



## THE SCOTTISH OFFICE

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Your reference: CJS/BS/8069  
Our reference: P/PPA/140/81

14 January 1999

Dear Sirs

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997: SECTION 47 AND SCHEDULE 4  
PLANNING APPEAL BY THE BUCCLEUCH ESTATES LTD: ERECTION OF RESIDENTIAL DEVELOPMENT EAST OF ECKFORD ROAD, ECKFORD, BY KELSO**

1. I refer to your client's appeal, which I have been appointed to determine, against the refusal of outline planning permission by Scottish Borders Council for the erection of a residential development east of Eckford Road, Eckford, by Kelso. I have considered the written submissions and made an unaccompanied inspection of the appeal site and the surrounding area on 9 December, 1998.

**DESCRIPTION AND BACKGROUND**

2. The appeal site is located on the south-east side of Eckford village. It is bounded to the west by the main road through the village and to the east by Eckford Cottage, an agricultural building and the former Eckford school house, now known as Hill View, which is accessed by way of a driveway which bisects the site. Open agricultural fields form the southern boundary and a small cluster of private detached dwellings form the northern boundary. The site slopes gently to west and north from the former school house. The roadside boundary is formed by a hedgerow as is the south side of the access to the former school house and the southern site boundary.

3. Your client initially sought outline planning permission for the erection of 8 detached dwelling houses in large plots on a site of 1.2ha to be served off an internal access road. The proposal was amended and is now for four houses on a reduced site area of 0.725ha as described in paragraph 2. The proposal includes the formation of a village green incorporating a play area. Access would be taken from Eckford Road just south of the driveway to Hill View.

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4. In July, 1990 and in June, 1991 outline planning applications were approved, subject to conditions, for the erection of five dwelling houses and three dwelling houses respectively on the field on the east side of the main road, Eckford.

5. Your client's application was refused for the following reason:-

1. The proposal is contrary to Policies 5 and 6 of the Roxburgh Local Plan in that the proposed development extends outwith the identified settlement boundary contained in the village plan for Eckford.

6. The development plan in force comprises the Scottish Borders Structure Plan, 1993, and the Roxburgh Local Plan, 1995. Policy S.10 of the structure plan states:-

"The Regional Council will encourage the development of infill and other small scale sites in settlements throughout the Region. The extent to which settlements can absorb such development will vary according to local circumstances and the open space characteristics of each settlement, and this will be defined in the appropriate Local Plans. This is without prejudice to Strategic Policy S6a."

Policy 5 of the local plan states:-

"Where settlement boundaries are defined, they indicate the extent to which towns and villages should be allowed to expand during the Local Plan period. All development related to these settlements should be contained within this boundary."

Policy 6 states:-

"Village Plans, providing a guide for future development, will be produced in the following order of priority for the villages of Smailholm, Eckford, Minto, Oxnam, Nenthorn, Crailing, Chesters, Lanton and Roxburgh. Following the completion of the Village Plans either Policy 2 or Policy 3 will apply to all of the villages. In the interim a general policy of restraint will apply in these villages. Any development proposals should satisfy the following criteria:-

1. The proposal will not intrude into open countryside or have an adverse impact on the landscape;
2. The proposal will be consistent with, and complement, the character of the settlement;
3. The proposal will be consistent with, and conform to, the form of the settlement;
4. The proposal does not have a significant adverse effect on the amenity of adjoining property;
5. Adequate access and servicing can be achieved;
6. Other policies of the Local Plan are not prejudiced."

#### SUMMARY OF CASES

7. **On behalf of your client**, you state that policy 5 of the local plan presumes against development outwith defined settlement boundaries. It is contended however, that a difference exists between the settlement boundaries defined in statutory local plans and those in non-

statutory village plans which have neither been the subject of formal public consultation nor rigorous assessment under cross examination at a local plan inquiry. By their very nature, village plans are intended purely for general guidance and only contain the preferred policy position of the council in relation to boundaries. The narrative of policy 6 states that they are intended to provide a guide for future development. You contend that, although arguably a material consideration, the council has, contrary to the advice contained in paragraph 36 of NPPG1, given undue weight to a document which only carries non-statutory status.

8. You state that policy 6 is intended as an interim policy statement against which development proposals would be judged until such time as village plans were produced for the settlements listed. The village plans are now in place and proposals are required to be appraised against the criteria of policies 2 and 3. You consider that the proposal compares favourably inasmuch as, given the settlement pattern of the village to the west and the location of the school house and the existing farm house to the south-east, development would not intrude onto open countryside; sympathetic and sensitive development of the site would complement the existing character of the village; the development would help consolidate the existing settlement pattern and result in firmer defensible boundaries; the housing would have no adverse effect on neighbouring properties; satisfactory access, parking and water and drainage facilities can be provided; and that the proposed development is consistent with other local plan policies.

9. You suggest that the southern boundary line of the village has been drawn arbitrarily, and contend that no cognisance has been taken of the farm building and small house to the south which form an integral part of the village. The council's landscape architect has stated that the appeal site could quite easily be incorporated and that the proposed development would be a logical extension to the village. It is contended that the revised layout and form of the proposed housing mirrors the existing linear pattern of the village to the west, while retaining the green as a core element closely linked to the village hall.

10. There is no evidence to suggest that, should a residential development proceed on the appeal site, it would create an undesirable precedent for further development in Eckford. Future proposals would, in any event, be determined on their own merits. You draw attention to a breach of a statutory settlement boundary at St Boswells, approved in April 1998. You contend that, with respect to small villages, it is unreasonable to place what amounts to an embargo on fairly insignificant extensions founded on sound planning principles, to justify the retention of an arbitrary boundary line contained in a non-statutory plan.

11. The issue of depopulation in the Scottish Borders and the need to reverse the trend is acknowledged by the structure plan. Both the structure and local plans state a requirement for the provision of a wide range of housing choice. This also includes locational choice, which is arguably of greater importance than sectoral choice within one settlement.

12. You state that NPPG3 recognises the demand for housing in rural areas and acknowledges that some of this will need to take place on greenfield sites. Structure plan policy S.10 presumes in favour of developing small scale sites in settlements depending on the circumstances and open space characteristics of each settlement. You state that Eckford is considered an appropriate location for limited new housing development to help meet the structure plan's strategic aims.

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13. Your client is committed to achieving a development which complements the existing settlement, provides good quality housing for the future, impacts least upon the social and physical fabric of the village and is prepared to accept suitably worded conditions, where appropriate, to control certain aspects of the development in advance of any application for approval of reserved matters. Such conditions might include a limit to the number of units, commitment to the village green/play area as part of a future detailed layout for the site and controls relating to access, infrastructure, landscaping, building heights, finishing materials and archaeological measures.
14. Your client intends that full and careful consideration would be given to structural landscaping in and around the site consistent with the guidance and advice contained in PAN44, NPPG3, structure plan policy R21 and local plan policy 6.
15. It is contended that the proposed dwellings would not overshadow or prejudice the privacy of any existing property or, by way of noise, fumes or appearance, be in any way detrimental to householders and the enjoyment of their property. Any perceived loss of amenity by neighbouring residents relates directly to such factors as concern over loss of view which is not a valid planning consideration. It is significant that, the residents of Hill View (the former school house), who are most likely to be affected by the development, have stated their full support for the proposals.
16. Neither SEPA or East of Scotland Water have any objections. Eckford has public transport links with Kelso, Jedburgh and other surrounding Borders towns.
17. You state that your client has devised a proposal which seeks to fit into and complement the village. It is considered that, in the longer term, an end to the uncertainty surrounding the appeal site would be beneficial, not only for the appellants, but for the village as a whole.
18. **On behalf of the council**, it is stated that the main issue in determining the application is whether the development complies with the local plan policies relating to settlement boundaries and housing in the countryside. Part of the application site, comprising two dwellings and a village green, is shown on the indicative plan to be located on land within the Eckford settlement boundary and is identified as a favoured area for the development of three dwellings in the village plan. This part of the development proposal is acceptable in policy terms, but the remainder of the application site, accommodating two dwellings, falls outwith the settlement boundary for the village. Policy 5 of the local plan, which applies to all village plans, states that all development should be contained within the respective settlement boundaries. That part of the development outwith the settlement boundary is therefore contrary to local plan policy. When the settlement boundary was drawn, it was considered that the western boundary of the proposed area formed a strong edge to the village. In the event that planning permission is granted, the regional archaeologist recommends the attachment of a condition to secure a programme of archaeological work as the proposed development lies in the area of Eckford Tower, a site of archaeological importance.
19. **Crailling, Eckford and Nisbet Community Council** and the local councillor represented that two of the proposed houses would be outside the identified village boundary; the houses should be bungalows because one and a half or two storey houses would adversely affect the amenity of other properties; and the play area would be located unsuitably close to and open to the road. A letter of objection was submitted by local residents on the grounds of



precedent, drainage issues, poor siting of the village green, and limiting the period for construction of the development if approved. A letter of support for your client's proposal was also submitted which welcomed an end to uncertainty concerning possible residential development and the best compromise the village is likely to get. It was understood that the village boundary was arbitrarily drawn and a redrawing of the boundary, together with the limited development proposed would greatly enhance the village.

## CONCLUSIONS

20. Section 25 of the Act requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. I consider, based on my inspection of the appeal site and the written submissions, that the issues to be determined are whether the proposal is consistent with development plan policy and, if not, whether an exception to the provisions of the plan is justified by other material considerations.

21. The local plan, adopted in 1995, proposed the preparation of a village plan for Eckford which was published as supplementary guidance in 1996. I accept the contention, made on behalf of your client, that the village plan is a non-statutory document and note your reference to paragraph 36 of NPPG1. I consider that the village plan serves the purpose of planning, fairly and reasonably relates to the determination of your client's application, and that it is a material consideration.

22. The preamble to policy 5 of the local plan indicates that the village will define the settlement boundary. Settlement boundaries are said to contain "all the areas which can realistically be regarded as part of the settlement" and "include all land that is likely to be required for development during the local plan period". All areas outwith settlement boundaries are regarded as countryside.

23. The question arises as to whether the south settlement boundary in the Eckford village plan contains all the areas which can realistically be regarded as part of the settlement. You have drawn attention to the southern extent of the existing houses on the west side of the main road, and to Eckford Cottage and the farm building east of the appeal site. On the other hand, it was apparent at the unaccompanied site inspection that the south settlement boundary, as depicted in the village plan, is at present slightly more robustly defined by landscape planting than that of the appeal site.

24. I have noted the views of the council's landscape architect. The indicative plan no. 5254/P12, submitted in support of the application, shows new planting south of the access to Eckford Cottage and east of Plot 1. The application plan reference Job No. 8069 indicates that the land south and east of the appeal site is in the control of your client. I have concluded, on balance, that the containment of the settlement would not be prejudiced, to a degree which would justify a refusal of planning permission, if the south boundary were to be redefined to contain the appeal site. I also conclude that an opportunity exists to reinforce the landscaped edge of the settlement at its south and east boundaries as proposed in the indicative plan. I do not consider that the proposal, thus defined, would establish a precedent for further development in either direction.

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25. I do not consider that the land which lies between the farm building and the existing houses on the main road should be regarded as open countryside for the purposes of policy 6. Neither do I consider that the proposal would lead to an adverse impact on the landscape. I would complement the character, and be consistent with the form of the settlement. I do not consider that it would have an unacceptable effect on the amenity of adjoining property such as would justify the refusal of planning permission. I have not been made aware of any problems relating to infrastructure provision and I do not consider that other local plan policies would be prejudiced.
26. It has been represented that the houses, if allowed, should be restricted to single storey. The unaccompanied site inspection revealed that the character of the village in the vicinity of the site is established in part by houses of single and two storey construction. I have concluded that up to four houses on the appeal site, in fairly generous plots, would not compromise the form and scale of the village if the houses were constructed to a single storey eaves height with accommodation in the roof space, as indicated in the indicative character sketches (ref. no. 5254/Sketches) submitted in support of your client's application.
27. It has also been represented that the proposed village green and play area would be poorly sited. I have concluded, in terms of their location in relation to the main road, that concerns can be satisfactorily addressed in the detail design of hard and soft landscaping and footpaths in the area.
28. Drawing these conclusions together, and having regard to all of the matters covered in written submissions and observed at the site inspection, I conclude that the local plan does not define a settlement boundary for the village of Eckford and that policy 5 of the local plan should not apply; that a village plan has been prepared in accordance with policy 6 and that it is a material consideration; that the settlement envelope as defined in the village plan is unduly restrictive; that the criteria which development proposals must satisfy as set out in policy 6 would not be compromised; and that your client's proposal is not contrary to the development plan. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based. Accordingly, in exercise of the powers delegated to me, I allow your client's appeal, and grant outline planning permission for the proposal in accordance with application no. 97/00580/OUT subject to the following conditions:-
1. This is permission is subject to the time limit set out in Section 59(2) &(3) of the Act (extract attached).
  2. Prior to the start of development details of the proposed means of drainage to be provided and proposals for the maintenance of any system shall submitted for the consideration and written approval of the council.
  3. Prior to the start of development, detailed plans shall be submitted for the consideration and written approval of the council showing the siting, design and external materials of all buildings and structures to be erected on the site and the means of access thereto. The proposed houses shall be no more than four in number and single storey, or single storey with dormers, of a design compatible in scale, character, detailing and finishing materials with the style of traditional houses in the surrounding area

4. The plans referred to in condition 3 shall also show (a) all the existing trees and shrubs on, and adjacent to the site and arrangements for the protection during construction of those features to be retained, (b) details of new landscaping and planting and arrangements for its maintenance, including the provision of 10m wide tree shelter belts to be planted parallel to the south boundary of the site, and parallel to the east boundary of the site, north of Hill View, (c) the facilities to be provided for car parking and turning within the site, (d) details of any screen walls/fencing to be provided, and (e) details of the facilities in the children's play area to be provided.

5. The tree shelter belt planting referred to in condition 4(b) shall be carried out in the first planting season following the occupation of the first house. Any trees which, within a period of five years die, are removed, or become seriously damaged and/or diseased, shall be replaced in the next planting season with others of a similar size and shape unless the council has given written authorisation to any variations.

6. Prior to the start of development, proposals which secure the implementation of a programme of archaeological work shall be submitted for the approval of the council in writing.

7. No works (other than service tails) shall commence in relation to the development until the proposed access to the public road has been formed to an adoptable road standard in accordance with details to be submitted to and approved in writing by the council.

8. Prior to the occupation of any house in the development, all roads and footpaths within and serving the development shall, unless otherwise agreed by the council, be completed to the level of bottoming and bitmac base course, including the access bellmouth, visibility splay and any turning heads, to the satisfaction of the council.

9. Within six months of the occupation or substantial completion of the last house in the development, all roads and footpaths within and serving the development shall, unless otherwise agreed by the council, be completed to the adoptable standard of the council.

29. This decision is final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of this letter, as conferred by sections 237 and 239 of the Town and Country Planning (Scotland) Act 1997; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the 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 1992 or of any orders, regulations or rules made under these Acts.

Farningham McCreadie Partnership P/PPA/140/81

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30. A copy of this letter has been sent to Scottish Borders Council and to Crailing, Eck and Nisbet Community Council. Those others who made representations have been informed of the decision.

Yours faithfully



DGB DUNCAN  
Reporter

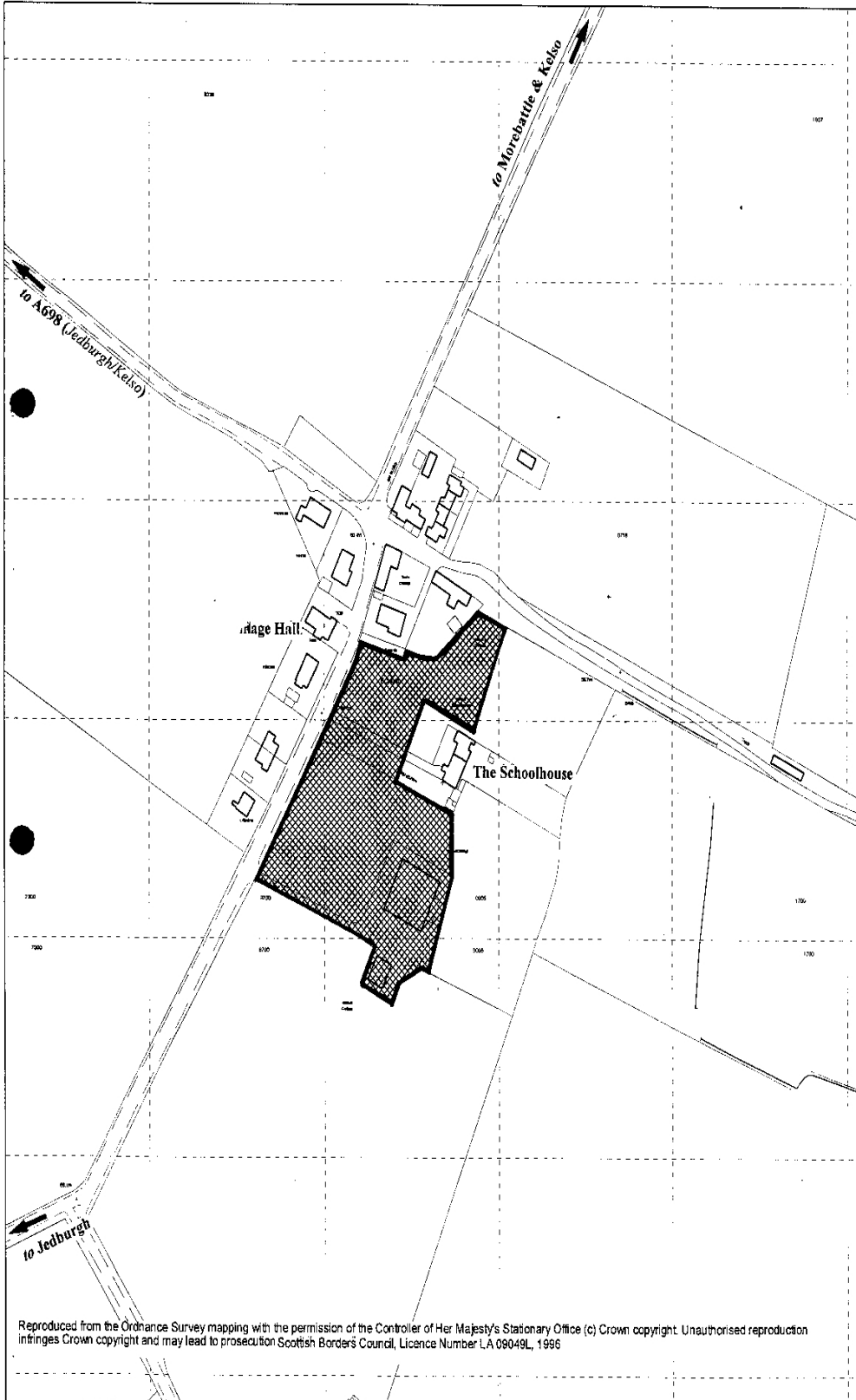


Title : Residential Development (8 dwellings)

Ref No.  
97/00580/OUT

Address: Site Adjacent The Schoolhouse, Eckford TD5 8LD

Scale : 1:2500



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