



APPEAL STATEMENT (CD 1)

SITE ADDRESS

**FOLLY COTTAGE WOODSIDE FARM, KELSO, SCOTTISH
BORDERS**

PROPOSAL

**APPEAL AGAINST REFUSAL OF REPLACEMENT DWELLING
AND ERECTION OF A SINGLE DETACHED GARAGE**

APPLICATION REF: 19/00965/FUL

APPLICANT

MR AND MRS JACKSON

NOVEMBER 2019

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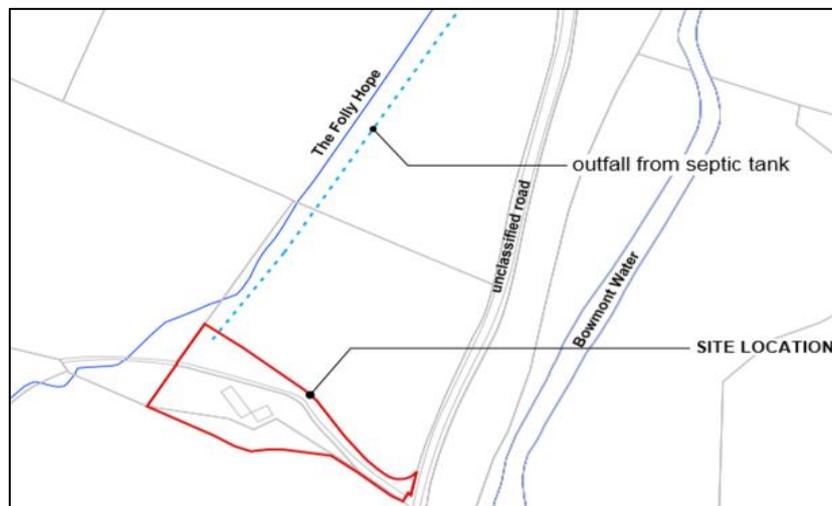
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1. INTRODUCTION AND PROPOSAL DESCRIPTION

- 1.1 This statement, prepared by Ferguson Planning, is submitted to Scottish Borders Council on behalf of the Appellant, Mr and Mrs Jackson. Appendix 1 also provides the core documents that form the remaining evidence base used in support of the proposal.
- 1.2 The purpose of this Statement is to provide a good level of understanding of the appeal site and the context within which it lies, before providing background to the proposed development and its compliance with planning policy and relevant Grounds of Appeal (GOA).
- 1.3 The proposal seeks a replacement dwelling due to constructional and sustainability issues that have emerged with the previously consented and enacted conversion development, in particular destabilising risks to the remaining walls and a deficiency in energy standards. The new build provides the opportunity to address these concerns while also ensuring build safety and improvements in energy efficiency.
- 1.4 The site is situated within the Bowmont valley, 3 miles south of Town Yetholm, on the lower eastern slopes of Crookedshaws Hill, overlooking the Bowmont Water. A track leads uphill from the roadside (the eastern boundary), where the building sits is on an elevation above The Folly Hope Burn, which forms the western boundary of this site. The southern boundary rises and is laid to improved grass, enclosed in a stock fence. The site is also situated with the Cheviot Foothills SLA.
- 1.5 The extract below indicates in red the defined plot for the purpose of the single dwellinghouse and associated works.





Proposal

- 1.6 Careful consideration has been given to the design and layout of the proposal to ensure the scale and character of the dwelling is in keeping with that of the original farmhouse. The existing external walls of the existing farmhouse are linear in nature with a separate former outbuilding adjoining creating a rough L shape format.
- 1.7 The proposed dwelling follows the existing linear farmhouse footprint, with the removal of the square L section on the south eastern side of the original dwelling. The proposal includes external extensions to the north and south as smaller subservient single storey elements (west wing and east wing).
- 1.8 There is a detached garage proposed towards the north west of the subject site, situated adjacent the hedge line on the northern boundary.
- 1.9 With a completely new building being proposed the constructional detailing has been amended to achieve very high standards of thermal and energy efficiency. This has been achieved by:
 1. Increasing the thermal performance of the external envelope (ground floor, external walls, roofs, windows and doors)
 2. Careful detailing to improve air tightness and installation of a MVHR unit (mechanical ventilation with heat recovery)
 3. Detailing to reduce/eliminate cold bridging at external junctions
- 1.10 The effect of the above measures along with the use of an air source heat pump for heating and hot water along with the installation of Solar PV panels means the house as now designed achieves a carbon dioxide emission rate which is 50% lower than that required by the current building regulations.

Planning History

- 1.11 The principle of residential development on the site was approved back in 2010 (10/00655/FUL) for the reinstatement, alterations and extensions to derelict farmhouse. Development regarding the conditions on this application had commenced and works included the implementation of an agricultural steel net stock fencing and plantation of a mixed species hedgerow along the northern boundary. Works commenced also included the service lay-by and bellmouth entrance have been formed in bitmac.
- 1.12 A further application was submitted and approved for the reinstatement, alterations and extension of former dwellinghouse and erection of detached garage (17/00104/FUL). The Apellant remains the same as the Applicant for the previous 2017 application.



- 1.13 The design and positioning of the dwelling consented previously remains the same as that proposed. It is noted here the only difference is the scale of the proposed dwelling as a 12.5 sq. reduction than that approved in the previous application.
- 1.14 The consented proposal has been enacted or started with alterations to the road access and provision of a lay-by in accordance with a planning condition but, for reasons outlined, the revised proposal before Members for which consent is now sought is deemed the most sustainable option. The design and layout of the single dwelling, as now proposed, is the same as that approved save a small reduction in scale.

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2. PLANNING POLICY CONTEXT

2.1 This section provides an overview of key planning policies relevant to the proposed development. Scottish Planning Policy (SPP) sets out national planning policies and is a key material consideration in the determination of this application. The Development Plan is made up of the Strategic Development Plan for South East Scotland (SESPlan) and the Scottish Borders Local Development Plan (2016).

Scottish Planning Policy (SPP) 2014

- 2.2 SPP encourages rural development that supports prosperous and sustainable communities and businesses, whilst protecting and enhancing environmental quality. SPP provides that, where appropriate, the construction of single houses outwith settlements should be supported provided such are well sited and designed to fit with local landscape character, taking account of landscape protection and other plan policies.
- 2.3 A key focus for SPP is the creation of well-designed, sustainable places and supporting sustainable economic growth and regeneration. SPP creates a presumption in favour of development that contributes to sustainable development.
- 2.4 Policies and decisions will be guided by key principles, including:
- supporting good design and the six qualities of successful places;
 - making efficient use of existing capacities of land, buildings and infrastructure;
 - supporting climate change mitigation and adaptation;
 - having regard to the principles of sustainable land use;
 - protecting, enhancing and promoting access to cultural and natural heritage;
 - reducing waste, facilitating its management and promoting resource recovery; and
 - avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.



Scottish Borders Local Development Plan 2016

- 2.5 The Scottish Borders Development Plan was adopted in 2016 and represents the most up to date development plan. It contains planning policies against which applications are assessed by the Planning Authority.
- 2.6 The key planning policies in this instance being:
- **HD2 Housing in the Countryside**
 - **PMD2 Quality Standards**
 - **EP5: Special Landscape Area**
 - **EP8: Archaeology**
 - **EP13: Trees, Woodlands and Hedgerows**

Policy HD2 Housing in the Countryside

- 2.7 The policy aims to allow appropriate conversions, restoration, and replacement in the countryside.

(E) Replacement Dwellings

- 2.8 Policy HD2, Part E, of the Local Development Plan 2016 supports replacement dwellings which fit the following criteria:
- A) *The siting and design of the new building reflects and respects the historical building pattern and the character of the landscape setting.*
 - B) *The proposal is in keeping with the existing/original building in terms of its scale, extent, form and architectural character.*
 - C) *Significant alterations to the original character of the house will only be considered where it can be demonstrated that these provide environmental benefits such as a positive contribution to the landscape and/or a more sustainable and energy efficient design.*

Policy PMD2 Quality Standards

- 2.9 This policy aims to ensure that all new development is of high quality and respects the environment within which it is contained. It covers a wide range of issues including sustainability, design and accessibility.



EP5: Special Landscape Area

2.10 In assessing proposals for development that may affect Special Landscape Areas, the Council will seek to safeguard landscape quality and will have particular regard to the landscape impact of the proposed development, including the visual impact.

EP8: Archaeology

2.11 The aim of this policy is to give strong protection to any archaeological or historic assets from any potentially damaging development. Archaeological assets and historic buildings represent an irreplaceable part of the Scottish Borders heritage and environment. In addition to their inherent historical importance, they are of great interest and value for educational, recreational and tourism purposes.

New housing in the Borders Countryside Supplementary Planning Guidance

2.12 In assessing proposals for the rebuilding of existing dwellings and for the construction of new dwellings on derelict residential sites, the standard policy criteria will be applied. In these cases, there is also a requirement that:

- there is substantial evidence of residential use on site.

Substantial evidence would require that:

- the walls of the former residential property are substantially intact.



3. POLICY COMPLIANCE

Replacement Dwelling

- 3.1 The principle of residential development on the site has already been deemed acceptable by the 10/00655/FUL application. The design and layout of this proposal has also already been deemed acceptable by the 17/00104/FUL application.
- 3.2 The main difference being between both proposals is what policy the proposal has been assessed against. The previous application was approved on its compliance with policy HD2 (C) Conversions of Buildings to a house and this application is instead assessing the proposal against Policy HD2 (E) Replacement Dwellings.
- 3.3 Following receipt of planning permission (ref: 17/00104/FUL) for the *“Re-instatement, alterations and extensions of former dwelling house and erection of detached garage”* at Folly Cottage work began on the detail design required for a building warrant application and tendering/construction purposes.
- 3.4 It was only during this stage that the full extent of re-building and remodelling required to the existing structures became apparent and appreciated. Two main areas of concern were identified which could affect the feasibility and practicality of safely working with the existing building.
- 3.5 The areas of concern were:
1. Excavations required for the ground floor slab and new foundations adjacent to the building.
- 3.6 The combined impact of the constructional depth of the new floor slab and depth of adjacent foundations could potentially undermine and destabilise the remaining walls. Large foundation stones which project beyond the face of the wall compound this problem as these would also need to be removed. The only safe solution to the above would be to underpin all areas of wall affected.
2. New and altered door and window openings within existing walls:
- 3.7 The arrangement of new and altered openings requires large areas of existing walling to be removed. With only shallow sections of wall above these openings remaining the feasibility of propping and retaining such small areas of wall is questionable. In practical terms it’s likely areas above openings would be completely removed leaving only small stubs of wall retained between openings.
- 3.8 Once the above came to light an assessment was made on the overall feasibility of working with the existing structure. This assessment determined that even if the drawings and tender/construction documentation showed underpinning, propping and retention of the



existing structures most contractors would be unwilling or unable to undertake these due to the constructional difficulties involved and safety concerns.

- 3.9 With the above in mind it was clear that the most sustainable solution lay in demolition and rebuilding, albeit retaining the appearance and form of the building for which consent had been granted.
- 3.10 The drawings now being submitted for planning permission differ only in that the footprint is smaller due to a reduction in accommodation now being proposed. In all other aspects the external appearance, location and materials being proposed are identical to those already approved. In reality, when built, the building as submitted will appear identical to that previously approved and therefore already comply with Policy PMD2- Quality Standards.
- 3.11 A further reasoning for the replacement dwelling is in increasing the sustainability credentials of the house. Ensuring it will be design close to passive house standards and being much more energy efficient. It will also look to use renewable technologies such as air source heat pump and in sustainable drainage solutions.
- 3.12 The proposal is also compliant with Housing in the Borders Countryside SG as there is evidence there was previous residential use on the site. Beyond this the latest planning consented for a residential building has been established or started securing the principle or acceptance of a residential dwelling on the site.

Access and servicing

- 3.13 Access to the site will be taken from the existing track and access off the narrow public road. The service lay-by and bellmouth entrance have also been formed in bitmac, as was requested by a planning condition on application 10/00655/FUL.
- 3.14 It is intended that the dwelling will be serviced by public water supply and a private septic tank with discharge via surface water soakaway. Details of these arrangements have been provided in the supporting documents.

Residential Amenity

- 3.15 There will be no residential impact as there are no residential properties nearby.

Design

- 3.16 It is acknowledged that the site sits within the sensitive landscape designation of Cheviot Hills. The design and scale of the dwelling has not changed from that given permission in 17/00104/FUL and it was accepted here that the presence of the cottage has been established and accepted in the isolated rural setting for a long time.
- 3.17 Despite its elevated location appropriate landscaping has been proposed to ensure the dwelling will not be overly prominent in the landscape.



- 3.18 This is a former dwelling therefore we do not consider its rehabilitation to harm the landscape setting: its presence has long been established and accepted in this rural and isolated valley. Appropriate landscaping will ensure that, throughout time, the appearance will not be overly prominent. The design is traditional in form therefore in keeping with vernacular.

Landscaping

- 3.19 The application proposes intense landscaping around all boundaries of the site. Tree planting will include native tree planting such as Gean Cherry, Rowan, Hornbeam, Hazel, Birch, Crab Apple and Field Maple. Hedge planting is to include the following native species; Hawthorn, Blackthorne and Dogrose.
- 3.20 The site had previously been enclosed in agricultural steel net stock fencing and a mixed species hedgerow had been planted along the northern boundary in compliance with a condition attached to application 10/00655/FUL.

Flooding

- 3.21 Review of the Indicative River & Coastal Flood Map (Scotland) prepared by SEPA indicates that the proposed development site lies out with the area assessed as having high, medium or low flood risk.

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4. GROUNDS OF APPEAL

Refusal Reasoning

4.1 Turning to the Grounds of Appeal (GOA). The Case Officer, within his report, has detailed that there have been **no objections by consultees** to the proposal. We did note the archaeology officer's request for related survey/watching brief. The Appellant is willing to accept a condition on this related matter. Again, necessary ecology surveys have already taken place together with strategy regarding the Barn Owl. The related report from the Appellant can be found within **Core Document 5** and which would be adhered to at all times and in accordance with guidance agreed with the Council's Ecology Officer.

4.2 There was **only a single reason** put forward as to why the application was refused. That being as quoted below:

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

4.3 Based on the above reasoning and wider context contained with the Officer's Report we have now set out below our Grounds of Appeal below.

Grounds of Appeal: 1

4.4 Our position on the reasoning for refusal has been wrongly applied and the interpretation, as described, of Policy HD 2 E has been wrongly enforced. The reasoning for refusal has gone beyond that sought by the policy itself. Previous permission and works undertaken to enact a residential use and purpose has already been established on the subject site.

4.5 The Appellant has clearly explained the reasoning as to why the conversion of the building was deemed not to be cost effective and how the new build would enable a more energy efficient building as per Policy HD 2 E requirements.

4.6 Returning to the application of the aforementioned policy the Appellant has sought legal opinion on the stance taken within the reasoning for refusal. The full letter from legal practice Anderson Strathern can be found within **Core Document 2**.



- 4.7 The determining issue for an assessment of this Application should have been whether or not the existing building can be considered to be an “existing dwellinghouse” in terms of Policy HD2 (E).
- 4.8 Previous permissions on the site have ruled and given much weight to it being a dwellinghouse. The application of the policy and whether or not a building, should for the purposes of Policy HD2 (E), be an existing dwellinghouse must first involve examining both what is physically on the ground and the extent to which the building has any existing use right to be a dwellinghouse conferred (1) over time or (2) through the implementation of a valid planning permission.
- 4.9 Firstly, there are substantial existing building on the ground and where previous permissions have been granted and started relating to residential use. The Planning Officer focuses primarily on the habitability but in the assessment fails to take fully into account the planning use rights conferred on the building through Permission 10/00655/ FUL which has been implemented.
- 4.10 The Planning Officer in his Report, whilst accepting an existing dwellinghouse, in terms of Permission 10/0065/FUL (in which development has commenced) and in terms of previous habitation the Officer’s report then places little or any weight on this important factor and rather focusses solely on current state or habitability of the building which is not the test required by Policy HD2 (E).
- 4.11 The Officer Report states:
- “In 2010, 10/00655/FUL, a permission for reinstatement, alterations and extensions was approved for what was described as a “derelict farmhouse”. This has commenced and now a live permission exists for re-instatement, alterations and extension, 17/00104/FUL.”*
- 4.12 The building became an “existing dwellinghouse” when development authorised under permission 10/00655/FUL was lawfully commenced.
- 4.13 In authorising development that Permission 10/00655/FUL granted a change of use from the building to a dwellinghouse. It is not habitable in its present condition but that does not prevent it being an existing dwellinghouse because there are substantial buildings in existence which have use rights for residential purposes conferred by Permission 10/00655/FUL.
- 4.14 It is not necessary for all of the building operations (as opposed to the “use”) authorised under Permission 10/00655/FUL to have taken place all though some of these operations have been undertaken in implementation of the permission. The remaining operations could be undertaken at any future time as Permission 10/00655/FUL, because it has lawfully commenced, will not expire. Again, there is no legal test or requirement within the policy that a house empty must be so for a set or certain period of time or it would then somehow no longer be considered as being a house.



- 4.15 The Officer's report has placed undue emphasis on the issue of physical state of the building rather than recognising the fact that the change of use of the building to use as a dwelling house has in fact taken place.
- 4.16 The habitability of the building is irrelevant and so is the prior agricultural use if indeed there was any such use.
- 4.17 All that Policy HD(2) requires is that there is an "existing dwellinghouse" and it should have been considered as such for the planning assessment of Application 19/00965/FUL .
- 4.18 The reason for refusal fundamentally misunderstands Policy HD2 (E) as it asserts "that the building is not a **habitable dwellinghouse**". Compliance with Policy HD2 (E) depends not on the habitability of a building but on the existence of a dwellinghouse.
- 4.19 Whether a building is habitable (as opposed to a building being an existing dwellinghouse) can be two very different things. An existing dwellinghouse may or not be habitable for a whole host of reasons and could equally to be a short or long term thing. As such, to base or interpret on that basis is the wrong policy test.
- 4.20 This proposal will not present undue or worrying precedent as alluded. Firstly, because there is no such thing in planning as precedence as each application will ultimately be determined on its individual merits and secondly, because the proposal complies with the policy as described. The reasoning for refusal has been made on an interpretation of said policy that has gone well beyond that described of being required by the policy wording.

Grounds of Appeal: 2

- 4.21 Policy HD2 E acknowledges as part of the reasoning or allowance for new build replacement homes that conversions can be expensive and can often hinder energy efficiency and use of renewables as advocated by wider sustainable and planning policies.
- 4.22 This appears to only have been briefly commented upon but crucially an important aspect behind this proposal. It has been nonetheless been accepted by the Case Officer and further reasoning for the proposal's overall compliance with Policy HD2 E.
- 4.23 The Case Officer's report is quoted as saying: ***I acknowledge the Agent's arguments in terms of energy efficiency, cost, and even safety.***
- 4.24 The application outlined the reasoning as to why the conversion is not a cost effective solution and it has been agreed that the policy is met in terms of allowing for a better and more energy efficient build to take place.

- 4.25 It is not creating a laissez-faire approach to housing in the countryside. The proposal is seeking to replace a residential building with another residential building in the same locale and to which was previously approved. It is strongly refuted that this proposal will therefore somehow have some or indeed any significant impact on the local countryside/landscape.
- 4.26 The build will be located in the same position and in fact will be smaller in scale than that previously approved and where one will not notice the difference between the two.
- 4.27 The Appellant's Architect has produced a number of elevation comparators which shows the difference between that recently approved by the Planning Department and that before the Local Review Body. Refer to **Core Document 3** for full appreciation of all elevations with key ones presented below.



NORTH EAST ELEVATION, as previously consented



NORTH EAST ELEVATION, as most recently refused



SOUTH WEST ELEVATION, as as previously consented



SOUTH WEST ELEVATION, as most recently refused

- 4.28 To proposition that the proposal will lead to wholesale loss to local built character is grossly exaggerating the context and failing to recognise that the building is not listed and that the permitted scheme also involves significant alteration to the existing structure. Further to this, it is plain to see there is little difference between that recently accepted and that now proposed. In fact the building or structure will be smaller in scale.



5. CONCLUSION

- 5.1 The principle of residential development on the site has already been accepted on the approval of application 10/00655/FUL. Further to this, the design and layout of the proposal has also already been approved in application 17/00104/FUL.
- 5.2 In an assessment of the feasibility of undertaking the development in the consented application 17/00104/FUL, a number of constructional issues became clear. Concerns regarding destabilising risks to remaining walls and to retention of only stub walls from the formation of door and window openings in existing walls were highlighted. Demolition and rebuilding addresses these concerns.
- 5.3 Enhanced standards of thermal and energy efficiency can be achieved over those possible under the previous consented proposal. These elements will achieve a carbon dioxide emission rate which is 50% lower than that required by the current building regulations
- 5.4 The rebuilding of the cottage would allow a property once used as a dwelling come back into residential use in a way that is safe to construct and is respectful of the sensitive landscape within which is it situated.
- 5.5 Considerable time has been put into the design due to its location with the Cheviot Hills Special Landscape Designation. Sensitive external materials have been selected to ensure the dwelling can be visually integrated to an acceptable manner within the surrounding landscape.
- 5.6 The design has also taken into careful consideration the layout and positioning of the previous farmhouse and has ensured alterations and extensions to the footprint are minimal in nature and do not disrupt the original layout of the dwelling. It is also noted the proposed footprint is smaller than previously approved schemes.
- 5.7 The site can be safely accessed via an existing access and track off the minor public road. The service lay-by and entrance have already been surfaced in bitmac as a requirement of a condition on the 10/00655/FUL application.
- 5.8 The proposal includes the introduction of landscaping as indicated on the Site Plan which will help to assimilate the plot into the landscape, as well as forming a robust boundary on all edges of the subject site.
- 5.9 Satisfactory private drainage arrangements can be achieved, subject to further details to be provided at the next stage in the planning process.
- 5.10 The Local Review Body is respectfully requested to approve this application which will provide the replacement of the dilapidated Folly cottage into a residential dwelling matching the design, layout and character of the original property.



APPENDIX 1: CORE DOCUMENTS

- 1. Appeal Statement**
- 2. Legal Position Statement**
- 3. Approved-Proposed Comparator Elevations**
- 4. Planning Statement**
- 5. Ecology Survey**
- 6. Location Plan**
- 7. Proposed Site Plan**
- 8. Proposed Plans**
- 9. Proposed Elevations**
- 10. Proposed Plans**
- 11. Decision Notice/Officer's Report**

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