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**From:** Ruairaidh Thompson [mailto:Ruairaidh@fergusonplanning.co.uk]

**Sent:** 04 August 2020 17:10

**To:** localreview <localreview@scotborders.gov.uk>

**Cc:** Tim Ferguson <tim@fergusonplanning.co.uk>

**Subject:** RE: Review of application 20/00453 - representations

**CAUTION:** External Email

Afternoon Fiona,

Please find attached, the final comments of the Appellant upon the Local Review at High Street, Kirk Yetholm.

I have also included the original JPEG files of the images included within the comments. I think most (if not all) were previously sent to Euan pretty shortly after the original Application was registered.

Thank you.

Kind regards,

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Ruairaidh

**Ruairaidh Thompson**  
**Planner**

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**From:** Tim Ferguson <[tim@fergusonplanning.co.uk](mailto:tim@fergusonplanning.co.uk)>  
**Sent:** 03 August 2020 17:21  
**To:** localreview <[localreview@scotborders.gov.uk](mailto:localreview@scotborders.gov.uk)>  
**Cc:** Ruairaidh Thompson <[Ruairaidh@fergusonplanning.co.uk](mailto:Ruairaidh@fergusonplanning.co.uk)>  
**Subject:** RE: Review of application 20/00453 - representations

Thanks

Ruaraidh will be responding pre deadline

T

**Tim Ferguson**  
Director



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**From:** localreview <[localreview@scotborders.gov.uk](mailto:localreview@scotborders.gov.uk)>  
**Sent:** 03 August 2020 10:44  
**To:** Tim Ferguson <[tim@fergusonplanning.co.uk](mailto:tim@fergusonplanning.co.uk)>  
**Subject:** FW: Review of application 20/00453 - representations  
**Importance:** High

Tim

Further to the email below I can confirm that no further additional representations from interested parties were received before the deadline. Should you wish to respond to the representation sent to you below please do so as soon as possible, but by the close of Friday 7 August at the very latest.

Kind regards  
Fiona Walling

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**From:** localreview  
**Sent:** 24 July 2020 09:59  
**To:** Tim Ferguson <[tim@fergusonplanning.co.uk](mailto:tim@fergusonplanning.co.uk)>  
**Subject:** Review of application 20/00453 - further representation  
**Importance:** High

Tim

**PLANNING APPLICATION** Garden Ground Of Clifton Cottage High Street Kirk Yetholm Scottish Borders  
**PROPOSED DEVELOPMENT:** Demolition of garage and erection of dwellinghouse  
**APPLICANT:** Mr & Mrs D & C Morrison

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997  
TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURE) (SCOTLAND)  
REGULATIONS 2013**

We have received the attached further representation from an interested party in connection with the above. If you have any response to this representation please email this to [localreview@scotborders.gov.uk](mailto:localreview@scotborders.gov.uk) within 14 days (i.e. by the close of Friday 7 August).

Please note that the deadline for further representations from interested parties is not until next Wednesday 29 July. We would usually wait until after the deadline to send you the representations for comment but as time is relatively short before the main agenda is issued the attached has been sent to you in the meantime. We will of course forward any additional representations received before the deadline ( in which case you will be given the full 14 days to comment on these).

Kind regards  
Fiona

Fiona Walling  
Democratic Services Officer  
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*How are you playing [#yourpart](#) to help us keep the Borders thriving?*

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F E R G U S O N  
P L A N N I N G



Ms Louise McGeoch  
Clerk to the Local Review Body  
Scottish Borders Council

04 August 2020

**BY EMAIL ONLY**

Dear Ms McGeoch,

Thank you for your recent correspondence and passing on the third party comments of 23rd July. We are grateful for the opportunity to respond to those comments.

We are mindful that the majority of third party comments relate to matters that have been extensively addressed in the Local Review Statement – which commenters have the statutory right to do. However, it is considered that very little of the comments challenge or require change to the Local Review Statement. To minimise duplication we have attempted to keep this representation concise and to signpost members to relevant paragraphs of the Statement, where possible.

First, it is noted that the public comments of 23rd July (hereafter referred to as “the comments”) devote significant attention to the greenspace issue. The comments contain multiple errors of both fact and judgement on this issue, which are identified below:

- It is stated that the verge between the appeal site and High Street is “an extension” of Key Greenspace GSYETH002. This is incorrect. Report of Handling 20/00453/FUL identifies the verge as an “*Other Greenspace*” defined under section (B) of Policy EP11; not a “*Key Greenspace*” defined under section (A) of the Policy. Paragraph 3.8 of the Local Review Statement makes clear that no works are proposed to the verge.
- This error of fact is then used as the foundation to base the argument that the appeal proposal, “would cause ambiguity and apprehension about ownership of the upper part of the Green”. This criticism was not raised by the Planning Officer or any other consultee and ignores the presence of the established, mature hedge along the site’s frontage which provides distinct boundary treatment.
- Commentary is provided on land ownership. It must be understood that:
  1. Land ownership is not a material consideration in the determination of a planning application; and
  2. The application site boundary (red line) plotted on the Site Location Plan

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extends round the Appellants' private garden only. Neither the application site boundary or other land owned locally (blue line) include the identified verge.

- It is alleged that the appeal proposal will enable/cause the parking of cars upon the Village Green. The Village Green is not included within the application site boundary and the parking of cars there is not proposed. It is also important to note that: parking a car in a public park (or other land you do not own when you do not have permission to do so) is not lawful and both the police service and the Council's parking enforcement team are able to enforce penalties on those who do so.
- It is noted that the comments state "there seems to be great ambiguity with regards this area of Greenspace", referring to the appeal site itself. It is accepted that this represents a personal opinion, however it is the professional opinions, stated in writing, of both the Forward Planning team (in their consultation response) and the Development Management Planning Officer (in Report of Handling 20/00453/FUL) as well as Ferguson Planning (in the Planning Statement and Local Review Statement) that the mistaken designation GSYETH003 covering the appeal site does not represent a valid reason for refusal.

Second, it is acknowledged that a body of commentary has been provided on the aspects of the appeal proposal which pertain to the Conservation Area. We consider that these comments do not change the position laid out in the Local Review Statement.

- It is noted that the comments disagree with paragraphs 3.26 - 3.30 of the Local Review Statement. While the interpretation of the commenter is welcomed, it should be noted that full extracts from Report of Handling 20/00453/FUL, the consultation response of the Heritage and Design Officer, and PAN-71 are replicated in the Local Review Statement to provide context. It is considered that there is no requirement to repeat these arguments.
- The commenter further opines that "the Conservation Officer has simply concluded a dwelling house, particularly one of the scale and mass proposed, is inappropriate for the site"<sup>1</sup>. It is very difficult not to be struck by the contradiction between this opinion and the claim that the Heritage and Design Officer has not attempted to administer an embargo on new development in the Conservation Area.
  - For the sake of clarity, under s.26 of the Town and Country Planning (Scotland) Act 1997, "development" includes works as minimal as removing (demolishing) a chimney, restoring a bricked up window, and preparing an open drainage ditch. Attempting to claim that new development has not been embargoed in a Conservation Area because it is permissible to replace a garage with another or a "small garden studio" is overly simplistic at best

<sup>1</sup> Underline represents the emphasis of this author for members' specific attention.

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and at worst borders upon being disingenuous.

- It is noted that the comments criticise the design of the proposed dwelling. Paragraphs 3.18-3.24 of the Local Review Statement set out how the design of the proposed dwelling is heavily influenced by the character of nearby existing dwellings within Kirk Yetholm. While it is acknowledged that the commenter is “not convinced”, this assessment has not been justified and cannot be accepted as accurate or supportable.
- The dual-purpose relevance of the appeal decisions cited, is clearly laid out in paragraph 3.30. There is no requirement to repetition this rationale.

Third, it is felt necessary to rebut comments made in relation to the detailed design of the proposal. Particularly:

- It is noted that the comments state that the proposed dwelling would “sit up” and appear “incredibly domineering” over the Village Green. However, it is important to note that the appeal site lies on lower ground than both No.’s 9 & 11 High Street (to the south). Additionally in the images that the commenter has provided, built structures have had to be identified with red arrows as they are otherwise indiscernible. Clearly, these characteristics are not consistent with the argument that the area surrounding the Village Green is openly exposed and vulnerable to visual distortion by the proposed dwelling.
- Furthermore, the photographs (especially Fig.5.) included with the comments clearly show views southward from the Village Green to be dominated by the terrace of existing dwellings finished in white render. This serves to visually illustrate the Appellants’ position established in paragraphs 3.18-3.24 of the Local Review Statement.
- With cognisance to the above point, the ‘iceberg’ simile used to describe the proposed elevational design is as poorly taken as it is melodramatic.
- The comments state that a “cluster of trees” which would screen the south elevation, are likely to be removed. No evidence has been provided to substantiate this claim and it should be noted that the identified trees are not in the same ownership as the garden plot adjacent to the north of the appeal site. Nonetheless it is important to note that the appeal site lies on lower ground than all land on the same side of the street, beyond the site’s south boundary. For this reason the proposed dwelling will stand at least 1.5 metres shorter than shown in the elevational plans, when viewed from the south. This is considered to be acceptable in the context of the existing dwellings opposite abutting the adopted highway.
  - It should also be noted that views of the site from the south (below) currently draw in substantial portions of the existing roof structures at the Yett, to the north-east of the appeal site. This fact reinforces the Village, as opposed to rural, aesthetic of the site’s surroundings.

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- For the sake of clarity, it is considered that the proposed design has been justified by the Local Review Statement and that the appeal proposal does not depend upon similarity (or otherwise) with the existing dwelling Burnslyde.

Fourth with regard to archaeology, we confirm that the Appellants' position set out in paragraphs 3.46-3.48 of the Local Review Statement remains unchanged.

Fifth we would be grateful if members would have regard to the following when considering the parking and access arrangements of the appeal proposal:

- The Appellants' position on the parking and access arrangements of the appeal proposal, within the local context of High Street, Kirk Yetholm, is set out in paragraphs 3.12-3.17 of the Local Review Statement. There is no requirement to repeat these arguments.
- It is noted that the comments state "the appeal statement states the appellant typically parks street side". This is factually incorrect. Whether the Appellants' park their car off-street (on land they own) or on-street in front of their house is not a material consideration in the determination of a planning application and the Local Review Statement is silent on the matter.

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- It is recognised that the comments include a plan of off-street parking in the local area, prepared by the commenter. However, it is also noted that at least one of the “off street parking spaces” actually lies within the adopted surface of the highway – remaining mindful that both a carriageway and a footway are included within the boundary of an adopted highway. A number of other supposed parking spaces appear to be garages or garden sheds, which adopted Parking Standards exclude from their definition of a parking space. It should also be noted that no source or reference is provided for the plan and it is unclear how this information has been collated.
  - Notwithstanding the above, the plan purports to show that 3 no. existing dwellings adjacent to the north-west of Clifton Cottage do not have off-street parking spaces. Clearly, within this context, on-street parking is not novel.
- The comments on shadow cast are acknowledged. However, it is considered that the addition of coloured outlines has un-intentionally conflated the issue. The un-edited aerial image has been copied below. The image gives clarity to the issue in that the shadow cast by the on-site tree can be seen rounding off on the north boundary of the appeal site. On close inspection, the shadows further to north-west can be seen to be cast by the adjacent garage and trees lining the Village Green.



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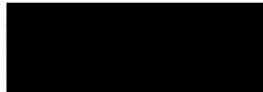
Sixth in relation to local opinion and the criticism of the Community Council contained within the comments, we would make the following two points:

- There is no requirement for a community council to conduct local referenda (including via postal ballot or similar) on support or opposition for a planning application. Indeed it is not recommended nor considered to represent best practice.
- For the sake of clarity the planning application was supported by 5 no. public commenters and objected to by 6 no. public commenters. It should be understood that a single neutral (essentially preliminary) comment was made by a public commenter who subsequently objected to the proposal (as per his statutory rights) and is counted within the 6 objections. Additionally, two members of the public (a Mr Smith and a Miss Douglas) each submitted 2 no. comments objecting to the proposal. Both Mr Smith's comments are counted as single objection and Miss Douglas' two comments are counted as a single objection (fully separate from that of Mr Smith). Therefore net objections to the proposal amounted to 1 no. and cannot be accurately understood as "a significant number of objections".

The Appellants' are grateful for this opportunity to address the public comments of 23rd July and thank the Local Review Officer, the Clerk to the Local Review Body, and her staff accordingly.

It is our hope that members of the LRB find these comments to be clear and helpful in completing their determination of the matter at hand.

Yours Sincerely



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