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Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2088
- Site address: land east of Knapdale, 54 Edinburgh Road, Peebles, EH48 8EB
- Appeal by S Carmichael Properties Limited against the failure of Scottish Borders Council to determine within the statutory period, an application for planning permission reference 20/00753/FUL dated 13 July 2020
- The development proposed: erection of 22 dwellinghouses with new access road and associated work
- Date of site visit by Reporter: 9 April 2021

Date of appeal decision: 18 May 2021

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## Decision

I dismiss the appeal and refuse planning permission.

## Preliminary matters

The proposed development falls within the description in paragraph 10 (b) of column 1 of the table in schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 and exceeds the threshold in column 2 of the table in schedule 2. However, on 14 April, I issued a screening direction confirming that the development for which planning permission is sought is not EIA development.

I have considered the potential for the proposal to have a significant effect on the River Tweed, a designated Special Area of Conservation (SAC). The appellant's ecological survey identifies a hydrological connection between the site and the river, via a culverted watercourse under the A703. This report concludes that, due to the potential for pollution, significant effects on the qualifying interests of the SAC could arise during both the construction process and subsequent occupation of the site. It advises that such potential effects could be mitigated by appropriate control of construction works and by suitable surface and foul water drainage arrangements.

When considering whether significant effects on a SAC are likely, no regard should be had to mitigating measures. Therefore, I find that foul and surface water drainage from the proposed development, and the construction works, would give rise to likely significant effects on the SPA, requiring me to carry out an Appropriate Assessment. I summarise this in my consideration of effects on the water environment, later in this notice.

## Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Special regard must also be had to the desirability of preserving the setting of nearby listed buildings.
2. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) including its accompanying supplementary guidance on housing 2014 (the SESplan Housing SG) and the Scottish Borders Local Development Plan 2016 (the LDP) including its supplementary guidance on housing 2017 (the LDP Housing SG). A replacement strategic development plan (SESplan 2) was rejected by Scottish Ministers in 2019 so is not part of the development plan. A proposed replacement for the LDP has been published but has yet to be submitted for examination.
3. Having regard to the provisions of the development plan, the main issues in this appeal are: the adequacy of the five year supply of effective housing land; whether the proposal would be sustainable development; and its effects on visual amenity, landscape and townscape character, the setting of nearby listed buildings, and the water environment.

### Is there a five year supply of effective housing land?

4. The appeal site lies outside the LDP defined development boundary for Peebles where LDP Policy PMD4 confirms that housing development proposals will normally be refused. However, both PMD4 and also SESplan Policy 7 potentially permit an exception to this presumption where it can be demonstrated that the proposal would contribute to addressing a shortfall in the five year supply of effective housing land. Scottish Planning Policy (SPP) also recognises the importance of maintaining such a supply.
5. SPP was revised in December 2020. Some of the revisions affect how I must assess the adequacy of the effective housing land supply. There is a current Court of Session challenge to the revised SPP. I have addressed the implications of this challenge in the conclusions section of this notice.
6. SPP paragraph 125 confirms that, where a proposal for housing development is for sustainable development and the decision-maker establishes that there is a shortfall in the housing land supply in accordance with Planning Advice Note (PAN) 1/2020, the shortfall is a material consideration in favour of the proposal. I address the sustainability question later, having first considered the adequacy of the housing land supply.
7. PAN 1/2020 explains how to calculate the five year effective housing land supply. It advises that the plan period housing land requirement from the adopted development plan should be divided by the plan period in years to identify an annual figure, which is then multiplied by five. This figure should then be compared with the five year supply of effective housing land, based on information collected as part of the housing land audit process, to establish whether there is a shortfall or surplus.
8. The plan period housing land requirement for the entire SESplan region is set out in SESplan Policy 5 and this is broken down into individual council areas in the accompanying SESplan Housing SG. These authority-specific targets are nearly seven years old and only run until 2024. Replacement housing requirements will be introduced in the fourth National

Planning Framework (NPF4) probably in 2022. Until then, one must decide either that it is impossible to determine whether there is a housing supply shortfall (on the basis that there is no up to date development plan housing land requirement) or alternatively, use a five times multiplier of the annualised SESplan Housing SG housing land requirement until NPF4 is in place. I regard the latter option as preferable, as it should still allow appropriate windfall sites to be justified by a shortfall in supply, which would be impossible if the alternative approach were taken.

9. Figure 3.1 of the SESplan Housing SG confirms the housing land requirement for each LDP area within the SESplan region for the periods 2009 to 2019 and 2019 to 2024. For Scottish Borders, the figures are 9650 and 3280 respectively, giving a total of 12930 for that 15 year period - an annual average build rate of 862. The SESplan Housing SG expected most of these to be built on land which was already committed for development either because it had already been allocated for that purpose or because planning permission had been granted.

10. Applying the methodology in PAN 1/2020 gives a five year requirement of  $862 \times 5 = 4310$  homes.

11. One role of the LDP is to allocate sufficient housing land to meet that requirement. The LDP examination found that insufficient land had been allocated and the council was required to submit supplementary guidance to Scottish Ministers within 12 months of the LDP adoption that would find land for an additional 916 units. In accordance with LDP Policy HD4, the council produced the LDP Housing SG in 2017. Due to adjustments to the supply since the LDP examination, this needed to identify land for an additional 811 units to meet the SESplan Housing SG requirement.

12. Having established the number of homes that require to be provided, it is necessary to consider whether the supply of effective land is likely to be sufficient. The council and appellant disagree on this matter. In drawing together my own conclusions, I have borne in mind that any assessment of this issue requires assumptions to be made about when sites in the established supply will be developed. Therefore, it is unrealistic to regard any calculation as infallible.

13. The council relies upon the most recent Scottish Borders Housing Land Audit (the 2019 HLA), which was published in April 2020 following input from local and national housing developers and the owners of sites that are identified within the established housing land supply. It finds an established supply of 9176, of which 3679 are considered to be effective or capable of becoming effective within the five year period 2019 to 2024 and a further 1945 units identified as potentially effective in years 6 and 7 (2025 and 2026).

14. The council's position (as set out in the 2019 HLA) is that in a rural area where housing demand is relatively weak, it is most appropriate to base predictions of future demand on the average number of completions that have occurred over the previous five years. It describes this as "prospective market demand" and distinguishes it from "the theoretical requirement", which is derived from the development plan's housing land requirement. Over the period 2015 to 2019, 1462 homes were constructed, which is an average of 292 per annum. If the effective five year supply of 3679 is compared with that rate of completions, there would appear to be a very healthy supply.

15. While I can understand the council's position that it does not consider that a shortage of housing land has constrained the rate of housebuilding in the recent past, it would be inconsistent with PAN 1/2020 to calculate the requirement for the next five years not on the development plan's housing land requirement, but on the level of past delivery. SPP expects any assessment of a housing supply shortfall to be made using the PAN 1/2020 methodology and, according to that methodology, the comparison should be between the five year target of 4310 and the identified effective supply of 3679. If this is credible then it appears there is a significant shortfall in the effective supply which potentially opens up a route to approval under SESplan Policy 7 and LDP Policy PMD4 and is, in any event, a material consideration in favour of allowing this appeal.

16. The appellant believes the 2019 HLA overstates the true extent of the effective five year supply. It has raised three main challenges to its findings. The first relies upon an argument that the housing land supply should be focussed on sites within SDAs, which would best support SESplan's spatial strategy and are likely to be attractive to developers. The second raises queries over the effectiveness of specific sites. The final challenge is to the council's assumptions about delivery from small sites.

17. I do not agree with the first of these grounds of challenge. The fact that a site is not located within an SDA might make it less favourable in policy terms, but if it already has an allocation or permission, then not being located within an area that SESplan identifies as the primary focus for development, should not, in itself, affect an assessment of its effectiveness. I also agree with the council that in order to support rural services and communities, some housing development away from the SDAs may continue to be required as a matter of policy. I note that LDP Policy HD2 specifically allows for housing in the countryside in certain circumstances. Therefore, I agree with the council that the existence of these sites (and the contribution they could make to the effective supply) cannot be ignored on the basis that they are not located within an SDA.

18. I agree with the appellant that, being located in a less accessible (non-SDA) location could affect a site's attractiveness to a potential developer. However, rather than make an assumption that non-SDA sites will, inevitably, be less attractive to prospective developers, I believe the issue requires to be looked at on a site by site basis.

19. Such a site by site analysis of the 2019 HLA-identified effective supply forms the basis of the appellant's second ground of challenge. As already stated, it is impossible to conclude that effectiveness predictions are either correct or incorrect or to quantify the scale of the supply with absolute precision. Instead, I have considered whether it is the council's or the appellant's assessment of the sites in dispute that seems the more credible in order to make a broad estimate of the scale of any shortfall so that the weight it should be given in the planning balance can be gauged.

20. Both sides have clearly looked at this issue very closely. However, the council has the advantage of having access to confidential pre-application discussions with site owners and prospective developers and has provided examples of sites that the appellant thought to be ineffective that have subsequently made progress towards development. Therefore, having regard to all of the submitted commentary on the sites in question, I am more persuaded by the council's site by site assessments of effectiveness.

21. Turning to the appellant's final criticism of the 2019 HLA, I am not persuaded that the council's allowance for future delivery from small sites is unreasonable, as it is informed by evidence of the important role such sites play in the delivery of housing within the Scottish Borders area. The appellant points out that 60% of small sites that were developed over the past five years were outwith settlements, which is inconsistent with the focus on SDAs. However, given the council's support for a certain level of development in rural locations (as confirmed in LDP Policy HD2), I find no justification for reducing the allowance for small sites in this way.

22. Taking all submissions into account, when assessed using the methodology recommended by PAN 1/2020, I find no justification to depart from the findings of the 2019 HLA, which suggests there is a shortfall in the five year all-tenure supply of effective housing land of around 600 units.

23. SESplan 2 has been referred to by both main parties. Had it not been rejected by Scottish Ministers, this would have provided replacement housing requirements to those set out in SESplan. In July 2019, following Scottish Ministers' rejection of that proposed plan, the six authorities within the region agreed a Joint Housing Land Position Statement. This confirmed that, when considering planning applications, along with other relevant material, the authorities would take most SESplan 2 policies into account along with the Housing Need and Demand Assessment (HNDA) 2015 and other studies that fed into SESplan 2.

24. SESplan 2 (as proposed) would have required the Scottish Borders Council area to accommodate an annual average total of 383 homes over the period 2018 to 2030. Applying the PAN 1/2020 methodology, this would have been a five year requirement of  $5 \times 383 = 1915$  homes. This is far lower than the 4310 requirement I calculated from the current SESplan and well below the effective supply identified in the 2019 HLA. This significantly lower target reflects a general reduction in predicted levels of need and demand than had been identified previously, and a greater focus on providing housing within Edinburgh rather than meeting some of the city's demand elsewhere. And in the examination of SESplan 2, it was recommended that the annual housing land requirement for Scottish Borders be further reduced to 320 units per annum (1600 over five years).

25. The SESplan 2 housing land requirement does not replace that set out in SESplan, as SESplan 2 has no development plan status. Therefore, it does not alter my conclusion that there is a significant five year effective land shortfall. I have considered in the conclusions section of this notice whether any weight should be given to the evidence base that informed SESplan 2's proposed approach, which suggests a significant decline in need and demand in the Scottish Borders.

#### Would the proposal be sustainable development?

26. I have assessed the proposal against the thirteen principles that paragraph 29 of SPP expects to be taken into account when assessing whether a proposal would support sustainable development. Not all are relevant to all forms of development so I am principally concerned with identifying any areas where the proposal is in direct conflict with a sustainability principle rather than those where it is unable to achieve a particular objective that is not strictly applicable.

27. The first requires due weight to be given to net economic benefit. I find it reasonable to predict that this (and indeed any) housing development proposal would generate an economic benefit for the land owner and developer, along with wider economic benefits to those employed in the construction process and to businesses within the service and supply sectors that would contribute to the development. The spending power of future residents of the proposed houses is also likely to benefit the economy of the town. There is no evidence to suggest that there would be any negative economic consequences so I am satisfied that the first sustainable development principle is met.

28. The second principle expects development to respond to economic issues, challenges and opportunities, as outlined in local economic strategies. I have not been advised of any such strategy to which this proposal would respond.

29. The third is concerned with supporting good design and the six qualities of successful places which are: distinctive; safe and pleasant; easy to move around and beyond; welcoming; adaptable; and resource efficient. I am confident that, subject to matters of detail being controlled by conditions, this principle could be satisfied.

30. The fourth principle expects efficient use to be made of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities. The proposed development of a greenfield site outside the settlement boundary is inconsistent with this principle, particularly when there are sites identified within Peebles in the 2019 HLA that would better support it.

31. As it is located within a reasonable walking distance of Peebles' extensive range of services, I am satisfied that the site would support the delivery of accessible housing, in accordance with the fifth principle of sustainable development.

32. In accordance with the sixth principle, the developer could be required to make an appropriate contribution towards the delivery of any necessary infrastructure, for example transport, education, energy, digital and water.

33. The seventh principle expects proposals to support climate change mitigation and adaptation including taking account of flood risk. There is no reason to suspect a flood risk issue with this proposal or any other adverse consequence of climate change. In comparison with a less accessibly located site, development here could help to reduce the need for motorised travel and therefore greenhouse gas emissions. Therefore I am satisfied that this principle is met.

34. The eighth principle involves improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation. Other than retaining the upper areas of the site as open land (to which the public already has rights of access under the Land Reform (Scotland) Act 2003) the proposal would not incorporate any specific measures to encourage health and well-being. The development (as with any residential development proposal) would provide an opportunity for its residents to interact socially.

35. The ninth principle has regard to the principles for sustainable land use set out in the Land Use Strategy. These principles encourage a wide-ranging consideration of the impacts of land use decisions. Of those that are relevant to the appeal proposal, I am

satisfied that the land is not so suited to a primary use such as food production or water catchment management that it should be reserved for such purposes; there is no evidence that the proposal would harm the functioning of any ecosystem. However, the inevitable suburbanisation of the site and its prominence mean it would have significantly harmful visual effects and would cause significant harm to the landscape and townscape. I discuss these later in this notice. The site's reasonably accessible location could allow future residents to choose travel options other than the car, thereby potentially reducing greenhouse gas emissions. I am also satisfied that the proposal would not cause a significant loss of outdoor recreation opportunity. Overall, I find the proposal is only partially compatible with the principles of sustainable land use in the Land Use Strategy and that where it is in conflict with that strategy, the adverse consequences would be significant.

36. The tenth principle is concerned with protecting, enhancing and promoting access to cultural heritage, including the historic environment. As I discuss later in this notice, the curtilages of two listed buildings would be adversely affected to some extent by the proposal, contrary to this principle of sustainable development.

37. The eleventh principle is about protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment. For reasons already stated, I predict that the effects of the proposal in this regard would be essentially neutral.

38. The twelfth principle is about reducing waste, facilitating its management and promoting resource recovery. This has no significant relevance to the proposal.

39. The final sustainable development principle is concerned with avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.

40. The development density would be compatible with that of its surroundings and there is no evidence of any water, air or soil quality concerns.

41. Some residents of properties on Edinburgh Road are concerned about loss of views, overlooking and overshadowing from the proposed homes. No party has right to a view over land they do not control and the appellant's response to residents' concerns demonstrates that the council's standards for such matters (as set out in its guidance note) would all be exceeded. I am satisfied that, even accounting for the ground level difference between existing homes and those now proposed, the separation distances of between 36 and 46 metres, together with the proposed tree belt, would avoid any unacceptable impression of being overlooked. I have no reason to doubt the accuracy of the appellant's sun path analysis which found that during both winter and summer months, there would be little additional obstruction to sunlight from the proposed houses than is already caused by the rising land to the east of the existing homes.

42. Taking all factors into account, I am satisfied that the effect on these properties would not be overbearing or likely to lead to any material loss of privacy or amenity and my conclusion overall is that this principle of sustainable development would be met.

43. Overall, I find that the proposal would satisfy most, but not all, of the principles that SPP paragraph 29 expects to be taken into account in assessing whether a proposal would

support sustainable development. However, the adverse consequences of the areas where the principles of sustainable development would not be satisfied –the use of a greenfield site outside the settlement boundary when alternatives appear to be available, the resultant significant adverse landscape, townscape and visual harm, and harm it would cause to the setting of two listed buildings, mean it would not be appropriate to characterise the development as sustainable development overall.

#### Landscape, townscape and visual amenity effects

44. The site forms the lower edge of a steeply rising field which occupies a prominent location on the eastern (west facing) side of the Eddlestone Water valley. The Development and Landscape Capacity Study for Peebles 2007 (the LCS) identifies the site as lying within the “west facing slopes” character area of the “Peebles North East” study area. This study primarily considered landscape and visual issues but also had regard to the sustainability of developing in different locations around the town.

45. Key characteristics of the “west facing slopes” landscape character area, and issues of particular concern, identified by the LCS as relevant to any proposed settlement expansion, include: the scenic quality of the landscape, which is a result of the diversity of spaces and woodland types; the need for engineering works due to the steepness of the land; the need to avoid extensive expansion of the town up the hillside; the loss of sinuous woodland and parkland, which contributes to the wider setting of the town and provides containment and shelter; the potential for a robust settlement edge to be lost; and the visibility of these slopes from a number of locations. Taking these issues into account, the LCS identified no options for settlement expansion within the “Peebles North East” study area.

46. The site lies within the Tweed Valley Special Landscape Area (the SLA) where LDP Policy EP5 confirms that particular regard will be had to a proposal’s landscape and visual impact. The Local Landscape Designations supplementary planning guidance 2012 identifies development pressure at settlement edges and recommends that this be carefully managed.

47. Where a proposal for development outside a settlement boundary is considered to be acceptable on an exceptional basis (which is a question I address in my conclusions to this notice) LDP Policy PMD4 requires it to be a logical extension of the settlement, which would not prejudice its character, visual cohesion or natural built-up edge and would not cause a significant adverse effect upon the settlement’s landscape setting or the natural heritage of the surrounding area.

48. In order to reduce the prominence of the proposed two storey homes, the development would be cut into the slope, rear gardens would be terraced and a tree screen would be planted between the proposed development and existing properties on the A703, which lie to the immediate west at a lower ground level than the site.

49. I viewed the appeal site from a number of locations in and around the town including most of the locations in the appellant’s landscape and visual impact assessment. From some locations, this included photomontage visualisations where the proposed development was helpfully depicted in white to enable accurate positioning of the proposal when in the field. I have borne in mind that this approach would significantly increase the

prominence of the proposal when compared with what could be expected if the development were to use materials of a more appropriately subdued palette. I have referred below only to viewpoint locations where I consider the landscape / townscape and / or visual effects would be particularly relevant to my assessment. However, I have had regard to all likely effects.

50. Looking first at effects on landscape and townscape and the interface between the two, I do not agree that keeping the development below the 190 metre contour would allow it to follow the established form of the town. The town occupies the floor of the valleys of the River Tweed and Eddlestone Water and extends only a limited distance up the valley sides. While it may be true that development elsewhere extends as high as 190 metres above ordnance datum, in the vicinity of the site, the edge of the town closely follows the A703, which runs close to the valley floor. Any development above that level is confined to scattered houses and the former Venlaw Castle Hotel. These are clearly separate from the town.

51. The field into which this proposal would extend the town is a very prominent and important feature of the Venlaw hillside backdrop to the town. The introduction of built development into the lower reaches of this field would reduce its scale and visual significance and the separation between the town and the scattered buildings that occupy the higher slopes of the hill.

52. I agree with the council's landscape architect that this field, along with the adjacent woodland, is also an important component of the designed landscape of Venlaw Castle. A linear development of modern houses would site very uncomfortably within this parkland landscape.

53. Turning to visual effects, when the site is approached from the north along the A703, I agree with the appellant that it would be successfully screened by existing development and the natural landform until the viewer was very close to the site. I also agree that from some locations on the A703 very close to the site, the existing houses and the proposed tree screen would avoid any significant visual effects. However, as I describe below, from many other locations within and close to the town, visual effects would be greater and in some cases, significantly harmful.

54. From the appellant's viewpoint VP02 at the car dealership on the A703, the proposed line of houses would be seen at close range above the existing housing along that road. In time, this view would be softened by the proposed tree planting between the development and the existing houses. Both the proposed trees and houses would obstruct views of Venlaw Castle which is currently seen from this stretch of the A703 as a noticeable landscape feature on the slopes of Venlaw.

55. From VP03 at North Lodge, the loss of mature trees to provide a site access and the visibility of that access and the proposed houses within the field would be prominent and urbanising changes to the view experienced by occupants of the lodge and vehicle occupants and pedestrians travelling south towards the town centre. The proposed development – especially the loss of trees and new access, would also be seen by those using the Venlaw Castle access drive, who would include residents and recreational users of Venlaw who would have high sensitivity to visual change.

56. Highly significant visual effects would be experienced from VP06 on Dalatho Street and from the western side of the A703 between Dalatho Street and Dalatho Crescent to the north. This would affect residents and road / footway users. From these locations, development would be seen rising above the existing housing on the A703 giving the impression of an urbanising and prominent incursion into the largely undeveloped hillside behind. A more distant but wider-angle view would also be experienced from the footbridge over the Eddlestone Water between Dalatho Street and Kingsland Road (VP10), which I noted from my site inspection is well used by recreational walkers.

57. I do not agree with the appellant that, at VP07 (Crossburn Farm Road), the fact that existing development already breaks the skyline, materially reduces the visual effect of what is now proposed. Regardless of the prominence of existing houses that are very close to this viewpoint, the proposed development would be seen as a clear incursion into the prominent sloping hillside backdrop to the view, creating a more enclosed and urban view and reducing the visual connection between this existing neighbourhood and the surrounding countryside.

58. From viewpoints VP11 and VP12 and for the entire length of that minor road which links the A703 and Standalane Way / Rosetta Road, the proposed development would be seen as an urban encroachment into the prominent field. This effect would be even more pronounced from Standalane Way, Rosetta Road and Elliot's Park, as exemplified in viewpoints VP13 to VP16 and from the recent housing development at Standalane View. From all of these locations, the sloping field, into the lower reaches of which this development would extend the town, is a critical component of the view – providing a strong visual contrast with the mixed woodland above and a definite edge to the settlement below. It is a critical part of the parkland setting to Venlaw Castle, which is seen across the valley on higher ground. To maintain the visual amenity of receptors in these locations, who include residents and recreational walkers on the Drover's Way long distance path, I consider it essential that this field remains free from urban encroachment.

59. Of great relevance to the experience of this proposal for users of the Drover's Way is VP17. From this more elevated viewpoint, the importance of the open field, of which the application site is a part, is perhaps even clearer, as it can be appreciated that it is one of a number of such open areas on Venlaw which are separated by woodland. Venlaw Castle can also be appreciated in its parkland context with the town of Peebles being confined to the valley floor. The proposed extension of built development into this field would be an immediately apparent incursion of the town into its hillside backdrop, forming a harmful addition to the view of sensitive receptors using this recognised long distance walking route.

60. Recreational users further away from the site would also experience significant harmful visual effects from the proposal. These are exemplified in the photomontages prepared for VP24 (Manor Sware viewpoint), VP25 (on the John Buchan Way to the south of the town) and VP26 (in Cademuir Hill forest). Even accounting for the significantly reduced prominence that appropriate materials and landscaping could deliver when compared with the stark white outlines used to identify the proposed dwellings in the photomontages, from all three of these important recreational receptor locations, the proposal would appear as an eye-catching and inappropriate expansion of the town onto the surrounding hillside.

61. The appellant believes that allocations detailed in the proposed LDP would alter the form of the settlement to such an extent that it would materially affect the context within which views of the appeal site would be experienced. In the settlement plan for Peebles in the proposed LDP there are three proposed site allocations that would significantly alter the shape of the settlement: a seven hectare housing site on land south of Chapelhill Farm; a 6.4 hectare mixed use development on Rosetta Road which was allocated for development in the LDP Housing SG, and a 5.7 hectare housing site on Rosetta Road, which already has planning permission. However, the location of these three proposed allocations (on the Eddlestone Water valley floor and the lower western slopes of that valley) is such that I am satisfied that they would not materially affect the landscape and visual impact of the appeal proposal. And in the case of the Chapelhill Farm site, as this is merely a proposed allocation that has yet to be examined, it is too soon to make any assumptions about the future status of this land.

#### Effect on the setting of nearby listed buildings

62. The site would be accessed from the driveway to the former Venlaw Castle Hotel – a category B listed Scots Baronial building, which occupies a very prominent position on the hillside above the town. The former gatehouse, known as North Lodge, is category C listed and is situated close to the proposed point of access.

63. The proposed development would be visible from, and in conjunction with, both listed buildings and would occupy land that has the appearance of parkland. Although it is not included within the Inventory of Gardens and Designed Landscapes, the appellant's LVIA recognises that historic plans show the site as forming part of the Castle Venlaw historic landscape and identify a similar open character since 1843.

64. LDP Policy EP7 requires, among other things, that the setting of listed buildings be conserved, protected and enhanced. Policy EP10 requires careful siting and design of all proposals within designed landscapes and presumes against proposals that would have an unacceptable adverse impact.

65. The proposed access road and associated tree felling would be likely to have an urbanising effect on the setting of North Lodge. Contrary to Policy EP7 this would fail to conserve or protect the setting of this building.

66. I also have concerns over the effect the proposal would have on the setting of the former hotel. That building occupies a commanding position within trees, looking out across open grazing land that has a parkland appearance. The introduction of a prominent housing development within that setting would give the impression of the town encroaching upon the listed building and would detract from the listed building's relative isolation, which is a visual reminder of its former importance. However well designed and finished the proposed houses were, this would detract from the setting of the listed building contrary to Policies EP7 and EP10.

#### Effect on the water environment

67. It is a requirement of LDP Policy EP15 that development does not result in a significant adverse effect on the water environment. All proposals are to be assessed in terms of their effect on surface and groundwater, their implications for flood risk, any river

engineering works that might be required and the provision of appropriate sustainable drainage (SuDS) infrastructure, . In this instance this issue carries particular importance, as there is a potential pathway for water-borne pollutants to travel from the site and reach the River Tweed SAC. LDP Policy ED1 requires, among other things, that it be demonstrated that the proposal would not adversely affect the integrity of such sites.

68. The developer proposes to connect foul drainage from the development to the public sewer and to handle surface water with a SuDS system. During the construction process, siltation and/or pollution of the water environment could be avoided by appropriate working methods, which could be secured by a construction environment management plan (CEMP).

69. Having considered all of the submitted evidence, I am satisfied that I have sufficient information on all reasonably foreseeable risks to carry out an Appropriate Assessment. My finding is that, with appropriate mitigation in place (which could be secured by planning conditions) there would not be an adverse effect on the integrity of the SAC. The proposal would therefore satisfy Policy ED1.

70. For similar reasons, I am satisfied that, in accordance with Policy EP15, no other element of the water environment would be materially harmed.

#### Other matters

71. In addition to the matters discussed above, local residents have raised concerns over the safety of the proposed site access due to development traffic potentially conflicting with farm and forestry vehicles using the Venlaw Castle access and also the large number of access points onto the A703.

72. I note that the council's Roads Planning Service considers the proposal to be contrary to LDP Policy PMD2 due to safety concerns with the site access . In response, the appellant commissioned a road safety audit of the proposals. This found that sight lines at the A703 are good, that no new junction onto that road would be required, pedestrian approaches to the junction appeared safe and vehicle speeds appeared generally to be within the 30 mph speed limit. Subject to widening the existing access and providing two metre wide footways with dropped kerb crossing points on both sides of the junction, the proposals are predicted to have no adverse road safety implications. The Roads Planning Service maintains its objections to the proposal but has not explained why the recommendations of the engineering consultant (which the appellant is willing to implement) would be inadequate to maintain acceptable levels of road safety. Based on what I saw on site and the balance of professional engineering input I have received, I conclude that it would not be appropriate to withhold planning permission on road safety grounds, as appropriate standards could be achieved via planning conditions, if I were to allow this appeal.

73. LDP Policy HD1 sets out the council's normal expectation that 25% of a housing development will be affordable and / or special needs housing either by on-site provision, the delivery of such housing elsewhere, or through a commuted payment. The non-statutory Affordable Housing supplementary planning guidance (2015) which appears to be extant despite pre-dating the current LDP, expects on-site provision for all developments of 17 or more units. The appellant is willing to provide five units on site with the

remaining 0.5 of a unit (to achieve a 25% contribution) provided as a commuted sum. The council points out that the need to incorporate an element of on-site affordable accommodation appears not to have been considered prior to this proposal coming to appeal and has evidently not been factored into the design of the proposed 22 identical large family homes. I agree that it has not been demonstrated how the proposal would satisfy local housing need although it would appear that the developer's offer would be sufficient to meet the requirements of Policy HD1, as this refers to the scale, but not the type and tenure, of any developer contribution being influenced by an assessment of the housing need. If I were to allow this appeal I am satisfied that an appropriate solution to the affordable housing contribution could be secured.

### Conclusions

74. The appeal site lies outside Peebles' development boundary. LDP Policy PMD4 confirms that development should be contained within such boundaries and that proposals for new development on unallocated sites outwith such boundaries will normally be refused.

75. SESplan Policy 7 potentially permits greenfield housing development outside a settlement boundary where necessary to maintain a five year effective housing land supply. Three criteria must be satisfied. The first is that the development would be in keeping with the character of the settlement and the surrounding area. I have set out above why I conclude that, contrary to this requirement, the proposal would be entirely out of keeping with the settlement and its surroundings. The second relates to green belt objectives, which is not relevant in this location. The third requires all necessary infrastructure requirements to be available or capable of being made available, which should not be a concern for this proposal. Overall, as all three criteria must be satisfied, which they are not, I find the proposal unable to draw support from this policy.

76. LDP Policy PMD4 potentially permits development outside development boundaries. This policy operates in two stages. First, a proposal must provide strong reasons to justify that it fits within one of four potentially acceptable categories of development. Of relevance to this proposal is the third, which is where a shortfall in the effective five year housing land supply has been identified. I have set out above that there appears to be a significant shortfall in the effective five year supply.

77. The second stage of Policy PMD4 then sets out four further requirements, all of which must be satisfied for the proposal to be supported by the policy. The first is that the proposal would represent a logical extension of the built up area. I find that, contrary to this requirement, the landscape, townscape and visual harm I have identified above mean the proposal would be an illogical extension to the town, which would fail to follow its established form and would increase its landscape prominence.

78. The second requires the proposal to be appropriate in scale to the size of the settlement. I have no concerns in this regard.

79. The third requires that the character, visual cohesion or natural built up edge of the settlement are not prejudiced. I find that proposed extension of the town up the valley side into an important and prominent open space would harm the character of the settlement, reducing its visual cohesion and creating an incongruous edge to the town at this point. It would, therefore, be in conflict with this requirement.

80. Due to the adverse landscape effects I have set out above, I also find the proposal to be in conflict with the fourth requirement, which is to avoid a significant adverse effect on the landscape setting of the settlement or the natural heritage of the surrounding area.

81. The policy then sets out three factors to be taken into account when deciding whether planning permission for development outside the settlement boundary should be granted. The first requires account to be taken of any restrictions on, or encouragement of, development in the longer term that may be set out in the settlement profile. The settlement profile for Peebles was modified by revisions to the proposals map in the LDP Housing SG. This allocates land for housing and other uses in the town and indicates that once that has been developed, the preferred area for future expansion will be to the south east of Peebles. There is no support for any development in the vicinity of the appeal site and I conclude that the proposal can take no encouragement from the settlement profile.

82. The second and third factors deal with cumulative effects with other development outside the settlement boundary and with infrastructure and service capacity issues. Neither of these appears to be a factor that would count against this proposal.

83. Overall, I find the proposal to be in conflict with LDP Policy PMD4.

84. Having regard to all of the submitted material, there is no evidence to support the appellant's claim that the appeal site's location fits with the LDP's strategy for development. On the contrary, the appeal site occupies a location (outside the development boundary) where the LDP is clear that development should only be permitted if justified by exception. The appellant states that the LDP specifically identifies Strategic Growth Areas (SGAs) and that Peebles is in such an area. However, there is no such designation in the LDP or indeed in SESplan. SESplan 2 proposed to indicate broad locations (including Peebles) where strategic growth would be encouraged, but was rejected by Ministers and is not part of the development plan.

85. Having regard to all relevant policies of both SESplan and the LDP, I find the proposal overall is not in accordance with the development plan. And, as the proposal would not constitute sustainable development, it can draw no support from SPP paragraph 33 or paragraph 125.

86. The shortfall in the five year supply of effective housing land remains a material consideration in favour of this proposal despite the lack of development plan or SPP policy support. The scale of that shortfall appears to be significant enough to be an important factor in its favour. Also in its favour are the site's reasonably accessible location, adjacent to a settlement that is located within a Strategic Development Area, and the positive economic benefits it would bring.

87. The housing need and demand assessment that fed into SESplan 2 (the 2015 HNDA) suggests that there may now be a significantly lower level of need and demand in the Scottish Borders than was forecast for the region in the Third National Planning Framework (NPF3) and was identified in the HNDA that informed SESplan,. This evidence may feed into future policy decisions about the extent and location of housing that is required across the region. However, at this stage it is impossible to know how it might affect such matters. As I am satisfied that the housing requirement that is set out in

SESplan remains relevant until it is formally replaced, I find no justification to give weight at this time to the 2015 HNDA.

88. Taking all matters into account, I find that the proposal would deliver a net economic benefit and would contribute to addressing what appears to be a significant shortfall in the five year supply of effective housing land. However, such benefits are significantly and demonstrably outweighed by the clear conflict with the development plan and the considerable harm the proposal would cause to the character of Peebles and its surrounding countryside, and to the visual amenity of those who live, work and visit the area.

89. If the current Court of Session challenge to the December 2020 SPP revisions is successful, the national policy position would revert back to its 2014 form. Therefore it is necessary to consider whether it would be reasonable for a decision to be made on this appeal pending the outcome of that challenge.

90. In its 2014 form, SPP paragraph 33 confirmed, among other things, that, where there is a shortfall in the effective housing land supply, and a proposal would contribute to sustainable development, for planning permission to be refused it would need to be demonstrated that its disbenefits would not only outweigh, but would significantly and demonstrably outweigh, its benefits. This became known as the “tilted balance”. The Court of Session has confirmed that development that would remedy, to some extent, a housing shortfall will almost inevitably contribute to sustainable development. It has also confirmed that the angle of tilt in favour of such a proposal may be affected by the extent of the housing supply shortfall.

91. In considering this appeal I have followed the PAN 1/2020 advice to use what is often referred to as the “average” method for calculating the housing requirement. This takes no account of any backlog in supply that may have arisen over the plan period. However, prior to the 2020 revisions to SPP, no methodology was specified. Therefore, it is necessary to consider what would be the effect of using an alternative approach (often referred to as the “residual” method) which takes account of past under-supply, to estimate the overall requirement.

92. The council has confirmed an annual average build rate of 292 between 2015 and 2019. I do not have data for the entire SESplan period, but if one assumes that this is representative of the level of housing delivery over the entire period and compares this with the average annual requirement of 862, then a significant supply backlog will have developed, significantly increasing the forward-looking supply shortfall of approximately 600. This would increase the weight that should be given to the shortfall in the planning balance.

93. If the proposal were found to “contribute to” sustainable development, despite not “being” sustainable development (which I accept is a lower bar) then, in accordance with SPP 2014 and Court of Session rulings, the planning balance would be tilted very significantly in favour of approval. SPP 2014 would also apply the “tilted balance” on account of SESplan being more than five years old. However, even then, the significance of the adverse consequences I have outlined above is so great that my conclusion on the planning balance would remain in favour of refusal, as the disbenefits of the proposal would significantly and demonstrably outweigh its benefits, even accounting for a strongly tilted

balance. Consequently, I see no merit in awaiting the outcome of the Court of Session challenge before determining this appeal.

94. I conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

*David Buylla*  
Principal Reporter