

**NOTICE OF REVIEW**

UNDER SECTION 43A(8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED) IN RESPECT OF DECISIONS ON LOCAL DEVELOPMENTS

THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2008

THE TOWN AND COUNTRY PLANNING (APPEALS) (SCOTLAND) REGULATIONS 2008

**IMPORTANT: Failure to supply all the relevant information could invalidate your notice of review.**

Use **BLOCK CAPITALS** if completing in manuscript

**Applicant(s)**

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

**Agent (if any)**

Name

Address

Postcode

Contact Telephone 1

Contact Telephone 2

Fax No

E-mail\*

Mark this box to confirm all contact should be through this representative:

Yes  No

\* Do you agree to correspondence regarding your review being sent by e-mail?

Planning authority

Planning authority's application reference number

Site address

Description of proposed development

Date of application  Date of decision (if any)

Note. This notice must be served on the planning authority within three months of the date of the decision notice or from the date of expiry of the period allowed for determining the application.

**Nature of application**

- 1. Application for planning permission (including householder application)
- 2. Application for planning permission in principle
- 3. Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission; and/or modification, variation or removal of a planning condition)
- 4. Application for approval of matters specified in conditions

**Reasons for seeking review**

- 1. Refusal of application by appointed officer
- 2. Failure by appointed officer to determine the application within the period allowed for determination of the application
- 3. Conditions imposed on consent by appointed officer

**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.

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

- 1. Further written submissions
- 2. One or more hearing sessions
- 3. Site inspection
- 4. Assessment of review documents only, with no further procedure

If you have marked box 1 or 2, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing are necessary:

**Site inspection**

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

- |  | Yes                                 | No                       |
|--|-------------------------------------|--------------------------|
| 1. Can the site be viewed entirely from public land?                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is it possible for the site to be accessed safely, and without barriers to entry? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

**Statement**

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. Note: 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.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

Please refer to separate Grounds of Appeal statement.

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 new material, why it was not raised with the appointed officer before your application was determined and why you consider it should now be considered in your review.

Considerable time was spent in pre-application discussion with Planning Officers. At no stage was the eventual reason for refusal mentioned. The positive nature of dialogue throughout was summed up within the Officer's Report, "...in terms of scale, massing, design and siting the proposals are acceptable," so there was apparently no need for further planning statements or background information to support the application. The Applicants would now appreciate the opportunity to put forward representations & supporting information to the Review Body.

**List of documents and evidence**

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.

- Grounds of Appeal Statement  
 - 2004 Planning Appeal Decision  
 - 645/AP Annotated Plan of Local Area

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**Checklist**

Please mark the appropriate boxes to confirm you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requiring a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

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 from that earlier consent.

**Declaration**

I the applicant/agent [delete as appropriate] hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents.

Signed

FRED WALKER ASSOCIATES

Date

25th June 2015

**The Completed form should be returned to the Head of Corporate Administration, Scottish Borders Council, Council Headquarters, Newtown St. Boswells TD6 0SA.**

## **Planning Application 14/01182/FUL**

### **Erection of dwelling house with integral garage and incorporating granny flat on land south of Boggsbank, Boggsbank Road, West Linton.**

#### **Grounds of Appeal Statement**

The Planning Officer's Report states, "It is considered that the current Local Plan policy takes precedent over previous planning decisions for this site, there is no established building group at this location and for this reason, the application cannot be supported."

In every other respect, the application has met with the approval of those consulted: No objections were received, the local Community Council wrote in support, whilst the form & location of the proposed buildings on the site & proposed access from the Boggsbank Road have met with no dissent.

To quote further from the Planning Officer's Report, "The proposals are not acceptable as they do not comply with Scottish Borders Local Plan policy D2 in that there is no existing building group of at least three houses at this location and a case has not been made that would support an exception to this policy." The Applicants wish to take this opportunity to put forward a case which combines three main arguments: Firstly, that there is indeed an established building group of at least three houses & furthermore a long-established & distinct wider built environment at Boggsbank, into the context of which the proposed development would fit seamlessly. Secondly, that justification can be made on economic grounds for this proposed new dwelling house with regard to the adjacent family haulage business. Thirdly, to outline a little of the history of the site which might inform any debate on its suitability as the location for a new dwelling house.

1.) POLICY D2 – HOUSING IN THE COUNTRYSIDE asserts the Council's wish to promote appropriate rural housing development in villages & in dispersed communities in the Southern Borders housing market area but with particular relevance to this application, "associated with existing building groups where this does not adversely affect their character or that of the surrounding area."

The Planning Officer's Report states that the proposed site, "Is an open area located to the south of a clear boundary formed by the line of mature trees along the access road to Westwater House and beyond." An argument can certainly be made that the site is well enclosed by existing trees / landscape. The access road with its avenue of trees forms a natural boundary to the site but not to the wider building group. As plan of local area 645/AP shows, Boggsbank Farm itself & Westwater Cottage lie within 60m of the proposed buildings; a disused Barn with recently approved Planning Permission for conversion into a dwelling house for which preparatory work is now underway lies approximately 100m away while Westwater lies around 200m away. No reference is made by the policy to any particular permissible spacing of an existing group to justify further additions. So, is Boggsbank a distinct place with, perhaps, a more dispersed housing group? In his determination of the Planning Appeal for outline consent dated 13th January 2004, the Reporter states (page 3, paragraph 13) that, "My site visit leaves me in no doubt that a "sense of place" exists, both at the junction of the access serving West Water and Boggsbank Road, and also the extended area to the east up to West Water. Existing development at the junction comprises West Water Cottage and the extended Boggsbank. While apparently only one house, Boggsbank has the appearance of two residential units. In addition there is a further building to the east of West Water Cottage, and West Water itself. While there may in fact only be two houses at the junction, the clear impression given is of a more substantial building group." The Reporter then continues, "Furthermore, the committee report on the application acknowledges that it could be argued that a "dispersed"

housing group exists if West Water itself is included, and that is a view which I hold, especially as an element of continuity is provided by the semi-derelict barn."

Current Supplementary Planning Guidance on New Housing in the Borders Countryside asserts that, "The Scottish Borders Council's policy is that in the countryside new housing will be encouraged to locate within or adjacent to building groups...Normally a group will consist of residential buildings comprising at least three dwelling units." Furthermore, "In all cases, the existence of a sense of place will be the primary consideration." All of which would appear to support the view expressed in the determination of the Planning Appeal of 2004 that, in the spirit of the legislation, the site is well suited to & appropriate for a new house.

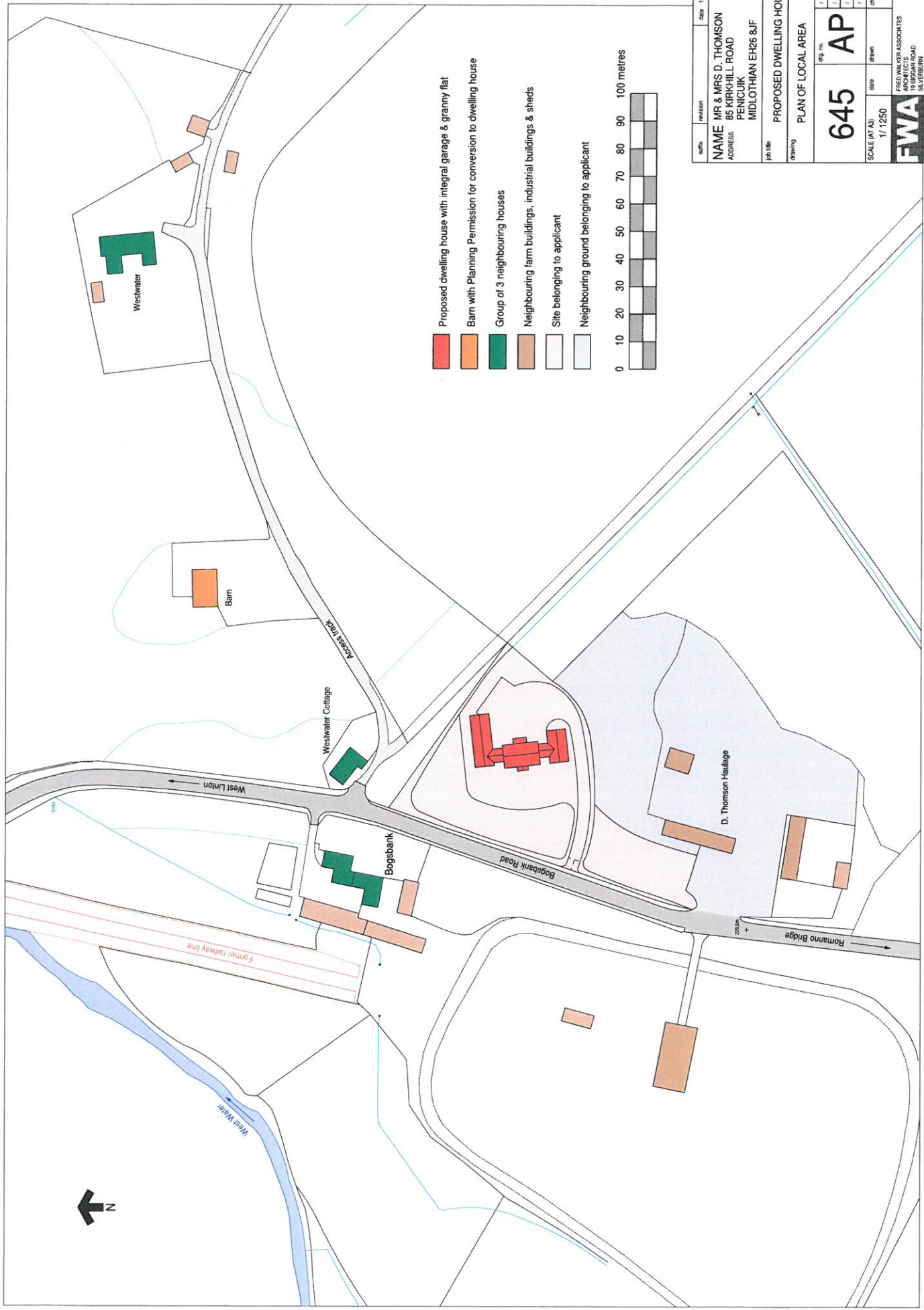
In conclusion, the proposed development would sit well within & be an appropriate addition to this existing building group but would have little wider visual impact.

2.) D. Thomson Haulage has operated from the Boggsbank yard for over 30 years. The business is road haulage, portacabin hire & storage. The yard comprises a generator shed, large garage / workshop & several storage containers. At present a total of 6 people are employed: 2 from West Linton, 1 from Penicuik & 1 from Carnwath together with Mr Douglas Thomson & son Robert.

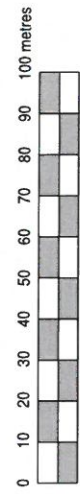
To oversee the continued successful & secure running of the business, the family would benefit from living at Boggsbank.

3.) Boggsbank is signposted from Romano Bridge & sits adjacent to a long established crossing point of the West Water. The Leadburn, Linton & Dolphinton Railway (remnants of which can be seen) ran close by & there is a considerable history of industrial activity in the immediate area. Research has revealed that in the post war years of the 1940s a Saw Mill was in operation on a part of the proposed site which highlights the point that this is not a previously undeveloped Greenfield area or "open countryside" but should rather be considered a Brownfield site which has been well looked after by the Applicants with a view to possible re-development.





- Proposed dwelling house with integral garage & granny flat
- Barn with Planning Permission for conversion to dwelling house
- Group of 3 neighbouring houses
- Neighbouring farm buildings, industrial buildings & sheds
- Site belonging to applicant
- Neighbouring ground belonging to applicant



ref.	revision	date	15/06/2015
<b>NAME</b> MR & MRS D. THOMSON			
<b>ADDRESS</b> 85 KIRKHILL ROAD			
PENICUIK			
MIDLOTHIAN EH26 8JF			
<b>job title</b> PROPOSED DWELLING HOUSE			
<b>drawing</b> PLAN OF LOCAL AREA			
app. no.	date	drawn	checked
<b>645</b>	<b>AP</b>		
<b>SCALE (AT A3)</b>		<b>1/1250</b>	

**FWA** FERRIS WATERS ASSOCIATES  
ARCHITECTS  
19 BORGAR ROAD  
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SCOTTISH EXECUTIVE

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[http://www.scotland.gov.uk/planning\\_appeals/seiru](http://www.scotland.gov.uk/planning_appeals/seiru)

Your ref:  
Our ref: P/PPA/140/195

13 January 2004

Mr & Mrs D Thomson  
82 Kirkhill Road  
Penicuik  
Midlothian  
EH26 8JF

10-30

FAO KEITH RENTON-

Sorry for the delay, meant to  
send this off ages ago  
Brenda

Dear Sir & Madam

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND  
SCHEDULE 4  
PLANNING APPEAL: LAND AT BOGSBANK ROAD, WEST LINTON**

1. I have been appointed to determine your appeal against the refusal of outline planning permission by the Scottish Borders Council for the erection of a dwellinghouse at the above location. I made an accompanied inspection of the appeal site and the area on 18 November 2003.
2. The 1.3ha appeal site is part of an extensive area of open land on the east side of Bogsbank Road, immediately to the south of the minor access leading to the established property known as West Water. Immediately to the north of this access is West Water Cottage, and facing it from the opposite side of the public road is Bogsbank, a single storey house with a large annex. Substantial outbuildings associated with Bogsbank appear to be used for livery purposes. West Water itself is some 150m to the northwest of the site and between it and West Water Cottage is a semi-derelict barn which seems to be used as an equipment store. Adjoining the south of the site is your haulage business, which comprises a number of large utilitarian buildings and open storage. The appeal site itself is on two levels; a lower area which extends to the south and east of West Water Cottage, and a higher area beyond an artificial earth bund, the top of which is at approximately the same level as the haulage yard. Mature broadleaf trees along the access road to West Water and along Bogsbank Road represent prominent features in the local landscape.
3. The proposal involves a detached dwellinghouse, and an indicative drawing shows this positioned centrally within the lower part of the site, served by a new access to Bogsbank Road.
4. Planning permission was refused because (in summary) the proposal is contrary to the Scottish Borders Structure Plan (SBSP) policies H5 and H6, and to Tweeddale Local Plan (TLP) policies 7 and 8, as the site is outwith any recognised settlement or building group and the need for the house has not been adequately substantiated.

5. **An objection by West Linton Community Council** advises that as there is no recognised building group at this location, the proposal is contrary to TLP policy 7. Since no economic need for the dwelling has been substantiated, the proposal is also contrary to TLP policy 8. **Another objection** by a local resident states that the proposal represents a departure from TLP policy 7.

6. **For the council** it is stated that SBSP policy H5 allows for new houses in the countryside outwith defined settlements, but associated with building groups, where they are in accordance with the terms of the policy guidance in "New Housing in the Borders Countryside". Favourable consideration under this guidance is more likely to be given where proposals are readily accessible to the strategic public transport network, they employ energy efficient and/or innovative design principles, and they incorporate employment generating uses appropriate to a countryside setting. SBSP policy H6 states that new houses in the countryside outwith defined settlements and unrelated to building groups will only be supported where the house can be shown to be essential at the location for the needs of a use that currently occupies or requires an appropriate rural location, and the requirement for a house cannot be satisfied by policy H5. TLP policy 7 allows for new housing development outwith identified settlements, but within or adjacent to building groups, where specified criteria are met, and policy 8 establishes similar criteria for sites that are not within or adjacent to building groups where an economic need can be clearly substantiated. TLP policies 57 and 58 relate to locational, landscape, design and external materials matters.

7. The appeal site clearly lies outwith any recognised settlement boundary and does not form part of any building group as defined in "New Housing in the Borders Countryside". There are presently 2 houses at this locus, West Water Cottage and Bogsbank. A further house, West Water, is about 150m to the east. The council acknowledges in terms of its guidelines that it could be argued that the overall settlement pattern constitutes a "dispersed housing group", but the view is taken that the access to West Water, which is well defined by established trees and shrubs, forms the boundary of the group. In any event, it is argued that the appeal site does not relate well to West Water Cottage and Bogsbank. Accordingly the proposal must be assessed against SBSP policy H6, the first criterion of which requires an applicant to provide evidence that the house is justified on grounds of essential need. It is acknowledged that the appellants' business operates from the adjoining land and that the proposed house would assist the running of this in terms of convenience, but it is not accepted that the erection of a house is essential to the future of the business. There does not appear to be any reason why the appellants could not acquire an existing house in West Linton or move to a location closer than Penicuik. Another possibility would be to erect offices on the site from which to manage the business, and security measures such as fencing and CCTV could be employed.

8. The appellants have questioned whether full details of the case of need were presented to members before the decision was taken to refuse permission. While the statement produced by their agent arrived too late to be incorporated in the committee report, it is confirmed that a summary was read out at the committee meeting. Members were therefore fully aware of all relevant circumstances before they reached their decision.

9. **In support of the appeal** you advise that a supporting statement detailing the need for the house was submitted by your agent, but it was not copied in full to councillors. In your opinion this affected the council's decision. Fundamental points included in the statement of need are as follows:

- your haulage business has operated from Bogsbank Road for over 20 years, during which time it has grown significantly to the extent that it now employs 5 full time drivers, a full time driver/mechanic and a part time bookkeeper;

- future expansion plans include developing the vehicle repairs side of the business, setting up a horse transport service, providing container storage on the site, and setting up a portacabin hire service;
- in addition to providing local employment, the business provides a service for local builders, farmers and gardeners, and it contributes significantly to the local economy;
- the business is presently administered by Mrs Thomson from the family home in Penicuik, but the birth of a third child means that this is no longer practical;
- an increase in sub-contractual work has generated increased paperwork and the need for the business administration to be undertaken on site; and
- the option of providing administrative space in the form of a portacabin has been rejected for personnel safety and security reasons.

10. You emphasise that this is not a case where the proposed house would be sold on for profit. The sole purpose of the application is to centralise your business and domestic arrangements, while continuing to benefit the local economy.

### Conclusions

11. Section 25 of the Act requires my determination to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan policies drawn to my attention as bearing on the appeal are referred to at paragraphs 6-7 above. Other material considerations are the council's "New Housing in the Borders Countryside" guidelines as amended, and your submission of need as outlined at paragraph 10 above. Having regard to the submissions, and my site visit, I consider the determining issues in this case are whether the proposal is consistent with the relevant provisions of the development plan and, whether a decision not in accord with these provisions is justified by other material considerations.

12. It is beyond dispute that the appeal site lies outwith any defined settlement, and so reference must firstly be made to the council's guidelines on "New Housing in the Borders Countryside" to establish whether a building group exists at this locus. The 1993 version of the guidelines defines a building group *inter alia* as being identifiable by a sense of place, which will be contributed to by natural or man-made boundaries, and it will normally consist of at least 3 dwelling units, including buildings capable of conversion to residential use. In assessing the suitability of any particular group to accommodate new houses, account should be taken *inter alia* of: the scale and siting of the proposed development, which should reflect and respect the character of the existing group; the new development should be limited to the area contained by the "sense of place"; and sites should not normally break into a previously undeveloped field. An alteration to the guidelines in 2000 introduced the concept of "dispersed" housing groups; and applied similar criteria to be met, but with an element of flexibility insofar as breaking into a previously undeveloped field is concerned.

13. My site visit leaves me in no doubt that a "sense of place" exists, both at the junction of the access serving West Water and Bogsbank Road, and also the extended area to the east up to West Water. Existing development at the junction comprises West Water Cottage and the extended Bogsbank. While apparently only one house, Bogsbank has the appearance of two residential units. In addition there is a further building to the east of West Water Cottage, and West Water itself. While there may in fact only be two houses at the junction, the clear impression given is of a more substantial building group. I note that the original definition of a building group includes the word "normally" when referring to "at least three dwelling units". This seems to me to be a recognition that exceptions to the standard definition will on occasion be justified. In my opinion the situation at the junction could qualify as such an exception. Furthermore the committee report on the application

acknowledges that it could be argued that a "dispersed" housing group exists if West Water itself is included, and that is a view which I hold, especially as an element of continuity is provided by the semi-derelict barn.

14. I am satisfied that a suitably designed house carefully positioned towards the northwest corner of the site would respect the layout, balance and character of the existing group, whether it be the group at the junction itself, or the dispersed group. Based on my site visit, and given the development at Boggsbank, I am not persuaded that the West Water access road forms an edge to the building group which must be preserved at all costs. While it could be said that the proposed house would break into a presently undeveloped field, I am satisfied that any impact that might produce could be suitably addressed by tree and shrub planting which would satisfactorily integrate it into its setting. Such tree planting would also firmly establish the southern boundary of the building group on the west side of Boggsbank Road. In regard to TLP policy 7, I consider that with the imposition of appropriate conditions on a grant of outline permission, all of the required criteria can be satisfactorily met. I therefore conclude that the proposal does not conflict with the provisions of SBSP policy H5 or TLP policy 7, and in consequence it is not necessary for me to assess the proposal against SBSP policy H6 or TLP policy 8. Given these conclusions, I do not consider that there is any need for a section 75 agreement which would have tied occupancy of the proposed house to your business.

15. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based. I find that the proposal is not in conflict with the relevant provisions of the development plan, and refusal is not justified by other material considerations. Accordingly, and in exercise of the powers delegated to me, I therefore allow your appeal and grant outline planning permission for the erection of a dwellinghouse at Boggsbank Road, West Linton (council ref: 03/00202/OUT), subject to the conditions:


- (1) Before development commences written approval from the planning authority shall be obtained for the details of the layout of the site, the proposed boundary treatment and landscaping, the finished external ground levels, the siting, design, external materials and finishes of the proposed house and any other buildings, the finished floor levels of buildings, the access, proposed on-site vehicle turning and parking facilities, and the arrangements for surface and foul water drainage. No work shall commence on site until all of the above "reserved matters" have been approved, and thereafter the development shall be implemented strictly in accordance with the approved details unless the council gives its written agreement to any variation. *(Reason: to ensure the proper development of the site as details have not yet been submitted.)*
- (2) Application for the approval of the "reserved matters" shall be made within 3 years of the date of this permission. *(Reason: to accord with section 59 of the Act.)*
- (3) The development hereby permitted shall start no later than 5 years from the date of this permission, or within 2 years from the date of approval of the last of the "reserved matters". *(Reason: to accord with section 59 of the Act.)*
- (4) The details submitted in pursuance of condition (1) shall show all existing trees on site retained and protected during the construction period and the proposals for doing so shall be incorporated in the required landscaping details. *(Reason: in the interests of amenity.)*

16. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town

and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicants' interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

17. Copies of this letter have been sent to the Scottish Borders Council and to those who lodged representations.

Yours faithfully



Alan M G Walker  
Principal Reporter

