

# Public Document Pack



## PLANNING AND BUILDING STANDARDS COMMITTEE MONDAY, 13TH JANUARY, 2020

A MEETING of the PLANNING AND BUILDING STANDARDS COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS TD6 0SA on MONDAY, 13TH JANUARY, 2020 at 10.00 AM

J. J. WILKINSON,  
Clerk to the Council,

6 January 2020

<b>BUSINESS</b>	
1.	<b>Apologies for Absence.</b>
2.	<b>Order of Business.</b>
3.	<b>Declarations of Interest.</b>
4.	<b>Minute.</b> (Pages 3 - 12)  Minute of Meeting held on 9 December 2019 to be approved and signed by the Chairman. (Copy attached.)
5.	<b>Application - Land W Of Store J And R Elliot Ltd, Commercial Road, Hawick - 19/00509/FUL</b> (Pages 13 - 40)  Consider an application for planning permission in respect of the Erection of Class 1 retail store and restaurant with drive thru and takeaway facilities on Land W of Store J and R Elliot Ltd. (Copy attached.)
6.	<b>Appeals and Reviews.</b> (Pages 41 - 46)  Consider report by Service Director Regulatory Services. (Copy attached.)
7.	<b>Any Other Items Previously Circulated.</b>
8.	<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**

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**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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Please direct any enquiries to Fiona Henderson 01835 826502  
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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, 9 December 2019 at 10.00 am

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Present:- Councillors T. Miers (Chairman), S. Hamilton, H. Laing, S. Mountford, C. Ramage and E. Small.  
Apologies:- Councillor S. Aitchison, A. Anderson, J. Fullarton.  
In Attendance:- Planning and Development Standards Manager, Lead Planning Officer (B. Fotheringham), Lead Roads Planning Officer, Solicitor (R. Kirk), Democratic Services Officer (F. Henderson).

1. **MINUTE.**  
There had been circulated copies of the Minute of the Meeting held on 4 November 2019.

**DECISION**  
**APPROVED for signature by the Chairman.**

2. **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.**

**DECLARATION OF INTEREST**

Councillor Ramage declared an interest in the following item in terms of Section 5 of the Councillors Code of Conduct and left the Chamber during the discussion.

3. **TREE PRESERVATION ORDER SBC 57 HAIG HOUSE, PRINCES STREET, HAWICK**  
There had been circulated copies of a report by the Service Director Regulatory Services to consider the confirmation, modification or revoking of Tree Preservation Order SBC57. The report explained that the Tree Preservation Order SBC57 which replaced Order SBC 32 had been made under delegated powers on 10 June 2019 and covered 12 individual and groups of trees containing mixed semi and mature trees and included Oak, Limes Yew and Cypresses at 25 Princes Street and replaced an earlier Order made at the same site. The trees varied in, providing different age class, diversity of colour and included broadleaf and conifer species. The order was as a result of an independent tree preservation order assessment following a review of all orders. The trees were visible from Commercial Road and Princes Street, Hawick. The report detailed the background to the Tree Preservation Order, which required to be made, confirmed, modified or revoked within 6 months of the order being made.

**DECISION**  
**AGREED to confirm the Tree Preservation Order SBC 57.**

4. **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) Erection of dwellinghouse on Land North West of Poultry Farm, Stow Road, Lauder – 18/01766/PPP;
  - (ii) Erection of two dwellinghouses on Garden Ground of 7 Heriot House, Heriot – 18/01766/PPP;
  - (iii) Demolition of existing dwellinghouse and erection of replacement dwellinghouse at Folly Cottage, Woodside Far, Kelso – 19/00965/FUL; and
  - (iv) Erection of porch and replacement boundary fence at 4 Lauder Road, Earlston – 19/01018/FUL
- (c) the decision of the Appointed Officer had been upheld in respect of Replacement windows at 5-1 Sandbed, Hawick – 19/00203/FUL
- (d) there remained two reviews previously reported on which decisions were still awaited when the report was prepared on 28<sup>th</sup> November 2019.

• Land North East of Maxton House, St Boswells	• Land North East of Hoprigshiel Farmhouse, Cockburnspath
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- (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> November 2019. These related to

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

*The meeting concluded at 12.30 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>
19/01116/FUL	Change of use from dwellinghouse to hotel	Hartree House, Hartree, Biggar

Decision: Approved subject to the schedule of conditions and informatives 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.

#### Informatives:

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.

#### NOTE

Councillor Heather Anderson commented on the application

Dr Graham Dobbie, Mrs Martine Purves and Mr Alan France, Residents spoke against the application

Mr Mike Goddard, Applicant spoke in support of the application

<u>Reference</u>	<u>Nature of Development</u>	<u>Location</u>
19/01244/FUL	19/01244/FUL: 19/01245/LBC	Former Kelso High School, Bowmont Street Kelso

Decision: Continued with delegated powers to Officer to allow negotiation, in consultation with the Chairman, on amended house designs on Plots 1 – 6 fronting Bowmont Street.

19/01244/FUL – subject to the following conditions and legal agreement.

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 (CIfA). 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

#### Informatives

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.

NOTE

Mr H Tomczyk, Kelso Community Councillor commented on the application.

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**SCOTTISH BORDERS COUNCIL**

**PLANNING AND BUILDING STANDARDS COMMITTEE**

**13 JANUARY 2020**

**APPLICATION FOR PLANNING PERMISSION**

<b>ITEM:</b>	<b>REFERENCE NUMBER:</b> 19/00509/FUL
<b>OFFICER:</b>	Stuart Herkes
<b>WARD:</b>	Hawick and Denholm
<b>PROPOSAL:</b>	Erection of Class 1 retail store and restaurant with drive thru and takeaway facilities
<b>SITE:</b>	Land W Of Store J And R Elliot Ltd, Commercial Road, Hawick
<b>APPLICANT:</b>	Image Estates Queen Street Ltd
<b>AGENT:</b>	Aitken Turnbull Architects Ltd

**SITE DESCRIPTION**

The site occupies land immediately to the west of a section of Commercial Road (A7 Trunk Road) in Hawick, to which it has a frontage. It is partially within the town's designated Town Centre and lies immediately adjacent to the Conservation Area. It lies immediately in between two existing retail stores; Sainsbury's to the south, and Aldi, to the north. It is part of a larger site that is allocated for redevelopment within the Adopted Scottish Borders Council Local Development Plan 2016 ('zR08: Commercial Road') for which a development brief was produced in 2009.

The southern section of the application site, is part of the existing car parking area at Sainsbury's; essentially the northeast corner of that retail unit's current provision. The eastern section of the application site is the former Bruce Motors car sales premises, which has recently been demolished. The north and west of the application site were historically the site of a pre-existing builders yard, J and R Elliot Ltd. Until recently, this also included two stone-built dwellinghouses, Nos. 30 and 30A Commercial Road, Hawick, which have now been demolished.

Within the site, there is a notable fall in levels between the car showroom premises site, and the higher made up ground level of Sainsbury's car park to the south. By contrast, the Aldi site has an equivalent surface level to the site, with no notable increase or reduction in levels either side of their shared perimeter boundary.

The land within the site does however rise naturally, and quite steeply, to the northwest, where there is a wooded slope, predominantly within the garden ground of Haig House, No 23 Princes Street. These trees are the subject of a statutory Tree Protection Order (TPO) which was confirmed at the December meeting of the Planning & Building Standards Committee.

The site was at one time occupied by a woollen mill and is known to accommodate the remnants of a mill lade which was in use from at least the 18<sup>th</sup> century.

The section nearest Commercial Road is now required to accommodate both temporary (road access) and permanent (infrastructure) works required within the

construction and operation of the Hawick Flood Protection Scheme (HFPS). Indeed, works relating to the delivery of the scheme are currently being progressed on site.

The River Teviot lies immediately below Commercial Road, to the east, on the opposite side of the public road from the site. The site lies within the medium likelihood (0.5% annual probability or 1 in 200 year) flood extent of the SEPA Flood Map, and is therefore potentially at a medium to high risk of flooding. Moreover, additional modelling carried out as part of the Hawick Flood Protection Scheme has identified that the majority of the site may be at risk during a 1:25 year return period, with part of the site at risk during a 1:10 year event. However, the site and surrounding area is due to be given an enhanced level of protection from flooding, with the delivery of the forthcoming HFPS.

## **PROPOSED DEVELOPMENT**

The proposal is that the site should be re-developed as a Class 1 retail store with a drive thru takeaway and restaurant, and associated works and infrastructure.

Since the time of the submission of the original planning application, there have been revisions to the designs of both of the proposed buildings, and also to the layout of the site. While these have included some revisions to address specific concerns raised by the Planning Department or statutory consultees, the revisions have mostly been unilaterally introduced by the applicant in response to its potential users' operational considerations. In their current forms, the designs of the two proposed buildings are reasonably in character with their functions.

The larger retail unit is not dissimilar in its scale or design to the retail units on the neighbouring sites to the north and south. It is described as a rectangular building with a floor area of around 52m by 33m, and would rise to 9.4m in height at its roof ridge. The roof and upper section would be a goosewing grey panelled roofing system; a different but not specified panel finish would be employed on the lower walls.

The proposed drive thru and restaurant is a smaller building, which comprises of four main sections, all flat-roofed which step-up incrementally in height from 3m to a height of just under 6m at its highest section. However, in its siting – specifically in lying between the aforementioned proposed retail unit and the public road it would be altogether more prominent in views from the public realm. It would be clad in a range of panels, including pseudo stone and timber effects of a range and type employed by a franchise.

The remainder of the site would accommodate the associated access roads, car parking and delivery areas required to operate the sites, with associated landscaping areas and some minor ancillary structures such as trolley sheds and bicycle stores.

The proposed finished levels indicate that while the land would generally be made up to an equivalent height as prevails on the Sainsbury site, this would result in a new 'step' between the site and the Aldi site to the north.

## **PLANNING HISTORY**

The site is currently allocated for redevelopment within the statutory development plan:

### **zR08: Commercial Road Allocated Site for Redevelopment**

The site is included within a larger area of land that has been allocated for redevelopment within the Adopted Scottish Borders Council Local Development Plan 2016 ('zR08: Commercial Road'). There is a planning brief for this larger site, which pre-dates the adoption of the statutory development plan. This is specifically the Scottish Borders Local Plan Supplementary Planning Guidance, Commercial Road, Hawick (February 2009). This document is now somewhat outdated, both in being over a decade old; and more practically, in that part of the larger allocated site it relates to – specifically the area which now accommodates the Aldi store - has already been re-developed within a more limited scheme than the one envisaged by the SPG.

The most recent planning history of the current application site, is as follows:

#### **17/00137/FUL – Approved Subject to Conditions and Informatives**

On 31 March 2017, Planning permission 17/00137/FUL allowed the temporary change of use of dwellinghouses; specifically, Nos. 30 and 30A Commercial Road, Hawick; to form welfare accommodation and use of builder's yard for storage in relation to construction works taking place on land to the north, on what has since become the Aldi supermarket site. This was for a twelve month period.

#### **16/00849/HON – No objection**

On 4 August 2016, Application for Prior Notification 16/00849/HON for the demolition of two dwellinghouses on the site; specifically, Nos. 30 and 30A Commercial Road, Hawick; was cleared.

#### **15/00327/FUL – Approved Subject to Conditions and Informatives**

On 18 June 2015, Planning permission 15/00327/FUL allowed the erection of three industrial units and the siting of twelve storage containers on the northwestern part of the site, in what was then the yard behind the motor vehicle garage premises. No such structures (units or containers) are present on site.

#### **14/01008/FUL – Approved Subject to Conditions and Informatives**

On 14 January 2015, Planning permission 14/01008/FUL consented a change of use of a former office at No 30 Commercial Road to dwellinghouse.

#### **11/00826/ADV – Approved Subject to Conditions**

On 04 August 2011, Advertisement Consent 11/00826/ADV consented the installation of new illuminated signage in relation to Bruce Motors Ltd premises.

#### **10/01159/ADV – Approved Subject to Conditions**

On 14 September 2010, Advertisement Consent 10/01159/ADV consented the installation of new illuminated signage in relation to Bruce Motors Ltd premises.

#### **10/01132/FUL – Approved Subject to Conditions**

On 13 September 2010, Planning permission 10/01132/FUL consented the recladding of the car showroom.

#### **99/01289/ADV – Approved Subject to Conditions**

On 08 November 1999, Advertisement Consent 99/01289/ADV consented the installation of new illuminated signage in relation to Bruce Motors Ltd premises.

#### **97/05354/FUL – Permitted**

On 22 August 1997, Planning permission 97/05354/FUL consented the installation of a communications satellite antenna in relation to Bruce Motors Ltd premises.

### **Neighbouring Land to the North - Aldi Site**

The Aldi store on the land to the north, was approved, and developed, under Local Review Body Appeal Decision 16/00005/RREF (approved on 12 August 2016), which overturned the refusal of Planning Application 15/00100/FUL. This permitted the erection of Class 1 retail food store with ancillary works, including car parking, access and landscaping.

### **Neighbouring Land to the South – Sainsbury’s Site**

The Sainsbury’s store on the land to the south was approved, and developed, under Planning permission 09/00622/FUL (approved on 23 December 2009), which was specifically for the erection of a Class 1 retail supermarket and three Class 1 non-food retail units with associated car parking and landscaping. At a later point in time, Planning permission 10/00925/FUL approved the erection of a petrol filling station (PFS) with associated forecourt, kiosk, access, car parking and landscaping. This PFS was consented in place of the aforementioned three Class 1 non-food retail units within the northern section of the site; that is, immediately adjacent to the boundary with the current application site.

## **REPRESENTATION SUMMARY**

Over two public consultations, objections have been received to the proposals from, or on behalf of, three parties, and on the following grounds:

- **Contrary to Local Plan** – contrary to Policy ED5 in that the proposal would be over-development and not sustained by the social and economic infrastructure of the area; contrary to Policy ED 3 in that it would be liable to adversely affect the vitality and vibrancy of the high street and traditional town centre;
- **Flood Plain Risk**
- **Detrimental to Environment**
- **Detrimental to Residential Amenity; Loss of light; Privacy affected; Overlooking; Noise Nuisance; Smell** – concerns are specifically raised with respect to the privacy of the adjacent area of garden ground at No 23 Princes Street, and the daylight and sunlight reaching this same area;
- **Health Issues**
- **Trees/landscape affected** – adjacent trees are subject to a Tree Preservation Order; no regard or provision is identified to protect the Root Protection Areas of these trees; one representation in objection, is a considered review of the Applicant’s Tree Survey Report, which seeks to counter statements and assessments made therein, providing additional information or alternative interpretations and assessments as to the state, importance and conservation of the trees, and how these would be most appropriately conserved. This also includes the clearly stated concern that the trees should be protected and not damaged by the proposed works;
- **Inadequate Boundary/Fencing** – not providing any attractive edge to site;
- **Inadequate Screening** – potential loss of trees, would have an adverse effect on site and its setting;
- **Increased Traffic; Road Safety** – contrary to Policy IS4, in that operation of proposed development would have adverse effect on road safety and result in congestion;
- **Parking and Access**- one set of objections (over two letters) is from representatives of a neighbouring owner (Aldi Stores Ltd) with respect to the presentation of parking and access as being capable of being accommodated over the three retail sites (Aldi, the site and Sainsbury’s) rather than these being separate or individual sites. Any design or consideration of parking and access to

the site and between neighbouring sites, which relies upon operation in these terms is rejected. It is advised that the proposals are not supported by any assessment against relevant planning policies and that no alternative car parking capacity is identified for Aldi customers during the period that the temporary road access would be in operation. Aldi also notes – and shares – the Roads Planning Section’s concern that the link path through from the site to Aldi’s site, conflicts with a car parking space within Aldi’s provision;

- **Over-Provision of facility in area;**
- **Poor Design;** considered that the proposed retail unit is too large; and out-of-scale with its surroundings;
- **Cultural heritage impacts** – loss of historic buildings from site; concern that historic details and context might not be conserved appropriately within any new development of the site;
- **Crime and antisocial behaviour** – considered that large car park areas would attract “boy racing” and fencing should be designed as to more effectively discourage or repel climbing; and
- **Inadequate notice to neighbours** - inadequate opportunity afforded to consider proposals.

#### **APPLICANTS’ SUPPORTING INFORMATION**

- Design and Access Statement
- Flood Risk Assessment Report
- Transport Impact Assessment Report
- Tree Survey Reports

#### **DEVELOPMENT PLAN POLICIES:**

##### **SESplan 2013**

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

PMD1: Sustainability

PMD2: Quality Standards

PMD3: Land Use Allocations

ED3: Town Centres and Shopping Development

HD3: Protection of Residential Amenity

ED5: Regeneration

EP8: Archaeology

EP9: Conservation Areas

EP13: Trees, Woodlands and Hedgerows

EP15: Development Affecting the Water Environment

EP16: Air Quality

IS1: Public Infrastructure and Local Service Provision

IS4: Transport Development and Infrastructure

IS6: Road Adoption Standards

IS7: Parking Provision and Standards

IS8: Flooding

IS9 Waste Water Treatment Standards and Sustainable Urban Drainage

IS13: Contaminated Land

## **OTHER PLANNING CONSIDERATIONS:**

### **National Planning Policy and Guidance**

Scottish Planning Policy (SPP)

### **Scottish Borders Council Supplementary Planning Guidance**

Waste Management (2015)

Scottish Borders Local Plan Supplementary Planning Guidance, Commercial Road, Hawick (February 2009)

## **CONSULTATION RESPONSES:**

### **Scottish Borders Council Consultees**

**Roads Planning Section:** has reviewed several versions of the proposed site layout and supporting details, and has raised concerns at these different stages with respect to these layouts, seeking specific revisions, or further information on particular aspects of the proposals. However, with regard to the latest version of the proposal, Roads has ultimately responded to highlight specific itemised concerns with regard to named specific Proposal Drawings, which it considers require further attention. Roads has also confirmed that it considers that there is capacity for these matters to be regulated acceptably under appropriately worded planning conditions and informatives in the event of approval.

**Landscape Section:** has maintained a concern that the footprint of the larger retail unit building should be set back a minimum of 4m from the boundary defining the site's shared boundary with the residential properties to the west, unless an arboricultural report by a qualified arboriculturalist has first been able to demonstrate to their satisfaction that the building's footprint could be accommodated as it is described on the Proposal Drawings, without having any unacceptable impacts upon any trees on neighbouring land. Following several requests to do so, the Applicants on 17 December, provided a report on the impacts associated with the trees. However, as the Landscape Section notes in its response of 18 December, this was not prepared by a qualified arboriculturalist, and has concentrated for the most part on protecting the foundations of the building from the trees (rather than the other way around) and as such has introduced concerns as to what the further impacts upon the protected trees of installing root barriers would be, given that the barriers would be inside of the aforementioned desired 4m root protection zone. Accordingly, the Landscape Officer has most recently advised that previously expressed concerns have not been addressed appropriately and in the terms sought in the original consultation response, and therefore that continues to maintain a concern that unless a full 4m Root Protection Zone is established and maintained between the proposed retail building and the existing site boundary, their concern that the proposal would be liable to cause unacceptable damage to trees on neighbouring land remains to be addressed. It is further pointed out that any layout in any case, requires to be assessed by a qualified arboriculturalist and should be supported by an Arboricultural Method Statement (BS5837:2012) to demonstrate how there would be no unacceptable impacts upon adjacent trees.

In its earlier consultation response, the Landscape Section advised of concerns that there should be a robust landscape treatment for the site, particularly along Commercial Road, to help ameliorate the visual impacts associated with accommodating a development of this scale within the streetscape at Commercial

Road. Concerns are particularly noted with regard to the indicated pumping station, which is acknowledged not to be part of the current application. Standard conditions are sought to regulate the implementation and maintenance of new landscaping.

**Flood Protection Section:** has responded on four occasions. While the first two consultation responses advised of, and maintained, concerns with respect to deficits within the assessment of the potential flood risk impacts liable to result as a consequence of the proposal, the third consultation response was able to take account of a further Flood Risk Assessment (FRA) utilising the 1D/2D hydraulic model developed for the Hawick Flood Protection Scheme (HFPS).

Rather than being provided by the Applicant, the aforementioned new FRA was instead prepared by Jacobs, the company which is responsible for the design of the HFPS, and was provided specifically for the purpose of identifying the impact of the proposed development upon the HFPS and receptors adjacent to the application site. A key consideration in this regard is that this FRA assesses the impact of the development using the actual model which was developed by Jacobs to design the HFPS. As such, it has been able to take full and direct account of all of the pertinent circumstances about the context within which the development would be accommodated; and take account of the impacts of the development itself, including the proposal that there would be significant land raising on site, to achieve the proposed finished floor and finished car park levels. This land raising has been modelled within the new FRA to allow the impact of the proposed development to be assessed with confidence, and to determine the significance of impacts upon adjacent receptors and the HFPS.

The FRA confirms that due to the presence of the proposed defences, the site is not at risk of flooding at the 1:75 year flood event. However, the modelling results and development impact upon water levels do show that the proposed development (proposed FFL 101.63mAOD) is anticipated to flood at the 1:200 year flood events and 1 in 200 year plus climate change events. It is advised that the Planning Authority may consider the proposed land raising and the flooding of the proposed commercial buildings to a depth of 0.04m at the 1:200 year event to be acceptable. However, it is noted that the 0.34m increase in water level within the wider application site area would be liable to place an increased load on the flood protection wall on Commercial Road and that the impact of this has not been considered by this FRA, and also has not been considered by Jacobs in the design of the flood defence wall at Commercial Road.

Taking account of all of the above, and in its summation to its third consultation response, the Flood Protection Section explicitly advises that it is content that the FRA undertaken by Jacobs has fully considered the impact of the proposed development upon the flood risk of Commercial Road. However, in relation to the last noted point with respect to the potential for a 0.34m increase in water level within the wider application site area as a consequence of the development, the Flood Protection Section advises that the Hawick Flood Protection Scheme project team should undertake further analysis to determine if the design of the flood walls can accommodate the 340mm rise in water level at the 1 in 200 year flood event and advise on this aspect of the development impact accordingly. This matter was referred by the Flood Protection Section directly to the Hawick Flood Protection Scheme team, and the latter's advice is noted below in the summary of their response.

Most recently, within its fourth consultation response, the Flood Protection Section has confirmed that the revised scheme does not present any issues for the Flood Protection Section that it has not previously considered, and therefore it has been content to maintain its previous advice (summarised above).

**Hawick Flood Prevention Scheme (HFPS) Section:** has responded on three occasions. The first consultation response advised of concerns with respect to deficits within the assessment of the potential flood risk impacts liable to result as a consequence of the proposal. The second consultation response was provided essentially in response to the outstanding issue noted by the Flood Protection Section in the latter's own third consultation response, specifically with respect to the identification of an additional risk to the Scheme from the development. Firstly, in its response, the HFPS Section has advised that it is fully aware of the additional Flood Risk Assessment (FRA) requested by the Council's Flood Protection Section and which was undertaken by Jacobs for the Flood Protection Section, and that the Scheme has been fully briefed on the FRA and its recommendations. Secondly, it is confirmed that any increased flood risk from the proposed development to the Scheme's new flood walls at Commercial Road, are considered to be fully the responsibility of the Scheme itself and not the developer in this case; and that the Scheme would, in the event of approval, look to revise the design of the HFPS to mitigate the identified additional risk from the proposed development into the new structure. More recently, the HFPS Section has confirmed in its third and most recent response relative to the current version of the scheme, that the latter does not present any issues that have not previously been considered, and therefore that the HFPS' previously given advice (summarised above) is maintained also in relation to the revised scheme.

**Archaeology Section:** has stated an objection and request for further information based on a lack of detail provided with respect to what is known about the mill lead. However, it is acknowledged that planning conditions might be imposed to regulate these matters, specifically in terms of a requirement that a Written Scheme of Investigation (WSI) be provided and agreed, to regulate the implementation of a scheme of archaeological works. A condition requiring a scheme of interpretation of the historic environment of the site and Commercial Road is also suggested.

**Economic Development Section:** has no objections to this proposal. It advises that since the production of the SPG for Commercial Road in February 2009, there has been a substantial transformation in the appearance and range of new business premises off Commercial road. The area has been transformed into a commercial hub and is considered to be a welcome offshoot and support to the high street. Further, new developments are welcomed if they support new employment opportunities. The site appears able to accommodate the level of floor space shown and would likely encourage further footfall to this area, especially a new drive through hot food operation. It is considered that the matters that would need to be clarified and agreed are mainly with Roads, Landscape, Flood Prevention and others. A plan with levels and sections would be beneficial to clarify how the site would interface with the surrounding land.

**Contaminated Land Officer:** notes that the land use is potentially contaminative due to it having historically accommodated part of a woollen mill, works and vehicle sales and repair garage, and advises that it is the responsibility of a developer to ensure that the land is suitable for development. It is recommended that any consent should be subject to a condition that no development be commenced until a site investigation and risk assessment have first been carried out in accordance with a scheme that is first agreed in advance by the Planning Authority, with any requirement arising from this assessment for a remediation strategy and verification plan, also being made a condition of the planning consent, with the details of such further work being submitted and agreed in advance by the Planning Authority prior to development commencing.

## **Statutory Consultees**

**Transport Scotland:** has been consulted and responded on four occasions to the public consultation; but on all occasions, including within its response to the current and latest version of the proposed site layout, simply to maintain its original concern that conditions be imposed upon any consent issued, firstly, to require the presentation and agreement of the details of street lighting, a barrier along the trunk road boundary, and details of the frontage landscape treatment along trunk road boundary; secondly, to prohibit drainage from the site being diverted into the trunk road drainage system; and thirdly, to ensure that any consent issued does not include any approval of the pumping station, which Transport Scotland understands is to be progressed under a separate planning application.

**SEPA:** has responded in objection to the proposals, most recently at the time of the last superseded scheme to advise that it maintains its objection in principle to the proposed development on the grounds that it may place buildings and persons at flood risk contrary to Scottish Planning Policy (SPP). It advised further to this, and within the same consultation response, that since the site (“the location of the proposed development”) is within the functional floodplain, it does not consider that it meets the requirements of SPP, and accordingly, that its position is therefore “unlikely to change”. Instead, SEPA recommends that alternative locations should be considered or that no land-raising should occur. It is pointed out that in the event that the Planning Authority were to propose to grant planning consent contrary to SEPA’s advice on flood risk, this decision would require to be referred to Scottish Ministers for their review, under the requirements of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

**Scottish Water:** has been consulted, but has not responded.

**Hawick Community Council:** has been consulted, but has not responded.

### **KEY PLANNING ISSUES:**

- Whether the proposed development is consistent with Local Development Plan policies and guidance on development within allocated sites;
- Whether or not the development is susceptible to, or liable to cause any unacceptable flood risk at the site or in the surrounding area;
- Whether or not sufficient reassurance has been given that the basis of SEPA’s objection would be appropriately addressed within the proposal in its current form, or that this can otherwise be mitigated acceptably; and
- Whether or not there would be any other unacceptable impacts upon the amenity and environment of the site and surrounding area, which cannot be mitigated appropriately.

### **ASSESSMENT OF APPLICATION:**

#### **Planning Principle**

Although the relevance of the specific guidance of the planning brief with respect to the wider redevelopment of the larger site that has been allocated for redevelopment within Commercial Road, is now less relevant, it is nonetheless material to the determination of the current application. The site has historically been the site of

business premises and has also been identified for redevelopment within the development plan. Therefore positive regard can be had to the principle of the site being redeveloped; and in a way that would be liable to reinstate any job-generating business or commercial use of the land. However, regard is still necessarily had to the principle of the specific proposals, and the extent to which these would comply with the policies of the development plan and the site context.

Policy ED3: Town Centres and Shopping Development is supportive of retail uses and of food and drink uses, being located within designated Town Centres. It is the case however, that much of the application site in fact lies out with the Town Centre as this is currently designated within the development plan. Notwithstanding this though, it is material that the land to the immediate north of the application site, is already the site of a Class 1 retail store. The application site is 'book-ended' by two existing larger retail units and the proposed primary use of the site is therefore in line with the predominant use of surrounding land. Furthermore, there are proposals coming through within the emerging development plan process, which would see both the site and the Aldi premises, included wholly within an expanded definition of the Town Centre. In addition, there was capacity for a Class 1 retail use to be accommodated in place of the sale or display of motor vehicles, as a permitted change of use. It is noted that Economic Development also considers that the proposal would be a good fit with the Commercial Road area, contributing to the area's general attractiveness to shoppers and visiting members of the public. All in all, while the application site is not wholly within the designated Town Centre, it is considered that there are significant material considerations which would reasonably allow that the principle of a new Class 1 retail store, and of a new restaurant being accommodated on the site.

A takeaway or drive thru, is strictly speaking a *sui generis* use, meaning it does not fit into any recognised use class. Takeaways are generally encouraged in locations within town centre areas, where they are most appropriately accommodated by existing infrastructure and facilities; and where their hours of operation are liable to be in sync with those of other surrounding businesses and uses. They are also more able to contribute positively to the range and diversity of facilities and services which the public can access in such locations; adding to the attractiveness, vitality and viability of the town centre. While a drive thru specifically, might not be appropriately located within any older established traditional town centre area, it is reasonable that an edge-of-town-centre location such as this might be expected to be the most appropriate site to accommodate the operation of this type of development; and the 'best fit' with the surrounding area.

In summary, while the specific proposal and its impacts upon the environment and amenity of the site and surrounding area require to be assessed on their own planning merits, the proposed use of the application site is considered to be reasonably capable of support where regard is had to the aforementioned material considerations. These are considered to be overriding, notwithstanding that much of the site lies outwith the Town Centre.

### **Design and Finish of Proposed Buildings**

The Proposal Drawings describe contemporary retail buildings which are generally in scale and keeping with the retail units on either side. The materials and finishes are in line with these designs and types of buildings, and generally do not raise any concerns. However, the built environment of the surrounding area is established, and the current proposal is essentially infilling a 'gap' within a new, emerging streetscape on Commercial Road. As such, there is a need to consider the specific materials and

finishes of the external surfaces in more detail, to ensure that the proposed buildings contribute appropriately to the character of the site and surrounding area.

While different designs and types of buildings are capable of being accommodated within the emerging and modern retail streetscape of Commercial Road, there is a concern that these should appear to belong together as a group of buildings when viewed in vantages from the town centre or approach roads and footpaths. There is a need to ensure that the precise materials and finishes contribute appropriately to the visual amenities of the site and surrounding area, including in the achievement of a wider and attractive retail environment on Commercial Road, as well as in terms of their contribution to the development of the Town Centre, Conservation Area and surrounding townscape more generally.

In the event of approval, planning conditions would be appropriately imposed upon any consent issued, to ensure that the precise details of the materials and finishes of the proposed external materials could be given appropriate scrutiny prior to their installation. It is reasonable that the two buildings might be regulated under separate conditions to allow some flexibility with regard to how the development is progressed, particularly if the structures were to go ahead at different times.

There are also a number of other ancillary structures within the site, whose precise design and appearance require to be regulated under appropriately worded planning conditions. These would allow the precise appearance and form of these to be subject to an appropriate level of scrutiny to protect the visual amenities of the site and surrounding area.

### **Site Layout and Finished Levels**

The proposed layout of the site necessarily requires to respond to a relatively high level of constraint, including the HFPS. At the same time, it also has to be safely and appropriately functional in road safety terms.

There is therefore a degree of compromise within the specific proposed layout as it seeks to respond effectively and appropriately to all competing requirements and constraints. As such, some consideration needs to be given to how the proposed layout can balance acceptably both its need to be fully functional and still acceptable in visual amenity terms. It is acknowledged that while what is specifically proposed here is not ideal, there has been little margin for the accommodation of anything else that would meet all of the various briefs acceptably. However, subject to a good landscaping treatment being accommodated, particularly in the area fronting Commercial Road, the proposed layout is considered to be an acceptable response to the form of the site, to the context of the site, and to the required operation of the proposal.

The proposed finished levels are shown relative to existing levels, and are generally considered to be acceptable in landscape and visual terms. The same information has also been reviewed by the Council's Flood Protection team and by the HFPS, and has ultimately raised no concerns for either.

A point of note is that while levels between the finished surfaces of the Sainsburys site and the proposed finished levels on site, are generally equivalent, there would be a difference in finished height between the site and Aldi, to the north. This is not ideal in visual amenity terms, or in terms of access between the two premises, but reflects the fact that there is already a 'step' in levels between Sainsburys and the majority of the

site and this matter would have required resolution where it is contiguous with neighbouring car park areas.

### **Road Safety, Access and Parking**

Transport Scotland (TS) has remained content with the proposal, but its support remains subject to the same matters being regulated to its satisfaction by planning conditions. These include ensuring that street lighting and the treatment of the roadside verge fronting the A7 are acceptable. A related concern is that there should be an appropriate barrier installed between the site and the carriageway of the Trunk Road to prevent the carriageway from being readily accessible from the site. Such matters are all capable of being regulated by appropriately worded planning conditions.

TS require that any consent issued should not include the construction or installation of the pumping station whose footprint is described indicatively on the Proposed Site Layout Plan. They are concerned that any consent issued would not be taken as an approval of any structure that might then be progressed without further reference to it. Notwithstanding the inclusion of a pumping station within the site however, it is understood that the Applicant has no direct involvement in the delivery of this or any other infrastructure that is required to support the HFPS. The pumping station is essentially only described to show that it has been 'factored in' by the Applicant and the matter can be regulated under an appropriately worded planning condition.

The Roads Planning Service (RPS) is generally content that the access and parking arrangements are now acceptable. However, minor alterations to the layout are all appropriately capable of being required and regulated by planning condition, and are addressed within the proposed schedule of conditions below. Amongst these matters is the concern also raised by Aldi that the footway link between the site and their premises conflicts with a parking space within the provision on their site.

A practical point is that the two proposed premises have requirements to set aside customer parking areas to manage deliveries and the movements of larger vehicles. These operations are liable to result in the requirement for protocols to manage such operations safely and efficiently. Where these are implemented efficiently they raise no concerns, but RPS has identified areas where poor implementation or coordination would have potential to result in disruption to the movement and parking of customer vehicles. Ultimately, the Planning Authority cannot regulate every aspect of the operation of a site and the efficient management of the site is reasonably understood to be in the operators' own best interests. Accordingly, it would be reasonable to attach informatives to advise the Applicant of specific areas of concern that RPS has highlighted, with the expectation that the operators address these within their daily management of the site.

It is noted that Aldi has wider concerns relating to the routing and operation of the temporary road that will be required to progress the Hawick Flood Protection Scheme. However, these are not matters that are proposed as part of this development, instead forming part of the delivery of the Flood Protection Scheme. Aldi has also objected to any suggestion on the Applicant's part to characterise the operation of car parking at the site and on the neighbouring retail premises as being capable of operating as general parking for the site and surrounding area. However, it is not considered that this is reasonably objectionable and might be expected to benefit Aldi as much as any of the businesses operating from the application site.

## **Drainage and Services**

Both Roads Authorities have raised concerns with respect to specific aspects of site drainage, and in particular in the case of TS that it should not be connected to the Trunk Road drainage system. RPS has highlighted particular issues which it considers require revision or clarification.

The Applicant has provided a site drainage layout plan, and in the event of approval, it would be appropriate to require that revised details should be provided to address the specific highlighted concerns. These matters are addressed within the proposed schedule of conditions.

## **Landscaping and Boundary Treatment**

Effective landscaping, particularly in relation to the site's roadside boundary with Commercial Road and the A7, has a critical part to play in allowing this proposal to be accommodated acceptably relative to its surroundings.

It is regrettable that there is no ability to maintain the depth of landscaping provision along this frontage that has been achieved on the neighbouring sites which would contribute to a sense of a consistent and continuous landscaping treatment along Commercial Road. However, there has been an additional need to accommodate infrastructure relating to the HFPS within this same road verge area which would be seen as an interruption in what might otherwise have been achieved.

Beyond the accommodation of infrastructure relating to the HFPS, there are other constraints which mean that space is generally at a premium within the site, particularly in relation to vehicle movements and the conservation of trees on neighbouring land. Ultimately these factors do not prevent the ability to bring forward appropriate landscaping proposals for the site. As such, while the proposed layout is accepted as representing a reasonable and balanced response, conditions and informatives are required to ensure that every opportunity to deliver a quality landscaped finish for the site is taken. Appropriate conditions are set out within the proposed schedule of planning conditions.

An aspect that does require further consideration is the boundary treatment. As noted above, the specific form and treatment of the roadside boundary and edge fronting Commercial Road is especially important in being highly visible, but any treatment must simultaneously address certain functional considerations required within the accommodation and operation of the HFPS infrastructure, along with Transport Scotland's requirement that there should be an appropriate barrier between the site and the Trunk Road. There is then a need for visual amenity concerns to be necessarily balanced by these practical considerations.

Issues with regard to the treatment of the other boundaries, are problematic where there is a need to accommodate a change in ground levels. There is a requirement for a retaining feature to be constructed along this boundary, while maintaining connectivity for the public. No details have been given as to what precisely would be installed, but any replacement means of enclosure along the boundary with the properties in Princes Street, would need to take account of the Root Protection Areas of the protected trees to the west. Ultimately, and due to the lack of details that have been submitted, the means of enclosure can be regulated by appropriately worded planning conditions.

## **Flooding**

The potential flood risks associated with the siting and operation of the proposed development have been considered in detail by the Council's Flood Prevention Authority, by SEPA, and by the Hawick Flood Protection Scheme (HFPS) Project team itself. This has involved highly detailed and technical assessments by all three agencies, who have also taken account of each other's assessments in reaching their conclusions. Given the overlap and implications for the accommodation of the HFPS, the latter has also commissioned its own Flood Risk Assessment research which has provided the most detailed information about the likely impacts and potential for mitigation.

The Council's Flood Protection Section's support is dependent upon the assessment of the HFPS Section, and the extent to which the latter considers that there is sufficient capacity available to allow for the proposal to be accommodated acceptably by, and within, the forthcoming HFPS.

For its part, the HFPS project team has advised directly that capacity is available to accommodate the proposal in flood risk terms; primarily in that the HFPS itself, would be designed to take account of the proposed development. In short, the proposal and all that is required to accommodate it, would simply be 'designed in' directly to the HFPS. By extension, this is understood to address fully the concerns of the Flood Protection Section.

Although given in response to an earlier version of the proposed scheme, both the Flood Prevention Section and the HFPS project team, have advised that they each maintain their previously given advice in relation to the latest and revised version of the proposed scheme. Again, given the latter's maintained advice that capacity can be 'designed in' to accommodate the proposal, both are understood to be content that the proposal could be progressed in the specific form described by the latest Proposal Drawings.

Notwithstanding that SEPA has reviewed the detailed assessments and consultation responses of both the Flood Prevention Section and the HFPS project team, SEPA maintains its objection to the development; advising that its objection should be taken as an objection in principle to the proposals. It has no requirement to be consulted on any revised scheme for the same proposal on the same site, at least where that involves any land raising.

SEPA identifies the site's presence within the functional flood plain, as the basis for its objection. Its concerns would be fully justified in any circumstance in which the proposed development were to go ahead without the HFPS first being in place. However, and despite the clear advice of the HFPS project team that it is able to directly accommodate the proposal within its calculations for the construction of the HFPS, SEPA does not consider that it has been given sufficient reassurance that the site can be developed without unacceptable flood risk impacts. SEPA notes the potential mitigation afforded by the forthcoming HFPS but does not consider that this is sufficient grounds to allow it to support the proposals; even on any conditional basis tied to the progress of the HFPS.

SEPA's position is noted, and in the event of the application being supported by Members, any approval contrary to SEPA's objection, would require the application to then be referred to Scottish Ministers for their approval.

In summary, while it is understood that SEPA has a reasonable concern to be consistent in its approach, it is also considered that they have not given sufficient weight to the extent and detail of work that has informed the assessments of the HFPS and the Flood Prevention Section, in the specific context of this proposal. As such, it is considered that SEPA's objection is outweighed by the advice articulated within the consultation responses of the Flood Prevention Section and HFPS project team.

Notwithstanding the above it would be reasonable to require that the development should not be commenced and progressed other than in conjunction with a timetable and programme which are first agreed with the HFPS project team. This is in the interests of ensuring that the development and scheme can go forward together, in such a way that the progress of the one does not undermine the efficiency or safety of the other. This is in the wider interests of ensuring that there would be no unacceptable flood risk impacts on site or within the surrounding area, as any consequence of the development being progressed or operated independently of the delivery of the HFPS. This would reasonably be reflected in the precise wording of any planning condition that might be imposed to regulate this particular matter.

There is a clear need for the delivery of both the HFPS and the development to be synchronised to some degree, to ensure that all of the above concerns are managed appropriately. Allowing for this to be regulated under a planning condition, would suffice to safeguard the site and surrounding area from unacceptable flood risk impacts.

### **Existing Trees**

As noted above, the land to the immediate west of the site includes residential garden ground, the trees within which, are the subject of a recently confirmed Tree Protection Order (TPO). In addition to providing the residential properties themselves with residential amenity and valuable screening between them and the existing and proposed retail premises in Commercial Road, these trees make a particularly valuable wider contribution to the visual amenities of the surrounding area, and provide a pleasant backdrop within views from the east, including in those from the town centre. As such they require to be conserved appropriately, and all due precautions should be applied to ensure that they are not subject to any unacceptable damage from the development. This includes damage to their Root Protection Areas and canopies. This is a requirement that has been highlighted at an early stage with the developer.

In its consultation responses, the Landscape Section has highlighted the potential for this sort of damage to occur, owing to the proximity of a number of the aforesaid trees to the boundary with the site. The Landscape Section has, and maintains, a clear recommendation that unless the Applicant has been able to demonstrate - through an arboricultural report prepared by an appropriately qualified arboricultural specialist - that these trees would not be impacted unacceptably by the progress of the development that is actually described on the Proposal Drawings, then they would consider that the trees would be most appropriately safeguarded by the footprint of the retail unit building being set back a minimum of 4m from the aforementioned site boundary. At present, the footprint of the building lies within a distance varying between 3.2m and 3.9m from the boundary, so the requested 4m Root Protection Zone area, has not been achieved. The latest report submitted on behalf of the Applicant has heightened concerns by describing more elaborate root protection measures intended to safeguard the foundations of the building rather than protect the trees. Rather than respond to the specific request to reposition the back wall of the building away from the trees, the report has sought to justify the current arrangement. By way of example, one recommendation within it has been to remove rather than retain trees.

That position is a complete contrast to the requirement by planning and landscape officers to seek the proper retention and protection of the trees, given their importance as both landscape and screening features.

The Applicant has repeatedly been advised of the need to establish what the impacts would be upon the Root Protection Areas of the trees were the footprint of the retail building to be sited and accommodated as proposed – critically within less than 4m of the site boundary at this point. However, the Applicant has to date, failed to provide any precise details or appropriately conducted and qualified professional assessment of these impacts. Accordingly, it is not clear what the impacts are, or would be, and whether or not there is any unacceptable risk to the neighbouring TPO'd trees. It is considered that the Applicant was reasonably required to address this, and demonstrate this, within their supporting details and ahead of the determination of the planning application, and in the terms sought by the Landscape Section. The failure to do so, is therefore a complication of its own making, in that it undoubtedly complicates any position within which the current application can be taken forward with any positive recommendation.

For the reasons noted by the Landscape Section summarised above, the most recent report assessing the relationship between the protected trees and the footprint of the building has failed to provide any reassurance that the trees would not be impacted unacceptably by the progress of the development as it is currently described. Accordingly, allowing the development to go forward as matters currently stand, would run the risk of there being unacceptable damage to the protected trees.

It is regrettable that the Applicant has not engaged an arboriculturalist to review and report on the impacts upon the trees in any terms that might have addressed the Landscape Section's concerns. Given that this matter has been referred back to the Applicant on numerous occasions before now and given that they have simply failed to provide the requisite information, it is not anticipated that there would be any reasonable prospect of this matter now being addressed to the satisfaction of the Landscape Section in time to meet the applicant's own deadline for determination. Nevertheless, it does appear that a solution can be achieved and therefore, the only viable option in the circumstances, is that this matter should be regulated by an appropriately worded - and critically, a suspensively worded - planning condition, requiring that the footprint of the retail building should now be moved (or reduced in size) so that it is a minimum of 4m from the property boundary in order to achieve the requisite Root Protection Zone area, and comply with the advice of the Landscape Section.

It is worth noting at this point that introducing a requirement that the building be offset by 4m or more from the boundary there is only very limited opportunities available for the micro-siting of this building due to the level of spatial constraints. Accordingly, it cannot be ruled out that even the accommodation of a relatively minor revision to the site plan to address this matter, might not then have some more significant 'knock on' effects within the proposed layout to absorb any such revision.

There is potential, therefore, for such a revision to the siting and orientation of the building, to require an even more fundamental redesign of the layout and configuration of the wider site. At present, it is simply not known to what extent any requirement of an offset to the siting of the retail building would trigger a larger and wider need to reconfigure the site. One simple way in which this might be accommodated would simply be to reduce the footprint of the retail building itself. This remains a credible option for the applicant.

In the event of any profound revision to the layout required to accommodate the aforementioned offset, any such revision would still require to be acceptable in terms that agree with the details that have already been reviewed and accepted by the Council's Roads and Flood Protection Authorities, and the HFPS amongst others.

Beyond the achievement of an acceptable relationship between the foundations of the retail unit and the root protection areas of the trees within the TPO, there is a requirement to ensure that all construction works are conducted in ways that would minimise damage to the roots and canopies of these same trees. A particular point of note is that the siting of access doors on this side of the building indicates that there would be area of hard standing or other means of access within this same area. While ground works and more superficial development within this area has potential to damage tree roots there are liable to be methods of construction which could be employed to ensure that the impacts would be acceptable. It is recommended that an Arboricultural Method Statement is prepared to describe and guide works in this area appropriately. This matter can be addressed under an appropriately worded planning condition.

### **Cultural Heritage and Archaeology**

The Archaeology Section requested additional information about the suspected location of a mill lade ahead of the determination of the application. While this request was relayed to the Applicant; it has ultimately had no response at the time of writing. However, the archaeological assessment required is still capable of being appropriately required by an appropriately worded planning condition.

With specific regard to the mill lade, the Archaeology Section has been further concerned to seek the imposition of an additional condition, to require and regulate the delivery of a scheme of interpretation for the site. This is principally to highlight the mill lade as an important feature of Hawick's industrial past.

Whilst this is desirable, the very high level of constraint dictating the layout and operation of the site means that this concern is not on balance, reasonably expected, to be practicable. Accordingly, while the Applicant might be encouraged to utilise any opportunity to conserve any record of the history of the site it is not considered that it would be reasonable to conserve the mill lade. An ulterior point is that the provision of interpretation boards is regulated under conditions relating to the consent issued for the neighbouring (Aldi) site.

### **Residential Amenity**

Occupants of No 23 Princes Street have objected to the development with respect to the impacts upon the amenity of their property.

Given that the site has reasonably been in use as business premises that have been open to the general public and/or accommodating a builders yard; given that the site has been identified for redevelopment within the statutory development plan; and given its set back from surrounding residential dwellings, the impacts upon the residential amenity of surrounding dwellings are considered, on balance, to be acceptable.

There are potentially impacts in terms of daylighting and sun-lighting upon areas of neighbouring garden ground, but given that these are wooded, and higher than the site, and given that there is also a benefit to the surrounding area with respect to the redevelopment of the site, including the removal of an industrial use, such impacts are on balance, considered to be acceptable.

However, it is considered that there are specific concerns raised by the neighbouring household at No 23 Princes Street which require attention. The existing trees do provide valuable screening to their property and the occupants are understandably keen to see them maintained. To this end, the measures already identified to safeguard the protected trees are reasonably also in the interests of conserving appropriately the residential amenity of the aforementioned dwellinghouse.

Beyond this matter, there are not considered to be any other impacts upon neighbouring properties, which would be considered objectionable. Concerns raised with respect to amenity issues such as noise and smell are noted, and while such impacts may be heightened during the development period, it is considered that the operation of the proposed premises would be liable to be similar in impacts to the operation of the former builders yard and car sales premises.

### **Other Concerns**

There is no specific need to regulate the use(s) of the site. There are only limited opportunities to change the use of the site from a Class 1 retail use and sui generis drive-thru/take away use, to anything other than a Class 1 retail use. The only partial exception, is that change to a Class 2 use might be possible in the case of the take away element only. This is not in this context, inherently problematic per se, even if the design and situation of the building concerned, make this unlikely.

The concerns raised by the Contaminated Land Officer are capable of being met by planning condition, and along the lines recommended in his consultation response. One point of note is that the site has historically been subject to works for various reasons, including the recent demolitions conducted to facilitate the progress of the HFPS. Accordingly, while the concerns remain valid there would also need to be some potential to respond to the actual circumstances on site, allowing that certain works have gone ahead, or are going ahead, under different planning permissions.

Although the proposal drawings indicate the presence of advertisements, any and all such advertisements would require to be assessed under the Advertisement Regulations to establish whether or not these could be installed as permitted advertisements or whether or not these would require to be made the subject of Advertisement Consent Applications.

### **CONCLUSION**

Taking account of overriding material considerations that are set out above, it is considered that the proposal would in its principle, be acceptable.

Beyond this, and on the balance of matters and considerations that apply to the assessment of the proposed scheme in its specific form and within the relatively constrained context within which it requires to be accommodated it is considered that the proposed development, is acceptable subject to the imposition of the schedule of conditions identified below.

Owing to SEPA's outstanding objection in principle to this proposal on the grounds that the development would be at risk of, and would cause, unacceptable flooding impacts on the site and in the surrounding area, any approval of this application by Members would itself require referral to, and approval by, Scottish Ministers in accordance with the provisions of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2009.

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

I recommend the application is approved subject to the approval of the Scottish Ministers, and the following conditions:

- 1 Notwithstanding the details submitted in support of the planning application, no development shall commence until, EITHER:  
(a) revised versions of all of the approved site layout plans have first been submitted to, and approved in writing by, the Planning Authority, which all consistently describe the footprint and foundations of the retail unit building hereby approved, set back such as to be at least a minimum distance of 4m away from the existing property boundary with the garden ground of Haig House, No 23 Princes Street; OR  
(b) an arboricultural report prepared by a qualified professional arboriculturalist, which identifies and describes the impacts of the proposal upon all trees along the western boundary of the site, has first been submitted to, and approved in writing by, the Planning Authority and includes appropriate mitigation of these impacts.  
Thereafter, the development shall only be implemented and operated in accordance with the approved details including any and all measures specifically identified to conserve the trees in question.  
Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a TPO, which make a valuable contribution to the visual amenities of the site and surrounding area and to the residential amenity of No 23 Princes Street and its neighbours.
- 2 No development shall commence until an Arboricultural Method Statement (AMS) fully compliant with BS5837:2012, has first been submitted to, and approved in writing by the Planning Authority, which details in full, the approach and measures that are to be taken during the construction period and within the construction works themselves, to minimise impacts upon all trees within the TPO area, including all such impacts upon and within the Root Protection Areas and canopy spreads of all trees that root into, and/or overhang, the site. This shall include all measures that are to be put in place or operated in order to minimise such impacts during construction works (including excavations) to accommodate any and all services (including water supply) and within the formation of any and all areas that are to be surfaced in hard standing. Further to the approval of this AMS, the development shall then be implemented in accordance with the approved details, including any and all mitigation measures required to protect the root systems within the area concerned.  
Reason: To retain effective control over the development in the interests of conserving appropriately trees on neighbouring land and within a TPO, which make a valuable contribution to the visual amenities of the site and surrounding area.
- 3 No development shall commence until a written programme and timetable for the implementation of the development, which addresses in full the matters set out in Informative Note 1 attached to this planning permission, has first been submitted to, and approved in writing by, the Planning Authority after consultation with the Council's Roads Planning Section and the Hawick Flood Protection Scheme project team. Thereafter, the development shall only be delivered and implemented in accordance with the details of the approved programme and timetable unless any subsequent change or changes to the approved details are first agreed in writing by the Planning Authority prior to the implementation of this change/these changes.

Reason: To retain effective control over the delivery and implementation of the development in the interests of road safety, by ensuring that sufficient measures are in place to manage vehicular and pedestrian movements at and around the site during the development period; and in the interests of mitigating appropriately the risk of any unacceptable flood risk impacts at the site and in the surrounding area during the same period by ensuring the delivery and effectiveness of the Hawick Flood Protection Scheme are not compromised by the development.

- 4 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the Planning Authority in advance of the commencement of construction on the retail unit building hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this same building, has first been submitted to, and approved in writing by, the Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

- 5 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the Planning Authority in advance of the commencement of construction on the restaurant building with drive thru and takeaway facilities hereby approved, no development shall commence upon the superstructure of this aforementioned building until a scheme of details describing the proposed external materials and finishes of the external surfaces of this building, has first been submitted to, and approved in writing by, the Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and the external walls of the aforementioned building shall be so finished, by a point in time that is no later than six months after the day of the first occupation of this same building.

Reason: To ensure a finished appearance for the same building that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

- 6 Notwithstanding the details submitted in support of the planning application, none of the following ancillary structures shall be erected or installed on site, other than in accordance with a scheme of details for each, which shall in each case, first have been submitted to, and approved in writing by, the Planning Authority, and which shall furthermore in each case, also include full details of the proposed size (including dimensions) and proposed finished appearance (including design, materials and finishes) of each, and each type of, ancillary structure:

- (a) storage container;
- (b) trolley bay shelter;
- (c) cycle store; and
- (d) play area, including details of all proposed play equipment, the surfacing and any enclosure.

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

Reason: To ensure a finished appearance for the site that is sympathetic to the visual amenities of the site and surrounding area, including Commercial Road and the Conservation Area.

- 7 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 (CIfA). 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. (Please see Informative Note 2 for related advice and guidance).

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.

- 8 Unless otherwise agreed in writing and in advance by the Planning Authority, no development shall commence until a ground investigation report has first been submitted to and approved in writing by the Planning Authority. The report shall include identification and assessment of potential contamination on the site [in accordance with PAN 33 (2000) and BS10175:2011 or subsequent revisions/replacements] and shall include [as applicable] a remediation strategy, validation report and monitoring statements, including timescales for the implementation of all such measures. Development shall not commence until the report is approved by the Planning Authority. Thereafter, the development shall be carried out only in accordance with the approved report, including approved remediation, validation, monitoring measures and timescales for their implementation.

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.

- 9 Notwithstanding the details submitted in support of the planning application, and unless otherwise agreed in writing by the Planning Authority in advance of the commencement of development, no development shall commence until all of the following have first been submitted to, and approved in writing by, the Planning Authority after consultation with Transport Scotland:

(a) a scheme of details of street lighting (including the proposed locations, dimensions, materials and finishes of the columns; the proposed numbers, specifications, luminance and operation of the lamps; and the lighting design); and

(b) a scheme of details describing the treatment of the site boundary with the A7 Trunk Road, including measures to regulate public access between the site and the carriageway of the Trunk Road.

Thereafter, the development shall be implemented and operated in accordance with the approved details and the site shall not be occupied for the first time, or be made, accessible to the general public, until all of the approved street lights have all first been installed and are all fully operational; and the roadside boundary treatment has first been fully implemented, and the measures to regulate public access to and from the Trunk Road are first in situ.

Furthermore, the aforementioned measures shall thereafter be maintained and operated in perpetuity in accordance with the approved details (including any and all repairs and replacement as necessary, to maintain this boundary treatment in situ, and to the required specification).

Reason: To ensure that there is no distraction or dazzle to drivers on the Trunk Road and that the safety of the traffic on the Trunk Road is not diminished; and to minimise the risk of pedestrians and animals gaining uncontrolled access to the trunk road with the consequential risk of accidents.

- 10 Notwithstanding the details submitted in support of the planning application, no development shall commence until revised versions of the approved site layout plans, which address in full the concerns of the Roads Planning Service (set out within Informative Note 3), have first been submitted to, and approved in writing by, the Planning Authority. Thereafter the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the Planning Authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the road access, footways and car parking provision described on the approved drawings have all first been fully constructed and completed, and made fully available to, and for use by, visiting members of the public.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

- 11 Surface water drainage from the site shall not be connected into the existing surface water drainage system which serves the carriageway of the A7 Trunk Road. No development shall commence until a revised version of the Approved Site Drainage Plan, which addresses in full the concerns of Informative Note 4, has first been submitted to, and approved in writing by, the Planning Authority. Thereafter, the development shall be implemented and operated in accordance with the approved details. Furthermore, and unless otherwise agreed in writing and in advance by the Planning Authority, no part of the development hereby approved shall be opened to, or otherwise made accessible to, the general public until the approved surface water drainage system has first been completed and fully implemented.

Reason: To retain effective control over the construction and operation of the site in the interests of road and public safety.

- 12 Notwithstanding the details submitted in support of the planning application, this consent shall not purport to grant consent for any of the following structures or installations that are described or indicated on the Approved Drawings, including the Approved Site Plan:

- (a) "Pumping station";
- (b) "Totem"; and/or
- (c) "Banner".

Please see Informative Note 8 for related advice and guidance.

Reason: To retain effective control over the development. The permission is not specifically an approval of the pumping station (or any other infrastructure) which is to be installed or operated by the Hawick Flood Prevention Scheme under a different consent. Any advertisements require Advertisement Consent.

- 13 Notwithstanding the details shown on the approved drawings, the development hereby approved shall not take place except in strict accordance with a scheme of hard and soft landscaping works, which shall first have been submitted to, and approved in writing by, the Planning Authority before the commencement

of development. Details of the scheme shall take full account of the advice and guidance of Informative Note 6, and shall include:

- (a) location and design, including materials, of any walls, fences and gates;
- (b) all soft and hard landscaping works;
- (d) a planting schedule and programme for subsequent maintenance.

Unless otherwise agreed in writing and in advance by the Planning Authority, all planting, seeding and turfing comprised in the approved details of new soft landscaping shall all be carried out during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved (regardless of whether this is the retail unit building or the restaurant building), and shall be maintained thereafter and replaced as necessary for a period of five years from the date of completion of the planting, seeding or turfing. Further to the completion of all approved new planting during the first full planting and seeding seasons following the first occupation of the first of the two buildings hereby approved, written notice shall be given to the Planning Authority for its information and inspection.

Reason: To ensure the satisfactory form, layout and assimilation of the development and to ensure that the proposed landscaping is carried out as approved.

- 14 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. Further, and unless otherwise agreed in writing and in advance by the Planning Authority, there shall be no excavation or raising or lowering of levels within the Root Protection Area(s) of any retained tree(s).

Reason: To ensure that the trees to be retained will not be damaged during demolition or construction, because the existing tree(s) represent an important visual feature which the Planning Authority considered should be substantially maintained.

## **Informatives**

### **INFORMATIVE NOTE 1:**

The timetable and programme required under Planning Condition No 3 attached to this Consent, should identify the precise times, periods (in calendar dates) and arrangements for the operation and management of all vehicular and pedestrian movements at, to, from and around the site, during all of the following phases of the implementation and progress of the development hereby consented, and any interludes in between these:

- (a) the commencement, progress and completion of any use of the site for the accommodation of any and all operations relating to the progress of the Hawick Flood Protection Scheme works; and
- (b) the commencement, progress and completion of the re-development of the site hereby approved, including the timetables and programmes for the completion of both the retail unit building and of the completion of the restaurant building.

The details shall include the proposed access arrangements to and from the site during all of these periods, and identify any and all measures required within the operation of the surrounding streetscape and wider road network, required to manage safely and expeditiously all vehicular and pedestrian movements at and around the site during these phases.

### **INFORMATIVE NOTE 2:**

The Written Scheme of Investigation required under Planning Condition 7 should include a proposed protocol for identifying whether or not there are any appropriate opportunities to conserve a record of the presence of the mill lade on the site, including any potential to conserve and display any actual physical remnant(s) in situ; and/or to provide any other interpretative resource to advise visiting members of the public about the site's industrial heritage.

### **INFORMATIVE NOTE 3:**

The details of the revised Site Plan Drawing required under Planning Condition 10, should be revised to address the following points highlighted by the Roads Planning Section:

- The radii on the left of the exit from the restaurant drive-thru should be larger and sweeter to ensure vehicles can manoeuvre out without having to use both lanes of the access road;
- The tie-in path with Aldi conflicts with a parking space in the Aldi layout and also has steps present. This should be an at grade route. A revised detail for this area is required;
- The crossing point located adjacent to the two disabled bays at the corner of the access road should either be relocated so as not to conflict with the adjacent parking bay or omitted. Pedestrians from that corner of the parking area and the link path should be encouraged to travel to the crossing in front of the main access;
- The trolley store and goods display zones still interfere with the free-flow of pedestrians/customers, particularly the one at the south east corner of the store;
- an upstand kerb should be utilised where the link path passes through the parking areas to the right of the restaurant. This will prevent vehicles driving across this area, protect the pedestrians and protect the footpath. (If flush kerbs are retained, the construction of the path is not to a standard suitable for vehicles and may deteriorate quicker than expected); and

A flush kerb should be provided between the two disabled bays to assist with access to the restaurant.

### **INFORMATIVE NOTE 4:**

The details of the revised Site Drainage Plan Drawing required under Planning Condition 11, should be revised to address appropriately all of the following points highlighted by the Roads Planning Section:

- As described on the Proposal Drawings, surface water may flow on to the pedestrian area in front of the restaurant due to the road levels and the flush kerb for the pedestrian crossing, to the left of the disabled bays;
- The levels indicate a low point in the corner of the parking area adjacent to Commercial Road [100.300]. This area may be suspect to ponding as the construction does not appear to be porous;
- There does not appear to be any drainage for the access path around the store building; and
- The gullies indicated for the parking areas along the main access road would be better placed on the carriageway side of the flush kerb, rather than on the parking side.

#### **INFORMATIVE NOTE 5:**

Please note that the signage shown on the Approved Drawings is not approved under this Planning Consent. An Advertisement Consent Application is required for the proposed signage unless the signage is compliant with exemptions under the Advertisement Regulations.

#### **INFORMATIVE NOTE 6:**

Planting plans must provide sufficient information to be enforceable by detailing the following:

- i.) Plan is to an identified true scale (e.g. 1:200).
- ii.) Boundary of the application site is clearly marked.
- iii.) Site orientation is indicated by a North point or OS grid lines.
- iv.) All existing trees, shrubs and hedges to be retained are clearly marked.
- v.) Take account of site factors such as slope, aspect, soil conditions, proximity of buildings and minimum distances from pipe and cable runs, when choosing planting positions. Where necessary, seek professional landscape advice.
- vi.) Planting positions are clearly marked showing individual trees and shrubs and / or planting area boundaries using dimensions as necessary.
- vii.) All species of plants identified using their full botanical name (e.g. oak - *Quercus robur*)
- viii.) All plant numbers to be identified individually or by group or area as appropriate. Species mixes can be identified by percentages and an overall number or a specified area and a planting density (e.g. *Betula pendula* 30%, *Quercus robur* 70%, 120 square metres @ 1 plant per 4 square metres = 9 *B. pendula* & 21 *Q. robur*)
- ix.) A planting schedule identifies all the proposed planting by species and specification indicating size and nature of plants to be used (e.g.: Extra heavy standard tree 14-16cms girth or shrub 60-75cms high in 2 litre pot.)
- x.) Notes on the plan describe how the planting is to be carried out and maintained to ensure successful establishment.
- xi.) The plan indicates when the work will be completed and ready for inspection taking account of planting seasons (e.g. November to end March each year for bare rooted plants.)

N.B. Planting conditions are only discharged following an inspection of the completed work

Please also note that the programme for completion and subsequent maintenance must include action points describing actions that will definitely be taken by the Applicant, and must also note precisely when these are to be carried out (i.e. definite actions to be carried out at clearly identifiable times). Use of ambiguous, vague or otherwise non-committal words or phrases (including "should", "could" or "may") must be avoided in favour of words and phrases that are clear and definite (such as "will" and "shall") when detailing these actions that the Applicant will carry out. A critical concern is that the detail and timing of the measures are capable of being checked if necessary by a third party, rather than left as discretionary or optional.

#### **INFORMATIVE NOTE 7:**

The granting of planning consent does not carry with it the right to carry out works within the Trunk Road boundary and that permission must be granted by Transport Scotland Trunk Road and Bus Operations. Where any works are required on the Trunk Road, contact details are provided on Transport Scotland's response to the Planning Authority which is available on the Council's Planning Portal.

Trunk road modification works shall in all respects, comply with the Design Manual for Roads and Bridges and the Specification for Highway Works published by the HMSO. The developer shall issue a certificate to that effect, signed by the design organisation.

Trunk road modifications shall in all respects, be designed and constructed to arrangements that comply with the Disability Discrimination Act: Good Practice Guide for Roads published by Transport Scotland. The developer shall provide written confirmation of this, signed by the design organisation.

**INFORMATIVE NOTE 8:**

The Roads Planning Section has raised concerns with respect to the need to manage the use of customer parking provision at the site, including the restaurant's operation of its own dedicated customer parking provision, as well as the temporary requirement for customer parking areas within the site to be set aside at times, for the use and movement of delivery vehicles. Ultimately, the site's operators should be aware of the need for good and effective regulation of the parking and access arrangements on site work, to ensure that these work optimally and safely; avoiding any and all unnecessarily exclusive, restrictive or overly elaborate arrangements that would be liable to reduce parking options available to customers, particularly during peak times of the day. Ultimately it is with the operators, and is in the operators' best interests, to ensure that these matters are addressed appropriately.

**DRAWING NUMBERS**

**Plan Ref**

**Plan Type**

7929-SA-8970-P005 (Drive Thru)	Proposed Elevations
7929-SA-8970-P006 (Drive Thru)	Proposed Plans
AT3184.L-01.101 REV I. (Gen Site Plan)	Proposed Site Plan
AT3184.L-2.101.A (Retail Unit)	Proposed Plans
AT3184.L-4.101.A (Retail Unit)	Proposed Elevations
AT3184.LOC.01 (Location)	Location Plan
P18-377-3E-ZZ-XX-DR-C-1000-P2 (Drainage)	Proposed Site Plan
P18-377-3E-ZZ-XX-DR-C-2000-P3 (Levels)	Proposed Site Plan
P18-377-3E-ZZ-XX-DR-C-4000-P2 (Build Up)	Proposed Site Plan
AT3184.L-01.103 (Tree Roots)	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.

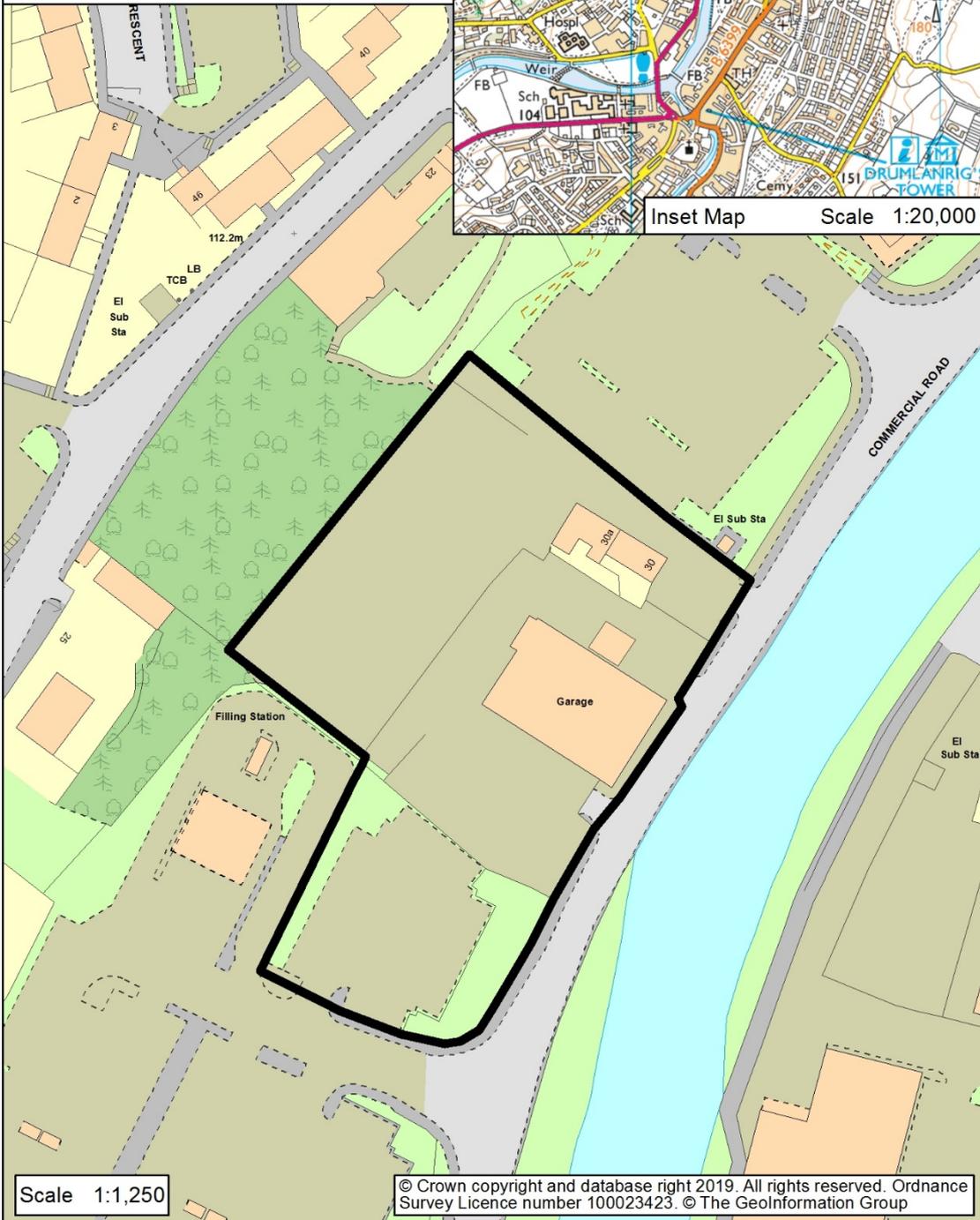
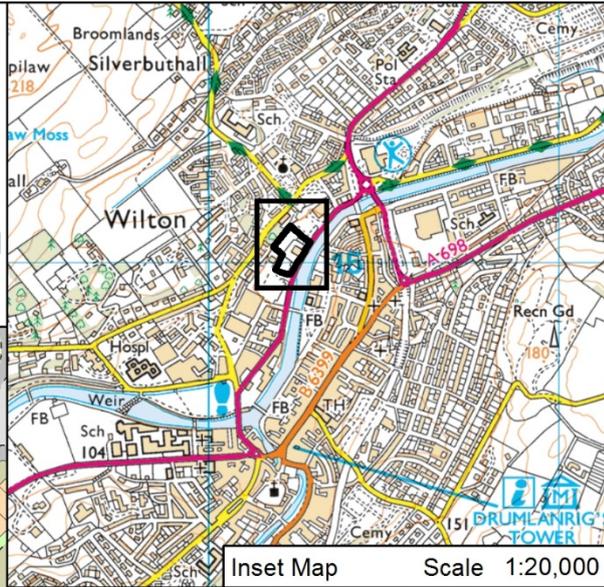
**Author(s)**

Name	Designation
Stuart Herkes	Planning Officer (Development Management)



19/00509/FUL

Land West Of Store J And R Elliot Ltd  
Commercial Road  
Hawick



Scale 1:1,250

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## **PLANNING APPEALS & REVIEWS**

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

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## **PLANNING AND BUILDING STANDARDS COMMITTEE**

**13<sup>th</sup> January 2020**

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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

- 2.2.1 Reference: 19/00160/UNDEV  
Proposal: Erection of a boundary fence forward of the front elevation greater than 1m in height  
Site: Silver Grange, Old Greenlaw Farm, Greenlaw, Duns  
Appellant: Jill Calder

Reason for Notice: Without planning permission, erected a fence upon the Land Affected.

Grounds of Appeal: The new 1.8m fence replaces an existing hedge/fence which was 2m in height and was burnt down by the appellants neighbour. The appellants position is that whilst failing part (b) and (c) of class 3E (2) of the GPD, part (c) clearly states that "development is not permitted by this class if it replaces or alters an existing gate, fence, wall or other means of enclosure and exceeds whichever is the greater of the original height or the heights described in sub paragraphs (a) and (b). There is no interpretation in part 1 of the legislation that outlines any timescales for replacement. Nor can the appellant find anything in the legislation relating to the materials used must be like for like to the original boundary. The appellants position is that as her neighbour destroyed her boundary, without her knowledge, and ongoing construction works undertaken to erect the appellants dwellinghouse, that replacing the original boundary was done as soon as reasonably practicable.

Method of Appeal: Written Representations

## 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 19<sup>th</sup> December 2019. This relates to sites at:

• Land West of Whitslaid (Barrel Law), Selkirk	• Land North West of Gilston Farm, Heriot
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### 5 REVIEW REQUESTS RECEIVED

5.1 Reference: 19/00514/FUL  
Proposal: Erection of dwellinghouse  
Site: Land South West of Carlenrig Farm, Teviothead, Hawick  
Appellant: Mr Walter Douglas

Reason for Refusal: The proposal is contrary to Adopted Local Development Plan Policies HD2 and PMD2, in that: (i) the development would not in its siting, respect the amenity and character of the site and surrounding area, principally by resulting in new development that would be unnecessarily and unacceptably over-dominant within the landscape by interrupting the skyline in views from the public realm; and (ii) it has not been demonstrated within the supporting details that the proposal would not be accommodated in an overly-contrived and artificial way, relative to the existing natural ground levels, and/or that any such visual impacts resulting from any extensive and significant alterations to ground works would be acceptably mitigated within views from the public realm; and (iii) it would in combination with the development proposed by Prior Notification 19/00515/AGN, also contribute to a highly visible spread of development across the skyline, which would in its randomly-spaced and dispersed form, register as an unusually prominent and incongruous form of development, which would be notably out-of-keeping with the rural

character of the surrounding landscape; an effect that would be exaggerated by any overly-contrived and artificial accommodation of the building.

- 5.2 Reference: 19/00857/FUL  
Proposal: Erection of fence  
Site: Land South East of Bungalow, Denholm Mill, Denholm  
Appellant: Denholm Mill Proprietors Association

Reason for Refusal: The proposed development would be contrary to Policies EP9 and PMD2 of the Scottish Borders Local Development Plan 2016 in that it would represent a prominent and incongruous form of development that would have an adverse impact on the character and appearance of the Conservation Area

## 6 REVIEWS DETERMINED

- 6.1 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Overturned (Subject to conditions and Informatives)

- 6.2 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.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

6.3 Reference: 19/01178/PPP  
 Proposal: Erection of dwellinghouse  
 Site: Land North East of Maxton House, St Boswells  
 Appellant: Mr and Mrs Richard and Alison Thomas

Reason for Refusal: The proposal is contrary to policies HD2 and EP6 of the Local Development Plan 2016 and Supplementary Planning Guidance New Houses in the Borders Countryside 2008 in that the site is outwith the Development Boundaries of St Boswells and Maxton and is not a logical extension to any building group, is divorced from the existing housing, outwith that sense of place. In addition, the proposal would break into a previously undeveloped field and the location would not respect the spacing between existing properties within the building group. Furthermore, 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 dwellinghouse on this site would lead to an unjustified and sporadic expansion of residential development into the open countryside and within the area designated as Countryside Around Towns.

Method of Review: Review of Papers

Review Decision: Decision of Appointed Officer Upheld

## 7 REVIEWS OUTSTANDING

7.1 There remained 3 reviews previously reported on which decisions were still awaited when this report was prepared on 19<sup>th</sup> December 2019. This relates to sites at:

<ul style="list-style-type: none"> <li>Land North East of Hoprigshiel Farmhouse, Cockburnspath</li> </ul>	<ul style="list-style-type: none"> <li>Land North West of Poultry Farm, Stow Road, Lauder</li> </ul>
<ul style="list-style-type: none"> <li>Garden Ground of 7 Heriot House, Heriot</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

## 8 SECTION 36 PUBLIC LOCAL INQUIRIES RECEIVED

Nil

## 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 19<sup>th</sup> December 2019. This relates to sites at:

<ul style="list-style-type: none"> <li>Fallago Rig 1, Longformacus</li> </ul>	<ul style="list-style-type: none"> <li>Fallago Rig 2, Longformacus</li> </ul>
<ul style="list-style-type: none"> <li>Crystal Rigg Wind Farm, Cranshaws, Duns</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

**Approved by**

**Ian Aikman  
Chief Planning & Housing Officer**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
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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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