

F E R G U S O N  
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16 Hendersyde Drive, Kelso, Scottish Borders

James Hewitt

June 2022

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## INTRODUCTION

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## INTRODUCTION

- 1.1 This Appeal Statement is submitted on behalf of James Hewitt (‘the appellant’) and sets out the grounds of appeal against the decision of the Scottish Borders Council (SBC) to refuse planning application LPA ref: 22/00093/PPP by a delegated decision on 28/04/2022.
- 1.2 The Planning Permission in Principle Application sought consent for the *“Erection of a New Dwelling House with Associated Infrastructure Works at 16 Hendersyde Drive, Kelso, Scottish Borders.”*
- 1.3 The four reasons for the refusal of the application as set out below.
- The proposals would be contrary to Policies PMD2: Quality Standards and PMD5: Infill Development of the LDP 2016 and the SPG on Placemaking and Design 2010 in that it would result in development that is out of character with the existing development pattern and would represent over-development and town cramming to the detriment of the amenity of potential occupants and to the amenity and character of the surrounding area.
  - The proposal would be contrary to Policy EP13: Trees, Woodlands and Hedgerows of the LDP 2016 and the SPG: Trees and Development 2020 as the development would result in the loss or harm to the woodland resource to the detriment of the visual amenity of the area and it not been demonstrated that the public benefits of the development outweigh the loss of this landscape assets.
  - The proposal would be contrary to Policy EP11: Protection of Greenspace in the LDP in that it has not been demonstrated that there is a social, economic or community benefit for the loss of open space or that the need for the development outweighs the need to retrain open space. No comparable replacement or enhancement of existing open spaces has been provided to mitigate the potential loss.
  - The proposal would be contrary to Policy IS8: Flooding of the LDP as the site is potentially at risk from surface water flooding, to the detriment of persons and property, and no evidence has been presented to evaluate the potential impacts.

1.4 The table below provides a summary of the technical consultee responses:

Consultee	Comment
Roads Planning	<b>No Objection. Detailed plans to be submitted at AMC stage</b>
SEPA	<b>No Objection</b>
Community Council	<b>No Objection, the council supports the application.</b>
Archaeology Officer	<b>No Objection</b>
Ecology Officer	<b>No Objection</b>
Flood Risk Officer	<b>Requests Flood Risk Assessment at Detailed Planning Application Stage.</b>
Scottish Water	<b>Requests Flood Risk Assessment at Detailed Planning Application Stage.</b>

1.5 The remaining sections in this appeal statement comprise:

- A description of the appeal site and surrounding context (Section 2)
- A summary of the appeal proposals (Section 3)
- Ground of Appeal (Section 4)
- Summary of the appellant’s case and conclusion (Section 5).

### Supporting Documents

1.6 This appeal statement should be read in conjunction with all the supporting documents and drawings submitted as part of the original planning application.

### Application Process

1.7 This appeal is made to the Local Review Body on the basis it was a local application, and which was determined under delegated powers. For the reasons outlined in this statement, we conclude that the development is in accordance with relevant development plan policies and supported by significant material considerations.

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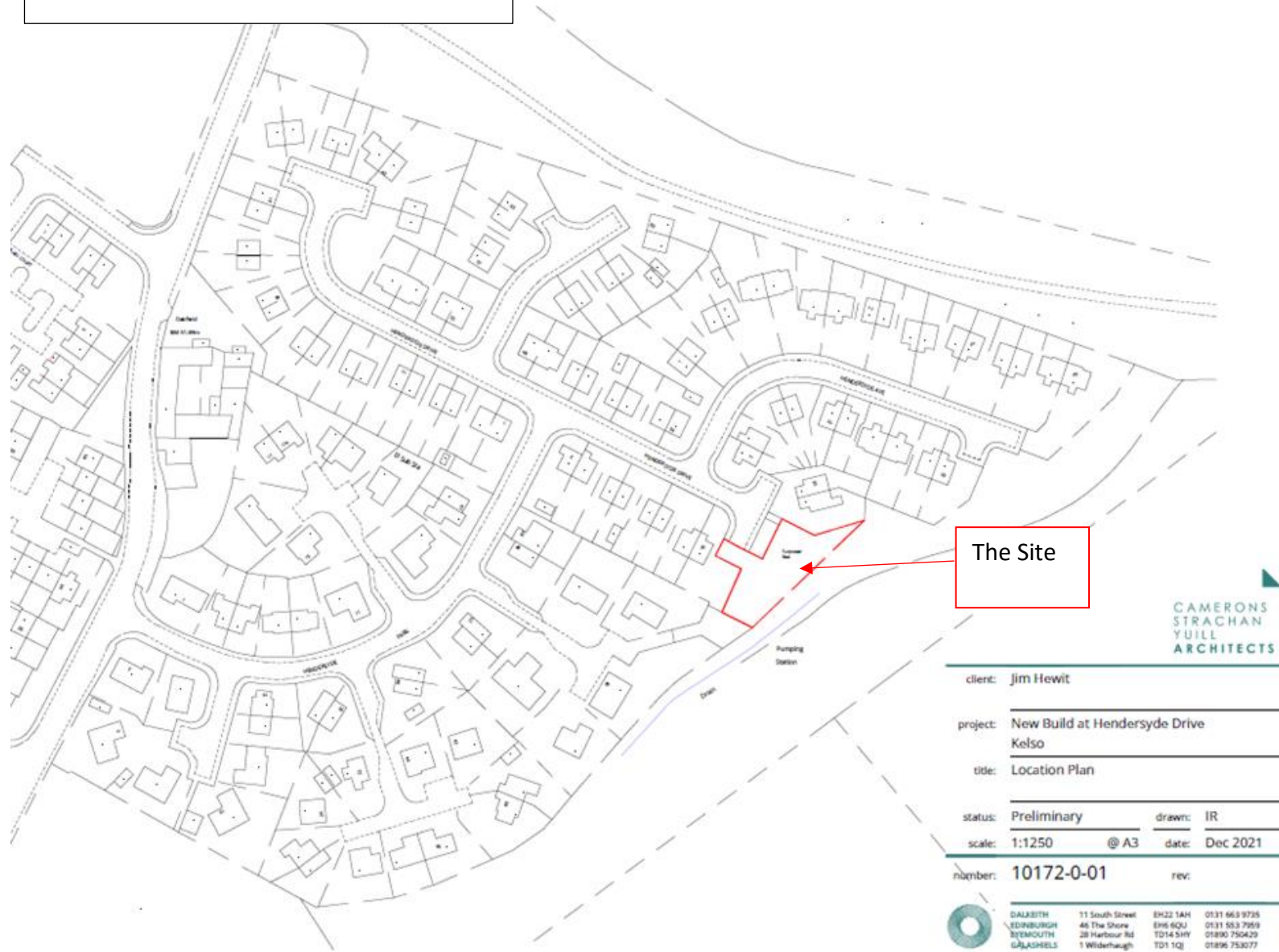
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APPLICATION SITE AND CONTEXT

## APPLICATION SITE AND CONTEXT

- 2.1 The site is located within the Settlement Boundary of Kelso, to the far east of Hendersyde Drive, at the end of the cul-de-sac. At present, the site is currently laid to grass, with trees along the western border. Adjoining the site to the north and west are residential properties along Hendersyde Drive as illustrated in Figure 1 below.
- 2.2 In terms of topography, the site itself is relatively flat, with the topography rising beyond the site boundary to the north.
- 2.3 With regards to the Local Development Plan adopted proposals map, along with being situated within the Settlement Boundary of Kelso, the site also falls within a designated landscape area as illustrated in Figure 2 in the Planning Statement forming part of the Core Documents.
- 2.4 The proposed dwelling is shown indicatively within the plot, towards the west of the site. The intention being that they would be set within the infill plot and retain the trees towards the easter border of the site, whilst not extending beyond the building line of the adjoining properties to the north.
- 2.5 In terms of accessibility, the site is approximately 0.8 miles (17-minute walk) to the town centre of Kelso, offering a range of services and facilities, along with ongoing public transport with the local bus stops to Melrose, Galashiels and Tweedbank for rail services to Edinburgh City Centre.
- 2.6 In terms of Heritage, there are no listed buildings on or within proximity to the site. Hendersyde Park (6-minute walk from the site) is listed as gardens and designated landscape which is not visible from the site.
- 2.7 The Scottish Environment Protection Agency (SEPA) are the statutory body for flood management in Scotland and maintain flood risk maps for public and development purposes. The site does not fall within an area at risk of river flooding. It is acknowledged the site appears to highlight a possible surface water flood risk. Drainage solutions for surface water is achievable and a detailed flood risk assessment can be undertaken at the detailed planning application stage to ensure the proposed dwelling is out with any surface water flood risk and deemed necessary.
- 2.8 There has been planning permission granted for the neighbouring dwellings which, historically would have similar characteristics to the proposed site in terms of the location and positioning.
- 2.9 Referring to the Scottish Borders Planning Application Portal, there have been no historic planning applications to date on the site or notable applications in the neighbouring area.

Figure 1: Proposed Location Plan



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## THE PROPOSAL



## THE PROPOSAL

3.1 This section set out the details of the proposal. The description of which is as follows:

***“Planning Application in Principle for a single Residential Dwelling with associated Amenity, Parking, Infrastructure and Access at land adjacent to 16 Hendersyde Drive, Kelso”.***

3.2 The proposed development involves the provision of a single detached residential property with associated infrastructure, adjoining 16 Hendersyde Drive, to the east of the Col-de-sac, within the settlement boundary of Kelso. The indicative site layout plan is identified below and within the submitted Core Documents.

Figure 2: Proposed Layout Plan



3.4 In terms of layout, the access is proposed off Hendersyde Drive, adjoining number 16 Hendersyde Drive to the west of the plot. The existing parking area is to be retained as illustrated in figure 2 above with two parking spaces proposed for the new dwelling, and the relocation of two new parking spaces for residents at 16 Hendersyde Drive.

3.5 Careful consideration has been taken in the positioning of the proposed dwelling within the site, ensuring there is reasonable separation distances to the existing dwellings adjoining the western and northern borders, safeguarding the daylight and sunlight provision and privacy of residents.

3.6 The proposed built form is set back from the road and is considered to not impinge upon the streetscape of the suburban area. This is further supported by the height of the proposal, not existing being the height of the neighbouring two-storey dwellings.

3.7 Private outdoor amenity provision for the proposed dwelling would be substantial, complimenting the designated landscaped area to the rear. The site benefits from being bordered by existing trees and vegetation to the southeast which will be retained where possible, minimising the visual impact and safeguarding the adjoining Special Landscaped Area.

3.8 As this Appeal relates to an application is for Planning Permission in Principle, the requirement to submit detailed drawings to secure the outstanding elements of the design in the next stage of the Planning process is acknowledged.

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Grounds of Appeal

## Grounds of Appeal

4.1 The Local Authority's decision to refuse the application is challenged on the basis of one reason for refusal and to which a response has been split into three grounds set out below. It is asserted that the Proposal accords with the relevant policies and intentions of the Local Development Plan and Supplementary Planning Guidance why we consider the application should be approved.

4.2 The Appellant sets out the following three Grounds of Appeal.

- **Ground 1:** The proposed development complies with Policies PMD2 and PMD5 as it is located within the settlement boundary and is considered to contribute to the character of the surrounding area and would not represent overdevelopment.
- **Ground 2:** The proposed development complies with Policies EP11 and EP13 as it would not result in the loss or harm of the woodland nor be considered detrimental to the amenity of the area.
- **Ground 3:** There are no other material considerations which warrant refusal of the application. The material considerations have not fully been taken into account. SPP and NPF4 both support sustainable development within settlement boundaries.

**4.3 Ground 1: The proposed development complies with Policies PMD2 and PMD5 as it is located within the settlement boundary and is considered to respect to the character of the surrounding area and would not represent overdevelopment.**

4.5 **Policy PMD2: Quality Standards:** *The Policy sets out a range of sustainability, placemaking and design, accessibility and open space/biodiversity requirements, whereby the proposal must:*

- *Take appropriate measures to maximise the efficient use of energy and resources, in terms of layout, orientation, construction and energy supply.*
- *Make provision for sustainable drainage.*
- *Incorporate appropriate measures for separate storage of waste and recycling.*
- *Incorporate appropriate landscaping to help integration with the surroundings.*
- *Create a sense of place, based on a clear understanding of context.*
- *Be of a scale, massing and height appropriate to the surroundings.*
- *Be finished externally in materials, the colours and textures of which complement the highest quality of architecture in the locality.*
- *Be compatible with, and respect, the character of the surrounding area, neighbouring uses and neighbouring built form.*
- *Be able to be satisfactorily accommodated within the site.*
- *Provide for appropriate boundary treatments to ensure attractive edges, and to help integration with the surroundings.*
- *Incorporate access for those with mobility difficulties.*
- *Not have an adverse impact on road safety in terms of the site access.*
- *Incorporate adequate access and turning space for vehicles including those used for waste collection purposes.*
- *Retain physical or natural features which are important to the amenity or biodiversity of the area.*

- 4.6 **Policy PMD5: Infill Development:** *The policy states the development on infill sites within development boundaries will be approved where the following criteria are satisfied:*
- a) *Where relevant, it does not conflict with the established land use of the area; and*
  - b) *It does not detract from the character and amenity of the surrounding area; and*
  - c) *The individual and cumulative effects of the development can be sustained by the social and economic infrastructure and it does not lead to overdevelopment or town and village cramming; and*
  - d) *It respects the scale, form, design, materials and density in context of its surroundings; and*
  - e) *Adequate access and servicing can be achieved, particularly taking account of water and drainage and schools capacity; and*
  - f) *It does not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking.*

#### **Appellant's Case**

- 4.7 We have set out below the circumstances for why this development should proceed in line with policy. We first demonstrate that the proposal is in keeping with the surrounding area whilst being within the settlement boundary on a site which has capacity for a dwelling, in accordance with Policy PMD2.
- 4.8 We then provide justification for the proposed development of the site respects the character of the surrounding area and its context within an infill location in line with Policy PMD5.
- 4.9 The proposed is positioned within the settlement boundary of Kelso, adjacent to existing residential properties along Hendersyde Drive. Planning Policy seeks to encourage a sustainable pattern of development focused on defined settlements in accordance with the need to support existing services and facilities and to promote sustainable development.

- 4.10 The proposal has been prepared to provide a good level of amenity for future occupiers of the proposed dwelling whilst safeguarding the amenity of residents within existing neighbouring properties at Hendersyde Drive and the wider settlement of Kelso. Although the detail off the proposal is deferred for future consideration, the indicative layout and location of the property within the site has ensured adequate separation distancing between properties can be reached, meaning there will be no adverse impacts on overshadowing and daylight/ sunlight provision whilst protecting privacy of residents.
- 4.11 It is considered the indicative scale of the proposed dwelling up to two stories in height is appropriate to the site and the local area. The building height does not extend beyond those of the neighbouring dwellings and the proposal is set back, enclosed within its infill location.
- 4.12 While this application is for Planning Permission in Principle, the proposal intends to support a sustainable for of development through renewables such as solar panels, air source heat pumps and electrical charging points.
- 4.13 The site is within a 17-minute walk into the town centre of Kelso, providing access to a wide range of services and facilities including a 5-minute walk to Broomlands Primary School and a 13-minute walk to Kelso High School, and is therefore considered to encourage a sustainable mode of transport with residents being less reliant on the car
- 4.14 The proposed dwelling has been careful positioned and designed ensuring there is a good level of amenity for future occupiers whilst safeguarding the privacy of the neighbouring dwellings and providing good quality standards using sustainable methods in accordance with Policy PMD2.
- 4.15 The proposal is therefore considered to satisfy criteria set out in Policy PMD2 when taking into account the detailed design elements are reserved for AMC stage.

**Policy PMD5 Part a) states *where relevant, it does not conflict with the established land use of the area.***

4.16 The proposal is within an infill location with residential properties to the north and west of the site as illustrated on the Location Plan within Figure 1 above. It is therefore considered the development will not conflict with the established land use of the area and is in accordance with Policy PMD5 Part a.

**Policy PMD5 Part b) It does not detract from the character and amenity of the surrounding area**

4.17 The proposal is considered to have no detrimental impact on the character and amenity of the surrounding area with being situated within a residential area within the settlement boundary where development is encouraged.

4.18 As previously discussed, careful consideration has been taken in the positioning of the proposed dwelling within the site, ensuring there is reasonable separation distances to the existing dwellings adjoining the western and northern borders, safeguarding the daylight and sunlight provision and privacy of residents, considered to be in accordance with Policy PMD5 Part b.

**Policy PMD5 Part c) states the individual and cumulative effects of the development can be sustained by the social and economic infrastructure and it does not lead to overdevelopment or town and village cramming.**

4.19 The proposal seeks to provide a single, family-sized dwelling that can be accommodated on-site, as demonstrated within the accompanying drawing pack. Kelso benefits from an array of social and economic infrastructure that are considered to have the capacity to support this small-scale development in accordance with Policy PMD5 Part c.

**Policy PMD5 Part d) states It respects the scale, form, design, materials and density in context of its surroundings.**

4.20 As mentioned above, it is considered the indicative scale of the proposed dwelling up to two stories in height is appropriate to the site and the local area. The building height does not extend beyond those of the neighbouring dwellings and the proposal is set back, enclosed within its infill location and the surrounding context in accordance with Policy PMD5 Part d.

**Policy PMD5 Part e) states adequate access and servicing can be achieved, particularly taking account of water and drainage and schools' capacity**

4.21 The indicative plans demonstrate adequate access and servicing can be achieved on-site, with the precise details to be set out in an AMC planning application.

4.22 As the proposal is for a single dwelling, it is considered both the Primary and Secondary Schools within Kelso will have the capacity for further residents, complying with Policy PMD5, Part e.

**4.23 Policy PMD5 Part f) states It does not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing or overlooking.**

4.24 The proposed drawings forming part of the Core Documents has illustrated substantial separation distances between the proposed plot and existing neighbouring residential dwellings, safeguarding the privacy of residents whilst not impacting on the daylight and sunlight provision in accordance with policy PMD5 Part f.

**Ground 2:** The proposed development complies with Policies EP11 and EP13 as it would not result in the loss or harm of the woodland nor be considered detrimental to the amenity of the area.

**4.25 Policy EP11: Protection of Greenspace:** Greenspace within the Development Boundary of settlements will be protected from development where this can be justified by reference to any of the following:

- The environment, social or economic value of the greenspace
- The role that the greenspace plays in defining the landscape and townscape structure and identity of the settlement
- The function that the greenspace serves.

**4.26 Policy PM13: Trees, Woodlands and Hedgerows:** The Council will refuse development that would cause the loss of or serious damage to the woodland resource unless the public benefits of the development clearly outweigh the loss of landscape, ecology, recreational, historical or shelter value.

#### Appellant's Case

4.27 It is considered the proposed site does not have a social or economic value to the local community given it is fenced off with no public access as illustrated in Figures 3 and 4. It is however acknowledged the dense woodland bordering the site to the north does hold environmental value. The proposal seeks to be positioned within the grassland of the site illustrated in Figure 5 and 6, retaining the existing woodland area to the east which will assist in minimising the visual impact and safeguarding the adjoining Special Landscaped Area.

4.28 Given the existing fence is above eye level, with no public access, it is considered the site is not a functional greenspace and does not define the identity of the settlement in accordance with Policy PM11.

4.29 A full Tree Survey and Topographical can be undertaken at the detailed planning application stage to ensure the proposed dwelling does not result in the loss or damage of the woodland in accordance with Policy PM13.

Figure 3: Photo taken from the west of the site adjoining Hendersyde Drive



Figure 4: Photo taken from the west of the site adjoining Hendersyde Drive



Figure 5: Photo taken beyond the fence line from the west of the site



Figure 6: Photo taken beyond the fence line from the west of the site



**Ground 3: There are no other material considerations which warrant refusal of the application. The material considerations have not fully been taken into account. The SPP and NPF4 both support sustainable development within settlement boundaries.**

4.29 Whilst it is a modest development site, analysis shows that that a significant proportion of houses built in the Scottish Borders range between 1-4 units and that many are non-allocated / windfall sites. The importance of smaller sites in delivering housing in the Scottish Borders should therefore not be overlooked and this site in question can help meet the housing land targets.

4.30 Our clients' aspirations are for this site to provide one new property, representing an opportunity to utilise a infill plot within a settlement boundary where the Local Development Plan encourages development and to help address the current housing shortfall. The proposal would be built by the applicant who is committed to deliver the development as soon as possible and is therefore effective and deliverable.

4.31 The proposed development supports the ethos of the Draft NPF4 with being situated within the settlement boundary of Kelso, supporting the 20-minute neighbourhood concept, creating sustainable communities.

4.32SPP advises that the planning system should support economically, environmentally, and socially sustainable places by enabling development that balances the cost and benefits of a proposal over the longer term. The aim is to achieve the right development in the right place it is not to allow development at any cost. This means that policies and decisions should be guided by the following principles in Paragraph 29 which we address in turn:

Policy Principle	How the Proposal Complies
Giving due weight to net economic benefit;	The proposal will deliver much needed investment and delivery of family housing within the settlement boundary of the desirable town of Kelso. The applicant will also seek to appoint local tradesmen during the construction process, contributing to the local economy.
Responding to economic issues, challenges and opportunities, as outlined in local economic strategies;	The proposal supports the growth of the community, ensuring there is a generous supply of housing land to cater for the increase in people and families living in the Scottish Borders.
Supporting good design and the six qualities of successful places;	The proposal will deliver one high quality a new family home, utilising sustainable technologies such as PV panels and air source heat pumps.
Making efficient use of existing capacities of land, buildings and infrastructure including supporting town centre and regeneration priorities;	The proposal will capitalise on the existing investment made in Kelso. The additional residents the proposed dwelling will bring to the town will contribute to local services and facilities through having a higher footfall in the local area.
Supporting delivery of accessible housing, business, retailing and leisure development.	The proposal will deliver a much needed family sized dwelling.
Supporting delivery of infrastructure, for example transport, education, energy, digital and water.	The proposal will make a financial contribution through a s.69 or s.75 agreement, as deemed necessary by SBC.
Supporting climate change mitigation and adaptation including taking account of flood risk.	The future proofing of homes for climate change will be agreed during the detailed planning application stage and will include renewable technologies.



SPP Table Continued...

Policy Principle	How the Proposal Complies
Improving health and well-being by offering opportunities for social interaction and physical activity, including sport and recreation.	The proposed garden within the site offers an opportunity for an array of activities as well as nearby walks and cycle routes. The site is also well located for the existing amenities provided by Kelso.
Having regard to the principles for sustainable land use set out in the Land Use Strategy;	The proposed site is in a sustainable suburban location, within walking distance to Kelso Town Centre, offering sustainable access to a school, shops, services and leisure facilities.
Protecting, enhancing and promoting access to cultural heritage, including the historic environment.	The sensitive approach to the design seeks to safeguard the character of dwellings within the building group.
Protecting, enhancing and promoting access to natural heritage, including green infrastructure, landscape and the wider environment.	The safeguarding of the existing tree on site and the provision of additional landscapin will provide a level of beneficial effects, such as enhanced biodiversity and additional screening through the introduction of locally appropriate hedgerow and trees within the proposed development.
Reducing waste, facilitating its management and promoting resource recovery; and	Suitable provision for waste collection can be demonstrated.
Avoiding over-development, protecting the amenity of new and existing development and considering the implications of development for water, air and soil quality.	The low-density scale of development is considered appropriate for a site of this nature.

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CONCLUSION

## CONCLUSION

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- 5.1 The submitted appeal, supported by this statement, seeks the Council's decision to refuse planning permission for the Planning Permission in Principle Application relating to the residential dwelling at 16 Hendersyde Drive, Kelso, Scottish Borders.
- 5.2 In summary:
- The proposal represents a logical infill location within the settlement boundary of Kelso, supported by policies HD3 and PMD5 in the LDP.
  - The proposal is sympathetic to the character of the suburban area, positioned in a logical location and will have no detrimental impact upon the amenity of neighbouring residents, ensuring there are adequate separation distances between the existing properties resulting in no overlooking or loss of daylight/sunlight.
  - The proposal will provide a high-quality family-sized dwelling within this desirable and sustainable location, within walking distance to Kelso Town Centre which benefits from a school, shops, cafes, and other local services, supported by the Draft NPF 20-minute neighbourhood.
  - The proposal will utilise sustainable renewable technologies.
  - The proposal will assist in meeting the strong demand for homes within the desirable location of Kelso.
  - There are no road safety concerns or objections from the Roads Officer or any other consultee. A Flood Risk Assessment (FRA) is deemed necessary and could be conditioned.
- 5.3 As we have demonstrated through this statement, we consider that the proposal complies with the development plan, and LDP Policies PMD2, PMD5, EP11 and EP13 against which the original application was refused.
- 5.4 There is a presumption in favour of applications that accord with the development plan unless there are significant material considerations that indicate the development plan should not be followed.
- 5.5 In addition to the above, the proposal will deliver local investment in trade employment, whilst expanding purchasing power in the local economy and supporting existing services.
- 5.6 The proposal is considered with the guiding principles of the SPP, and we do not consider that there are any impacts which are significant and demonstrably outweigh the presumption in favour of development. We therefore respectfully request that the appeal be allowed.
- APPENDICIES: Core Documents
- Core Doc 1: Decision Notice and Officer Report  
Core Doc 2: Location Plan  
Core Doc 3: Proposed and Existing Plan  
Core Doc 5: Planning Statement

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