

90/01238/OUT

REFUSAL OF OUTLINE PLANNING CONSENT

REF E283/90

BORDERS REGIONAL COUNCIL

Town and Country Planning (Scotland) Act 1972

To Mr D W Alexander Rowanbank, Leyden Road Kirknewton Mid Lothian:

With reference to your application registered on 18th June 1990 for outline planning permission under the above-mentioned Act for the following development, viz:-

Erection of dwellinghouse

at

Maxton House (Plot B) Maxton St Boswells

the Borders Regional Council in exercise of their powers under the above-mentioned Act hereby refuse outline planning permission for the said development.

The reasons for the Council's decision are on the attached Schedule.

Dated 13th August 1990

Regional Headquarters  
Newtown St Boswells  
MELROSE TD6 0SA

.....  
 Director of Planning and Development

REFUSAL OF OUTLINE PLANNING CONSENT

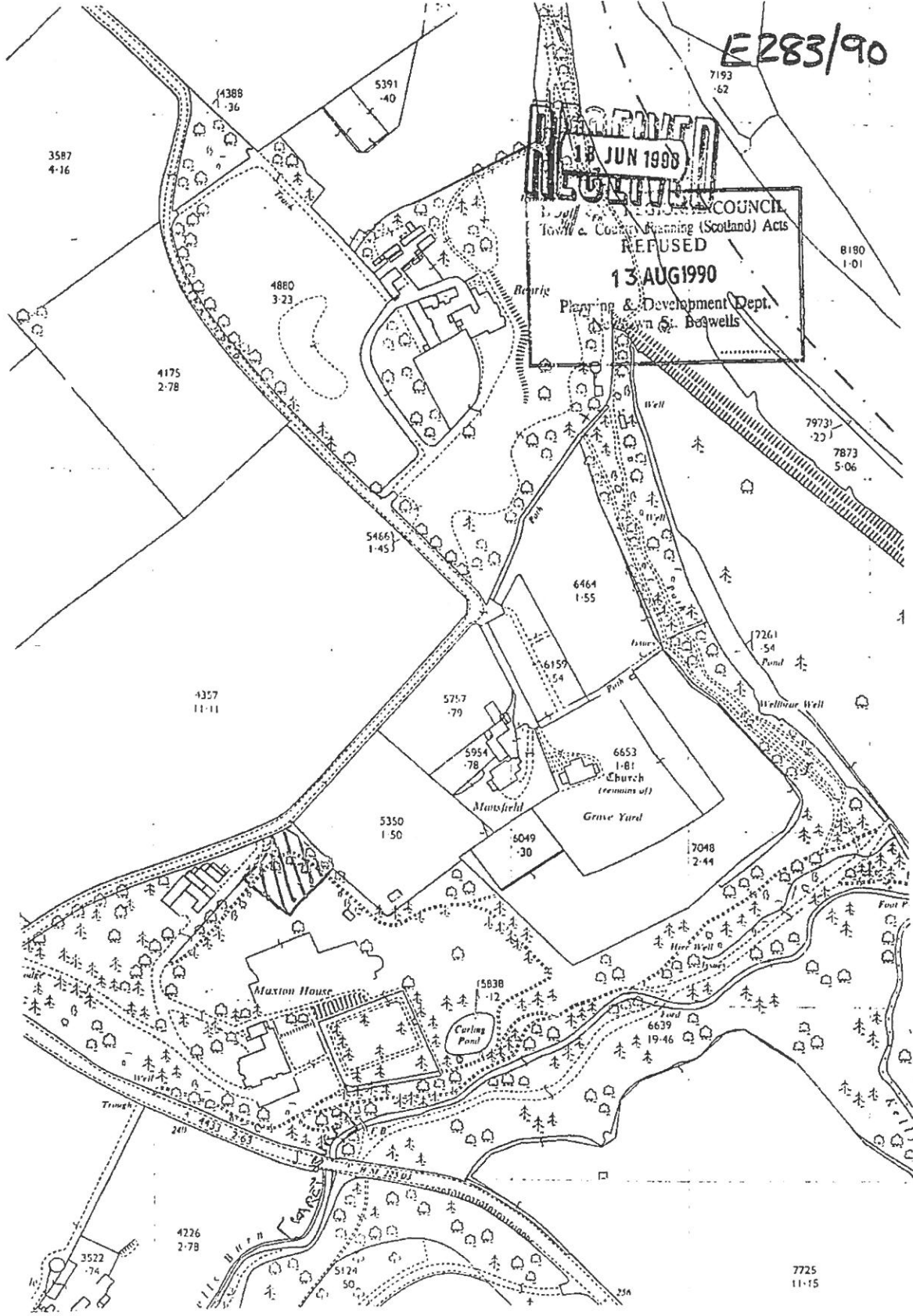
REF E283/90

SCHEDULE

01

The proposal would be detrimental to the setting, character, and established amenity of Maxton House and the building group in the surrounding area.

E283/90





THE SCOTTISH OFFICE

Inquiry Reporters

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Edinburgh EH1 3DN

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Messrs Peter P C Allan  
Consultant Town Planner  
29 Stafford Street  
EDINBURGH  
EH3 7BT

Your ref: GAP/559-1

Our ref: P/PPA/B/248

13 May 1991

Dear Sirs

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972: SECTION 33  
AND SCHEDULE 7

APPEAL BY MR D W ALEXANDER: PROPOSED DWELLING HOUSE,  
PLOT B, MAXTON HOUSE, ST BOSWELLS

1. I refer to your client's appeal, which I have been appointed to determine, against the refusal of Borders Regional Council to grant outline planning permission for the erection of a dwelling house on a site described as Plot B which forms part of the policies of Maxton House, Maxton, St Boswells. I made an accompanied inspection of the site and the surroundings on 20 February 1991 and have considered the written submissions of the parties and of neighbours. These were completed on 21 March 1991.

2. Maxton House is in the countryside, on the A699 road just over 1km south-east of St Boswells and about 300m from a loop in the River Tweed. Houses in the vicinity include Maxton House and its Lodge House, a recently built bungalow in a former walled garden, stables tastefully converted into a house, and a site between Maxton House and the Stables House for which planning permission has been recently given on appeal for another house to be built. These are all in a group on or near to the A699 road. Others at a distance to the north include Mansfield and Benrig House both in their own grounds and with paddocks. The policies of Maxton House extend northwards to the walled boundary of Benrig House but exclude the ruins of the old St Boswells Church and its old graveyard and the northern modern extension of the graveyard known as Benrig Cemetery. Woodland, including on both sides of the St Boswells Burn, forms an arc in the southern part of the policies of Maxton House from the Stables House and the Lodge on the western side, south of Maxton House and through to the River Tweed in the east. The driveway to Maxton House runs from the Lodge through this woodland to the south-east side of Maxton House; a branch runs northwards to Stables House.

3. The appeal site lies between part of the south-eastern boundary of Stables House and part of the boundary of a paddock next to Mansfield. At its northern corner it has a short frontage to the unclassified narrow road which runs from the A699 road at Maxton House by a tortuous route to the B6404 road east of St Boswells. The south-western and

south-eastern boundaries of the site are not defined on the ground and the half-acre site is part of the lawn on the northern side of Maxton House. The proposed access is from the unclassified road, at the northern frontage of the site where it is opposite to a bend in the road and where a tarmac passing place has been formed in the highway on the site side, replacing a former grass margin there.

4. Another appeal relates to Plot A Maxton House, which is some 210m north-east of Plot B and which is the subject of a separate decision letter (reference P/PPA/B/247).

5. The planning authority's reasons for refusal were that the proposed development would be detrimental to the setting, character, and established amenity of Maxton House and the building group in the surrounding area.

6. You say that the planning authority's policies for this area are to encourage the development of infill and other small sites in settlements and of infill sites in established building groups in the countryside. The planning authority accepts that Maxton House and the surrounding buildings and spaces do constitute an established building group where there are opportunities for infill development which would comply with their policy relating to housing in the countryside. The other houses in the group are set within significant areas of ground which maintain the character of this group. The appeal site is specified to be 0.5 acre in extent, similar in size to the adjacent plot where planning permission was recently given on appeal. In giving that decision the Reporter stated "further sites would appear to remain in the immediate vicinity which could be developed under the same policy guidelines". The northern boundaries of the appeal site are defined by a ranch-style fence and by a 2m high timber fence. Only the southern boundaries facing Maxton House are undefined on the ground and this can be overcome by screen planting on these boundaries and a condition of planning permission could require this. The form of the existing building group is characterised by the random orientation of buildings. The scale, siting and design of the proposed building which would determine the sympathetic relationship between the proposed house and Maxton House and its setting, remain at this outline stage under the control of the planning authority. A sympathetic relationship can be assured when granting approval later from the details of the development. There is no lack of relationship between the site and the surrounding buildings, walls, trees and identifiable garden spaces.

7. You also say that satisfactory visibility is obtainable along the unclassified road from the centre line of the proposed access, particularly if the visibility is measured 2m from the original edge of the carriageway and not from the edge of the recently-formed passing place. (You also doubt the correctness of forming this passing place on land which belongs to your client). You say that your client would be entitled to cut back part of the beech hedge and part of the 2m high timber fence bounding Stables House clear of a triangle of ground that is under his control on the west side of the access, and that this would further improve visibility from the access. In your opinion it would be inappropriate to dismiss this appeal on road safety grounds. Nevertheless, if it is thought that access should not be taken from the unclassified road, it would be possible to gain access to the site by way of the existing driveway to Maxton House and a condition of planning permission could be imposed to secure this. The proposal meets the 4 criteria for permission to develop

an infill site in a recognised established building group in the countryside.

8. In your view the planning authority have failed to give sound and clear cut reasons for refusing planning permission, they reached their decision without due consideration of all materials considerations and they failed to take into account comments made by a Reporter in a previous appeal decision. They have acted unreasonably and you apply for an award of expenses against Borders Regional Council.

9. Borders Regional Council say that the plan attached to the application defined an area of ground for Plot B which is calculated at about 0.25 acre. It is within the grounds of Maxton House, with high hedge and fencing on the side next to Stables House, a fence and a landscaping strip containing new and mature trees on the side next to the paddock of Mansfield but it presents an open aspect to Maxton House. Access from the unclassified road is directly to the site through a break in the fencing and at the end of a line of beech hedge.

10. The approved structure plan and the adopted local plan do not authorise development in the countryside or outwith designated settlements except in abnormal cases, which do not apply here. A more recent policy has been adopted for housing in the countryside intended to attract population back to the countryside and in particular to encourage infill development in appropriate cases within or adjacent to building groups in the countryside, provided that the development meets 4 criteria. They are:-

- No loss of agricultural land
- No detriment to the countryside amenity
- No difficulty with access and other road requirements, and
- No lack of water and drainage facilities.

11. It is accepted that the site is within an existing loose building group and it is right to consider to what extent the proposal would fit in with the intentions of the policy for housing in the countryside. Limited infill opportunities exist in and adjacent to this group and they are illustrated in a land use plan which was prepared for discussion purposes, but they do not include this appeal site. This site bears an unsympathetic relationship with the remainder of the buildings, trees and forms of enclosure within the building group. With its lack of clearly defined natural boundaries on the south-east and south-west and only a thin tree screen on the north-east a house on this small site would be unduly dominant within the building group and would be detrimental to countryside amenity. The location and alignment of the site are factors just as important as the positioning and design of a house within it, in assessing the impact of the development upon the character and setting of Maxton House.

12. The whole surrounding area is of high amenity with large amounts of mature woodland, impressive detached houses, well kept gardens and paddocks and an air of rural seclusion. The appeal site would arbitrarily remove a corner of open paddock with an alignment which would not respect the alignment or setting of Maxton House. The proposed house would intrude upon the setting of Maxton House and detract from the open aspect and vistas across the paddocks. It would detrimentally affect the setting, character and established amenity of Maxton House. The coherence of the remaining grounds around Maxton House ought to be preserved. If the proposed development were permitted it would set an

undesirable precedent for further encroachment and reduction of the grounds.

13. The roads department of the regional council does not accept the suitability of the proposed access on the outside of a bend in the unclassified road where the road is narrow and the visibility is restricted. Although the roads department would not object to taking access to this site from the existing entrance and driveway which serve Maxton House, there would be implications in planning terms of loss of amenity if a lengthy access driveway to the appeal site had to be formed across the paddock. That in turn could also lead to pressure for further development within the grounds and the risk of further detriment to the coherence and amenity of those grounds and the setting of Maxton House. Water and drainage would be unlikely to present problems.

14. It was a plot adjacent to the driveway near its entrance and between there and Stables House which was granted outline planning permission on appeal in 1989. That is a plot which was definable as a building space which could be developed without detriment to the character and amenity of the remainder of the group. The original application for outline planning permission there was recommended for approval, although it was later refused by the council. In his decision letter the Reporter remarked upon the availability of other (unidentified) sites within the group, but his comment should not be seen as an overriding justification for approving the development of this appeal site.

15. Unreasonable behaviour on the part of Borders Regional Council is denied and your application for the award of expenses is resisted.

16. Upon the usual statutory consultations being made, the local regional councillor objected to the proposal because the formation and use of the access from the narrow public road would prejudice public safety and because he opposes the loss of further policy land from Maxton House. The roads department object to the proposed access as has been stated above. Other objections were made by St Boswells Community Council, the Association for the Protection of Rural Scotland and from 4 local residents.

17. Those objections support the planning authority's case and also make some additional points. It is said that the appeal site is too close to Stables House and its development would unfavourably change the spacious distribution of residential buildings around Maxton House: the site is too small for development of appropriate character: the proposed development would be too intrusive and would detract from the amenity of Stables House and Maxton House. At the northern boundary of the appeal site where the access is proposed to be formed, the unfenced length has already been widened by the removal of the fence and by cutting back a 7 ft length of beech hedge. The local residents know from years of experience that the unclassified road is dangerous in use due to its narrowness and they say that further turning movements into and out of the appeal site could add to the current dangers.

18. Borders Regional Council are clearly desirous of balancing a need to prevent rural depopulation with the conservation of the very beautiful Borders countryside. Although with the council's informal policy for housing in the countryside, the planning authority wish to encourage some development in building groups in the countryside, the preservation of the amenity is also an important consideration and so is the avoidance

of sporadic development and the uncontrolled infill of building groups which might be detrimental to countryside amenity. There is no local shortage of opportunities for house building.

19. From my inspection of the site and from the written submissions I have reached several conclusions. First, the application clearly states that the proposal is the development of approximately 0.5 acre. The plan which accompanied the application, not prepared by an expert or professional person, indicated the location of the site and its boundaries on a plan which was drawn to scale; the area of the portion so marked was calculated by the regional council to be about 0.25 acre. In such a case of conflict between the written document and a drawing, the information in the written document must take precedence. The boundaries shown on the drawing, where they do not represent the physical features on the ground, must be presumed to have been marked in the wrong places. The south-west and south-east boundaries should have been placed further south so as correctly to enclose 0.5 acre. My ruling is that the drawing must be interpreted with this in mind.

20. I conclude also that the determining issues are whether the appeal site is within or adjacent to an existing building group in terms of the planning authority's non-statutory policy for housing development in the countryside; and if so, whether it is an appropriate site for development without loss of agricultural land, without detriment to countryside amenity, without difficulty with access and other roads requirements; and with no lack of water and drainage facilities.

21. On the first issue, all parties are agreed that the site is within or adjacent to a group of buildings with Maxton House as the centre-piece. Although I am doubtful that the group should be considered to be so wide as to include Mansfield, Benrig Cemetery and Benrig House, this is immaterial to the present case as the site is part of the close group of buildings. I am satisfied that it is right further to consider this site in relation to the non-statutory policy of the planning authority.

22. On the second issue, the site is part of the parkland of Maxton House and is not agricultural land. There is no reason to expect a lack of water or drainage facilities. The proposed access has become a more complicated issue because of the argument whether the passing place is part of the carriageway or not. I accept the submissions made by the regional council upon this as the road comprises the carriageway and the margins on both sides and is bounded by the hedges or fences on either side. Thus 2m back from the edge of the tarmacadam surface is the point at which the visibility in both directions along the public road should be assessed and it is severely limited by hedges on both sides of the gap not in the control of your client. If the visibility were reckoned from the former edge of the carriageway before the passing place was formed, the visibility from the access would be less restricted, but the visibility along the unclassified road from left and right would be limited by the bend in the road and would be insufficient for road safety, especially as the road here is narrow and it is said, at some times to be fairly busy.

23. You have said that your client would, in the last resort, be able to form an access from the existing Maxton House driveway. But to form a branch from the driveway to the appeal site would cut across the grassland of the policies and would detrimentally affect the amenity of the policies of Maxton House. The site itself would represent an arbitrarily chosen intrusion into the parkland where nothing could screen a house on



it if it were large enough and of such quality of design and materials as would be in character with the surrounding buildings. It is not enough, in my opinion, to ignore the consequences of a grant of outline planning permission in this case. They would inevitably be the erection of a building which would by its presence be harmful to the amenity and setting of a fine old house in beautiful countryside. My conclusion is that the proposed development would be detrimental to countryside amenity and the construction of a driveway across the parkland to it would increase that detriment.

24. Considering all these points together I consider it is not a case where outline planning permission should be given contrary to the policies of the structure and local plans as it would not fit well enough the aims of the planning authority's liberal non-statutory policy for housing in the countryside in groups of buildings.

25. I have taken into account all the other matters raised but they do not outweigh the matters that led to my overall conclusions. For these reasons and in exercise of the power delegated to me I hereby dismiss your client's appeal and refuse to grant planning permission.

26. The foregoing decision is final, subject to the right of any person aggrieved by this decision to apply to the Court of Session within 6 weeks of the date hereof conferred by Sections 231 and 233 of the Town and Country Planning (Scotland) Act 1972; 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 applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1971 or of any orders, regulations or rules made under these Acts.

27. Copies of this letter have been sent to Borders Regional Council and to objectors or their agents. A further letter will be sent concerning your application for the award of expenses.

Yours faithfully

S ROBERTSON ESQ FRICS  
Reporter

93/01204/OUT

REFUSAL OF OUTLINE PLANNING CONSENT

REF E292/93

BORDERS REGIONAL COUNCIL

Town and Country Planning (Scotland) Act 1972

To Mr Robert Boney Maxton House Maxton St Boswells

With reference to your application registered on 4th August 1993 for outline planning permission under the above-mentioned Act for the following development, viz:-

Erection of single storey dwellinghouse

at

Plot 1, Maxton House Maxton St Boswells

the Borders Regional Council in exercise of their powers under the above-mentioned Act hereby **refuse outline planning permission** for the said development.

The reasons for the Council's decision are on the attached Schedule.

Dated 11th October 1993

Regional Headquarters  
Newtown St Boswells  
MELROSE TD6 0SA

.....  
*Asst.* Director of Planning and Development

REFUSAL OF OUTLINE PLANNING CONSENT

REF E292/93

SCHEDULE

01

The proposal would be detrimental to the setting character, and established amenity of Maxton House and the countryside in the surrounding area, and would contravene Policy 7 of the Ettrick & Lauderdale Local Plan.

93/01205/007

BORDERS REGIONAL COUNCIL  
PLANNING AND DEVELOPMENT COMMITTEE - 11 OCTOBER 1993  
APPLICATION FOR PLANNING PERMISSION

REF: 26/E293/93

APPLICANT : Mr Robert Bowey  
AGENT : None  
DEVELOPMENT : Erection of single storey dwellinghouse  
LOCATION : Plot 2, Maxton House, Maxton  
TYPE : Outline

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COUNCILLOR : Mr.A.J.C.Hewat  
ADVERTISEMENT : No  
LISTED BUILDING : Not Listed  
CONSERVATION AREA : Not Applicable

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BACKGROUND REPORTS AND POLICIES

STRUCTURE PLAN : R11  
LOCAL PLAN : Ettrick & Lauderdale L.P. Policy 7, 62, 63  
OTHER : None

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CONSULTEES AND RESPONDENTS:

Regional Councillor  
Director of Roads & Transportation  
St Boswells Community Council

Director of Water & Drainage  
Tweed River Purification Board  
Eight respondents

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RECOMMENDATION:

That the application be refused for the following reason(s):

SEE OVER

REASON

G1

The proposal would be detrimental to the setting character, and established amenity of Maxton House and the countryside in the surrounding area, and would contravene Policy 7 of the Etrick & Lauderdale Local Plan.

BORDERS REGIONAL COUNCIL

PLANNING AND DEVELOPMENT DEPARTMENT

Supplementary Statement of Observations By Director of Planning and Development on the Appeal by Cameron-Farningham Associates on behalf of Mr Robert Bowey Against the Refusal of Planning Permission by Borders Regional Council for the Erection of Two Dwellinghouses at Plots 1 & 2 Maxton House, Maxton, Near St Boswells.

1.0 Introduction

1.1 In general the appellants agents statement raises no fundamentally new issues in this case. The Regional Council feel that the case against the development of the land at Maxton House has been adequately outlined at the previous appeal and in the current Regulation 6 statement. However, it is consider necessary to make specific reference to some of the points raised in the appellants statement of evidence.

2.0 Comments on Grounds of Appeal

2.1 It is correct that the Regional Council has been engaged in the process of reviewing of its Local Plans and also its housing in the countryside policy. This review has not, however, altered the fundamental basis of the policy. The outcome of this review process has been the adoption in the Finalised version of the Ettrick and Lauderdale Local Plan of Policy 7 (copy attached as Production 1) and also the publication in December 1993 of the "New Housing in the Borders Countryside - Policy and Guidance Note" (copy attached as Production 2). It was within this policy context that the two planning application for Plots 1 & 2 were determined.

2.2 The Council would dispute the statement in para. 2.4 that the "principle of development at this location is not an issue." Policy 7 lists the preferred building groups at which new housing will be encouraged within and adjacent to and it should be noted that Maxton is not included in this preferred list. It also states that limited development may also be permitted within or adjacent to existing building groups provided a list of policy criteria are met. This means that the Regional Council have to make a determination firstly whether there is a group and secondly the suitability of the group to absorb new development.

2.3 The Council accepts that Maxton House and its environs form a building group, as defined in the policy and in the Guidance Note, however the Council contended that the group is not capable of successfully absorbing the development proposed. In the circumstances as the site does not meet the necessary criteria in this respect then clearly the principle of the development is in question. In particular the Council contend that the development is contrary to criteria 2 and 6. The Council's view that the development of the site would be contrary to countryside amenity was clearly supported by the Reporter at the earlier appeal.

6. I continue to maintain that development in the open parkland to the north of Maxton House would not be an appropriate way in which to infill in this building group, and would be detrimental to countryside amenity and would not respect the substantial and spacious nature of the surrounding development pattern. The current proposal for two houses rather than one previously proposed, only strengthens my views.

Recommendation by Director of Planning and Development

7. For these reasons, and to be consistent with a previous decision, I would recommend refusal of these applications.