sustainable transport use.

Concerned at the operation of Bowmont Street and seeks an area of double yellow lines along the frontage of the site, preventing vehicles parking on Bowmont Street at the site frontage in the vicinity of the junction which would have resulted in a long section of single file traffic. Seeks a condition with the developer being responsible for

meeting the costs associated with the promotion, and implementation if successful, of a Traffic Regulation Order.

**Education Officer:** Developer contributions are required for Edenside Primary School to be paid for the private market units. These contributions can be phased and will be index linked.

**Environmental Health:** Land is potentially contaminative and a full risk assessment and remediation scheme will be required by condition. Advice should also be given on construction days/hours.

**Heritage and Design:** Response awaited.

**Landscape Architect:** No objections but seeks set-back of the houses fronting Bowmont Street and new planting within the front gardens. Requires previous Tree Survey to be integrated into the Site Layout, showing removals, retentions and root protection areas. The central greenspace perimeter roadway could be treated with Tegula setts as an open focal point square. A full landscaping plan is required with details of hard surfacing, retained and proposed boundary treatments, hedges, walling and fencing only to the rear of properties.

**Housing Strategy:** Consistent with various reports relating to extra care housing in the Borders and in the 2019-24 SHIP. The extra care housing will be fully affordable housing for social rent on a Design and Build contract by the applicant. Start time is hoped to be January 2020.

**Ecology Officer:** Identifies that the location and type of buildings would be suitable for bats as are the trees intended to be felled. Prior to determination of the application, a bat survey is required in the form of a preliminary roost assessment in first instance, followed by activity surveys if there is a need shown. A preliminary ecological appraisal and breeding bird survey are also required.

Following the submission of a bat Preliminary Roost Assessment, accepts the findings that no bat roosts were found either in the buildings or in the trees and shrubs. Seeks a precautionary Species Protection Plan to set out the mitigation should any bats be encountered. In terms of breeding birds, one nest was discovered on the building and the building and trees/shrubs do offer potential habitat. A Species Protection Plan will also be required for breeding birds. No other protected species were found.

**Archaeology Officer:** Croft House and other former cottages on site require further evaluation, trenching and interpretation. Conditions are suggested in relation to those former buildings and a general requirement for a Written Scheme of Investigation.

**Neighbourhood Services:** Raises several issues including the need for Tegula blocks at junctions and visibility/construction traffic onto Bowmont Street.

**Waste Services:** Collection points should be at the end of cul-de-sacs on the main drag.

### **Statutory Consultees**

**Scottish Water:** Response awaited.

**Kelso and District Community Council:** No objections to the demolitions and support the conversion to provide extra care housing. Refers to lack of retention of old gateway to Croft House. Main concern relates to lack of suitable parking both within the development (Plots 33-40) and along Bowmont Street. Some additional parking should be proposed to ensure parking problems not worsened.

### **Other Consultees**

**Architectural Heritage Society of Scotland:** Whilst welcoming the conversion of the school, object to the lack of window details, the design and materials for the first floor extension and the uniformity of windows.

**Kelso Amenity Society:** Supports the conversion proposals and communal areas. Concerned at the lack of imagination in the new houses, would have preferred more bungalows for older people and feels there is insufficient parking.

### **19/01245/LBC**

### **Scottish Borders Council Consultees**

**Heritage and Design:** Supports the application which secures the future of the listed buildings which are Category B in an important art-deco style. The proposals comply with the previous Conservation Statement and Feasibility Study and are referenced in HES "Managing Change in the Historic Environment". Demolitions still allow for the most significant main parts of the building to be retained and the layout allows for corridors and room partitions to be largely retained. The new extension is appropriate in design provided material is controlled by condition. Windows were original "Crittall" but new grey aluminium windows may be acceptable subject to full details by condition – they were used successfully in the former Berwickshire High School. There should be a legal agreement to secure phasing, ensuring that the conversion and repair works to the school are implemented at an appropriate stage during the development of the new housing.

### **Statutory Consultees**

**Historic Environment Scotland:** Supportive of the proposals which are in compliance with the earlier Conservation Statement. Accepts the demolitions which strip the building back to the higher significance L-shaped central block and still maintains the character of the listed building. Welcomes retention of the main staircases but the Council may wish to seek additional window and external material details.

**Kelso and District Community Council:** No objections to the demolitions and support the conversion to provide extra care housing. Refers to lack of retention of old gateway to Croft House. Main concern relates to lack of suitable parking both within the development (Plots 33-40) and along Bowmont Street. Some additional parking should be proposed to ensure parking problems not worsened.

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## REPRESENTATION SUMMARY

Support has been received from a local SBC Ward Member who welcomes the design and purpose of the scheme, retaining important parts of the listed buildings, meeting the increasing needs of extra care and being a great asset for Kelso.

Objections to the full planning application have been received from one local household, on the grounds of the intended number of houses, the traffic impacts when turning left onto Bowmont Street and the potential loss of cherry trees. Full details are available to view on Public Access.

## DEVELOPMENT PLAN POLICIES:

### Scottish Borders Local Development Plan 2016

RKELS002  
PMD1 Sustainability  
PMD2 Quality Standards  
PMD3 Land Use Allocations  
IS2 Developer Contributions  
IS4 Transport Development and Infrastructure  
IS6 Road Adoption Standards  
IS7 Parking Provision and Standards  
IS9 Waste Water Treatment Standards and Sustainable Urban Drainage  
IS13 Contaminated Land  
EP1 International Nature Conservation Sites and Protected Species  
EP2 National Nature Conservation Sites and Protected Species  
EP3 Local Biodiversity  
EP7 Listed Buildings  
EP8 Archaeology  
EP9 Conservation Areas  
EP13 Trees, Woodlands and Hedgerows  
EP15 Development Affecting the Water Environment  
EP16 Air Quality  
HD1 Affordable and Special Needs Housing  
HD3 Protection of Residential Amenity  
HD5 Care and Retirement Homes

## OTHER PLANNING CONSIDERATIONS

SEPlan Strategic Development Plan 2013  
Scottish Planning Policy 2014  
National Planning Framework 3 2014  
PAN 44 Fitting New Housing into the Landscape 2005  
PAN 61 Planning and Sustainable Urban Drainage Systems 2001  
PAN 65 Planning and Open Space 2008  
PAN 67 Housing Quality 2003  
Designing Streets 2010

SBC Conservation Statement 2012  
HES Managing Change in the Historic Environment

SPG Affordable Housing 2015  
SPG Developer Contributions 2016  
SPG Trees and Development 2008  
SPG Landscape and Development 2008  
SPG Green Space 2009  
SPG Placemaking and Design 2010  
SPG Biodiversity 2005  
SPG Guidance on Householder Development 2006  
SPG Waste Management 2015

## **KEY PLANNING ISSUES**

The main determining issues with these applications are compliance with Local Development Plan Policies and Supplementary Planning Guidance on preservation and enhancement of listed buildings, development within allocated sites, layout and design of dwellinghouses, traffic, ecology and tree impacts. Development contributions also need to be considered.

## **ASSESSMENT OF APPLICATIONS**

### Planning Policy

The site is wholly within the settlement boundary of Kelso and is identified in the Local Development Plan 2016 for redevelopment under reference RKELS002. This allocation is subject to a series of site requirements as follows:

- A variety of uses may be appropriate although surrounding amenity requires protection
- Retention of some buildings especially the B Listed main school
- Demolition only allowed if justified
- Gates retained and restored
- Layout and design to respect retained buildings and setting
- Trees retained if possible
- Need for structure planting

The site contains the former Kelso High School and associated buildings and extensions, the main building being Category B Listed. Any works to the building, including demolitions, alterations and development within the grounds of the building, are subject to assessment under LDP Policy EP7. The site also lies immediately outwith the boundary of Kelso Conservation Area which runs along Bowmont Street, albeit the curtilage walling and old gate piers bordering the site lie within the Conservation Area. Development must also respect the setting of the Conservation Area under Policy EP9.

The provision of Extra-Care units in the main towns across the Borders is supported by the Council following the identification of large projected need. In terms of overall policy compliance, conversion of the main school to residential Extra-Care units, and new housing within the grounds, complies with the terms of the allocation which supports a variety of different uses. Such uses would require to ensure that the amenity of the surrounding properties is maintained and protected, these properties largely being residential apart from the rugby club. Residential amenity is considered in a separate section in this report but it is considered that, in general, the residential uses proposed for the former school and grounds are likely to be appropriate for their

surroundings, giving rise to less impact than if commercial, industrial or recreational uses had been proposed.

Whilst the listed building and landscaping details of the scheme are considered separately in this report, the proposals do comply with the other general requirements of the LDP allocation. The core original listed building and surrounding gates and walls are retained as are many of the important areas of trees, especially to the north and south of the site. Demolitions are restricted to the modern and less important parts of the school buildings and have been justified in the 2012 Conservation Statement. The new houses are designed to ensure that the retained buildings and landscape have an appropriate setting preserved, whilst retaining the amenity of surrounding uses.

Overall, the development is in accordance with the redevelopment allocation RKELS002 and the principle Policies EP7 on listed buildings and EP9 relating to Conservation Areas.

### Listed Buildings

The former Kelso High School is a significant building designed by the renowned architects Reid and Forbes in 1936, in an Art Deco style with distinctive South American detailing. Reid and Forbes specialised in Modern Movement schools and were responsible for a range of other schools commissioned by County Councils across the Scottish Borders at Newtown, Jedburgh, Morebattle and at their important school at Chirnside. The school was added to the statutory list in 1993 at category B. The redevelopment allocation in the Local Development Plan, RKELS002, lists the requirement to retain some buildings on the site, especially the main listed school building.

When proposals were first advanced for a new high school in Kelso, the Council sought to actively consider new uses for the current building and site. A Conservation Statement was commissioned and prepared for the site, including an evaluation and assessment of the relative significance of all the elements. This Statement was discussed with Historic Scotland and formed an important tool in developing proposals. As a follow on, a Feasibility Study was also commissioned by the Council, to consider how the site could be redeveloped, retaining and adapting the most significant parts of the building. The recent (April 2019) HES publication “Managing Change in the Historic Environment – use and adaption of listed buildings” includes reference to the preparatory work carried out by the Council as good practice.

Members will note that the consultation response from Historic Environment Scotland supports the proposals, allowing the main listed core building to be brought back into long-term use. They note that the demolitions strip the building back to the high significance L-shaped core block and that the details of the application are wholly in line with the aforementioned Conservation Statement. They also welcome the retention of the main internal staircases into the new use but advise that the Council may wish to seek more details of elements such as the replacement windows and external materials.

The Council Heritage Officer notes that the proposals, informed by the Design and Access Statement, take full account of the Conservation Statement and Feasibility Study. All elements of the building identified in the Conservation Statement as being of significance are retained, especially the main core building and iconic front façade. The demolitions relate to the “later” elements of the school complex including the games hall, teaching blocks, assembly hall and music room extensions.

In terms of the interior of the retained building, the arrangement of flats allows main corridors, staircases and most partitions to be retained, the original gym hall being proposed as a communal open space and café area. The lower ceiling lines within the building are being disguised from the outside through the use of film on upper window panes, which is an acceptable solution.

The treatment of the exterior of the building has resulted in some objection from the Architectural Heritage Society of Scotland (AHSS) and the need for agreement of further details from Historic Environment Scotland. The Kelso and District Amenity Society welcome the conversion details, however, as does the local Ward Member. In terms of the main external alterations to the retained building, all replacement windows are intended in dark grey aluminium but in a similar lying pane pattern to replace the Crittall steel original windows. There are, in fact, already double glazed replacements within the building and such proposed windows have already been used successfully on the B-Listed former Berwickshire High School. The Heritage Officer considers that, subject to final details of the replacement windows being controlled by condition (including an analysis of other options considered), the window proposals are acceptable.

The use of a modern cladding material to the new first floor rear extension is also acceptable in principle, subject to a sample being approved by condition. This will be dark grey and will sporadically overlap the ground floor part of the extension. Whilst this is not considered acceptable by the AHSS, the Heritage Officer believes the new material allows the new and retained parts of the building to be differentiated.

However, the AHSS also refer to the lack of first floor windows lining up with ground floor windows. This lack of symmetry is discordant and has been raised with the agent, including further discrepancies noticed between the floor plan and elevations, in relation to window sizes and locations on the rear extension. Revisions to the plan have now been made to resolve the discrepancies, albeit the existing windows on the ground floor extension have been indicated now without their lying pane pattern. The aforementioned condition will ensure the correct pattern for all replacement windows, including those on both floors of the extension. It will also be necessary to clarify the external treatment of the exterior of the building by condition, which is understood to be white paint on the previously rendered walls and retention/restoration of all other areas of exposed stone.

Given the importance of the retention and restoration of the core listed building within the overall development of the site, there is clearly a need to ensure that the private housing element of the development does not reach completion without works being carried out to the listed building. The Heritage Officer raises this concern and seeks some phasing connection via a legal agreement, to ensure this situation does not occur. A similar enabling connection was included within the legal agreement covering new-build within the grounds of Caerlee Mill, Innerleithen.

In this particular case, the works to the retained high school building are being carried out by Eildon Housing Association and will constitute the “affordable housing” element of the overall housing development. It is also the case that many demolitions are required on site to clear the remainder of the site for the new housing development. Even if no listed buildings were present on the site, there would be various time triggers within the legal agreement to ensure the affordable housing was delivered and not left until the end of the private housing development programme. A suitable clause will be included in the legal agreement covering the timing for the delivery of the affordable housing and completion of the listed building works.

In summary and subject to the aforementioned conditions, revisions and legal agreement, it is considered that the proposals for the main listed building are in accordance with relevant Local Development Plan policies and with the Conservation Statement and Feasibility Study.

### Layout and Density

The density and layout of the development should be assessed against Local Development Plan Policy PMD2, the “Placemaking and Design” SPG and “Designing Streets” in particular. They should also be assessed against Policies EP7 and EP9 in relation to the preservation and acceptable treatment of the setting of listed buildings and Conservation Areas.

The proposal for new-build housing within the grounds of the retained high school building is in accordance with the mixed uses element of the LDP allocation and the nature of surrounding residential uses, as previously explained. The layout and density of the houses is particularly influenced by the position and setting of the retained listed building and its iconic frontage setting. Other constraints also influence the layout including access and footpath linkages, surrounding residential amenity, townscape frontage to Bowmont Street and the presence of trees within the site, especially to the northern, central and southern ends of the site.

In terms of the listed building, areas of parking and landscaped open space have been retained to the frontage and there has also been a distinct buffer provided between the nearest houses and the building. Twelve of these new houses have also been restricted to single storey to enable the setting and views to the frontage to be retained, especially from Bowmont Street and the rugby ground to the south and south-east.

The development also recognises the need to present a street frontage to Bowmont Street through the provision of three pairs of semi-detached blocks set behind, but in close proximity to, the retained site walls. The response from the Landscape Architect expresses some concern that these houses are too close to the public pavement and seeks some easement of the layout behind these houses to set them back further. This appears to be possible via a planning condition and also allows a little more space between the corners of the end houses and the retained curved entrance walls. It is also desirable to ensure that this part of the development is carried out concurrently with, or before, the housing immediately behind the Bowmont Street frontage. This would then prevent views of house gables and rear parking courts. This can be secured through a standard phasing condition.

The retained high school building results in two more distinct developable areas to the north-east and south-west of the site, allowing for two storey semi-detached and terraced housing. The south-western part of the site allows for 24 houses arranged from an internal spur off the main site access road, with return link to that road. The north-eastern part of the site provides 15 houses off an L-shaped spur, with pedestrian access leading through to Inchmead Crescent. A vehicular link is also provided into the existing car park to the rear of the former high school building.

This housing layout is considered acceptable in terms of its treatment of the aforementioned constraints. The density is in keeping with the nature and density of existing surrounding housing developments, improved by the provision of lower height houses to the front of the listed building and open space areas. The overall layout and density are considered to be in compliance with Local Development Plan Policies PMD2, 3 and with the Placemaking and Design SPG. The considerable constraints on the site are treated sympathetically by the layout and density of the development.

## Access

Policies PMD2, IS4 and IS6 require safe access to and within developments, capable of being developed to the Council's adoptable standards and in accordance with the guidance in "Designing Streets". The LDP also contains requirements for any housing development beyond 50 units to be accompanied by a Transport Assessment. The initial response from Roads Planning to the application sought the submission of a Transport Statement and better connectivity, both internally and through to Inchmead Crescent. A meeting was then held with the agent and these and other issues discussed.

The agent responded with comments and amended plans detailing the following:

- Ownership reasons why a vehicular link through to Inchmead Crescent cannot be proposed.
- Improved connectivity through a loop link around the rear of the retained former high school building.
- Movement of plots to allow a more pronounced kink in the main access road, in line with variety promoted in "Designing Streets".
- Turning head provision at the north-eastern end of the site with some reduction in parking spaces
- Disabled parking provision
- Transport Statement and Swept Path Analysis

In response to these submissions, Roads Planning have raised no objections to the development. They are content with the traffic impacts and principle of the development being served from the access onto Bowmont Street. They view this access as having previously served a busy school campus and that there should be ample capacity for the access and junction onto Bowmont Street to safely accommodate the proposed traffic volume and movements, especially given on-street parking and reduced speeds. For these reasons, they do not share the concerns expressed by the Community Council and objector over the parking situation or the turn out onto Bowmont Street, from the site. Given the listed nature of the gate piers and the explanation of visibility splays within the Transport Statement, there would seem justification to retain the gate piers as they are.

Roads Planning Service responses are detailed in the Consultations section of this report, namely:

- A vehicular link to Inchmead Crescent, whilst preferable, is outwith the control of the applicant and they have been unable to reach agreement on the acquisition of the land. The plan is still accepted as it now incorporates a link at the westerly end of the former school building and, a larger deviation between plots 13 and 25 which helps to calm traffic.
- Swept path analysis has highlighted a number of areas where revisions are required to the layout, controlled by condition.
- The overall layout provides a well-connected, naturally calmed street layout broadly in line with the principles of Designing Streets although there is agreement with the Landscape Architect that there is an opportunity to create a square in front of the main entrance to the old school with the use of a high quality block.
- Considers there to be ample parking provision well spread throughout the site with extra parking available nearby, both on street and in the public car park to the rear

of Orchard Park, if required. The site is also on a bus route which will assist in supporting more sustainable transport use.

- Concerned at the operation of Bowmont Street and seeks an area of double yellow lines along the frontage of the site, preventing vehicles parking on Bowmont Street at the site frontage in the vicinity of the junction which would have resulted in a long section of single file traffic. Seeks a condition with the developer being responsible for meeting the costs associated with the promotion, and implementation if successful, of a Traffic Regulation Order.

Subject to appropriate planning conditions as listed below, it is considered that the proposed development would comply with Local Development Plan Policies PMD2, IS4, IS6 and related national/supplementary guidance.

### Design

The design of the development must comply with Local Development Plan Policy PMD2 and the “Placemaking and Design” SPG in general. There are also significant considerations in relation to the setting of the B Listed Building and the boundary of Kelso Conservation Area, protected by Policies EP7 and EP9.

Policy PMD2 requires developments to be of a scale, massing and height appropriate to its surroundings. Taking into account the two storey flats and houses surrounding the site, in Orchard Park, Poynder Place and Bowmont Street, the design approach of 35 out of 47 houses being two storey is entirely consistent with, and sympathetic to, the surrounding context. Similarly, the majority of the houses are proposed as semi-detached blocks which also match with the surrounding housing character.

In terms of the setting of the listed building protected by Policy EP7, the two storey elements are restricted to the northern and southern sides with the front setting occupied by single storey houses. This allows views towards the iconic frontage to be preserved, whilst the two storey housing continues and respects the building lines set by the listed building. In terms of the boundary of the Conservation Area, protected by EP9, this is respected by the formation of an enclosed street frontage of three semi-detached two storey blocks, set close to the retained roadside wall. This form of enclosure is sympathetic to the character of the Conservation Area, views of the listed building being afforded at the main site entrance, over the roofs of the single storey houses. The concerns of the Landscape Architect are acknowledged in relation to the proximity of the house frontages to the street and it is considered that some easement back of the houses would be possible by planning condition, even if this requires a slight adjustment to rear house positions and garden boundaries.

The design of the houses is characterised by hipped steep slate roofs and several “art-deco” features which provide a sympathetic overall design approach to the housing. These include recessed ornate door entrances, projecting bays, curved walling and cast stone moulded features, especially for the single storey houses within the setting of the listed building. All windows will be dark grey timber and there will remain a larger wall to window emphasis. In consideration of the hipped nature of the roofs in the surrounding housing areas, especially to the Croft Road and Orchard Park areas, it is considered that this design approach is entirely appropriate. The use of natural slate and “art-deco” features enhance the designs and provide a strong and sympathetic link to the listed building.

There are some concerns that the render colour, being uniformly white throughout all 47 houses and the retained listed building, could reduce the prominence and importance of the building within its setting, rather than wholly being sympathetic to it.

Render colours can, however, be controlled by planning condition and this will allow careful assessment of the need to balance colours to prevent the new houses visually competing against the listed building. It was also felt that the elevations of houses on Plots 13 and 14 were less interesting facing out towards the listed building and its preserved setting. Changes were sought to improve their appearance and have now been made by providing a central pitched roof projection and additional frontage windows to the bedrooms. These elevations now have a more interesting façade to the public realm.

Subject to appropriate conditions on the position of houses on Plots 1-6 and external materials, the proposals can be considered to be in accordance with Policies PMD2, EP7, EP9 and the SPG in relation to the design of development within the setting of listed buildings and Conservation Areas.

#### Residential Amenity

Policies PMD2 and HD3 contain safeguards regarding residential amenity, both in terms of general use compatibility but also direct impacts such as privacy and light. In terms of PMD2, the development of the site for housing is compatible with and respects the uses that predominantly surround the site.

In terms of direct impacts on existing residential amenity, this must be assessed against the background of the impacts from the former use of the complex as a high school. The development is obviously changed in nature and will present a less intensive replacement use in terms of noise, traffic generation etc. There is sufficient screening around the site to prevent any significant privacy loss, aided by the set-back of the proposed houses and the provision of twelve single storey houses in the centre of the site.

Some of the proposed rear gardens are limited in depth and this has resulted in houses proposed in close proximity to the boundaries to houses in Orchard Park and Poynder Place. The agent has made some adjustment to the position of the houses where the greatest impacts were anticipated, there being a more angled relationship with slight movement further away from the houses in Orchard Park. The nearest houses would now be 22m apart with the smallest garden at Plot 20 now being 7m. There has been no objection from the occupants of the nearest houses in Orchard Park to the original proposals and it can, therefore, be assumed they would be content with the improvements in separation space. At these distances, it is considered that residential amenity is preserved in terms of privacy and receipt of light, in compliance with Policy HD3 and the SPG.

The houses in Poynder Place back onto the site but are separated by generous rear gardens and a high wall. The proposed houses that are near to this boundary are wholly single storey and there will be no light or privacy intrusion, even though some of the proposed houses have relatively restricted rear garden depth. The house on Plot 25 has moved nearer the boundary wall as a result of the adjustments necessary but still remains around 30m away from the nearest house in Poynder Place which remains an acceptable and compliant distance.

Elsewhere within the site, residential amenity is preserved between proposed houses and with existing houses to Croft Road and Inchmead Crescent. The separation space and privacy arrangements to the north are aided by the acute angle of the proposed houses to the existing houses and the intervening tree screening/parking areas. Privacy distances are also acceptable between new houses within the development

and between the converted Extra-Care units within the former high school building and new/existing houses.

Overall, following adjustments to the layout, there would be no reason to consider that the development would contravene LDP or SPG residential amenity requirements in terms of privacy and light.

### Landscape

Impacts on the landscape need to be considered against Local Development Plan Policies PMD2 and EP13 primarily, with further regard to Supplementary Planning Guidance on landscape, trees and development. The site lies outwith the Kelso Conservation Area, apart from the roadside gate entrances and walling along Bowmont Street. There are trees within the site in various locations but particularly at the Bowmont Street entrance, rear of the Poynder Place houses, within the front setting of the main former high school building and northern boundary. The trees are not currently protected. The Local Development Plan requires existing trees to be retained if possible.

As mentioned by the Landscape Architect, a Tree Survey is in place for the site and is referred to in the Design and Access Statement. This still needs to be interpreted upon the site layout and clarity provided on the trees to be lost, retained and methods of protection. This can be controlled by planning condition, given that there is no objection from the Landscape Architect to the general proposals. Whilst undoubtedly some trees will be lost at the site entrance and between the former high school building and the rugby ground, the most important trees lie between the site entrance road and the wall bordering the rear of the Poynder Place housing. These trees will be retained as a line of avenue planting and, even though the roadway has shifted slightly towards them as a result of other layout amendments, the Landscape Architect is satisfied that there will be no greater impact on them than already caused by the current footpath and car park. Other important trees are retained within the open space area fronting the retained listed building and at the northern end of the site. Overall, it is considered that sufficient important trees are being retained within the site to comply with the requirements of the Local Development Plan and subject to identification and protection by conditions.

The application is supported by hard surfacing and boundary treatment plans. These provide general information on surfacing treatment including the use of Tegula block pavements at internal road junctions. The Landscape Architect considers that this could be extended around the square of parking and main trees at the entrance to the Extra-Care units, to provide an enhanced focus and point of arrival. I would agree with this and consider the enhancement would also link with the improvements made to the public elevations of the houses proposed for Plots 13 and 14. An appropriate condition will be recommended, seeking an amended and more detailed hard landscaping plan.

The Landscape Architect also makes recommendations regarding new planting and boundary treatments. The proposals already ensure that high fencing is generally kept away from more open plan frontages and street elevations, albeit the final details still require to be specified. The walled enclosures to the more central Plots 11-14 retain enclosure and match with the existing walling bordering the site to the rear of Poynder Place, subject to materials. There are sporadic new street trees proposed in nodal locations and to break up parking, albeit the final details will still need to be specified in a soft landscaping plan. This should include consideration of small ornamental trees to the Bowmont Street frontage. Similarly, there are soft and hard planting treatments proposed to the front and rear of the former high school building that still require to be

specified in more detail. Overall, however, the new landscaping proposals are acceptable in principle and can be addressed in more detail via appropriate conditions

### Water and Drainage

The site is allocated in the Local Development Plan for redevelopment and, although now proposed for 47 private houses and 34 Extra-Care apartments, the expected usage of on-site water and drainage services is not expected to represent a technical or insurmountable issue. Scottish Water have not replied to the consultation but the allocation of the site for redevelopment of sites and buildings with such intensive former uses is not expected to present any significant infrastructure problems. Policy IS9 will require sustainable urban drainage solutions to deal with surface water from the development. This will be addressed within the Roads Construction Consent and Building Warrant but should also be included as a planning condition to ensure best SUDs practices are followed in the design of the drainage scheme. There is no indication that the site is at any risk from surface or river flooding, albeit the drainage scheme should be designed to accommodate peak storm events.

### Ecology

The application requires assessment principally against Local Development Plan Policies EP1-EP3 covering international, national and local nature conservation and protected species. The Council Ecology Officer has identified the main issues as potentially involving the loss and disturbance of buildings and trees that could impact on bats and breeding birds. Whilst he considered the likelihood of roosts being encountered to be low given the urban surroundings and distance to the river, he did feel buildings could contain gaps and crevices providing opportunities for bats.

In compliance with Government guidelines, it was recommended that a preliminary roost assessment was carried out pre-determination to ascertain if any further bat surveys were needed. The assessment was subsequently provided, together with information on breeding birds and other mammals. Following the submission, the Ecology Officer accepts the findings that no bat roosts were found either in the buildings or in the trees and shrubs. He seeks a precautionary Species Protection Plan to set out the mitigation should any bats be encountered. In terms of breeding birds, one nest was discovered on the building and the building and trees/shrubs do offer potential habitat. A Species Protection Plan will also be required for breeding birds. No other protected species were found.

Subject to the recommended conditions, the development would be considered to be in compliance with the relevant biodiversity LDP Policies and SPG.

### Archaeology

Local Development Plan Policy EP8 seeks to ensure that any regional or local archaeological interests are not adversely affected by development proposals and that this may involve detailed investigations and mitigation to avoid such impacts. The site requirements listed in the LDP allocation also look for retention of the gates to the north-west and south-west site boundaries where possible. The response from the Council Archaeology Officer identifies that the gates and walls to the south-west of the site served the former Croft House which dated from the late 18<sup>th</sup> Century and was demolished to make way for the Kelso High School in the 1930s. There was also a row of cottages which ran from the aforementioned gates along the Bowmont Street frontage and which were also demolished at the same time.

The Archaeology Officer identifies that the proposed development, especially proposed plots 1-6 and 21-24, would be within these areas of former buildings. Despite disturbance as a result of school infrastructure, these areas still require to be evaluated further by means of site trenching and, depending on findings, post excavation research, publication and interpretation. He requires separate conditions covering the evaluation and also the interpretation of the former Croft House and Croft House Cottages. Subject to these conditions, together with a condition ensuring the retention of the existing walls and former entrances, it is considered that the proposed development would comply with LDP Policy EP8.

#### Other issues

Local Development Plan Policy IS13 requires developments on potentially contaminated land to be subject to detailed site evaluation/investigation and, depending on the outcome, full remediation and mitigation to render the site suitable for the proposed use. Clearly, this is important for residential developments and particularly for Extra-Care developments where they may be an additional vulnerability to site contamination. The Council's Environmental Health Service have identified the potential for contamination arising from the site's former uses as a commercial nursery and school. They recommend the standard suspensive condition relating to site investigation and mitigation proposals.

Recommendations from Environmental Health in relation to construction hours and activities reflect the largely residential surroundings to the site. Their recommendations are now part of the standard applicant informatics that appear on all planning consents issued by the Council and no longer require to be added as a specific Informative.

In terms of waste storage, no particular issues have been raised by the Waste Strategy team, albeit they recognise that collection points may need to be on the main road system rather than within cul-de-sacs. The Roads Planning team revisions will assist with this provision, having required the layout to pass swept path analysis for refuse vehicles and additional turning head provision.

#### Developer Contributions

Local Development Plan Policy IS2 requires all housing developments to contribute to infrastructure and service provision where such contributions are considered necessary and justified, advised by the Development Contributions SPG. This includes a requirement for all private housing developments of 17 units and upwards to provide on-site affordable housing units at a ratio of 25%. The agent has stated that the conversion of the former High School into 34 Extra Care units will also meet the Council's definition of affordable housing, which would normally require 25% of the 47 new-build private market units to be provided as affordable units on site.

Members will note that the Housing Strategy consultation reply confirms that the Extra Care Units will be "*100% affordable housing for social rent*" and is identified in the current SHIP. Eildon Housing Association and the agent have also confirmed this. The provision of these 34 units, therefore, meets the development contributions required for affordable housing within this overall development provided a condition is imposed to ensure that the 34 units are proposed for extra care units which also comply with the Council's definition of affordable housing. The timing of the provision of the extra care/affordable units will still need to be agreed within a legal agreement, also in connection with the phasing of the listed building conversion and renovation works.

In terms of other financial contributions that would be demonstrated to be required by the development, Education and Lifelong Learning have confirmed that development contributions are required for Edenside Primary School, but only in relation to the 47 private market houses. The developer will be required to meet these contributions, to be progressed through the Legal Agreement. In terms of play space, the normal Council approach is to seek £500 per market and affordable units for off-site play provision enhancement in the local area, normally met by the developer within the Legal Agreement. In the case of Extra Care units, however, which also represent the affordable housing provision, the nature of such accommodation and qualifying criteria for occupation of the units, would not justify seeking commuted sums for off-site play space provision. The £500 per housing unit will only be sought, therefore, on the 47 private market housing units.

## **CONCLUSION**

The proposals are an appropriate and sensitive development in accordance with the redevelopment allocation in the Local Development Plan and involving the retention and restoration of the original listed building within the site whilst providing much needed Extra-Care accommodation. The proposals also represent sympathetic new development within the grounds of the listed building, respecting both the setting of the building and the amenity of surrounding residential properties, in accordance with relevant Local Development Plan Policies and supplementary planning guidance.

## **RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:**

I recommend the applications are approved subject to the following conditions, informatives and a legal agreement, as follows:

### 19/01244/FUL

1. No development shall commence until a scheme of external materials (including specifications and samples of materials and colours) for all new buildings within the development, has first been submitted to and approved in writing by the Planning Authority. The materials shall include natural slate roofing for the new houses. Thereafter, no development shall take place except in strict accordance with the approved scheme.

Reason: To ensure external materials are visually appropriate to the development and sympathetic to the surrounding area.

2. No development shall commence until a scheme of external materials (including specifications and samples of materials and colours) for the retained former high school building has first been submitted to, and approved in writing by, the Planning Authority. The materials shall include the cladding to the proposed first floor extension, the proposed external wall treatments of the building and full details and specifications of the existing and replacement windows, including analysis of options considered to improve the thermal efficiency of the existing windows. Thereafter, no development shall take place except in strict accordance with the approved scheme.

Reason: To ensure external materials are sympathetic to the character of the listed building and appropriate to the visual character of the surrounding area.

3. No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a Written Scheme of Investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological

organisation working to the standards of the Chartered Institute for Archaeologists (ClfA). The WSI shall be submitted by the developer no later than 1 month prior to the start of development works and approved by the Planning Authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is fully implemented and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.

4. No development shall commence until a Scheme of Archaeological Interpretation to recall the former Croft House and Croft House Cottages has been submitted to, and approved in writing by, the Planning Authority. The Interpretation then to be implemented in accordance with the details of the agreed Scheme.

Reason: There is archaeological interest in terms of former development on the site and it is desirable to record this history.

5. No development shall commence until a scheme of phasing of the development, including provision for the vehicular link to Orchard Park and pedestrian link to Inchmead Crescent, is first submitted to, and approved in writing by the Planning Authority. Once approved, the development shall proceed in accordance with the scheme.

Reason: To ensure the development is carried out in appropriate stages to reflect townscape, infrastructure and environmental constraints.

6. All approved Extra-Care residential units proposed within the former high school building shall meet the definition of "affordable housing" as set out in the adopted Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance "Affordable Housing" 2015 and shall only be occupied in accordance with arrangements (to include details of terms of occupation and period of availability) which shall first have been submitted to and approved in writing by the Planning Authority prior to development commencing.

Reason: The Extra Care Units are proposed to meet the affordable housing requirement for the new private market housing on the site and conversion of the building for unrestricted market housing would not comply with development plan policies and guidance with respect to contributions to infrastructure and services, including local schools.

7. Prior to the commencement of development, the developer shall submit for approval in writing by the Planning Authority written confirmation that the Species Protection Plan for bats, as outlined in the Preliminary Roost Assessment, Former Kelso High School, Kelso, The Wildlife Partnership, November 2019 shall be implemented in full. Thereafter, no development shall take place except in strict accordance with the outlined Species Protection Plan.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP1 and EP3.

8. No development shall be undertaken during the breeding bird season (March to August), unless the developer submits for approval in writing by the Planning Authority written confirmation that the detailed Species Protection Plan for breeding birds, as outlined in the Preliminary Roost Assessment, Former Kelso

High School, Kelso, The Wildlife Partnership, November 2019, shall be implemented in full. Thereafter, no development shall take place except in strict accordance with the approved plan.

Reason: To protect the ecological interest in accordance with Local Development Plan policies EP2 and EP3.

9. Unless otherwise agreed in writing and in advance by the Planning Authority, prior to any development commencing on site, a scheme will be submitted by the Developer (at their expense) to identify and assess potential contamination on site. No construction work shall commence until the scheme has been submitted to, and approved, by the Council, and is thereafter implemented in accordance with the scheme so approved.

The scheme shall be undertaken by a competent person or persons in accordance with the advice of relevant authoritative guidance including PAN 33 (2000) and BS10175:2011 or, in the event of these being superseded or supplemented, the most up-to-date version(s) of any subsequent revision(s) of, and/or supplement(s) to, these documents. This scheme should contain details of proposals to investigate and remediate potential contamination and must include:-

A desk study and development of a conceptual site model including (where necessary) a detailed site investigation strategy. The desk study and the scope and method of recommended further investigations shall be agreed with the Council prior to addressing parts b, c, d, and, e of this condition;

and thereafter

- b) Where required by the desk study, undertaking a detailed investigation of the nature and extent of contamination on site, and assessment of risk such contamination presents.
- c) Remedial Strategy (if required) to treat/remove contamination to ensure that the site is fit for its proposed use (this shall include a method statement, programme of works, and proposed validation plan).
- d) Submission of a Validation Report (should remedial action be required) by the developer which will validate and verify the completion of works to a satisfaction of the Council.
- e) Submission, if necessary, of monitoring statements at periods to be agreed with the Council for such time period as is considered appropriate by the Council.

Written confirmation from the Council, that the scheme has been implemented completed and (if appropriate), monitoring measures are satisfactorily in place, shall be required by the Developer before any development hereby approved commences. Where remedial measures are required as part of the development construction detail, commencement must be agreed in writing with the Council.

Reason: To ensure that the potential risks to human health, the water environment, property, and, ecological systems arising from any identified land contamination have been adequately addressed.

10. No development shall commence until a revised site plan has been submitted to, and approved in writing by the Planning Authority indicating further setback of the proposed houses on plots 1-6 from Bowmont Street and any necessary

repositioning of gardens, parking and plot boundaries to the rear. The development then to proceed in accordance with the revised and approved layout.

Reason: To safeguard the character and visual amenity of the townscape and adjoining Conservation Area.

11. No development shall commence until further details of proposed levels within the site have first been submitted to, and approved in writing by the Planning Authority. These details shall include existing and proposed ground, road and other hardstanding levels; proposed house and finished floor levels. The levels shall relate to a fixed, off-site datum point. The development shall be carried out in accordance with the approved details

Reason: To ensure levels within the site achieve a sympathetic visual appearance, preserve residential amenity and make satisfactory provision for surface water drainage.

12. No development shall commence until precise details of the surfacing materials for the proposed roads, footpaths and parking spaces have been submitted to, and approved in writing by the Planning Authority. The development shall be completed in accordance with the approved details.

Reason: To ensure that the proposed development is laid out in a proper manner with adequate provision for traffic and in a manner which enhances the character and visual appearance of the development and the setting of the listed building.

13. The proposed roads, footpaths and parking spaces/areas indicated on the approved drawings shall be constructed to ensure that each dwelling unit, before it is occupied, shall be served by a properly consolidated and surfaced carriageway, parking area and footpath/shared surface.

Reason: To ensure that the development hereby approved is served by an appropriate access and parking facility.

14. Prior to commencement of development, the developer must formally request in writing that the Council promote an appropriate Traffic Regulation Order for parking restrictions on Bowmont Street along the site frontage. Thereafter the developer must implement any signage and lining in accordance with the outcome of that order.

Reason: To ensure the free flow traffic on the existing public road.

15. Prior to commencement of development an amended site plan to be submitted to, and agreed by, the Planning Authority taking into account the requirements of the swept path analysis included in the Transport Statement submitted November 2019 or subsequently approved version. Thereafter the development to be carried out in accordance with the agreed details unless otherwise agreed in writing.

Reason: To ensure the site can be adequately serviced.

16. No development shall commence until a detailed scheme of soft landscaping and planting (incorporating protection of existing trees, new trees, hedges, layout, location, species, schedule, implementation date(s) and future maintenance of all new planting and communal open space within the site) has first been submitted to and approved in writing by the Planning Authority. The development shall only be carried out in accordance with the approved details in implementation and maintenance of the approved scheme.

Reason: Further information is required to achieve an acceptable landscape scheme for the site.

17. No development shall commence, (notwithstanding the details provided in the approved drawings), until a further detailed scheme of site and plot boundary treatment (walls, railings and fencing) has first been submitted to and approved in writing by the Planning Authority. This should include retention and renovation of the boundary walling around the site and the curved walls and gate piers fronting Bowmont Street, including consideration of replacement railings. The scheme shall include their detailed design, height and materials. All boundary treatments within the application site shall accord with the approved scheme.

Reason: Further information is required to achieve an acceptable boundary treatment scheme for the site.

18. With the exception of those marked for removal on the approved plans, all other existing trees within the site to be retained. No development to be commenced until a Tree Survey and Tree Protection Plan are submitted to, and approved in writing by, the Planning Authority. The development then to proceed in accordance with the requirements and mitigation approved in the Tree Protection Plan.

Reason: To safeguard existing trees within the site.

19. No development shall commence until further details are submitted to, and approved in writing by the Planning Authority, relating to the provision of a water supply and both foul and surface water drainage, including SUDs details .This should include written evidence on behalf of Scottish Water that the development will be serviced by mains drainage and water supply. The development then to be implemented fully in accordance with the approved details.

Reason: To ensure the development can be adequately serviced and minimise risk of off-site surface water run-off

#### Informatics

1. All prospectively adoptable roads, pavements and associated infrastructure will require Road Construction Consent. The applicant should discuss this separately with the Council's Roads Planning Service to establish the scope and requirements of Council adoption. All works within the public road boundary must be undertaken by a contractor first approved by the Council.
2. It should be borne in mind that only contractors first approved by the Council may work within the public road boundary.
3. The developer shall be responsible for meeting the costs associated with the promotion of any traffic orders and for the installation of any lining and signage required should that order be successful.
4. Parking bays to be a minimum of 2.5 by 5.0 metres, excluding any paths adjacent to parking bays. Where enclosed by any physical feature such as walling or fencing the bays must be widened to 3.0 metres to ensure adequate access/egress from parked vehicles. The length of the bays will need to be increased to 5.5 metres when situated hard up against the building. Nose to tail parking arrangements should be a minimum of 12 metres in length to ensure vehicles do not overhang the carriageway/footway.

5. Development should be carried out in a manner consistent with British Standard guidance on construction works, to maintain neighbouring amenity, in particular BS5228.

19/01245/LBC

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 16 of the Town and Country Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, as amended by The Planning etc. (Scotland) Act 2006.

2. No development shall commence until a scheme of external materials (including specifications and samples of materials and colours) for the retained former high school building has first been submitted to, and approved in writing by, the Planning Authority. The materials shall include the cladding to the proposed first floor extension, the proposed external wall treatments of the building and full details and specifications of the existing and replacement windows, including analysis of options considered to improve the thermal efficiency of the existing windows. Thereafter, no development shall take place except in strict accordance with the approved scheme.

Reason: To ensure external materials are sympathetic to the character of the listed building and appropriate to the visual character of the surrounding area.

3. No development shall commence, (notwithstanding the details provided in the approved drawings), until a further detailed scheme of site and plot boundary treatment (walls, railings and fencing) has first been submitted to and approved in writing by the Planning Authority. This should include retention and renovation of the boundary walling around the site and the curved walls and gate piers fronting Bowmont Street, including consideration of replacement railings. The scheme shall include their detailed design, height and materials. All boundary treatments within the application site shall accord with the approved scheme.

Reason: Further information is required to achieve an acceptable boundary treatment scheme for the site and to ensure satisfactory preservation of this Listed Building.

#### DRAWING NUMBERS

Location Plan	L(-1) 001
Existing Site Plan	L(-1) 002
Proposed Site Plan	L(-1) 101 B
Demolition Plan	L(-1) 102
Hard Landscape Plan	L(-1) 103 B
Existing Floor Plans	L(-2) 001
Proposed Ground Floor 1	L(-2) 101 A
Proposed Ground Floor 2	L(-2) 102 A
Proposed First Floor 1	L(-2) 103 A
Proposed First Floor 2	L(-2) 104 A
Existing Elevations 1:200	L(-4) 001
Existing Elevations 1:100 1	L(-4) 002
Existing Elevations 1:100 2	L(-4) 003
Proposed Elevations 1	L(-4) 101 A
Proposed Elevations 2	L(-4) 102 A
Proposed Elevations 3	L(-4) 103 A
Street Elevations	L(-4) 110
House Type A	L101
House Type B	L110
House Type C	L120
House Type D	L130
House Type E	L140
House Type F	L150
House Type G	L160
House Type H	L170
House Type I	L(-2) 271

#### **Approved by**

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

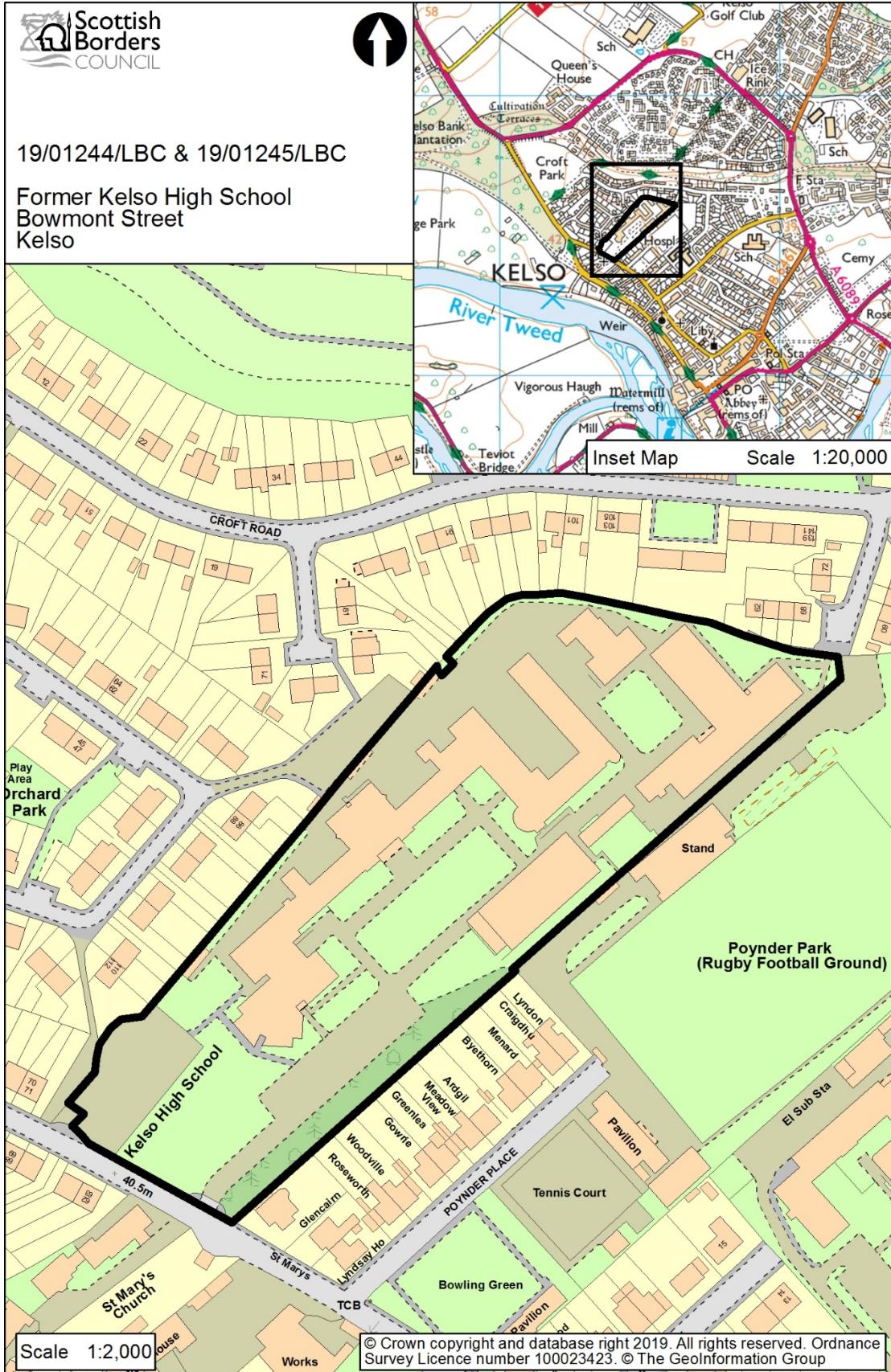
#### **Author(s)**

Name	Designation
Craig Miller	Principal Planning Officer



19/01244/LBC & 19/01245/LBC

**Former Kelso High School**  
**Bowmont Street**  
**Kelso**



**TREE PRESERVATION ORDER SBC 57 Haig House, Princes Street, Hawick**

**Report by Service Director Regulatory Services**

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**PLANNING AND BUILDING STANDARDS COMMITTEE**

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**9<sup>th</sup> December 2019**

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**PURPOSE AND SUMMARY**

- 1.1 **The purpose of this report is to consider the confirmation, modification or revoking of Tree Preservation Order SBC 57,**
- 1.2 Tree Preservation Order SBC 57 was made on 10 June 2019 under delegated powers. It covers trees at Haig House, Princes Street Hawick and replaces an earlier Order, SBC 32.
- 1.3 A Tree Preservation Order must be confirmed, modified or revoked within 6 months of the order being made.

**2 RECOMMENDATIONS**

- 2.1 **I recommend that the Planning and Building Standards Committee agrees:**

- (a) **Confirm Tree Preservation Order SBC 57**

### **3 BACKGROUND - TREE PRESERVATION ORDER SBC 57**

3.1 Tree Preservation Order SBC 57 was made on the 10 June 2019; it covers 12 individual and groups of trees at 25 Princes Street and replaces an earlier Order made at the same site. This order is a result of an independent tree preservation order assessment following a review of all orders.

Regulations require that, once an Order is made, a period of 28 days is made available for concerned parties to raise representations in respect of the Order. Within a period of six months from the making of the original Order, the Council must, having taken representations into account and with or without modification, decide if the Order should be confirmed.

3.2 The trees are visible from Commercial Road and Princes Street Hawick. The trees were designated under individual and group orders containing mixed semi and mature trees. Species include Oak, Limes Yew and Cypress. They vary in height, providing different age class, diversity of colour and include broadleaf and conifer species.

3.3 The tree preservation order was made following a site visit in March 2019 by Tree Consultancy Group.

There is currently a planning application to develop the area south of Haig House (19/00509/FUL) with proposed development adjacent preserved trees and this is material in the context of whether the protection of trees is justified.

3.4 Objections from both the trees owner and adjacent site developer in the aforesaid planning application have been received outwith the 28 day permitted period under the Town and Country Planning (Scotland) Act. However, given that they were received in advance of any decision being made, it is reasonable to take the matters raised in these representations into consideration. To summarise the objections:

- Arboricultural information improperly obtained
- Inadequate protection TPO 57 be varied to include all trees on Princes Street as per TPO 32
- TPO 57 includes two Chestnut trees in Haig House and Commercial Road
- The economic benefit of the adjacent development and jobs is already established
- The siting of the proposed store cannot be moved because of access and parking requirements.
- The quality and condition of boundary trees and lack of screening.
- The requirement to remove overhanging branches from adjoining property to enable development.

Copies of this correspondence together with copies of the aforementioned letters of objections are appended to this report.

The tree survey that led to the making of the Order was undertaken by an external independent specialist, Tree Consultancy Group, on behalf of the Council following the nationally acknowledged appraisal system for evaluating trees for a preservation order.

The matters raised in representations were available and taken into account as part of a subsequent review by the consultant who undertook the original survey and assessment. The justification for the Order is concerned solely with the

value and contribution of the trees in question. Nevertheless, the consultant's review of the Order and the representations (dated 13 August 2019), which is attached to this report, addresses the matters raised in representations and confirms that the methodology applied is the mostly widely used and consistent with national standards and that the trees are considered worthy of protection.

This assessment forms part of a Borders wide review of Tree Preservation Orders and the consultant's subsequent review demonstrates that the proposed order has been the subject of a thorough and robust assessment, including a number of visits to the sites in question.

- 3.5 The trees are generally in good condition and continue to provide an amenity value to the local landscape. It has an expected safe useful life expectancy of at least 40 years for the trees following sound arboricultural practice.
- 3.6 Third party representations have been received in relation to the current planning application making specific reference to the woodland and its screening value. Confirming the order will allow the Local Authority control over any proposed tree works and ensure continuous tree cover.

## **4 IMPLICATIONS**

### **4.1 Financial**

There are no costs attached to any of the recommendations contained in this report.

### **4.2 Risk and Mitigations**

The report describes the elements of risk that have been identified and how they will be managed in relation to this matter, and no specific additional aspects need to be highlighted.

### **4.3 Equalities**

- (a) There are no equalities in approving this report.

### **4.4 Acting Sustainably**

#### **(a) Economic Growth**

The proposal does not have an affect on social growth.

#### **(b) Social Cohesion**

The trees provides a visual amenity for local residents and the Community at large.

#### **(c) Protection of the environment**

The confirmation of Tree Preservation Order SBC 57 will ensure continuity of tree cover to provide a natural resource within the local landscape for future generations.

### **4.5 Carbon Management**

- (a) Trees as well as providing visual amenity contribute to a green infrastructure by providing screening, shade, reducing wind speeds, providing opportunities for wildlife and are a key resource to climate change adaptation.

### **4.6 Rural Proofing**

- (a) It is anticipated there will be a positive impact on the local area from the proposals contained in this report.

## **5 CONSULTATION**

5.1 Legal Services have been consulted on this report.

**Approved by**

**Service Director, Regulatory Services**

**Signature .....**

### **Author(s)**

Name	Designation and Contact Number
Simon Wilkinson	Tree Officer (01835) 826655

### **Background Papers:**

Tree Preservation Order 57

Objection to Order from GLS Ltd, dated 24 July 2019 (including letter in draft, dated 17 July 2019, on behalf of Image Estates)

Objection to Order from Mrs F E Mackie, dated 7 July 2019

Letter from Anna Craigan Environmental Services, on behalf of Image Estates, dated 4 August 2019

Report, "Summary of Assessment Procedure for Review of Tree Preservation Order no.32", Tree Consultancy Group, dated 13 August 2019

**Previous Minute Reference:** None

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Environment and Infrastructure, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA. Telephone: 01835 825060. E-mail: [prs@scotborders.gov.uk](mailto:prs@scotborders.gov.uk)

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

THE SCOTTISH BORDERS COUNCIL TREE PRESERVATION ORDER NO. 57 (2019)

The Scottish Borders Council as "the Planning Authority" make the following Tree Preservation Order in exercise of the powers conferred by Section 160 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so

**CITATION, COMMENCEMENT AND INTERPRETATION**

1. (1) This Order may be cited as The Scottish Borders Council Tree Preservation Order No. 57 (2019) and takes effect on 10 June 2019.
- (2) In this Order
  - "the 1992 Order" means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;
  - "the Act" means the Town and Country Planning (Scotland) Act 1997;
  - "protected tree" has the meaning given in article 2.

**PROTECTED TREES**

2. (1) A protected tree is a tree specified in Schedule 1 to the Order or comprised in a group of trees or in a woodland specified that Schedule.
- (2) The position of such trees, groups of trees or woodlands is identified in the manner indicate in Schedule 1 and on the map annexed to this Order.
- (3) Where any ambiguity as to the identification of a protected tree arises between the map and the specification in Schedule 1 to this Order, the map is to prevail.

**PROHIBITED ACTS**

3. Subject to the provisions of the Act and the exemptions specified in article 4, no person is except with, and in accordance with, the consent of the planning authority:-
  - (a) to cut down, top, lop, uproot, wilfully damage or wilfully destroy; or
  - (b) to cause or permit the cutting down, topping, lopping, uprooting, or wilful damage or wilful destruction of,  
a protected tree.

**EXEMPTIONS**

4. Nothing in article 3 is to prevent:-
  - (a) the cutting down of a tree in accordance with a felling licence granted by the Forestry Commissioners under the Forestry Act 1967;
  - (b) the cutting down, uprooting, topping or lopping of a tree on land in the occupation of a planning authority when this is done by or with the consent of that authority;
  - (c) the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding 75 millimetres;
  - (d) the cutting down or uprooting in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;

- (e) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, The Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision;
  - (f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker and the work is necessary –
    - (i) in the interests of the safe operation of the undertaking;
    - (ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or
    - (iii) to enable the statutory undertaker to carry out development for which planning permission is granted by the 1992 Order,
- provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary;
- (g) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
  - (h) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
  - (i) the cutting down, topping, lopping or uprooting of a tree where work is required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A of the Act, or deemed to have been granted (whether for the purposes of Part 3 of the Act or otherwise); or
  - (j) the cutting, topping, lopping or uprooting of a tree by, or at the request of SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.

#### **DIRECTIONS AS TO REPLANTING**

5. (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of a woodland area, the planning authority may give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which the owner must replant trees on that land.
- (2) Where a direction is given under paragraph (1) and trees on the relevant land are felled (pursuant to the consent), the owner of that land must replant trees on the land in accordance with the direction.
- (3) Any direction given under paragraph (1) may include requirements as to:-
  - (a) species;
  - (b) number of trees per hectare;
  - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
  - (d) the preparations of ground, draining, removal of brushwood, lop and top; and
  - (e) protective measures against fire.

## **ADAPTION AND MODIFICATION OF THE ACT**

6. (1) The provisions of the Town and Country Planning (Scotland) Act 1997 mentioned in column 1 of Part 1 of Schedule 2 to this Order are to have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications specified in column 2 of Part 1 of that Schedule.
- (2) The provisions referred to in paragraph (1), as so adapted and modified, are set out in Part 2 of Schedule 2 to this Order.

## **COMPENSATION**

7. (1) Subject to paragraphs (2) to (5), any person who has suffered loss or damage caused or incurred in consequence of:-
  - (a) any refusal or consent required under this Order; or
  - (b) any grant of any such consent subject to conditions, is entitled to recover from the planning authority compensation in respect of such loss or damage.
- (2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.
- (3) The time within which any such notice shall be given is a period of six months –
  - (a) from the date of the decision of the planning authority; or
  - (b) where an appeal has been made to Scottish ministers against the decision of the planning authority, from the date of the decision of Scottish Ministers on the appeal.
- (4) No claim may be made under this article if the amount in respect of which the claim would otherwise have been made is less than £1,000.
- (5) No compensation shall be payable to a person –
  - (a) for loss of development value or other diminution in the value of the land;
  - (b) for loss or damage which was not reasonably foreseeable when consent was refused or was granted subject to conditions;
  - (c) for loss or damage reasonably foreseeable by that person and attributable to failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or
  - (d) for costs incurred in appealing to the Scottish Ministers against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.
- (6) In this article –

“development value” means an increase in value attributable to the prospect of development;

and, in relation to any land, the development of it shall include the clearing of it.

## **APPLICATION OF TREE PRESERVATION ORDER TO FUTURE PLANTING**

8. This Order applies to any tree specified in Schedule 1 to this Order which is to be planted in pursuance of a condition imposed by virtue of section 159
  - (a) of the Act as from the time when those trees are planted.

Dated this Tenth day of June Two Thousand and Nineteen.

Solicitor

REGISTER on behalf of the within named THE SCOTTISH BORDERS COUNCIL in the REGISTER of the COUNTY of ROXBURGH.

Solicitor,  
Newtown Saint Boswells.  
Agent.

This is Schedule 1 referred to in the foregoing Tree Preservation Order by Scottish Borders Council  
(SBCTPO57/2019)

## SCHEDULE 1

### ARTICLE 2

**Location – Springbank, 21 Princes Street, Hawick**

<b>Trees Specified Individually</b> (references as specified on the map)	
<b>No. on Map</b>	<b>Description</b>
SBC057-T012	12 Metre Lime
<b>Title Information</b>	
The above area of land forming part and portion of ALL and WHOLE the subjects registered in the Land Register of Scotland under Title Number ROX865.	

**Location – Haig House, 23 Princes Street, Hawick**

<b>Trees Specified Individually</b> (references as specified on the map)	
<b>No. on Map</b>	<b>Description</b>
SBC057-T001	21metre Lime
SBC057-T002	10metre Yew
SBC057-T003	16metre Yew
SBC057-T004	15metre Yew
SBC057-T005	20metre Lime
SBC057-T006	8metre Yew
SBC057-T007	10metre Yew
SBC057-T008	21metre Lucombe Oak
SBC057-T009	16metre Yew
SBC057-T010	14metre Lime

SBC057-T011	15metre Sycamore
<b>Groups of Trees</b> (references as specified on the map)	
No. on Map	Description
SBC057-G001-T001	12metre Lawson Cypress – Group Component
SBC057-G001-T002	13metre Lawson Cypress – Group Component
SBC057-G001-T003	13metre Lawson Cypress – Group Component
SBC057-G001-T004	12metre Lawson Cypress – Group Component
SBC057-G001-T005	13metre Lawson Cypress – Group Component
SBC057-G001-T006	13metre Lawson Cypress – Group Component
SBC057-G001-T007	12metre Lawson Cypress – Group Component
SBC057-G001-T008	12metre Lawson Cypress – Group Component
SBC057-G001-T009	9metre Lawson Cypress – Group Component
SBC057-G002-T001	12metre Lawson Cypress – Group Component
SBC057-G002-T002	10metre Lawson Cypress – Group Component
SBC057-G002-T003	11metre Lawson Cypress – Group Component
SBC057-G002-T004	11metre Lawson Cypress – Group Component
SBC057-G002-T005	12metre Lawson Cypress – Group Component
SBC057-G002-T006	10metre Lawson Cypress – Group Component
SBC057-G002-T007	16metre Sycamore – Group Component
<b>Title Information:</b>	
The above trees and groups of trees forming part and portion of ALL and WHOLE the subjects known as and forming Haig House, 23 Princes Street, Hawick being the subjects more particularly described in and disposed by the Disposition by James Melville Robertson and George Paterson in favour of Fiona Elizabeth MacKie and George Hutchison Bowie dated the Seventeenth day of June, Nineteen Hundred and Ninety Four and registered in the General Register of Sasines for the County of Roxburgh on the Fourteenth day of July Nineteen Hundred and Ninety Four.	

This is Schedule 2 referred to in the foregoing Tree Preservation Order by Scottish Borders Council  
(SBCTPO57/2019)

## SCHEDULE 2

### PART I PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning (Scotland) Act 1997	Adaptation or Modification
Section 36 (Registers of applications etc.)	<p>For subsections (1) to (3) substitute</p> <p>"(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing</p> <p>(a) information as to the nature of such applications, the decisions of the planning authority thereon,</p> <p>(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and</p> <p>(c) any directions as to the replanting of woodlands."</p>
Section 37 (determination of applications: general considerations)	<p>(a) In subsection (1)</p> <p>(d) for "planning permission" where those words first appear;" substitute "consent under a tree preservation order";</p> <p>(e) for "sections 27B(2) and 59(1)(b) substitute "subsections (1A) and (1B)";</p> <p>(f) for "planning permission" in both of the other places where those words appear substitute "consent under the order";</p> <p>(g) after "think fit", insert, "(including conditions limiting the duration of the consent or requiring the replacement of trees)"; and</p> <p>(b) After subsection (1) insert</p> <p>"(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such</p>

	<p>felling is carried out in the course of forestry operations (but may give directions for securing replanting).".</p> <p>(c) Omit subsections (2) and (3); and</p> <p>(d) In subsection (4) for paragraphs (a) to (c) substitute-</p> <p>"(a) consent under a tree preservation order; or</p> <p>(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,"</p>
Section 44 (effect of planning permission)	<p>(a) references to 'planning permission' are to be treated as references to 'consent required by a tree preservation order';</p> <p>(b) for 'the permission' substitute 'the consent';</p> <p>(c) for 'to develop land' substitute 'to carry out works'; and</p> <p>(d) after 'land' insert 'on which the tree or trees to which the consent relates are situated'.</p> <p>(e) Omit subsections (2) and (3).</p>
Section 47 (right to appeal against planning decisions and failure to take such decisions)	<p>(a) For subsection (1) substitute</p> <p>"(1) Where a planning authority</p> <p>(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;</p> <p>(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;</p> <p>(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p> <p>(d) have not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],</p> <p>the applicant may by notice appeal to the Scottish Ministers".</p> <p>(b) Omit subsections (1A), (2) and (4).</p> <p>(c) For subsection (3) substitute</p> <p>"(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under</p>

	<p>(a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;</p> <p>(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,".</p> <p>(d) For subsection (5) substitute-</p> <p>"(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.".</p>
Section 47A	
Section 48 (determination of appeals)	<p>(a) In subsection (5)(a)</p> <p>(i) for "sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 and Part I of Schedule 3" "section 37(1), (1A) and (1B)"; and</p> <p>(ii) for "planning permission" substitute "consent under a tree preservation order".</p> <p>(b) Omit subsections (5)(b) and (6) to (8).</p>

## PART II

### **PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,**

### **AS ADAPTED AND MODIFIED BY PART I**

The following provisions of the Town and Country Planning Act 1997, as adapted and modified by Part I of this Schedule, apply in relation to consents, and applications for consent, under this Order.

#### **Section 36**

**36.-**(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing

(a) information as to the nature of such applications, the decisions of the planning authority thereon,

(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and

any directions as to the replanting of woodlands."

(4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

## **Section 37**

**37.-**(1) Where an application is made to a planning authority for consent under a tree preservation order-

(a) subject to subsections (1A) and (1B) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent or requiring the replacement of trees); or

(b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

(1B) Where the authority grant consent for the felling of trees in a woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

(4) The date of the grant or refusal of-

(a) consent under a tree preservation order; or

(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,

shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

## **Section 44(1)**

**44.-**(1) [Without prejudice to the provision of this Part as to the duration, revocation or modification of consent required by a tree preservation order], any grant of consent required by a tree preservation order shall (except in so far as the consent otherwise provides) ensure for the benefit of the land on which the tree or trees to which the consent relates are situated and all persons for the time being interested in it.

## **Section 47**

**47.-**(1) Where a planning authority

(a) refuse an application for consent under a tree preservation order or grant it subject to conditions;

(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;

(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or

(d) have not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],

the applicant may by notice appeal to the Scottish Ministers ".

"(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under

(a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;

(b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph,".

(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

### **Section 47A**

**47A.-**(1) In an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time the decision appealed against was made unless that party can demonstrate-

(a) that the matter could not have been raised before that time, or

(b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to-

(a) the provisions of the development plan, or

(b) any other material consideration.

### **Section 48**

**48.-**(1) On an appeal under section 47 the Scottish Ministers may

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(3) If the Scottish Ministers propose to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about their proposal.

(5) In relation to an appeal to the Scottish Ministers under section 47-

(a) sections 37(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Scottish Ministers under section 47 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.



1:750  
(A4)

## Tree Preservation Order

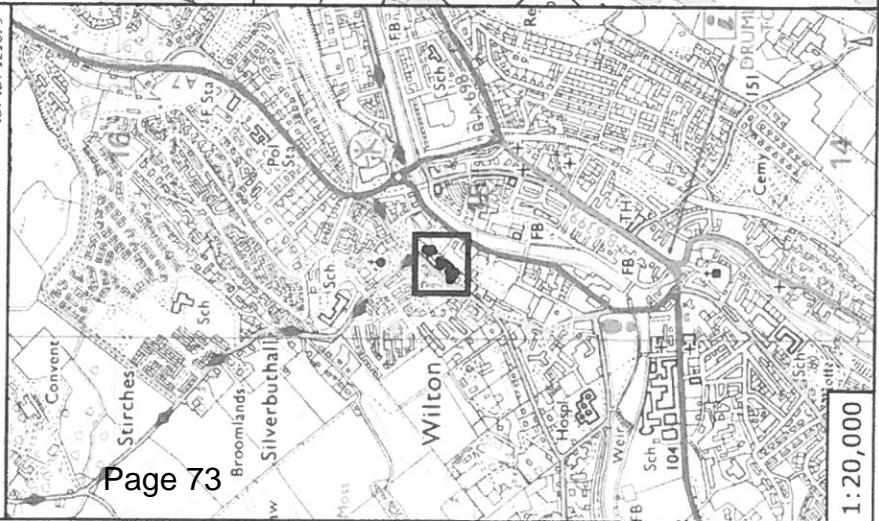
**SBC57**

Hawick

## Legend:

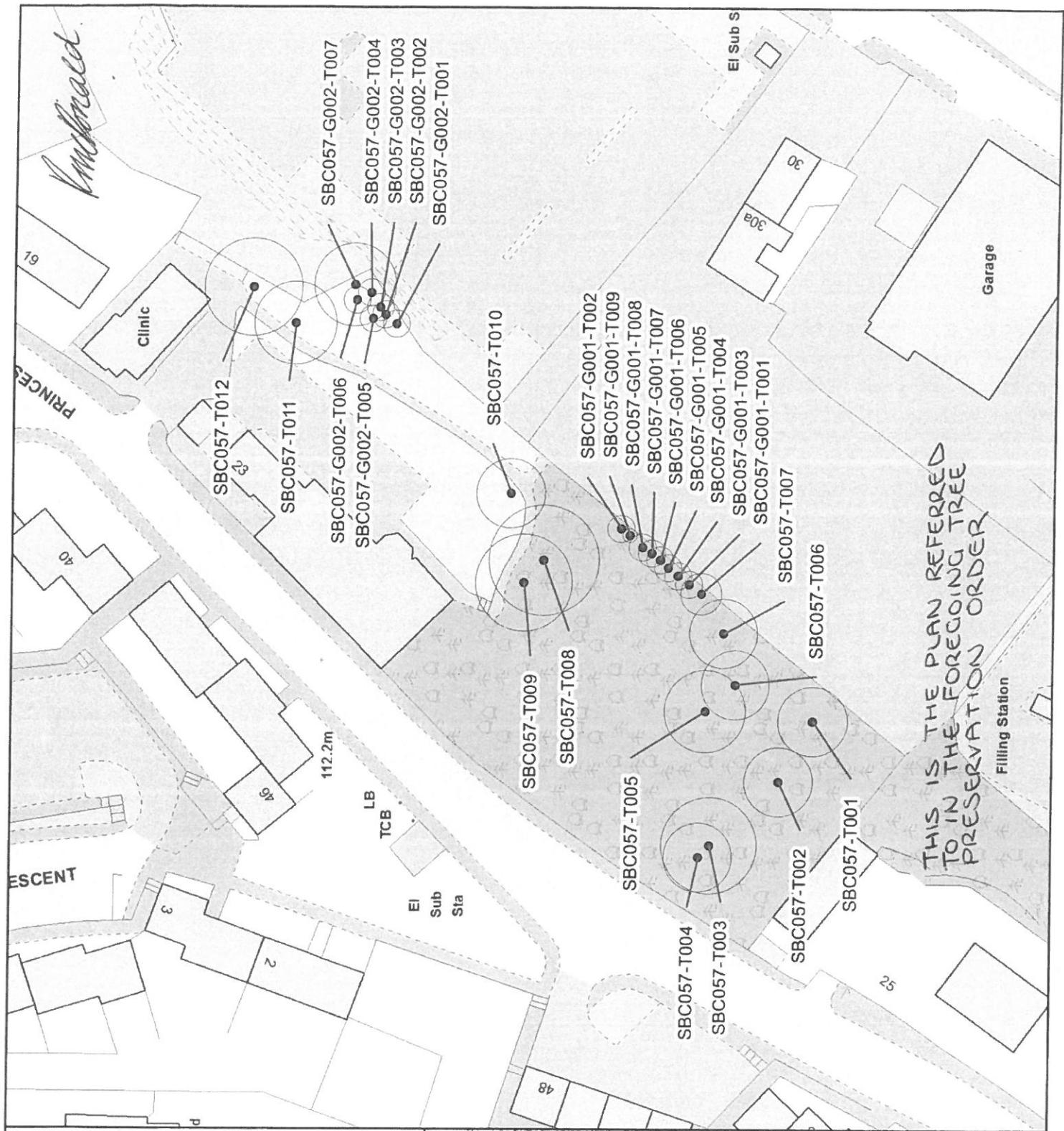


0 10 20 30 Metres

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THIS IS THE PLAN REFERRED  
TO IN THE FOREGOING TREE  
PRESERVATION ORDER

Filling Station



1:20,000



Subject: FW: Tree at Commercial Road, Hawick - Tree Survey & TPO  
Objection  
information - Haig House, Princes Street, Hawick  
Attachments: Draft to Planning Dept.SBC (17 July 19) TPO.docx; IMG-  
20190717-  
WA0001.jpg; IMG-20190717-WA0003.jpg; IMG-20190717-WA0004.jpg

Importance: High

From: GLS Ltd [mailto:[info@gls.ltd.uk](mailto:info@gls.ltd.uk)]  
Sent: 24 July 2019 11:35  
To: Herkes, Stuart <[SHerkes@scotborders.gov.uk](mailto:SHerkes@scotborders.gov.uk)>  
Subject: Tree at Commercial Road, Hawick - Tree Survey & TPO Objection  
information - Haig House,  
Princes Street, Hawick  
Importance: High

Hi Stuart

Tree Survey & TPO Objection Information  
Haig House, Princes Street, Hawick

As has been discussed previously on several occasions we are unable at this juncture to provide a comprehensive survey as requested for the reasons given in our draft TPO objection justification.

Various consultants have looked at this on our behalf and the inability to gain access to Haig House and the stockpiling of materials by SBC prevents confirmed assumptions being provided.

A draft objection to the TPO is attached herewith and further to our notification of objection of 25 June 2019 this provides some element of back up until an agreed methodology might be reached. We have endeavoured to discuss this with Simon Wilkinson on various occasions unsuccessfully.

The following are the principle reasons to our TPO objection:-

1. The economic benefit of the proposed development and jobs and rateable income achievable is already established.
2. The siting of the proposed B&M store cannot be moved further from the boundary because of access requirements for Aldi and parking numbers required.
3. The quality of the Lawson Cypress trees and their lack of screening and the fact that 4 of these are already dead.
4. The requirement to remove overhanging branches from the adjoining property to enable development.

Our advisors inform us that given the inability to take breast girth measurements from the trees in question and investigate the extent of root encroachment that a full survey cannot be completed. It is therefore hoped that this draft report and our comments will enable you to take a balanced view on the planning application.

It should also be noted that due to Mrs Mackie placing herself in a dangerous situation albeit on her own property our operatives were unable to complete the removal of the dangerous chestnut tree on the Bayhill Farming land.

It would be appreciated if you could confirm that we have absolute authority to so do and we would then require to involve the Police in ensuring that the operation may be carried out safely and we shall seek separate advice as to whether or not we can charge Mrs Mackie for the wasted time by our Arboriculturalist.

Finally given that we have received information from various individuals within SBC we would be grateful if this letter plus attachments can be passed to the appropriate individuals in relation to our aforementioned objection to the proposed TPO.

Yours sincerely

Gavin Stevenson  
On behalf of Image Estates (Queen Street) Ltd

GLS Limited  
Crown Business Centre  
20/22 High Street  
HAWICK  
TD9 9EH

Tel: (01450) 373168  
Fax: (01450) 373251  
Email: info@gls.ltd.uk  
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From: Frater, Brian  
Sent: 08 July 2019 09:08  
To: Aikman, Ian; Wilkinson, Simon; McKinlay, Nuala  
Subject: FW: Objection - The Scottish Borders Council Tree Preservation Order No. 57

From: F E Mackie [mailto:fem13@talktalk.net]  
Sent: 07 July 2019 20:21  
To: Frater, Brian <BFrater@scotborders.gov.uk>  
Subject: FW: Objection - The Scottish Borders Council Tree Preservation Order No. 57

From: F E Mackie [mailto:fem13@talktalk.net]  
Sent: 07 July 2019 20:20  
To: Tracey.logan@scotborders.gov.uk  
Cc: 'dparker@scotborders.gov.uk'; Ramage, Clair (Councillor)  
<Clair.Ramage@scotborders.gov.uk>  
(Clair.Ramage@scotborders.gov.uk); Hayward, Julie  
(JHayward2@scotborders.gov.uk); 'Julie';  
'JHayward1@scotborders.gov.uk'; 'BFrater@scotborders.gov.uk';  
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'hawickfloodps@scotborders.gov.uk';  
'AGueldner@scotborders.gcsx.gov.uk'; 'Shona.Haslam@scotborders.gov.uk';  
'Marshall, Stuart (Councillor)'  
Subject: Objection - The Scottish Borders Council Tree Preservation Order No. 57

Chief Executive  
Scottish Borders Council  
Council Headquarters  
Newtown St Boswells

4th July, 2019

Dear Madam

Town and Country Planning Act  
Objection - The Scottish Borders Council Tree Preservation Order No. 57

I write in relation to the above and to make a formal objection to The Scottish Borders Council Tree Preservation Order No. 57 on the following grounds.

- i. The 'arboricultural' information upon which it was based was improperly obtained.
- ii. The scope of the protection offered by it is inadequate and does not reflect the risk of felling to which all trees in the Princes Street/Commercial Road "green corridor", outwith the grounds of

Haig House, are subject.

iii. TPO No. 57 does not afford protection to horse chestnuts of significant historical and natural value in the grounds of, and on land directly adjacent to, Haig House.

i. Arboricultural information obtained improperly  
If you have been following the email chain between myself and the Head of Legal Services regarding the circumstances leading up to the imposition of TPO No. 57, you will be aware that it has recently come to my attention, following my receipt of said TPO No. 57, that TPO No. 32 which was made in 2006 and meant to protect 139 trees in the 'green corridor' of Princes Street/Commercial Road (from the new Lidl building in the west, to the A7 in the east) lapsed after six months because it was not confirmed or registered by Legal Services.

You will also be aware that I remain deeply concerned about how the 'arboricultural' information that informed this new TPO No. 57 was gathered. On 2 November 2017, I received a 'section 176 notice' from Simon Wilkinson, Tree Officer, claiming that SBC was undertaking a "Borders-wide tree review", and that therefore I was required to allow an 'arboricultural consultant', Mr Ken Harvey, to enter my grounds in order to survey my trees. In May 2019, after two further visits by Ken Harvey, I spoke to my neighbours on at 27, 25, 21 and 19 Princes Street who have trees that were 'covered' by TPO No. 32 to enquire as to whether they had been contacted by the Council and/or had their trees surveyed. I have asked the same questions of them again before writing this response. None of my neighbours have been contacted by the Council with regards to a "Borders-wide tree review", been visited by a tree consultant, or indeed been notified about TPO No. 57. This is especially concerning in relation to the owner of 21 Princes Street, as TPO No. 57 purports to include trees on her property, and yet she has not received her statutory notification. All of this is I find extremely peculiar - why was this tree survey focussed solely on my garden, when the previous (albeit lapsed but widely upheld and believed in) TPO No. 32 covered trees sited along the length of Princes Street/Commercial Road?

What has compounded the curious and conspiratorial character of this "Borders-wide tree review", is information I have received under FOIAG261-EIR12999. Simon Wilkinson stated on 2 November 2017, in his "notice" letter to me that a "Borders-wide tree review" was underway, and that he required access

to my garden. Simon Wilkinson stated in an email to Gavin Stevenson ([info@gls.ltd.uk](mailto:info@gls.ltd.uk)), the developer behind planning application 19/00509/FUL, dated 13 March 2019 that SBC "are currently undergoing (sic) a complete TPO review, [and] having completed the Berwickshire and Tweedale (sic) area are now about to start in the Hawick area. The Horse Chestnut along with all the other trees on Commercial Road/Princes Street are part of that review". For your reference, if you have not been following the emails into which I have been copying you, the horse chestnut referred to explicitly is tree No. 84, a tree which, up until recently everyone, with perhaps the exception of a few of your more senior officers, thought was protected by TPO No. 32, because everyone, with the exception of those officers, thought TPO No. 32 was extant.

This contradiction between what Simon Wilkinson wrote to me in 2017, and what he wrote to Gavin Stevenson in 2019, suggests that he has misrepresented the situation to one or other of us. Why? It is my contention that he, perhaps along with officers in Legal Services, became aware in 2017 that TPO No. 32 had never been confirmed or registered. (Perhaps this discovery came about as a result of the complaint I raised with the SPSO which relied heavily on the existence of TPO No. 32. During the time that complaint was going forward, SBC at no time indicated to the SPSO that TPO No. 32 had in fact lapsed) Was it then that Simon Wilkinson realised that trees the Council had meant to protect 13 years ago, were actually unprotected? It is my contention therefore that Simon Wilkinson sought access to my grounds on false pretences by claiming that a Borders-wide tree review was underway (perhaps it was, but as his email of 13 March 2019 makes clear, it was not underway in this area, and it is also clear to me, after speaking to neighbours, that it is still not underway in this area) so that Scottish Borders Council could ensure that a valid and convenient TPO existed before Gavin Stevenson applied for planning permission to develop 30-32 Commercial Road.

#### ii. Inadequate protection

My second objection is that TPO No. 57 only protects 28 out of the 139 trees that were all equally deemed worthy of protection under the now-lapsed TPO No. 32. Magisterial chestnut and beautiful cherry trees stand on east Princes Street in an area known locally as "The Gravies", and more properly as the graveyard of the Auld Kirk. The composer of the town's Common Riding anthem Teribus lies

buried in this former graveyard. As even the myth of the long-expired TPO No. 32 fades, what protects them from being cut down? At a meeting held in Hawick Town Hall in April this year to discuss the Hawick Flood Protection Scheme, one person suggested that they could indeed be cut down in order to provide parking while the Flood Protection Scheme was in operation and cars were diverted from Commercial Road onto Princes Street.

With regards to trees within my own grounds, TPO No.57, amongst other notable trees, ignores a mature poplar that stands at over 28 metres tall, which can be seen and is regularly favourably remarked upon by our Princes Street neighbours as they can view it over the wall, and a weeping ash which, despite Simon Wilkinson's recommendation that it should be cut down in the autumn of 2006, two months or so after TPO No. 32 had in fact lapsed, has remained healthily in situ until the present day.

The new TPO No. 57 strangely only covers the trees in my grounds - is there I wonder, as I await for yet another set of FOI requests, now any actual protection, or protection intended, for the other trees in the 'green corridor'? Or are they now at the mercy of those who would cut them down, unsanctioned, as they have so often done in the past? As the Council is aware, a TPO, or at least the threat of one existing, is sometimes all that stands between an area of woodland being felled and not.

As you may well be aware, trees were felled during the development of the Aldi site, and the only reason that more were not was because my family intervened in good faith, believing TPO No.32 to be extant, and warned the attempted fellers that the trees were protected by a TPO (which obviously they were not because it had long since lapsed). The horse chestnut, marked as tree No. 84 on the Plan annexed to TPO No. 32, equally still stands because I informed the contractor that it was protected by TPO No. 32, in good faith. (It also still stands because the permission for its removal, given by Mark Douglas, was based on entirely incorrect information).

If Scottish Borders wish to retain the green corridor along Princes Street and Commercial Road, they need to ensure that TPO No. 57 is varied to cover all the trees that were supposed to be protected by TPO No. 32. Scottish Borders Council would be unwise to continue to put assume that trees along this

corridor are sufficiently protected simply by virtue of being privately or Council-owned. This has never deterred developers or their contractors previously. Only the large fines associated with damaging or destroying a tree subject to a TPO has the power to deter.

iii. No protection for horse chestnuts at Haig House/30-32 Commercial Road Adjacent to the fence that delineates my property from Commercial Road is a horse chestnut tree, given on the plan annexed to the now expired TPO No. 32 as tree No. 80. At 30-32 Commercial Road, just over the fence, stands horse chestnut tree No. 84. In between the trees, is a gate which allows access from my grounds onto 30-32 Commercial Road. The path which passes through this gate must have constituted the mill owner, Walter Laing's, route of access to Wilton Mills when the house and mill were first constructed. Although I respect that the fence and gate are unlikely to be original, it stands that the path from the house leads through the gate and fence at this point allowing us a right of servitude across the abovenamed property and onto Commercial Road. The two chestnut trees form a beautiful natural frame to this aperture. My neighbour, the late Provost Zandra Elliott, and I often met and chatted at this gate and remarked on the natural beauty of the two trees. I was led to believe at the imposition of, the now lapsed, TPO No. 32, that both of these trees were protected. I was puzzled when I recently received the new TPO No. 57 and dismayed to see that TPO protection had been conveniently removed from both trees under this instrument.

Yet, because, at the time, I still believed this legal instrument to be extant (that is, TPO No.32), I recently put my daughter's and my own life at risk in trying to protect tree no. 84 from being felled. This matter is now in the hands of the police. Further, in order to protect tree no. 84, I have made a verbal offer to Gavin Stevenson to purchase it from the owner, Bayhill Farming Limited, but this was refused.

I would like to note here that the only reason an attempt to fell tree no. 84 on this occasion was made was because Mark Douglas gave a permission which proved to be invalid due to the fact that he had in turn based his decision on an out-of-date plan for the temporary road due to be laid by the Flood Protection Scheme. This road, when built, will now take an entirely different route as indicated on the new blueprint shown to me by Rachael Warrington of the HFPS project team on a visit to my premises.

As planning permission in respect of 19/00509/FUL has not yet been granted, and as the two trees offer such a beautiful natural amenity to an otherwise bleak and featureless area, I feel most strongly that tree no. 84 deserves to be protected and allowed to remain in situation. Correspondence between Gavin Stevenson and Council officers, which was released to me under EIR 12999, suggest that tree no. 80 and no. 84 are diseased and/or dangerous. I have owned Haig House, peaceably and quietly, for twenty-five years this past midsummer's day and, in that time, only one branch of any significance has fallen from tree no. 84. The recent cutting of the tree has revealed a small canker, visible from my side, something any other tree might have and stand for decades to come. When a tree becomes a barrier to 'progress' in the eyes of a developer, how often is it declared dangerous or diseased after a report is compiled by an 'arboriculturalist' - a largely unregulated 'profession' and an often self-styled title, or one rather easily obtained, in the case of the Mr Ben Anderton who carried out the review, from a university ranking 16 out of 17 in the country for its agricultural and arboricultural courses.

Besides, with regard to the type of disease the tree is purported to have, the Forestry Commission states in their online advice page Bleeding Canker of Horse Chestnut, that:

"Some trees may survive for many years as disease progression can be very slow or even show signs of recovery (vigorous callus development at the margins of cankers when bark has been killed by the disease)."

Did the 'arboriculturalist' employed by Gavin Stevenson examine the tree for such signs of recovery? There are no signs, in his very brief report, that he did. Further the Forestry Commission state:

"Removing affected trees unless they pose a safety hazard is unnecessary. It will not prevent disease spread on a site where some trees already show symptoms. Also, significant numbers of trees do recover."

It is ominous that in the most recent plan submitted to the public portal by Aitken and Turnbull on behalf of Image Estates Limited, the plan shows no Tree Root Protection Areas for any of the significant number of trees along my fence line presently protected by TPO No. 57. It also shows no tree No. 80 or No. 84 at all. Instead there is a storage box situated across the gate which provides my right of servitude

and where the trees now stand.

Hawick's history and architecture, be it natural or built, is being eroded by a mind-set that thinks no further than its own convenience. Trees No. 80 and No. 84 are worth protecting and preserving in that they celebrate a mind-set that planned for the future - whether they would live to enjoy the fruits of their labour or not - and that thought and cared about how those in the future would benefit from their forethought in planting beautiful trees. It would be unthinkable that the historical horse chestnut tree No. 84 should be destroyed for the sake of a storage box.

TPO No. 57 has not been extended to horse chestnut No. 80, on my side of the fence, and thus it is at risk from the developers. Its tree root protection area is adjacent and probably interwoven with that of No. 84. Why have only horse chestnuts been conveniently excluded from TPO No. 57?

In 2006, the Council deemed 139 trees on Princes Street/Commercial Road to be worthy of the greatest protection. Since 2006, none of those trees have been legally protected. The introduction of TPO No. 57 means that only 20% of those trees formally identified under TPO No. 32 are now protected. I request that the Council provide all 139 trees with the same protection that they had under the lapsed TPO No. 32 as they are part of one large group - the green corridor along Princes Street/Commercial Road, Hawick. Otherwise the Council will start to see that corridor, which it considers in its development plan for Hawick to be of significant visual amenity, disappear.

Mark Douglas, in the emails submitted to the SBC planning portal in relation to the planning application 19/00509/FUL, states that "there are a...number of trees which lie behind this in the grounds of Haig House and (sic) provide a wooded backdrop to the lower land in Commercial Road". Some of my trees have already been killed by contractors working on the Aldi site (why Simon Wilkinson gave them permission to cut back trees on a completely different site to the one they were supposed to be working on continues to both mystify and gravely concern me) and have died back as a result, thus providing a much reduced amenity value.

In conclusion, whilst I welcome the protective aspects of TPO No. 57 in respect of the possibility of damage to trees and tree root areas from the proposed development of the Bayhill site, I object to TPO No. 57 for the above reasons, chiefly due to the fact that it is not as extensive as the lapsed TPO No. 32.

Therefore, in order to ensure the original 139 trees are protected as before, I request the following:

- i. That TPO No.57 be varied immediately in order that all trees, privately or publicly owned, and formerly protected by the long-lapsed TPO No.32, are protected until new surveys are conducted and new, appropriate and independent TPOs instituted for their protection.
- ii. That said variance extend specifically to chestnut trees Nos. 80 (Princes Street) and 84 (Commercial Road) and that they henceforward be recognised by Scottish Borders Council as items of special natural and historical significance and value to the town and preserved accordingly.

You may also be aware that I am in the process of compiling a second complaint which is likely, given the current attitude to my concerns being adopted by certain SBC officers, to require to be escalated to the SPSO, and which will include some of the matters outlined above. The SPSO will look to both Scottish Borders Council and myself to have taken steps towards the resolution in full or in part of all matters pertaining to the complaint. The granting of the variance to TPO No.57, and the recognition of the special status of trees No. 80 and No. 84. (lapsed TPO No.32 attached schedule), by Scottish Borders Council may go some way towards evidencing such steps on the part of the Council.

Yours sincerely

F E Mackie

# ACES

Anna Craigen Environmental Services  
email: annac.aces@gmail.com

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4<sup>th</sup> August 2019

To whom it may concern,

**Proposed TPO, Haig House, Princess Street, Hawick**

I am writing to substantiate the points raised about trees G1 and G2 in the letter dated 17<sup>th</sup> July 2019 (written on behalf of Image Estates (Queen Street) Ltd) regarding the proposed Tree Preservation Order (TPO) at Haig House (March 2019).

It is important to clarify at this early stage that I come from a tree conservation, community liaison and landscape design background, this report provides an honest appraisal and accurate representation of my understanding of the current tree health and status of the Lawsons cypress trees (G1 & G2) in question throughout this correspondence. Please see Appendix B for a summary of my relevant experience.

I understand that in spite of their poor quality (stature and health) as specified in the TPO data chart produced by Scottish Borders Council - the only reason for their inclusion in the proposed TPO is for the screening benefit that they offer to the adjacent privately owned home. In support of the letter (17<sup>th</sup> July) I too would argue that these trees appear to provide very little relevant screening to the house or any useable areas of its associated garden space, due to the topography of the area and the presence of many more unaffected, healthy mature trees within the woodland area. In my opinion the TEMPO scorings provided in the above document are overly generous, particularly given the existing obvious presence of an issue affecting the health and forecasted longevity of this species within the woodland stand.

Unfortunately limitations on access make it impossible to conduct a closer investigation and assessment of the nature of these issues. We have however inspected the trees to the best of our ability using zoomed photography from the adjacent development site.

Please see the photographs in Appendix A for reference. Photo 1 - Even from a distance it is obvious that there are numerous dead standing Lawson cypress specimens within the stand which points to the fact that there is a significant local threat to these trees. Without closer inspection it is difficult to confirm whether or not these trees have: suffered historical damage (ring barking, root compaction from former land use activities), have fallen victim to substantial waterlogging or drought, or there is a fungal pathogen present.

In my opinion the latter option seems to be the most likely issue, given the fact that the trees are completely dead and lack any foliage (and that they are growing in an area that has suffered significant flooding over the years) strongly points to the potential presence of a fungal pathogen affecting the tree roots, e.g. honey fungus or Phytophthora root rot (a disease primarily associated with heavy, waterlogged soils - laboratory examination would be required to determine its presence).

I would like to draw your attention to Photo 2 which evidences some further browning on branches in the adjacent surviving trees, this suggests potential early signs of a continuing issue that will undoubtedly affect the longevity of the trees included in this TPO.

The development proposal for the adjacent site will pose no additional risk to these specific trees. Given the estimated age of these trees and the historical land use of the adjacent area, it can be concluded that the trees were planted in unfavourable conditions and have grown in conjunction with the challenging surrounding land use conditions over the course of their lives to date, i.e. hard landscaping in an industrial area on a flood plain = existing compromised root structure, poor stature and poor health. The area of woodland appears to have benefitted from little or no significant management and maintenance over recent years and many of the trees appear to be competing for space and light, in turn, affecting the quality, health and structure of the trees.

I would also like to state at this point that Lawson's cypress are a non-native ornamental species that provide little ecological benefit for our native fauna and invertebrates. There are many other more quick growing, more beneficial species that could be replanted in the space created by removing the dead trees, should recognition be given to their current poor health and imminent demise or, by way of mitigating any loss of small shrubby regen plants along the woodland perimeter during site development.

In conclusion, Trees G1 & G2 are in poor health and provide limited benefit as a screen, they are not aesthetically pleasing, nor are they beneficial ecologically. They are blatantly suffering from a significant health issue and they have undoubtedly faced growth limitations and challenges since they were planted 20 - 30 years ago due to their location in a regularly flooded, hard landscaped industrial area. I believe that they are not of sufficient enough quality/ health to be included in a sweeping tree preservation order area and that imposing any associated root protection areas on trees in this state of health would be negligible.

Yours sincerely,

Anna Craigen

BA(ord)/ MA(hons) Landscape Architecture

## Appendix A

**Photo 1**



**Photo 2**



## Appendix B

### **Anna Craigen (ACES) – Summary of Relevant Experience:**

**1993 – 1998:** BA(ord)/ MA(Hons) Landscape Architecture at Edinburgh College of Art/ Heriot Watt University. With one year professional practice (Landscape Architect Assistant) at Portsmouth City Council (1996-97).

**2000 – 2002:** Complex Plans Examiner (RO2) at Registers of Scotland, Edinburgh. GIS Mapping; Property/ Planning Law; resolving boundary and land ownership conflicts.

**2002 – 2019:** Community Liaison & Education Officer (now part time) at Borders Forest Trust. A local woodland/ environmental charity that focusses on the conservation/ protection and creation of woodlands in the South of Scotland for the benefit of wildlife and people. Project work involvement included: management of selective tree thinning operations in sensitive sites in the Tweed Valley; recording, surveying and monitoring veteran trees; leading general woodland survey and monitoring activities – tree health and biodiversity, and liaising with the public over a wide array of tree related issues.

ACES (established in 2013): relevant project work has included:

- Leading public/ volunteer team tree health and biodiversity survey events (culminating in written reports to highlight ongoing site management recommendations) on behalf of the Haining Charitable Trust (Sept – Oct 2014).
- Providing advisory services in community woodland/ orchard establishment and ongoing woodland/ tree management to a variety of Borders based Community Groups, e.g. Cove, Craik.
- Leading weekly volunteer team sessions in carrying out a variety of woodland management tasks, e.g. selective thinning, pruning, tree planting etc.
- Woodland management advice/ site visits and recommendations to a variety of Private Estates in the Borders, e.g. Newhouses
- Risk assessment policy & procedure development, landscape/ woodland management advice and design of natural play areas at Born in the Borders visitor centre, Lanton, nr Denholm.
- Tree Reports/ Planting Proposals for GLS Limited (2014-2015)
- Tree Reports (site mitigation recommendations & RPA calculations to direct site design and development) for Private Landowners to support Planning Applications (2016 – 2019)

17 July 2019

Planning Department  
Scottish Borders Council  
Council Headquarters  
Newtown St Boswells  
MELROSE  
TD6 0SA

Dear Sirs

**Proposed TPO, Haig House, Princes Street, Hawick**

We are instructed to act on behalf of Image Estates (Queen Street) Ltd the developers of the commercial site in Commercial Road Hawick working in conjunction with Hawick Flood Protection Scheme.

We are advised that a planning application to raise the site level above the two-hundred-year flood level and to erect a commercial building on our client's property was submitted and registered on 5 April 2019.

The owner of the adjacent property to the rear Haig House Princes Street, Hawick has lodged an objection to the proposed site raising and development works and has simultaneously requested that TPO status be awarded to all trees in the lower area of the grounds. The former use of our client's property has for many years been industrial in nature and potentially subject to flooding.

Haig House sits in a substantially elevated position and our client's site is already well screened by the numerous other tree specimens higher up the embankment of the Haig House policies.

We have been asked to comment on the proposed TPO application and forward our findings to SBC Planning Dept.

In particular our clients have asked us to examine the information available and if appropriate to lodge a formal objection to TPO's being placed on the groups of Lawsons Cypress identified (G1 and G2) in your report and widely acknowledged to be in poor condition.

We would like to have been given the opportunity to carry out further investigations but have been denied access to Haig House and are therefore unable to comment in specific detail on the condition of these trees or on the extent of root encroachment onto our client's property.

At this time SBC on behalf of HFPS have stock-piled materials on our client's property and this has further hampered the extent of our investigations.

We have however used all available means of access and after due consideration on the information available our own findings and scoring on groups G1 & G2 would be as follows.

		Condition	Life Span	Public Visibility	Other Factors	Expediency	Total	Decision
G1	Lawson Cypress	1	1	2			4	TPO Indefensible
G2	Lawson Cypress	1	1	2			4	TPO Indefensible

## **CONDITION**

A number of these are already dead and the surviving specimens are particularly poor examples

## **LIFE SPAN**

Given the age (est approx. 20 years) and quality and viability in adjoining trees their maximum lifespan is concluded to be up to 10 years

## **PUBLIC VISIBILITY**

The trees in question are currently obscured by an existing motor dealership building and a two-metre timber boundary fence. Until recently they were also hidden from site by a row of cottages (now demolished). Accordingly they are barely visible from Commercial Road. Due to the substantially elevated position of Haig house and the other properties on Princes Street they are not visible from Princes Street nor do they afford any direct screening to the Princes Street dwellings.

## **CONCLUSION**

Our clients position is as follows

- They have no objection to a TPO being granted on trees specified 1-12 as identified in your assessment of March 2019 which they received a copy of on 5 July 2019.
- Our findings concur with this
- They believe that other specimens adjacent to the boundary are predominantly Elder and do not merit a TPO.
- They consider the Lawsons Cypress trees identified (G1 and G2) in your report and widely acknowledged to be in poor condition do not merit a TPO.

Our own findings concur with this view and in conclusion to the foregoing points our expert opinion is that there are no justifiable grounds for granting TPO's on the identified groups of Lawson Cypress and we request that this letter is treated as a formal objection to that proposal..

Yours faithfully



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# Tree Consultancy Group

Arboriculture - Urban Forestry - Planning

**SUMMARY OF ASSESSMENT PROCEDURE**

**FOR**

**REVIEW OF TREE PRESERVATION ORDER NO. 32**

**AT**

**PRINCES STREET**

**HAWICK**

Ref: SBC/TPO32

13th August 2019



Page 99

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Principal Consultant:  
Kenneth Harvey MICFor. M.Arbor.A. Dip.For.  
Chartered Arboriculturist

## **1 INTRODUCTION**

- 1.1 As part of our contract with Scottish Borders Council to review their Tree Preservation Orders (Ref: SBC/CPS/1235), we recommended that SBC Tree Preservation Order No. 32: 2005 *Princes Street, Hawick* be revised to include considerably fewer trees than were included in the original Order. In accordance with our recommendations, a revised Order, SBC TPO No.57 was subsequently made on 10th June 2019.
- 1.2 Objections have been raised to the making of the Order and questions asked about the assessment procedure used to justify trees' inclusion or omission. As the Order will have to be confirmed within 6 months taking all relevant matters into consideration, we have been asked to prepare a summary of our assessment procedure for consideration by the Council and objectors to the Order.

## **2 BACKGROUND**

- 2.1 Planning authorities are advised to review Tree Preservation Orders (TPOs) periodically to ensure that they remain valid and useful, and Scottish Government Planning Circular 1: 2011 sets out the powers of Councils to vary and revoke Tree Preservation orders under the terms of the Town and Country Planning (Scotland) Act. To comply with this policy, a review of the Council's Orders is being carried out .

The purpose for the review is to:

- *To ensure that the Council's Tree Preservation Orders are accurate and representative of the trees and woodland amenity value they are deemed to protect.*
- *To update the TPO records to ensure that the schedule description of tree numbers, species, condition and corresponding plans are accurate, current and enforceable.*
- *To provide adequate detail to enable Scottish Borders Council to re-notify owners and neighbours of any varied, revoked or new Tree Preservation Orders.*
- *To provide recommendations on any action that might be required to improve the effectiveness and / or registration of an existing order. (A model order is available on the Scottish Government website following a review in 2013.)*

The reassessment of SBC TPO No.32 *Princes Street, Hawick* was undertaken as part of this review.

## **3 METHODOLOGY**

- 3.1 A TPO review starts with a walkover assessment carried out from places to which the public have access, as the purpose of protecting trees by a TPO is primarily to preserve their visual amenity in the landscape. This process involves identifying the most significant trees and then considering the expediency of making them the subjects of a TPO. It should be borne in mind that TPOs are a burden on title to a property, so should only be considered where the trees have significant public benefit and there is some reason to believe they are at risk. Only in exceptional circumstances would it be appropriate to include trees under sound and responsible management. Such an exception may apply if the tree was a particularly fine specimen of a rare species, or the tree had particular historical significance. It can also be appropriate to use a TPO to protect trees which are at risk of damage due to development on adjacent sites, as roots and overhanging branches may be vulnerable to loss or severance under Common Law without the statutory protection an Order gives.

In such situations, the Order ensures that due regard is given to ensuring the tree's health when designing planning layouts.

- 3.2 In order to be able to decide which trees are suitable for inclusion in a TPO and which aren't, the use of some kind of system is recommended to ensure, as far as possible, that selection is carried out in a fair, consistent, objective, and repeatable manner. It helps the Council explain to landowners why their trees have been included in a TPO, and also helps to avoid including large numbers of low value trees within the TPO system which the Council then has to manage.
- 3.3 The most widely used appraisal system developed for this purpose is the *Tree Evaluation Method for Tree Preservation Orders - TEMPO*. It is an easy to use field guide to decision-making which also provides a written record of the process. It is presented as a single-page pro forma, and allocates scores to various relevant criteria. When these scores are added together, it gives a total figure which informs whether the tree merits protection by a TPO and, if so, whether the making of a TPO is justifiable (i.e. defensible). As with any such system, its efficacious use is predicated on the assessor having a thorough understanding and knowledge of the subject matter.
- 3.4 We used TEMPO in the assessment of the trees at Prices Street.

#### **4 TREE SURVEY**

- 4.1 TPO No.32 was made in 2005 and included most of the trees growing at that time in the area between Princes Street and Commercial Road.
- 4.2 The first stage of the review was a walk-over assessment carried out in November 2017, viewing the trees from public places to determine which trees still existed, what condition they were in, and what contribution they made to the visual amenity of the locality.
- 4.3 This initial assessment found that many trees included in the TPO no longer existed, mainly due to development, and that the quality and value of the remaining trees was highly variable. It was also apparent that there was no foreseeable threat to many of the trees identified as being visually significant and in good condition, as the sites on which they grow are under responsible management.
- 4.4 The sites were considered as follows:
  - The trees at Wilton Old Churchyard are highly significant in the local landscape. However, as they are under Council control (SBC Site Ref.HAWI064) there is no risk of unauthorised felling so no need for inclusion in a revised order.
  - The group of sycamores and Norway maples growing along the western side of the newly-developed ALDI supermarket site on Commercial Road appear to be in satisfactory condition. As the development works there are now complete, there is no further perceived threat to the trees. As the site lies within the Hawick Conservation Area, the trees are in effect protected anyway, so there is no need to include them in a revised Order.
  - There are numerous highly significant trees at No. 23 Princes Street (Haig House). Access to the property was required to appraise these more fully, and an accompanied site visit was arranged with the owner, Mrs Mackie. This took place on 21st December 2017, and confirmed that there were many trees worthy of inclusion in a revised Order. During the meeting, Mrs Mackie said that

she was considering selling the property, and the matter of a possible future threat to the trees and the expediency of protecting them by inclusion in a revised Order was discussed.

- The large mature Horse chestnut growing within the vacant site on Commercial Road immediately to the south-west of ALDI was assessed and appeared to be in acceptable condition for its maturity. As it had very high visual amenity value and local historical value, it was considered to be highly suitable for inclusion in a revised Order.
- The only significant trees at No.25 Princes Street are a mature beech and a group of yews. The beech stands close to the house and significant decay was visible from outside the property. It was therefore discounted as not being in good enough condition to justify inclusion in an Order. The yews appeared to be in satisfactory condition and could potentially justify inclusion in a revised Order.
- The dense group of mature and semi-mature ash and sycamore growing between No. 25 Prices Street and the Sainsbury's Filling Station were visually assessed from the Filling Station. Although a few individuals were assessed as having future development potential, many were noted to have significant defects.
- The large ash and sycamores within No.27 Prices Street may have been significant when TPO No. 32 was originally made, but they have since been subjected to major disfiguring reduction works and are no longer worthy of protection.
- Due to development, many trees included in the original Order no longer exist. The trees formerly growing on the bank between 'Stepsyde' and the Sainsbury's site were mostly sycamores, but these have all been felled. The stumps are regenerating vigorously, but they are no longer worthy of inclusion in an Order.
- The open-space at Wilton Path are highly significant in the local landscape and were included in the original TPO. However, as they are under Council control (SBC Site Ref.HAWI042) there is no risk of unauthorised felling so no need for inclusion in a revised order.

No other significant trees were identified.

- 4.5 Following this initial appraisal, the findings and our recommendations were discussed with Mr Simon Wilkinson (Tree Officer at SBC), and it was agreed that a closer assessment of those trees considered to be most suitable be carried out using the TEMPO system.
- 4.6 A second visit was made to No.23 Prices Street (Haig House) on 28th March 2019. Twelve individual trees at the property scored 12 points or more under the TEMPO system, and as such were assessed as merititing inclusion in a revised Order. Two groups of Lawson cypresses on the property boundary which form evergreen screens between the properties on Commercial Road and Haig House and its garden were also included. These have been unsympathetically reduced in height and a couple killed by the subsequent removal of the remaining lateral branches overhanging the boundary. However, their overall condition was considered to be satisfactory, and as they provide valuable screening to Haig House which it is desirable to maintain, and they are foreseeably threatened by the imminent development of the adjacent site, the surviving component trees scored sufficient points in the expediency assessment part of TEMPO to justify their collective inclusion in a revised Order.

- 4.7 The large mature Horse chestnut growing within the vacant site on Commercial Road immediately to the south-west of ALDI scored 15 points, making it highly suitable for inclusion in a revised Order.
- 4.8 The yews at No.25 Princes Street were assessed collectively under the TEMPO system. However, their relatively limited individual visibility and lack of perceived threat meant that they scored insufficient points to justify inclusion in a revised Order.
- 4.9 The dense group of mature and semi-mature ash and sycamore growing between No. 25 Prices Street and the Sainsbury's Filling Station were assessed collectively under the TEMPO system but scored insufficient points to justify inclusion in a revised Order.

## **5 Recommendations**

- 5.1 We subsequently recommended that a revised Order was appropriate, but that only the 12 individual trees and 2 groups identified at No.23 Prices Street (Haig House), and the mature Horse chestnut at the vacant site on Commercial Road south of ALDI were worthy of statutory protection by a Tree Preservation Order.

Kenneth Harvey MICFor. MArborA. Dip.For.  
Chartered Arboriculturist  
Registered Consultant of The Institute of Chartered Foresters

13th August 2019

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## **PLANNING APPEALS & REVIEWS**

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### **Briefing Note by Chief Planning & Housing Officer**

### **PLANNING AND BUILDING STANDARDS COMMITTEE**

**9<sup>th</sup> December 2019**

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#### **1 PURPOSE**

- 1.1 The purpose of this briefing note is to give details of **Appeals** and **Local Reviews** which have been received and determined during the last month.

#### **2 APPEALS RECEIVED**

- 2.1 Planning Applications

Nil

- 2.2 Enforcements

Nil

- 2.3 Works to Trees

Nil

#### **3 APPEAL DECISIONS RECEIVED**

- 3.1 Planning Applications

Nil

- 3.2 Enforcements

Nil

- 3.3 Works to Trees

Nil

#### **4 APPEALS OUTSTANDING**

4.1 There remained 2 appeals previously reported on which decisions were still awaited when this report was prepared on 28<sup>th</sup> November 2019. This relates to sites at:

- |  |   |
|--|---|
| • Land West of Whitslaid (Barrel Law), Selkirk | • Land North West of Gilston Farm, Heriot |
|--|---|

## 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 18/01766/PPP  
Proposal: Erection of dwellinghouse  
Site: Land North West of Poultry Farm, Stow Road, Lauder  
Appellant: Dr John Crombie Smith

Reason for Refusal: The proposal is contrary to policies PMD4 and HD2 of the Local Development Plan 2016 and Supplementary Planning Guidance: New Housing in the Borders Countryside (December 2008) in that the application site is located outwith the Development Boundary for Lauder, is not associated with any recognised building group of 3 or more houses and the need for a house at this particular location has not been adequately demonstrated as being a direct operational requirement of any agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside. The erection of a house on this site would lead to an unjustified and sporadic expansion of residential development into the open countryside.

5.2 Reference: 18/01777/FUL  
Proposal: Erection of two dwellinghouses  
Site: Garden Ground of 7 Heriot House, Heriot  
Appellant: Mr Craig Dougall

Reasons for Refusal: 1. The proposed development does not comply with Policies PMD2, HD2 and EP13 of the Local Development Plan 2016, or Supplementary Planning Guidance on New Housing in the Borders Countryside 2008, Trees and Development 2008 or Placemaking and Design 2010 in that the siting and design of the proposed development would have an adverse and unsympathetic impact on the landscape character of the site; sense of place of the existing group and its built form; and existing tree planting. Other material considerations do not outweigh these policy conflicts. 2. The proposed development does not comply with Policy PMD2 of the Local Development Plan 2016 or New Housing in the Borders Countryside Supplementary Planning Guidance 2008 in that it has not been demonstrated that the development can be provided with a safe means of vehicular access and would not adversely impact on the integrity of the public road and verge, therefore potentially leading to an adverse impact on road safety. Other material considerations do not outweigh these policy conflicts.

5.3 Reference: 19/00965/FUL  
Proposal: Demolition of existing dwellinghouse and erection of replacement dwellinghouse  
Site: Folly Cottage Woodside Farm, Kelso  
Appellant: Mr & Mrs Roddy & Rachel Jackson

**Reason for Refusal:** The development would be contrary to policy HD2 (E) of the Local Development Plan 2016: Replacement Dwellings and Supplementary Planning Guidance: New Housing in the Borders Countryside 2008 in that the building is not a habitable dwellinghouse as it was last used for agricultural purposes and has been uninhabited for a significant period in time and its demolition would result in the loss of a building of local character to the detriment of the historic built environment.

5.4 Reference: 19/01018/FUL  
Proposal: Erection of porch and replacement boundary fence  
Site: 4 Lauder Road, Earlston  
Appellant: Mr Bryan Moore

**Conditions Imposed:** 1. The porch hereby permitted shall not be carried out otherwise than in complete accordance with the drawing (Number: 27766(Moore) PL01), materials and specifications approved by the Planning Authority. Reason: To ensure that the development is carried out in accordance with the approved details. 2. The fence and gate to be erected on the front and side boundaries of the front garden facing the A68 to be no more than 1.2m in height (the fence on the north/side boundary to be no higher than the existing fence). Reason: To safeguard visual amenities.

## **6 REVIEWS DETERMINED**

6.1 Reference: 19/00203/FUL  
Proposal: Replacement windows  
Site: 5 - 1 Sandbed, Hawick  
Appellant: Hawick Angling Club

**Reason for Refusal:** The proposal fails to comply with Policies PMD2 and EP9 of the Scottish Borders Council Local Development Plan 2016, and with the advice contained within the Supplementary Planning Guidance: Shop Fronts and Shop Signs 2011, in that its appearance has a significantly adverse and unacceptable visual impact on the character of the building, and is highly detrimental to the character and appearance of Hawick's Conservation Area.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

## **7 REVIEWS OUTSTANDING**

7.1 There remained 2 reviews previously reported on which decisions were still awaited when this report was prepared on 28<sup>th</sup> November 2019. This relates to sites at:

- |   |  |
|---|--|
| • Land North East of Maxton House,<br>St Boswells | • Land North East of Hoprigshiel<br>Farmhouse, Cockburnspath |
|---|--|

## **8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED**

Nil

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## **9 SECTION 36 PUBLIC LOCAL INQUIRIES DETERMINED**

Nil

## **10 SECTION 36 PUBLIC LOCAL INQUIRIES OUTSTANDING**

- 10.1 There remained 3 S36 PLI's previously reported on which decisions were still awaited when this report was prepared on 28<sup>th</sup> November 2019. This relates to sites at:

• Fallago Rig 1, Longformacus	• Fallago Rig 2, Longformacus
• Crystal Rigg Wind Farm, Cranshaws, Duns	•

### **Approved by**

**Ian Aikman  
Chief Planning & Housing Officer**

**Signature .....**

### **Author(s)**

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**Background Papers:** None.

**Previous Minute Reference:** None.

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

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