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Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100009777-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning Limited		
Ref. Number:		You must enter a Building Name or Number, or both: *	
First Name: *	Suzanne	Building Name:	
Last Name: *	McIntosh	Building Number:	12-14
Telephone Number: *	01316560303	Address 1 (Street): *	Lochrin Buildings
Extension Number:		Address 2:	Gilmore Place
Mobile Number:		Town/City: *	Edinburgh
Fax Number:		Country: *	United Kingdom
		Postcode: *	EH3 9NB
Email Address: *	smcintoshplan@gmail.com		

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Mr"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Green Farm Steading"/>
First Name: *	<input type="text" value="Stewart"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Kane"/>	Address 1 (Street): *	<input type="text" value="Broughton"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Broughton"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="Scotland"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="ML12 6HF"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Scottish Borders Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text"/>
Address 2:	<input type="text"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text"/>
Post Code:	<input type="text"/>

Please identify/describe the location of the site or sites

<input type="text" value="Redundant Treatment Works North East of Broughton Place Cottage Broughton Scottish Borders"/>

Northing	<input type="text" value="637090"/>	Easting	<input type="text" value="311612"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Appeal against the refusal of planning permission 15/00890/PPP for the Erection of a Dwellinghouse and upgrade access track

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

Please see attached grounds of appeal document and the supporting documents, some of which are of a private, medical, confidential nature

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Please see attached document list

Application Details

Please provide details of the application and decision.

What is the application reference number? *

15/00890/PPP

What date was the application submitted to the planning authority? *

29/07/2015

What date was the decision issued by the planning authority? *

19/01/2016

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

A site visit is required in order that the LRB gets a sense of the context of the site within the building group which is under contention. It is also required in order for them to appreciate the brownfield nature of the site.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

The barriers to entry are unlocked field gates. The LRB could access the site. In the interests of the appeal procedure being a public, quasi judicial process the applicant should be given the opportunity to witness the proceedings; especially as there will be a representative from the decision making department there. It would be against the interests of fairness in quasi-judicial processes if the appellant were not afforded the opportunity to witness the LRB process in full.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mrs Suzanne McIntosh

Declaration Date: 16/04/2016

LIST OF APPELLANT DOCUMENTS

**IN RESPECT OF THE APPEL AGAINST REFUSAL OF
PLANNING PERMISSION IN PRINCIPLE 15/00890/PPP**

FOR A

DWELLINGHOUSE ON

AT LAND AT

THE FORMER WATER TREATMENT WORKS,

BROUGHTON PLACE, BROUGHTON, BIGGAR

SCOTTISH BORDERS

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

15.4.16

LIST OF APPELLANT DOCUMENTS (APP)

- 1. Grounds of Appeal Document**
- 2. Planning Application Form**
- 3. Grounds of Appeal**
- 4. Location Plan**
- 5. Indicative Drawings**
- 6. Supporting Planning Statement**
- 7. Supporting Medical Statement**
- 8. Scottish Borders Local Plan – proposed plan 2016**
- 9. Planning Application Decision Notice**
- 10. Planning Application Report of Handling**

GROUNDS OF APPEAL

**IN RESPECT OF THE REFUSAL OF
PLANNING PERMISSION IN PRINCIPLE 15/00890/PPP
FOR A
DWELLINGHOUSE ON
AT LAND AT
THE FORMER WATER TREATMENT WORKS,
BROUGHTON PLACE, BROUGHTON, BIGGAR
SCOTTISH BORDERS**

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

15.4.16

1. INTRODUCTION

1.1 Planning permission in principle was refused on 19th January 2016 by delegated authority to the Chief Planning Officer. The reasons for refusal were as follows:

1. The proposal is contrary to Policy D2 – Housing in the Countryside and Supplementary Planning Guidance on new Housing in the Borders Countryside and Policy HD2 – Housing in the Countryside of the proposed Local Development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.

2. The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated local plan 2011 and policies HD2 and PMD4 of the Proposed Local Development Plan in that the state need for the dwellinghouse would not justify the proposed development in this specific location.

3. The proposed dwellinghouse would be contrary to Policy D2 of the Scottish borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local Development Plan in that satisfactory access and other road requirements cannot be met.

1.2 This grounds of appeal document accompanies the appeal to the LRB of Scottish Borders Council. Each of the documents submitted with the planning application in principle are submitted; including those which were itemised as confidential as they are of a private medical nature concerning a minor.

1.3 The original planning application in principle was for the erection of a dwellinghouse to accommodate the Kane family. The primary function of the house was to be purpose built to suit the family's complex physical needs including being fully wheelchair accessible but also other needs relating to the care of a disabled family member.

1.4 A search of site's for suitable locations started around 10 years ago and was restricted to brownfield land and within settlements around the catchment area of Broughton given this is where the family have lived for many years. A suitable site, within the Broughton Place building group was found and purchased and

forms the land that was the former water treatment works, Broughton Place, Broughton, Biggar.

- 1.5 The house is essential to the growing needs of the family which are not being met in the current home and cannot be met in any other home that has not been specifically designed for them. A house specifically design for them will take into account their complex physical needs, be located close to where they need to be ie within a reasonable locality of Broughton where they currently reside. It is necessary for the family to stay in Broughton as a result of school, work and personal commitments.
- 1.6 The application is for Planning Permission in Principle and as such an OS base plan and site plan defining the desired location for the house are provided. The Supporting Planning Statement and a confidential document detailing the specific medical circumstances relevant to this case were also provided for the assistance of the Planning Officer in considering the proposal. A pre-application consultation has been undertaken with Dorothy Amyes and a representation had been made to the Local Development Plan regarding the issues relating to this proposal.
- 1.7 The appellant seeks to provide a reasoned justification as to why this proposal should be considered as an exception to the rule. In addition, the appellant requested that the LRB considered this application and the potential impacts of refusing the application in the light of the requirements under Equalities legislation in addition to Planning legislation. This is something that has not been done adequately by the Planner and requires to be done by the Local Review Body with guidance from the council's solicitor.

2 SITE LOCATION AND DESCRIPTION

- 2.1 The appeal site is located outwith the Broughton settlement boundary around 400m from the village confines. The appeal site is however within the context of a building group located at Broughton Place comprising a number of different types of dwellings within a scattered building group accessed from a single point of access and located within a distinct pattern around the access route. These dwellings comprise Broughton Place Farm, Broughton Place and Shepherds Cottage. All buildings are located off the access track which runs around the central field, enclosed by stone dykes. Some are residential, some commercial in use. There is clearly a lot of activity in the locale.

2.2 A water treatment facility was located at the site until 2005 and discussions in the past have taken place as to whether the site is brownfield given its former use. The applicant advises that there was a building on site for 30 years. The site is contained by boundary fencing and has tree planting within it. It sits comfortably within the landscape and enjoys long views to the west. Looking back from the west towards the site, it is contained by the levels and planting around the site. The access road into the site, formerly used by the water board still exists, under the grass which has grown over it in the past decade.

3 BACKGROUND

3.1 The site has been the subject of previous planning applications and an appeal. There are some critical differences between this appeal and that which was considered by the Reporter 8 years ago. In addition, there are a number of fundamental reasons why the application should and could be supported now and why the LRB should revisit these issues in the light of their other decisions they have made over the past few years. This statement seeks to convey these.

3.2 The last planning application which went to appeal, SBC reference 07/01075/FUL was considered on the basis of the case put before the Reporter at the time. That Reporter did not give sufficient consideration to the issue of the specific need for the house and was not provided with the evidence to substantiate the claim. Had he had the letters of support and this information before him he may well have come to a different conclusion at that time.

3.3 These are critical elements that require full consideration now, especially in the light of recent SBC planning committee and LRB decisions on similar cases and the intervening changes in equalities legislation. In addition, the last appeal decision was many years ago. Planning policy, particularly in relation to development in the countryside and building groups has changed over that time, Scottish Borders planning policy and development plan has changed and LRB as a result of all of these changes is able now to reconsider the issues afresh.

3.4 In addition, although each case is considered on its own merits the council is bound to consider proposals in the light of the relevant legislation. In this case, the specific requirements of this family, as fully demonstrated in the supporting confidential documents, illustrate exactly why the house is required, the implications of not approving the house, the implications of not being able to accommodate this family elsewhere and the conflicts with equalities legislation in failing to address the needs of this family all require to be considered. In other

cases the council's solicitor has advised the LRB on the issue of the impact of decisions where the Equalities Act comes into play; I would request that her advice be sought in relation to this proposal also.

4 PROPOSAL

- 4.1 This appeal seeks to challenge the refusal of planning permission in principle by Scottish Borders Council under delegated powers for a single dwellinghouse for occupation by Stewart Kane, his partner Jeanette Denson their two daughters and a son.
- 4.2 The setting of the site is within the Broughton Place group of loosely arranged buildings around the central green field set on a hillside in open countryside. It could reasonably be determined to be a loose building group formation.
- 4.3 The site plan illustrates a single storey house being located in the centre of the plot, accessed from the existing track. Limited re-grading is required in order to provide a wheelchair accessible sensory garden around the dwelling. The proposal would not involve large areas of re-engineering of the site and would sit comfortably in its landscape, enjoying long views to the west. It would be designed to a high architectural standard and reflect the character of its surroundings vernacular. The purpose of the house is to be specifically designed for the needs of a disabled person, fully wheelchair accessible and to have sufficient space to accommodate all the required equipment and circulation needed by the family now and in the future. It is essential that the long term needs of the family are addressed. The house presents the opportunity to be able to bring in overnight and respite care by making provision for an additional bedroom. It would also allow level, wheelchair access to the garden – something no other property that hasn't been designed or built as DDA compliant can achieve based on the research done by the family and Eildon Housing Association to find an appropriate house. The specifically designed house would provide what the family need to provide permanence to their housing situation and a quality of life that every family should be entitled to.
- 4.4 Since the application was lodged last year the family have moved to another Eildon HA rented house in the village, which by no means meets their requirements in terms of size, circulation, access to the outside of the house, being dry and not damp and having sufficient space for all of the equipment required for a person with the specific disabilities as detailed in the supporting confidential medical reports. Their previous accommodation had been in a two

storey property which had proven very difficult to use given there was no possibility of modification or including a stair lift etc. The space constraints in both properties are evident. The current property is single storey but still does not meet all of the needs and requirements a purpose built house would as stated above. It is very limited in terms of outside space, access to the outside, internal circulation and storage space for all the equipment required. The only improvement it has brought is not having to negotiate a staircase but all other barriers to a full life still exist. The Planning Officer did not ask the family about this or ask for them to have the medical reports updated. The support network around the family can of course update their comments. This is something that is in hand at the time of lodging the appeal and is anticipated as being available for the LRB.

5 PLANNING POLICIES

- 5.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as Amended) requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 At the time of the submission of the application the development plan comprised the Scottish Borders Structure Plan and the consolidated Scottish Borders Local Plan 2011. The proposed Local Development Plan was a material consideration as is the Supplementary Planning Guidance and any relevant information as to the personal circumstances of the applicant.
- 5.3 The determining issues are whether the proposal would be in accordance with the development plan and if not whether there are any material justifications that would support a departure from the policies.
- 5.4 Since the decision notice reasons for refusal were issued the Scottish Borders LDP has moved on to the stage of being the 'proposed plan'. The Reporters' report has been issued, the council has endorsed the modifications and the plan is ready to be printed and adopted. It is as close to being adopted as it can possibly get. The most relevant, up to date statement of council policy in the determination of this appeal are therefore those policies of the new local development plan, as detailed below. The LRB are asked to consider this point in looking at the reasons for refusal.
- 5.5 An out of date plan, the consolidated Scottish Borders Local Plan 2011 should not be the focus of the determination or reasons for refusal, at this time and may well have been superseded by the time a decision is taken on this appeal. The

LRB is asked to disregard policies D2 and G8 of the consolidated Scottish Borders Local Plan in their deliberations.

- 5.6 The most relevant proposed local development plan policies relating to this site and proposal therefore now are as follows:

HD2 – Housing in the countryside

The Council wishes to promote appropriate rural housing development:

- a) in village locations in preference to the open countryside where permission will only be granted in special circumstances on appropriate sites,*
- b) associated with existing building groups where this does not adversely affect their character or that of the surrounding area, and*
- c) in dispersed communities in the Southern Borders housing market area.*

- 5.7 The plan also advises that within building groups an increase in housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that a number of criteria are met. This policy is supported by Scottish Government's Scottish Planning Policy (SPP) and Planning Advice Note (PAN) 44 which set out development control criteria for expansions to existing settlements and guidance on fitting new housing development into the landscape.

- 5.8 **Policy PMD4: Development Outwith Development Boundaries:** Where Development Boundaries are defined on Proposals MapsDevelopment should be contained within the Development Boundary and proposals for new development outwith this boundary, and not on allocated sites identified on the proposals maps, will normally be refused. The plan advises that *Exceptional approvals may be granted provided strong reasons can be given that are specified on a list.* The most important of those on the list is *d) it is a development that it is considered would offer significant community benefits that outweigh the need to protect the Development Boundary.*

- 5.7 The specific medical needs of the applicant's family are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal. The confidential medical statement clearly details the first hand professional medical evidence and assessments relating to this case. It identifies the needs of the family concerned and gives an indication of the future needs of the family. Given the medical needs the council is clearly requested to have significant regard to the requirements of the Equalities Act 2010. The council is also required to have regard to the harm resulting from not approving

this application and giving sufficient weight to the Equalities Act 2010 requirements.

- 5.8 The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal. This is specifically the case where the life of a disabled person is impacted upon to the extent that it would be if the appeal were rejected.
- 5.9 In reviewing another case that I was involved in which raised similar issues the Scottish Borders Local Review Body was persuaded that, *in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.*
- 5.10 In that case the LRB determined that while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.
- 5.11 Aside from being in a countryside location, albeit in a loose building group formation, the proposal has previously been in use as a water treatment works and as such its restoration in health, safety and landscape impact terms is important. With suitable conditions the proposal can be sensitively accommodated on the site with very limited impact on the landscape.

6 DELEGATED REPORT

- 6.1 The delegated report advises that Six letters of representation had been received objecting to the application on the following grounds:

- *proposal is contrary to local plan policy for Housing in the Countryside*
- *the site does not relate well to other nearby buildings including the A listed Broughton Place*
- *it is not part of a building group*
- *it is outwith the settlement boundary of Broughton*
- *it is not a brown field site*
- *access to A701 is difficult*

- unsuitable access from Broughton Place Cottage through agricultural land
- impact of extra traffic on existing shared access road
- no indication given as to how site will be connected to public water supply
- question whether septic tank and soakaway can be accommodated within the site
- located in a National Scenic Area and site will be very visible and have an adverse impact on the landscape
- other building sites within the village
- difficult for emergency vehicles to access the site
- the development would interfere with the agricultural activity of the farm
- development at the site would be an historical injustice compromising one of the first enclosed and settled farms in southern Scotland which, unlike most farms, has been managed to remain largely intact for well over 200 years.
- impact of the development on an adjacent tree belt
- the family have recently moved to accommodation adapted for disabled use in the village

6.2 The Planning Officer comments that *As this is an application for planning permission in principle the design of the proposed house is not being considered at this stage. The issues raised regarding access rights and wayleaves are a legal rather than a planning issue. The loss of view is not a material planning issue.*

6.3 The applicant makes the following contribution regarding the representations made:

The LRB will be aware that people object to planning applications for very different reasons and their motivations ought to be questioned. In this case the objections are not as straightforward as they seem at first glance. One of the objectors named on the web site as is the co-owner of Broughton Place. Both her and her husband are now running a business renting out holiday homes at Broughton Place. In doing so they actively encourage holiday makers to come to Broughton Place in their cars and once here encourage them to walk across the hillside. This person has made comments on the appellants' existing accommodation yet has never been there or conversed with the appellant about their needs. In the interests of clarity the appellant requires more than just a specially adapted bathroom to accommodate the needs to their disabled child. For someone to express an knowledge of the personal circumstances of another without being fully conversant in the facts is astonishing and something that the LRB should be mindful of.

In addition, there appear to be many with vested interests in this land. There are tenants making claims of the new house destroying the landscape yet they themselves are content to erect unsightly shacks and buildings without gaining the appropriate consents. Some of the same people have made disparaging remarks about the appellant placing his son in a 'gilded cage' – which the appeal Reporter actually agreed with – this was discriminatory at best – again people who are ignorant of the facts making unfounded assumptions. They ask that the LRB do not repeat this behaviour.

In the last 10 years there have been new builds and the main access road coped with extra traffic. There are various vehicles from cars to tractors which use this road on a daily basis. The addition of one house will not be of such significant detriment that it would present a hazard that should be refused.

Finally, the issue with a lot of the people making comments is and always has been historically linked to the previous land owner and the way the sale of the land to Scottish Water was handled. There was a building there for over 30 years yet they say the site is not brownfield when clearly it is.

- 6.4 Roads: At the last appeal the Reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road, they did not see this as a flaw in the application. The council's Roads Dept argue that *whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.* The appellant would comment that it is unlikely that someone approaching the village would take the decision to overtake someone waiting to turn left and this scenario is being exaggerated to the detriment of their application. The LRB is asked to consider this point and examine the access in situ.
- 6.5 In addition, the access exists to the site, as it always has – it is overgrown. The access has always been through grazing land even when the site was in use as a water treatment works.
- 6.6 Regarding Education and the proposed requirement for a financial contribution of £1383, the applicant would be content with this.
- 6.7 Environmental Health comments that this land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose. This would be the subject of a condition on the application and an undertaking that the applicant would address in preparing the detail on the site. The appellant would be content to comply with the condition recommended *that development is not be permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority.*
- 6.8 Upper Tweed Community Council Objected to the application and stated that: *If it is approved, it would be very difficult to resist other applications to build houses in the countryside, and a proliferation of new houses outside existing settlements would be detrimental to this rural and agricultural area. The proposed house would not be part of an existing building grounds and as far as we are aware is not required for rural or agricultural use. The objections stated on 30 May 2008 by the Reporter of the Scottish Government would appear to have equal force today. The Local Plan already makes provision for new houses in Broughton and we do not consider that additional provision is needed.*

- 6.9 While respecting their view, it must be corrected. Each application is considered on its merits and the provision exists to allow LRBs to take cognisance of other material considerations which allow planning policies to be set aside where there are over-riding reasons that something should be approved. The community council were not aware at the time of writing of the personal, medical needs associated with the application or the requirements of the Equalities Act.
- 6.10 The also comment on the design of the house, yet the proposals are indicative only and has been designed to take account of its setting. There is no policy in the SBC that requires traditional architecture – that is clearly a personal taste issue expressed by the community council and not one founded in policy. It is clear from the wording that the objectors have asked them to make these points. In other communities, where a family has a distinct need for a house on the basis of the needs of a disabled child the community has rallied support for the proposal. One such proposal was the Ramp House, designed by Chambers McMillan Architects situated in the heart of the conservation area in Portobello, Edinburgh. The community supported the needs of the family and the highly contemporary design of the house has since won various architectural awards and is held in high esteem as an example of good contemporary architecture in a highly sensitive setting.
- 6.11 Re: Building group the planning officer comments that: *The existing dispersed group of buildings at Broughton Place includes Broughton Place Farm, Broughton Place Cottage, The Potting Shed, Broughton Place (now divided into flats) and two existing dwellings on the north side of the main access road. The group of buildings is defined by the location of the existing residential units relative to each other and the relationship they have as a group of buildings to the landscape setting. The group is located within a mature woodland setting defined on the south side by a significant belt of mature woodland.*
- 6.12 *In his Appeal decision the Reporter was not convinced that the group of houses as noted above formed a recognisable building group. He noted that ' If it is a group, it is a very scattered one, with a small number of dwellings occupying an extensive area. If the boundary of the group is transient then it could be extended time and time again and the loss of countryside character would, as a consequence be very considerable.'*
- 6.13 She notes that *There is a 'sense of place' created by the main buildings, the Broughton Place farm house and steading, Broughton Place and the ancillary properties, Garage House and Stables Cottage, the latter three are included in the 'A' listing for Broughton Place. These are all accessed along a tree lined road up to Broughton Place. The Potting Shed is a conversion and extension of a former outbuilding located adjacent to the walled garden at Broughton Place. Broughton Place Cottage is a traditional cottage which was more than likely built for one of the workers on the estate. All of these properties reflect and are related to the historical development of the Broughton Place land over time.*
- 6.14 The appeal site is located adjacent to all of these and clearly has a relationship with them and is located on the fourth side of the square in which they are all

situate; as can be seen on the map. It can therefore be considered to be within that loose building group relationship.

- 6.15 She notes that the proposal does not have an economic justification as noted above and states *it is acknowledged that the applicant does require special needs housing to cater for the needs of the son. However, it is understood that the applicant's have recently moved into a single storey property on the A701 in Broughton. This property is rented from the Eildon Housing Association and has been adapted for disabled persons. The supporting statement which was submitted at the beginning of November notes that the new house is essential to meet the needs of the family which are not being met in the current home and cannot be met in any other home within a reasonable locality of Broughton. It is unclear if this relates to the new accommodation or the previous accommodation in the village which was two storey. It appears that the supporting medical statements relate to the previous accommodation.*
- 6.16 The opinions of the medical professionals can be updated to take account of the new accommodation. The supporting statement related to the current accommodation. The appellants do not have a fully wheelchair accessible house – the only benefit from the new house is the converted bathroom. The appellants still require to manually lift their son around the house. This is clearly a health and safety issue.
- 6.17 She also states that: *Whilst the need for a house for this particular family is understood, the current development would not offer significant community benefits.* The appellant would comment that the significant benefit to the community would be being able to retain this family within the community where they have lived for many years, where the children go to school and where the family operate their business from.
- 6.18 Regarding the proposed LDP and the representations made in respect of this issue. The Reporter's comments are noted to the representation made to the Reporter in the Examination of the new Local development Plan relating to changes being made to the policy PMD4 - Development Outwith Development Boundaries. The Reporters commented as follows:
- I do not believe that further changes are required to the circumstances set out. I agree with the council that possible additional exceptions, such as a need to retain families/retirees within a community where no other suitable housing stock is available, can reasonably be dealt with as a material consideration at the development management stage. Furthermore, it may also be possible to deal with such cases under circumstance (b) relating to affordable housing, or circumstance (d) relating to community benefits.*
- 6.19 Therefore no modifications to policy were undertaken - Development outwith Development Boundaries'
- 6.20 The Planning Officer comments on the original Supporting Statement *'The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent*

as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.' Furthermore, the statement maintains that if Reporter had had all medical evidence in front of him when he assessed the previous application he may well have come to a different conclusion. She advises that *this is purely speculation and is not material to the current application.* I could comment that **It is a point that must at least be considered.**

- 6.21 She concludes that *Given the assessment of the application against the prevailing policies and the land available for new housing in the vicinity of Broughton (not taking account of any properties which may currently be on the market) it is considered that the needs of the family do not outweigh these policy considerations and the proposals cannot be supported.*
- 6.22 In respect of the Equalities Legislation she advises that *When taking any decisions the Council must have regard to the Equalities Act 2010 - section 149 which states that a public authority must, in the exercise of its functions, have due regard to a number of factors including to the need to consider the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.*
- 6.23 Yet she does not state how the Planning Department assessed this application in respect of that requirement. It is known that in the past they have resisted taking cognisance of this legislation and have left it to the elected members to take that decision. The differences referred to between this and another example are not correct. The primary hardship in this case are the health and safety implications for the appellants who are required to carry their son around the house. In addition, if the appellants are forced to move the uprooting of their family from schools and work are additional hardships. In this case, as in the Lovatt's Selkirk case there is no viable alternative. The appellants have been looking for one for nearly a decade.
- 6.24 The Local Review Body have the ability to consider all of the material considerations and draw their own conclusions. It is considered that in the case of the current application, taking into account the requirements of the Equalities legislation, the needs of the family do not outweigh the policy considerations and that by refusing the application for a house on this particular site, the family will not be severely disadvantaged.
- 6.25 Years of searching for an appropriate site in the locale has revealed nothing. The site is the only site that it is possible to purchase and build on. There is an existing access and the site itself is level and sits well in the landscape. The house can be sensitively introduced into the site without impacting adversely on the landscape and other occupiers. The family will be severely disadvantaged as set out in the medical statement.

6.26 In addition, what other uses can the site potentially have if the council do not accept that it could have an acceptable use as a family home – well designed, low impact on the landscape and non-intrusive for neighbours.

7 CONCLUSION

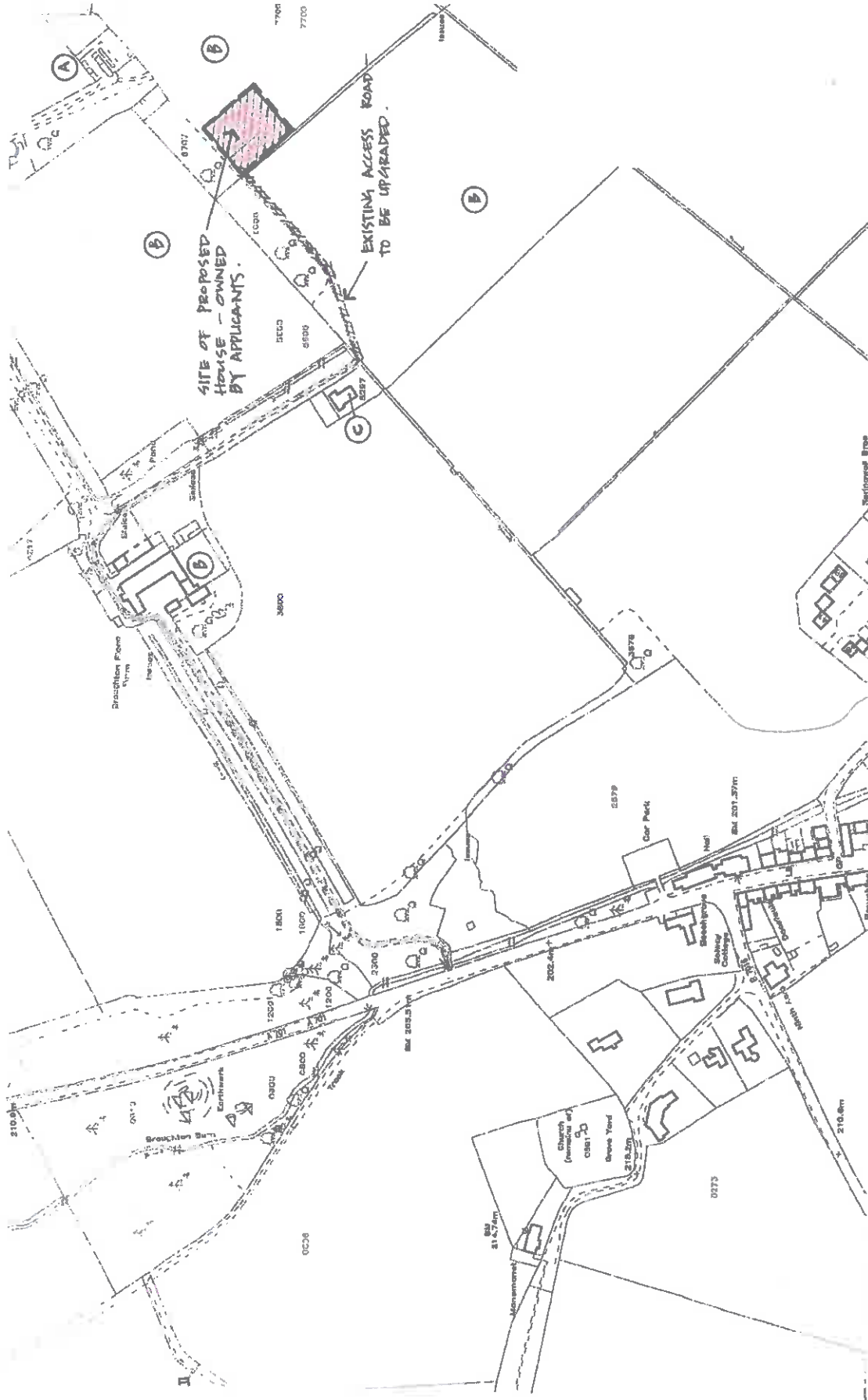
7.1 There is a clearly robust and justifiable need for the house for this family. This is the only available brownfield site that could accommodate their needs within the Broughton locality. It is in the interests of the family and the local community to retain this family within this area.

7.2 In summary the need justification is based on the following:

- The applicant and his family require the house to accommodate the specific medical, accessibility and spatial needs of one of their children (all evidence to support this is provided in a separate confidential document given the sensitive nature of the personal information);
- No other accommodation in the locality or within a reasonable distance has been found in the 8 years since the appeal decision.
- No other location is likely to be found and the existing home cannot be altered or extended to accommodate the family's needs.

7.3 Similar other decisions with the Scottish Borders Council area have found in favour of the families with specific needs relating to the disabled. This case requires the same sensitive consideration. The applicant respectfully requests that you approve this application, as an exception to the rule, with the appropriate conditions attached.

Suzanne McIntosh BA(Hons)MRTPI



SITE OF PROPOSED HOUSE - OWNED BY APPLICANTS.

EXISTING ACCESS ROAD TO BE UPGRADED.

- NOTIFIED NEIGHBOURS:
- (A) Mr & Mrs. G. Buchanan-Dunlop
The Paving Shed
Broughton Place
Broughton M12 6HU
 - (B) Andrew K. Elliot
Broughton Place Farmhouse
Broughton M12 6HS
 - (C) Bruce L. Fraser
Broughton Place Cottage
Broughton M12 6HS

THIS IS THE DRAWING REFERRED TO IN THE APPLICATION FOR BUILDING WARRANT DATED 15/00890/PPP

client	S. KANE & J. DENISON
project	PROPOSED HOUSE BROUGHTON PLACE BROUGHTON
date	LOCATION PLAN
drawn	051105/LOC
scale	1:1000
date	15/07/07

GORDON HILLIARD
 BUILDING DESIGN
 6 MARKET PLACE
 BELLEBUS
 BORDENS
 TD7 4RT
 T: 01150 723333
 F: 01150 714444
 E: gordonhilliard@design.co.uk
 www.gordonhilliard.co.uk

This drawing is to be read in conjunction with the application for a building warrant. It is not to be used for any other purpose without the prior written consent of the architect.

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1989

subject to the
requirements of the
associated Decision
Notice



FLOOR PLAN



NORTH EAST ELEVATION



SOUTH WEST ELEVATION



NORTH WEST ELEVATION



SOUTH WEST ELEVATION

EXTERNAL MATERIALS

WALLS
 All external walls to be finished with a high quality render or stone finish.
ROOFING & SLATES
 The roof to be finished with a high quality slate or stone finish.
GLAZING
 All windows and doors to be finished with a high quality glazing unit.
PAVING
 All external paving to be finished with a high quality paving stone.



VISUAL FROM SOUTH



VISUAL FROM SOUTH WEST



VISUAL FROM WEST

REFUSED

subject to the requirements of the associated decision
No/20



SITE PLAN : SCALE 1:200



PLANNING SUBMISSION

NAME: S. MAHE & BRIDGON
PROJECT: PROPOSED HOUSE
LOCATION: BRUCEWOOD
DATE: 21/05/2012

GORDON MURDOCH ARCHITECTS
 10 MARKET PLACE
 LEITH
 EDINBURGH
 TEL: 01779 235200
 FAX: 01779 725844
 E: gordonm@brucewoodarchitects.co.uk

15/00890/PPP



Newtown St Boswells Melrose TD6 0SA

Tel: 01835 825251

Fax: 01835 825071

Email: itsystemadmin@scotborders.gov.uk

Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 000127524-001

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

Type of Application

What is this application for? Please select one of the following: *

We strongly recommend that you refer to the help text before you complete this section.

- Application for Planning Permission (including changes of use and surface mineral working)
- Application for Planning Permission in Principle
- Further Application, (including renewal of planning permission, modification, variation or removal of a planning condition etc)
- Application for Approval of Matters specified in conditions

Description of Proposal

Please describe the proposal including any change of use: * (Max 500 characters)

Erection of a Dwellinghouse

Is this a temporary permission? *

Yes No

If a change of use is to be included in the proposal has it already taken place?
(Answer 'No' if there is no change of use.) *

Yes No

Have the works already been started or completed? *

No Yes - Started Yes - Completed

Applicant or Agent Details

Are you an applicant, or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:	Suzanne McIntosh Planning
Ref. Number:	
First Name: *	Suzanne
Last Name: *	McIntosh
Telephone Number: *	07792230979
Extension Number:	
Mobile Number:	01316560303
Fax Number:	
Email Address: *	smcintoshplan@gmail.com

You must enter a Building Name or Number, or both:*

Building Name:	
Building Number:	12-14
Address 1 (Street): *	Lochrin Buildings
Address 2:	Gilmore Place
Town/City: *	Edinburgh
Country: *	UK
Postcode: *	EH3 9NB

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title: *	Mr
Other Title:	
First Name: *	Stewart
Last Name: *	Kane
Company/Organisation:	
Telephone Number:	
Extension Number:	
Mobile Number:	
Fax Number:	
Email Address:	

You must enter a Building Name or Number, or both:*

Building Name:	
Building Number:	39
Address 1 (Street): *	Hawdene
Address 2:	
Town/City: *	Broughton
Country: *	Scotland
Postcode: *	ML12 6FW

Site Address Details

Planning Authority:

Scottish Borders Council

Full postal address of the site (including postcode where available):

Address 1:

Address 5:

Address 2:

Town/City/Settlement:

Address 3:

Post Code:

Address 4:

Please identify/describe the location of the site or sites.

Northing

637090

Easting

311612

Pre-Application Discussion

Have you discussed your proposal with the planning authority? *

Yes No

Pre-Application Discussion Details

In what format was the feedback given? *

Meeting Telephone Letter Email

Please provide a description of the feedback you were given and the name of the officer who provided this feedback. If a processing agreement [note 1] is currently in place or if you are currently discussing a processing agreement with the planning authority, please provide details of this. (This will help the authority to deal with this application more efficiently.) * (Max 500 characters)

Pre- app email exchanges and supporting info submitted in 2014.

Title:

Mrs

Other title:

First Name:

Dorothy

Last Name:

Amyes

Correspondence Reference Number:

Date (dd/mm/yyyy):

25/03/14

Note 1. A processing agreement involves setting out the key stages involved in determining a planning application, identifying what information is required and from whom and setting timescales for the delivery of various stages of the process.

Site Area

Please state the site area:

200.00

Please state the measurement type used:

Hectares (ha) Square Metres (sq.m)

Existing Use

Please describe the current or most recent use: (Max 500 characters)

Water Treatment Works

Access and Parking

Are you proposing a new or altered vehicle access to or from a public road? *

Yes No

If Yes please describe and show on your drawings the position of any existing, altered or new access points, highlighting the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? *

Yes No

If Yes please show on your drawings the position of any affected areas highlighting the changes you propose to make, including arrangements for continuing or alternative public access.

Water Supply and Drainage Arrangements

Will your proposal require new or altered water supply or drainage arrangements? *

Yes No

Are you proposing to connect to the public drainage network (eg. to an existing sewer)? *

- Yes – connecting to public drainage network
- No – proposing to make private drainage arrangements
- Not Applicable – only arrangements for water supply required

What private arrangements are you proposing? *

- New/Altered septic tank.
- Treatment/Additional treatment (relates to package sewage treatment plants, or passive sewage treatment such as a reed bed).
- Other private drainage arrangement (such as chemical toilets or composting toilets).

What private arrangements are you proposing for the New/Altered septic tank? *

- Discharge to land via soakaway.
- Discharge to watercourse(s) (including partial soakaway).
- Discharge to coastal waters.

Please explain your private drainage arrangements briefly here and show more details on your plans and supporting information: * (Max 500 characters)

The application is in principle and the detail has not been established at this stage

Do your proposals make provision for sustainable drainage of surface water? (e.g. SUDS arrangements) *

Yes No

Note: -

Please include details of SUDS arrangements on your plans

Selecting 'No' to the above question means that you could be in breach of Environmental legislation.

Are you proposing to connect to the public water supply network? *

- Yes
- No, using a private water supply
- No connection required

If No, using a private water supply, please show on plans the supply and all works needed to provide it (on or off site).

Assessment of Flood Risk

Is the site within an area of known risk of flooding? *

Yes No Don't Know

If the site is within an area of known risk of flooding you may need to submit a Flood Risk Assessment before your application can be determined. You may wish to contact your Planning Authority or SEPA for advice on what information may be required.

Do you think your proposal may increase the flood risk elsewhere? *

Yes No Don't Know

Trees

Are there any trees on or adjacent to the application site? *

Yes No

If Yes, please mark on your drawings any trees, known protected trees and their canopy spread close to the proposal site and indicate if any are to be cut back or felled.

All Types of Non Housing Development - Proposed New Floorspace

Does your proposal alter or create non-residential floorspace? *

Yes No

Schedule 3 Development

Does the proposal involve a form of development listed in Schedule 3 of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013? *

Yes No Don't Know

If yes, your proposal will additionally have to be advertised in a newspaper circulating in the area of the development. Your planning authority will do this on your behalf but will charge you a fee. Please check the planning authority's website for advice on the additional fee and add this to your planning fee.

If you are unsure whether your proposal involves a form of development listed in Schedule 3, please check the Help Text and Guidance notes before contacting your planning authority.

Planning Service Employee/Elected Member Interest

Is the applicant, or the applicant's spouse/partner, either a member of staff within the planning service or an elected member of the planning authority? *

Yes No

Certificates and Notices

CERTIFICATE AND NOTICE UNDER REGULATION 15 – TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (SCOTLAND) REGULATIONS 2013

One Certificate must be completed and submitted along with this application form. This is most usually Certificate A, Form 1, Certificate B, Certificate C or Certificate E.

Are you/the applicant the sole owner of ALL the land? *

Yes No

Is any of the land part of an agricultural holding? *

Yes No

Certificate Required

The following Land Ownership Certificate is required to complete this section of the proposal:

Certificate A

Land Ownership Certificate

Certificate and Notice under Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Certificate A

I hereby certify that –

(1) - No person other than myself/the applicant was an owner (Any person who, in respect of any part of the land, is the owner or is the lessee under a lease thereof of which not less than 7 years remain unexpired.) of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

(2) - None of the land to which the application relates constitutes or forms part of an agricultural holding.

Signed: Suzanne McIntosh

On behalf of: Mr Stewart Kane

Date: 29/07/2015

Please tick here to certify this Certificate. *

Checklist - Application for Planning Permission

Town and County Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Please take a few moments to complete the following checklist in order to ensure that you have provided all the necessary information in support of your application. Failure to submit sufficient information with your application may result in your application being deemed invalid. The planning authority will not start processing your application until it is valid.

a) If this is a further application where there is a variation of conditions attached to a previous consent, have you provided a statement to that effect? *

Yes No Not applicable to this application

b) If this is an application for planning permission or planning permission in principle where there is a crown interest in the land, have you provided a statement to that effect? *

Yes No Not applicable to this application

c) If this is an application for planning permission, planning permission in principle or a further application and the application is for development belonging to the categories of national or major developments (other than one under Section 42 of the planning Act), have you provided a Pre-Application Consultation Report? *

Yes No Not applicable to this application

Town and County Planning (Scotland) Act 1997

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

d) If this is an application for planning permission and the application relates to development belonging to the categories of national or major developments and you do not benefit from exemption under Regulation 13 of The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, have you provided a Design and Access Statement? *

Yes No Not applicable to this application

e) If this is an application for planning permission and relates to development belonging to the category of local developments (subject to regulation 13. (2) and (3) of the Development Management Procedure (Scotland) Regulations 2013) have you provided a Design Statement? *

Yes No Not applicable to this application

f) If your application relates to installation of an antenna to be employed in an electronic communication network, have you provided an ICNIRP Declaration? *

Yes No Not applicable to this application

g) If this is an application for planning permission, planning permission in principle, an application for approval of matters specified in conditions or an application for mineral development, have you provided any other plans or drawings as necessary:

- Site Layout Plan or Block plan.
- Elevations.
- Floor plans.
- Cross sections.
- Roof plan.
- Master Plan/Framework Plan.
- Landscape plan.
- Photographs and/or photomontages.
- Other.

Provide copies of the following documents if applicable:

- | | | |
|--|------------------------------|---|
| A copy of an Environmental Statement. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Design Statement or Design and Access Statement. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Flood Risk Assessment. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Drainage Impact Assessment (including proposals for Sustainable Drainage Systems). * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Drainage/SUDS layout. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Transport Assessment or Travel Plan. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Contaminated Land Assessment. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| Habitat Survey. * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |
| A Processing Agreement * | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> N/A |

Other Statements (please specify). (Max 500 characters)

Supporting Planning Statement and Medical Statement

Declare - For Application to Planning Authority

I, the applicant/agent certify that this is an application to the planning authority as described in this form. The accompanying plans/drawings and additional information are provided as a part of this application.

Declaration Name: Suzanne McIntosh

Declaration Date: 29/07/2015

Submission Date: 29/07/2015

Payment Details

Cheque: Suzanne McIntosh Planning Limited, 000010

Created: 29/07/2015 18:06

15/00890/PPP

Scottish Borders Council
Town And Country
Planning (Scotland) Act
1997

REFUSED

subject to the
requirements of the
associated Decision
Notice

SUPPORTING STATEMENT

APPLICATION FOR PLANNING PERMISSION IN PRINCIPLE

FOR A

DWELLINGHOUSE ON

AT LAND AT

**THE FORMER WATER TREATMENT WORKS,
BROUGHTON PLACE, BROUGHTON, BIGGAR
SCOTTISH BORDERS**

On behalf of Mr S Kane and Ms J Denson

SUZANNE MCINTOSH PLANNING LIMITED

1.11.15

1. INTRODUCTION

- 1.1 This Supporting Planning Statement accompanies a planning application that has been lodged with Scottish Borders Council. The application is for the erection of a dwellinghouse to accommodate the Kane family within a purpose built and designed fully wheelchair accessible dwelling on land at the former water treatment works, Broughton Place, Broughton, Biggar.
- 1.2 The house is essential to the growing needs of the family which are not being met in the current home cannot be met in any other home within a reasonable locality of Broughton where they currently reside.
- 1.3 The application is for Planning Permission in Principle and as such an OS base plan and site plan defining the desired location for the house are provided. The Supporting Planning Statement and a confidential document detailing the specific medical circumstances relevant to this case are also provided for the assistance of the Planning Officer in considering the proposal. A pre-application consultation has been undertaken with Dorothy Amyes and a representation has been made to the Local Development Plan regarding the issues relating to this proposal.
- 1.4 The applicant seeks to provide a reasoned justification as to why this proposal should be considered as an exception to the rule. In addition, the appellant requests that the council considers this application and the potential impacts of refusing the application in the light of the requirements under Equalities legislation in addition to Planning legislation.

2 SITE LOCATION AND DESCRIPTION

- 2.1 The application site is located outwith the Broughton settlement boundary around 400m from the village confines. The appeal site is within the context of a building group located at Broughton Place comprising a number of different types of dwellings within a scattered building group accessed from a single point of access and located within a distinct pattern around the access route. These dwellings comprise Broughton Place Farm, Broughton Place and Shepherds Cottage. All buildings are located

off the access track which runs around the enclosed central field. Some are residential, some commercial in use.

- 2.2 A water treatment facility was located at the site until 2005 and discussions in the past have taken place as to whether the site is brownfield given its former use. The site is contained by boundary fencing and has tree planting within it. It sits comfortably within the landscape and enjoys long views to the west. Looking back from the west towards the site, it is contained by the levels and planting around the site. The access road into the site, formerly used by the water board still exists, under the grass which has grown over it in the past decade.

3 BACKGROUND

- 3.1 The site has been the subject of previous planning applications and an appeal. I do not propose to go into each of these however there are some critical differences between this application and those that have come before. In addition, there are a number of fundamental reasons why the application should and could be supported now and why the council should revisit these issues in the light of their other decisions over the past few years. This statement seeks to convey these.
- 3.2 The last planning application which went to appeal, SBC reference 07/01075/FUL was considered on the basis of the case put before the Reporter at the time. The Reporter did not give sufficient consideration to the issue of the specific need for the house and was not provided with the evidence to substantiate the claim. Had he had the letters of support and this information before him he may well have come to a different conclusion at that time. These are critical elements that require full consideration now, especially in the light of recent SBC planning decisions and the intervening changes in equalities legislation.
- 3.3 In addition, although each case is considered on its own merits the council is bound to consider proposals in the light of the relevant legislation. In this case, the specific requirements of this family, as fully demonstrated in the supporting confidential documents, illustrate exactly why the house is required, the implications of not approving the house, the implications of

not being able to accommodate this family elsewhere and the conflicts with equalities legislation in failing to address the needs of this family all require to be considered.

4 PROPOSAL

- 4.1 This application seeks planning permission in principle for a single dwellinghouse for occupation by Stewart Kane, his partner Jeanette Denson their two daughters and a son.
- 4.2 The setting of the site is within the Broughton Place group of loosely arranged buildings around the central green field set on a hillside in open countryside. It could reasonably be determined to be a loose building group formation.
- 4.3 The site plan illustrates a single storey house being located in the centre of the plot, accessed from the existing track. Limited re-grading is required in order to provide a wheel chair accessible sensory garden around the dwelling. The proposal would not involve large areas of re-engineering of the site and would sit comfortably in its landscape, enjoying long views to the west. It would be designed to a high architectural standard and reflect the character of its surroundings vernacular. The purpose of the house is to be fully wheelchair accessible and to have sufficient space to accommodate all the required equipment and circulation needed by the family now and in the future. It is essential that the long term needs of the family are addressed.

5 PLANNING POLICIES

- 5.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 (as Amended) requires that planning decision are made in accordance with the development plan unless material considerations indicate otherwise.
- 5.2 The development plan comprises the Scottish Borders Structure Plan and the consolidated Scottish Borders Local Plan 2011. The proposed Local Development Plan is a material consideration as is the Supplementary

Planning Guidance and any relevant information as to the personal circumstances of the applicant.

- 5.3 The determining issues are whether the proposal would be in accordance with the development plan and if not whether there are any material justifications that would support a departure from the policies.
- 5.4 The relevant development plan policies relating to this site and proposal are as follows: Policy EP1 National Scenic Area which states that development in the NSA will only be permitted where firstly the objectives of the NSA and overall landscape value will not be compromised; and secondly where any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by social or economic benefits of national importance.
- 5.5 Policy EP2 Area of Great Landscape Value is also relevant and advises that the council will seek to safeguard landscape quality and will have particular regard to the landscape impact of the proposal. Proposals which will have a significant adverse impact will only be permitted where the impact is clearly outweighed by social or economic benefits of local importance.
- 5.6 Also relevant is the policy H8 in the Scottish Borders Structure Plan–Housing in the Countryside. H8 advises that *Isolated Housing Proposals for housing in the countryside outwith settlements identified in the Local Plan, and unrelated to building groups, will not be supported unless its location is essential for the needs of an agricultural business etc... All such development must be on well located and designed sites with a low environmental impact. Proposals must meet sustainable construction requirements particularly in relation to energy efficient design and connection to the public transport network.*
- 5.7 Other relevant policies relating to the detailed design, access, sustainability, landscape, biodiversity etc but the policies above are considered the biggest hurdles to overcome.
- 5.8 The specific needs of the applicant are the most significant material consideration which must, in this case, outweigh any planning policy objection to this proposal. The confidential medical statement clearly details the first hand professional medical evidence and assessments

relating to this case. It identifies the needs of the family concerned and gives an indication of the future needs of the family. Given the medical needs the council is clearly requested to have significant regard to the requirements of the Equalities Act 2010. The council is also required to have regard to the harm resulting from not approving this application and giving sufficient weight to the Equalities Act 2010 requirements.

- 5.9 The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.
- 5.10 In reviewing another case raising similar issues the Scottish Borders Local Review Body was persuaded that, *in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.*
- 5.11 In that case the LRB determined that *while the development was contrary to the Development Plan there were substantial and overriding material factors in this instance that outweighed the presumption in favour of the Development Plan.*
- 5.12 Aside from being in a countryside location, albeit in a loose building group formation, the proposal has previously been in use as a water treatment works and as such its restoration in health, safety and landscape impact terms is important. With suitable conditions the proposal can be sensitively accommodated on the site with very limited impact on the landscape.

6 CONCLUSION

- 6.1 There is a clearly robust and justifiable need for the house for this family. This is the only available brownfield site that could accommodate their needs within the Broughton locality.
- 6.2 In summary the need justification is based on the following:
- The applicant and his family require the house to accommodate the specific medical, accessibility and spatial needs of one of their children (all evidence to support this is provided in a separate confidential document given the sensitive nature of the personal information);
 - No other accommodation in the locality or within a reasonable distance has been found in the 7 years since the appeal decision.
 - No other location is likely to be found and the existing home cannot be altered or extended to accommodate the family's needs.
- 6.3 Similar other decisions with the Scottish Borders Council area have found in favour of the families with specific needs relating to the disabled. This case requires the same due consideration. The applicant respectfully requests that you approve this application with the appropriate conditions.

Suzanne McIntosh BA(Hons)MRTPi

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

Application for Planning Permission

Reference : 15/00890/PPP

**To : Mr Stewart Kane per Suzanne McIntosh Planning 12-14 Lochrin Buildings Gilmore Place
Edinburgh EH3 9NB**

With reference to your application validated on **18th September 2015** for planning permission under the Town and Country Planning (Scotland) Act 1997 for the following development :-

Proposal : Erection of dwellinghouse and upgrade access track

**at : Redundant Water Treatment Works North East Of Broughton Place Cottage Broughton
Scottish Borders**

The Scottish Borders Council hereby **refuse** planning permission for the **reason(s)** stated on the attached schedule.

**Dated 19th January 2016
Regulatory Services
Council Headquarters
Newtown St Boswells
MELROSE
TD6 0SA**

Signed



.....
Chief Planning Officer

APPLICATION REFERENCE : 15/00890/PPP**Schedule of Plans and Drawings Refused:**

Plan Ref	Plan Type	Plan Status
051105/LOC	Location Plan	Refused
141412/PL/01	Planning Layout	Refused
Supporting Statement	Other	Refused
141412/PL/02	Site Plan	Refused

REASON FOR REFUSAL

- 1 The proposal is contrary to Policy D2 - Housing in the Countryside and Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of the proposed Local development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.
- 2 The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated Local Plan 2011 and Policies HD2 and PMD4 of the Proposed Local Development Plan in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.
- 3 The proposed dwellinghouse would be contrary to Policy D2 of the Scottish Borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local development Plan in that satisfactory access and other road requirements cannot be met.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to Corporate Administration, Council Headquarters, Newtown St Boswells, Meirose TD6 OSA.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997.

SCOTTISH BORDERS COUNCIL

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO
CHIEF PLANNING OFFICER**

PART III REPORT (INCORPORATING REPORT OF HANDLING)

REF : 15/00890/PPP
APPLICANT : Mr Stewart Kane
AGENT : Suzanne McIntosh Planning
DEVELOPMENT : Erection of dwellinghouse and upgrade access track
LOCATION: Redundant Water Treatment Works
North East Of Broughton Place Cottage
Broughton
Scottish Borders

TYPE : PPP Application

REASON FOR DELAY:

DRAWING NUMBERS:

Plan Ref	Plan Type	Plan Status
051105/LOC	Location Plan	Refused
141412/PL/01	Planning Layout	Refused
SUPPORTING STATEMENT		Other Refused
141412/PL/02	Site Plan	Refused

NUMBER OF REPRESENTATIONS: 6

SUMMARY OF REPRESENTATIONS:

Representations

Six letters of representation have been received objecting to the application on the following grounds:

- proposal is contrary to local plan policy for Housing in the Countryside
- the site does not relate well to other nearby buildings including the A listed Broughton Place
- it is not part of a building group
- it is outwith the settlement boundary of Broughton
- it is not a brown field site
- access to A701 is difficult
- unsuitable access from Broughton Place Cottage through agricultural land
- impact of extra traffic on existing shared access road
- no indication given as to how site will be connected to public water supply
- question whether septic tank and soakaway can be accommodated within the site
- located in a National Scenic Area and site will be very visible and have an adverse impact on the landscape
- other building sites within the village
- difficult for emergency vehicles to access the site
- the development would interfere with the agricultural activity of the farm
- development at the site would be an historical injustice compromising one of the first enclosed and settled farms in southern Scotland which, unlike most farms, has been managed to remain largely intact for well over 200 years.
- impact of the development on an adjacent tree belt

- the family have recently moved to accommodation adapted for disabled use in the village

As this is an application for planning permission in principle the design of the proposed house is not being considered at this stage. The issues raised regarding access rights and wayleaves are a legal rather than a planning issue. The loss of view is not a material planning issue.

Consultation Responses

Roads Planning

A planning application for a dwelling on this site, 07/01075/FUL, was submitted to the Council in 2007. This application was recommended for refusal by the relevant officer at that time and was subsequently refused by the Tweeddale Area Committee. An appeal against that decision was submitted to the Scottish Government and the reporter upheld the decision of the Council and refused the application for various reasons.

During consideration of the previous application, this section had recommended refusal on the grounds of road safety given that the geometry of the access to the site off the A701 did not permit two vehicles to pass. Should two vehicles meet at the access, and the provision of this property would increase that possibility, this would result in a vehicle having to sit on the main A701 whilst the second vehicle left the site. It was the opinion of this section at that time that this was not a satisfactory situation.

As part of the reasoning behind their decision, the reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road, they did not see this as a flaw in the application. Whilst I accept his support for the passing situation, I would argue that whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.

Furthermore, it is currently not the practice of this service to support development which would require access via a working farm.

Notwithstanding the above, there are also issues with the access track to the site which would all have to be resolved to the Council's satisfaction should the application be approved. It is not clear whether the applicant has enough control to resolve these issues and, until such times that all of the above issues can be resolved to the Council's satisfaction, I would have to recommend against this application in the interest of road safety.

Education

The proposed development is located within the catchment area for Broughton Primary School and Peebles High School.

A contribution of £1383 is sought for the High School.

Environmental Health

Contaminated Land

The above application appears to be proposing the redevelopment and change of use of land which was previously operated as a water treatment works. This land use is potentially contaminative and it is the responsibility of the developer to demonstrate that the land is suitable for the use they propose.

It is recommended that planning permission should be granted on condition that development is not be permitted to start until a site investigation and risk assessment has been carried out, submitted and agreed upon by the Planning Authority.

Any requirement arising from this assessment for a remediation strategy and verification plan would become a condition of the planning consent, again to be submitted and agreed upon by the Planning Authority prior to development commencing.

Upper Tweed Community Council

Object to this application. If it is approved, it would be very difficult to resist other applications to build houses in the countryside, and a proliferation of new houses outside existing settlements would be detrimental to this rural and agricultural area. The proposed house would not be part of an existing building grounds and as far as we are aware is not required for rural or agricultural use. The objections stated on 30 May 2008 by the Reporter of the Scottish Government would appear to have equal force today. The Local Plan already makes provision for new houses in Broughton and we do not consider that additional provision is needed.

Moreover, we consider that the design of the house would not fit in well with its surrounding environment. The site is up on a hill and any house built there would be visible from a wide area around. Other houses in prominent positions are largely of traditional types and we would be much happier with a house which conformed to this standard, rather than one of a more modern design as is proposed. The site is in a National Scenic Area and the adverse impact which the house, as currently designed, would have on the landscape is unacceptable.

We note that a number of close neighbours of the site have expressed concerns about water supply and drainage, the unsuitability of the proposed access near Broughton Place Cottage for more traffic, the difficult access from the A701 and the impact on the working of the farmland over which access would be required. We recommend that full weight should be placed on these concerns.

PLANNING CONSIDERATIONS AND POLICIES:

Scottish Borders Consolidated Local Plan

G1 - Quality Standards For New Developments

G2 - Contaminated Land

D2 - Housing in the Countryside

H2 - Protection of Residential Amenity

BE1 - Listed Buildings

EP1 - National Scenic Areas

G5 - Developer Contributions

G8 - Development outwith Development Boundaries

NE4 - Trees, Woodlands and Hedgerows

INf2 - Protection of Access Routes

INf4 - Parking Provision and Standards.

SPG - New Housing in the Borders Countryside

Proposed Local Development Plan 2013

PMD1 - Sustainability

PMD2 - Quality Standards

PMD4 - Development Outwith Development Boundaries

HD2 - Housing in the Countryside

EP4 - National Scenic Areas

EP7 - Listed Buildings

EP13 - Trees, Woodlands and Hedgerows

IS2 - Developer Contributions

IS5 - Protection of Access Routes

IS7 - Road Adoption Standards

IS13 - Contaminated Land

Recommendation by - Dorothy Amyes (Planning Officer) on 12th November 2015

The application site is a former water treatment facility and is accessed from the A701 via the existing private road serving Broughton Place Farm and Broughton Place. The site would be accessed along the line of a former track to the water treatment facility which would be upgraded. There is a mature belt of trees to the north of the site and open farmland to the south and east. There are no longer any buildings on the site.

The application seeks planning permission in principle for a new detached dwellinghouse. An indicative design has been submitted with the application but details of this will not be considered as part of this assessment. The applicant has submitted a supporting statement and medical reports, the latter is treated as confidential information and has not been placed on the public file.

A previous application (07/01075/FUL) by the same applicant for a dwellinghouse on this site was refused for the following reasons:

1 The proposed dwellinghouse would be contrary to Policy H5 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 7 of the Tweeddale Local Plan 1996 in that it would constitute housing development in the countryside that is not well related to an existing building group.

2 The proposal would be contrary to Policy H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policy 8 of the Tweeddale Local Plan 1996 in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.

3 The proposed dwellinghouse would be contrary to Policies H5 and H6 of the Scottish Borders Structure Plan 2001-2011, Policy D2 of the Finalised Scottish Borders Local Plan 2005 and Policies 7 and 8 of the Tweeddale Local Plan 1996 in that satisfactory access and other road requirements cannot be met.

A subsequent appeal was dismissed. The Reporter considered that the lack of connection with any rural use coupled with the lack of connection to a recognised building group meant that the proposal would be inconsistent with the development plan in relation to the principles of the proper location of new development in the countryside.

Assessment

Policy

The application site is located some distance to the North East of the defined settlement boundary of Broughton and it must therefore be assessed against the Council's Local Plan policy D2 - Housing in the Countryside and the Supplementary Planning Guidance on New Housing in the Countryside, also Policy G8 - Development outwith Development Boundaries. The draft Local Development Plan policies for housing in the countryside and outwith settlement boundaries as also material considerations. The Structure Plan policies and the Tweeddale Local Plan no longer apply.

Policy D2 notes that the council wishes to promote appropriate rural housing development in:

- 1) village locations in preference to open countryside
- 2) associated with existing building groups where this does not adversely affect their character or that of the surrounding area and,
- 3) in dispersed communities in the Southern Borders Housing Market area.

As noted above the site is not located within the village of Broughton, and it is not with the Southern Housing Market Area. This leaves the association with an existing building group. In the previous application this was assessed as follows:

'Limited new housing development in the countryside will be encouraged within or adjacent to recognised building groups where those building groups are identifiable by a sense of place which is contributed to by natural boundaries such as water courses, trees or enclosing land forms or man-made boundaries such as existing buildings, roads, plantations or other means of enclosure. The existing dispersed group of buildings at Broughton Place includes Broughton Place Farm, Broughton Place Cottage, The Potting Shed, Broughton Place (now divided into flats) and two existing dwellings on the north side of the main access road. The group of buildings is defined by the location of the existing residential units relative to each other and the relationship they have as a group of buildings to the landscape setting. The group is located within a mature woodland setting defined on the south side by a significant belt of mature woodland.'

In his Appeal decision the Reporter was not convinced that the group of houses as noted above formed a recognisable building group. He noted that ' If it is a group, it is a very scattered one, with a small number of dwellings occupying an extensive area. If the boundary of the group is transient then it could be extended time and time again and the loss of countryside character would, as a consequence be very considerable.'

There is a 'sense of place' created by the main buildings, the Broughton Place farm house and steading, Broughton Place and the ancillary properties, Garage House and Stables Cottage, the latter three are included in the 'A' listing for Broughton Place. These are all accessed along a tree lined road up to Broughton Place. The Potting Shed is a conversion and extension of a former outbuilding located adjacent to the walled garden at Broughton Place. Broughton Place Cottage is a traditional cottage which was more than likely built for one of the workers on the estate. All of these properties reflect and are related to the historical development of the Broughton Place land over time. Broughton Place is located on the site of a former house which was destroyed by fire in 1773. The current house is considered to be a rare and excellent example of an interwar (1935-38) Scottish country house set within a designed landscape by the internationally renowned architect Sir Basil Spence.

The current application site is located on the south side of an existing woodland belt within farmland and it has no connection to or relationship with the 'sense of place' created by the above. It is therefore considered to be outwith the identifiable limits of the building group and therefore contrary to the building groups policies contained within the development plan. The site would be contrary to Policy D2 (A) Building Groups of the Consolidated Local Plan.

Policy D2 (E) Economic Requirement allows for housing with a location essential for business needs. The Council must be satisfied that the housing development is a direct operational requirement of an agricultural, horticultural, forestry or other enterprise which is itself appropriate to the countryside or the housing development would help support a business that results in a clear social or environmental benefit to the area, including the retention or provision of employment or the provision of affordable or local needs housing. There are no business needs associated with this proposal as the stated justification for the proposed dwelling house is that it is necessary to be fit for purpose to support the applicant's son who suffers from profound developmental and physical disability. As there is no established business at this location which requires a dwellinghouse to be essential for the running of that business, the proposal also fails to comply with the provisions of Policies D2.

The application also needs to be assessed against Local Plan Policy G8 -Development outwith Development Boundaries. This states that proposals for new development outwith development boundaries and not on allocated sites identified in the proposals maps will normally be refused although exceptional approvals provided that strong reasons can be given. These exceptions are : a job generating development that has an economic justification, affordable housing as noted under Local Plan policy H1 or a shortfall in the housing land supply, and the site represents a logical extension of the built-up area, is of an appropriate scale in relation to the size of the settlement, does not prejudice the character, visual cohesion or natural built up edge of the settlement and does not cause a significant adverse effect on the landscape setting of the settlement or the natural heritage of the surrounding area.

The proposal does not have an economic justification as noted above. It is acknowledged that the applicant does require special needs housing to cater for the needs of the son. However, it is understood that the applicant's have recently moved into a single storey property on the A701 in Broughton. This property is rented from the Eildon Housing Association and has been adapted for disabled persons. The supporting statement which was submitted at the beginning of November notes that the new house is essential to meet the needs of the family which are not being met in the current home and cannot be met in any other home within a reasonable locality of Broughton. It is unclear if this relates to the new accommodation or the previous accommodation in the village which was two storey. It appears that the supporting medical statements relate to the previous accommodation.

Whilst the need for a house for this particular family is understood, the current development would not offer significant community benefits.

New Local Development Plan

The agent submitted comments to the Reporter in the Examination of the new Local development Plan relating to changes being made to the policy PMD4 - Development Outwith Development Boundaries. The Reporters commented as follows:

'I do not believe that further changes are required to the circumstances set out. I agree with the council that possible additional exceptions, such as a need to retain families/retirees within a community where no other suitable housing stock is available, can reasonably be dealt with as a material consideration at the development management stage. Furthermore, it may also be possible to deal with such cases under circumstance (b) relating to affordable housing, or circumstance (d) relating to community benefits.

No modifications to policy - Development outwith Development Boundaries'

Local Plan Policy H1 - Affordable Housing relates primarily to larger developments which requires a proportion of the development to be affordable housing and/or special needs housing. There are currently two sites allocated for housing within the settlement boundary in both the Consolidated Local Plan and the Draft Local Development plan. Both of these sites have been identified as having a capacity for 10 housing units. In addition to this planning permission in principle was granted (on appeal) in 2014 for a housing development, part of which is within the development boundary. There is a legal agreement in place requiring 25% of any housing built on the site to be affordable. There is therefore adequate land available within the settlement boundary for the development of new affordable/special needs housing and for individual dwellinghouses adapted to meet the individual needs of the family.

The Supporting Statement states: 'The detriment to the family of not being able to accommodate their needs in terms of space and equipment required, nor alter their existing dwelling to such an extent as to accommodate the needs of the family is considerable; and is enough to outweigh any planning policy objection to the proposal.' Furthermore, the statement maintains that if Reporter had had all medical evidence in front of him when he assessed the previous application he may well have come to a different conclusion. This is purely speculation and is not material to the current application.

Given the assessment of the application against the prevailing policies and the land available for new housing in the vicinity of Broughton (not taking account of any properties which may currently be on the market) it is considered that the needs of the family do not outweigh these policy considerations and the proposals cannot be supported.

Equalities Legislation

When taking any decisions the Council must have regard to the Equalities Act 2010 - section 149 which states that a public authority must, in the exercise of its functions, have due regard to a number of factors including to the need to consider the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

The agent makes reference to another application where the Equalities Act was taken into consideration and which has an 'intention to approve' notice (subject to the completion of a legal agreement) by the LRB (ref 12/01191/PPP) As with this application there were specific medical conditions which either required adaptations to an existing dwelling or a new house. There are differences between the current application and this application in that the land in question was also close to the applicant's smallholding and the house would enable him to continue with this business. As noted below it was considered that any refusal would cause the appellant extreme hardship.

As part of the consideration of the application the LRB Members debated at length the applicant's personal medical circumstances and whether they were a material consideration. They also considered the implications of the Equality Act 2010. The applicant's submissions had stressed that his circumstances had changed in recent years and that a new dwellinghouse designed for disabled access was required to meet his living needs. It had also been highlighted in the submissions that there was no viable or affordable means of adapting his existing house to allow suitable levels of wheelchair access.

The Local Review Body considered that personal circumstances can rarely be taken into account in considering the merits of planning applications; that any material consideration should serve or be related to the purpose of planning, relate to the development and use of land, and be fairly and reasonably related to the particular application. However, after reviewing the case in detail, the Local Review Body was persuaded that, in these specific circumstances, this information submitted by the appellant was material to the consideration of the appeal. The LRB concluded that a refusal of permission would cause the appellant extreme hardship. It concluded that this fact, together with the provisions of Section 149 of the Equality Act, enabled it to grant an exceptional approval of the application; to grant planning permission to the appellant to erect a new house specifically designed to improve his quality of life and to allow him to remain in an area with which he is familiar and to retain a connection to his existing small holding and equestrian operations.

Each application must be considered on its own merits and the differences between the two applications are noted above. It is considered that in the case of the current application, taking into account the requirements

of the Equalities legislation, the needs of the family do not outweigh the policy considerations and that by refusing the application for a house on this particular site, the family will not be severely disadvantaged. Furthermore, the site is on a hillside away from other properties and with clear access difficulties as noted below. A site closer to the village with easy access for carers and emergency vehicles would appear to be more appropriate to meet the family's needs.

Access

During consideration of the previous application, Roads Planning recommended refusal on the grounds of road safety given that the geometry of the access to the site off the A701 did not permit two vehicles to pass. Should two vehicles meet at the access, and the provision of this property would increase that possibility, this would result in a vehicle having to sit on the main A701 whilst the second vehicle left the site. It was the opinion of this section at that time that this was not a satisfactory situation.:

At the Appeal, the reporter accepted that two vehicles could not pass on the bridge and that one would have to wait on the main road, but due to the forward visibility available to traffic on the main road. However, he did not see this as a flaw in the application. In relation to the current application, Roads Planning, whilst accepting this viewpoint, still consider that whilst the visibility available should make drivers aware of any vehicle sitting on the main carriageway, the same visibility also makes overtaking on that stretch of the road available to drivers who may be frustrated at sitting behind slow vehicles. This in itself could cause a danger should an approaching driver not be aware the vehicle in the middle of the road is waiting to turn, or even that it is there.

The access road beyond the junction is narrow, winding and steep up to Broughton Place Farm which would make access for emergency vehicles difficult particularly in the winter months. Beyond the farm, access to the site is via a track to Broughton Place Cottage and then across a field laid to grass. The former access track to the site across the field is not clearly visible and it is on a slope. It is currently not the practice of Roads Planning to support development which would require access via a working farm which this would be.

The issues with the access track to the site which would all have to be resolved to the Council's satisfaction should the application be approved. It is not clear whether the applicant has enough control to resolve these issues and, until such times that all of the above issues can be resolved to the Council's satisfaction, Roads Planning recommend against this application in the interest of road safety.

Impact on Landscape

The site is located in an elevated position but is now surrounded by semi-mature trees which have been planted by the applicant. It would also be viewed against a backdrop of mature trees. These trees would help to screen any building on the site and a sensitively designed single storey dwellinghouse would not have a significant adverse impact on the landscape quality of the National Scenic Area. Provided that the access track was upgraded in an approved manner it is unlikely that it would affect the existing mature trees.

Residential Amenity

As noted above, the proposed new house is not close to the existing residential properties at Broughton Place and any building would not have any impact on residential amenity except for additional vehicles accessing the site and due to the specific medical requirements, it is likely that there would be more vehicular movements by the family and visitors. This has the potential to impact on the residents of Broughton Place Cottage who currently live at the end of a farm track.

Service Provision

Water Supply

The applicants have indicated that they propose to use the public water supply. However, no indication has been given as to how they propose to do this given that the site is relatively isolated and they have no control over any of the surrounding land.

Drainage

A new private drainage system is proposed for foul and surface water drainage. Again as this is a planning permission in principle application no details have been provided. However, it is considered that there is sufficient land within the site to accommodate an appropriate drainage system which would be acceptable to both Building Standards and SEPA and which would not have an adverse impact on the surrounding land.

Both the drainage and water supply could be addressed through suitably worded conditions should the application be approved.

Developer Contributions

The agent has indicated that the applicants would be prepared to pay the required contribution towards Education and Lifelong Learning but have not yet indicated whether this would be through a Section 69 or 75 Legal Agreement.

In conclusion, it is considered that the application cannot be supported as it is contrary to Local Plan policies and the specific needs of the applicants and their family do not outweigh these policy considerations.

REASON FOR DECISION :

The proposed development is not acceptable as it is contrary to Scottish Borders Consolidated Local Plan policies D2 and G8, Supplementary Planning Guidance on New Housing in the Borders Countryside and the Proposed Local Development Plan policies HD2 and PMD4, in that the application site does not relate well to the building group at Broughton Place and the requirement for a dwellinghouse on medical grounds does not justify a departure from development plan policy. Furthermore, in the interests of road safety, in that the existing vehicular access to the site is inadequate.

Recommendation: Refused

- 1 The proposal is contrary to Policy D2 - Housing in the Countryside and Supplementary Planning Guidance on New Housing in the Borders Countryside and Policy HD2 - Housing in the Countryside of the proposed Local development Plan in that the site for the new house is not within the recognisable building group at Broughton Place and it does not relate well to this group.

- 2 The proposal would be contrary to Policies D2 and G8 of the Scottish Borders Consolidated Local Plan 2011 and Policies HD2 and PMD4 of the Proposed Local Development Plan in that the stated need for the dwellinghouse would not justify the proposed development in this specific location.

- 3 The proposed dwellinghouse would be contrary to Policy D2 of the Scottish Borders Consolidated Local Plan 2011 and Policy HD2 of the Proposed Local development Plan in that satisfactory access and other road requirements cannot be met.

“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.