

Plot to the East of South Laws, Duns, TD11 3HZ

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Plot to the East of South Laws, Duns, TD11 3HZ

JERRY AND SHONA PONDER

May 2022

FERGUSON PLANNING

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INTRODUCTION

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- 1.1 This Appeal Statement is submitted on behalf of Jerry and Shona Ponder ('the appellant') and sets out the grounds of appeal against the decision of Scottish Borders Council (SBC) to refuse planning application LPA ref: 21/01625/PPP by delegated decision on 22/03/2022.
- 1.2 The applicants live locally and wish to stay in the area where they run a successful business (Countryside Kitchens) nearby in Kelso.
- 1.3 The Planning Permission in Principle Application sought consent for the "Residential Dwelling with Associated Amenity Parking, Infrastructure and Access" at the plot to the east of South Laws, Duns, TD11 3HZ.
- 1.4 The single reason for the refusal of the application as set out below.

The proposed development fails to comply with Policy HD2 of the Scottish Borders Local Development Plan 2016 and Supplementary Planning Guidance, New Housing in the Borders Countryside 2008, as it would not relate well to the existing building group, it would break into an undeveloped field, outwith the building groups sense of place, and it would result in ribbon development along the public road, which would adversely impact upon the composition and quality of the landscape character. Furthermore, the proposed development fails to comply with Policy ED10 as it would result in the permanent loss of prime quality agricultural land.

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

Consultee	Comment
Roads Planning	No Objection
Scottish Water	No Objection
Community Council	No Objection
Archaeology Officer	No Objection
Ecology Officer	No Objection
Flood and Coastal Management	Requests Flood Risk Assessment at Detailed Planning Application Stage.
SEPA	Requests Flood Risk Assessment at Detailed Planning Application Stage.

- 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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APPLICATION SITE AND CONTEXT

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- 2.1 The site is currently rough pasture bordered to the west by an existing residential dwelling forming part of the building group at South Laws. Adjoining the site to the south and east is agricultural land. To the north are dense trees and hedgerow with the existing access to the northeast. The adopted access road leading to the A6112 adjoins the northern boundary which serves the building group at South Laws, beyond lies Laws North Plantation. A Site Plan is shown within Figure 1.
- 2.2 There are a number of newbuild properties in the adjoining building group, all of which would have been on similar agricultural land historically.
- 2.3 In terms of topography, the site itself is relatively flat, with the topography falling slightly beyond the site boundary to the south.
- 2.4 With regards to the Local Development Plan adopted proposals map, the site holds no specific allocations or designations.
- 2.5 The proposed dwelling is shown indicatively on the plot with the new access to the northwest, illustrated within 'The Proposal' section of this report below. The intention being that the proposal relates well to the established building group to the west, not extending beyond the existing building line to the north of the adjoining property, whilst being contained by existing and proposed new planting.
- 2.6 In terms of accessibility, the site is approximately five miles southeast of Duns (24-minutes cycle or 11-minute drive) offering a range of services and facilities, along with onward public transport with the local bus stops to Kelo, Galashiels, Berwick- Upon- Tweed and Tweedmouth.
- 2.7 In terms of Heritage, there are no listed buildings on or within close proximity to the Site.

- 2.8 The Scottish Environmental Protection Agency (SEPA) is the statutory body for flood management in Scotland and maintains flood risk maps for public and development purposes. It is acknowledged the northern boundary of the site appears to highlight a possible flood risk. The applicant is unaware of the field flooding.
- 2.9 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.
- 2.10 Referring to the Scottish Borders Planning Application Portal, there have been no historic planning applications to date on the site. There has been a neighbouring application for residential development within the South Laws Building Group which is referenced in the table below:

LPA Ref	Address	Proposal	Status
18/00249/FUL	Land East of South Laws House, Swinton, Duns, Scottish Borders	Erection of Dwelling House	Approved 3 rd August 2018

Figure 1: Proposed Location Plan



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THE PROPOSAL

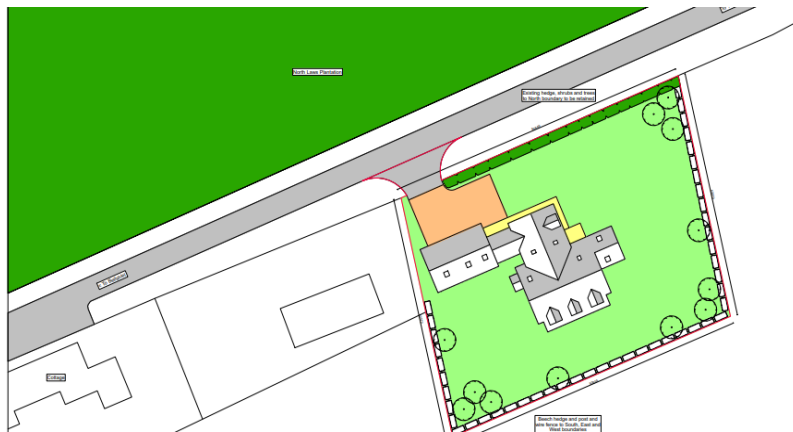
THE PROPOSAL

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

“Planning Application in Principle for a Residential Dwelling with associated Amenity, Parking, Infrastructure and Access at the Plot to the East of South Laws, Duns”.

3.2 The proposed development involves the provision of one detached residential dwelling with associated infrastructure at the Plot to the East of South Laws, Duns, which is identified on the site location plan in Figure 1 and the proposed Layout Plan in Figure 2 below:

Figure 2: Proposed Layout Plan



3.3 In terms of layout, it is proposed to incorporate a new site access to the northwest, as it is thought to relate well to the adjoining the building group to the west.

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

3.5 The propped frontage of the property has been aligned to match the neighbouring properties.

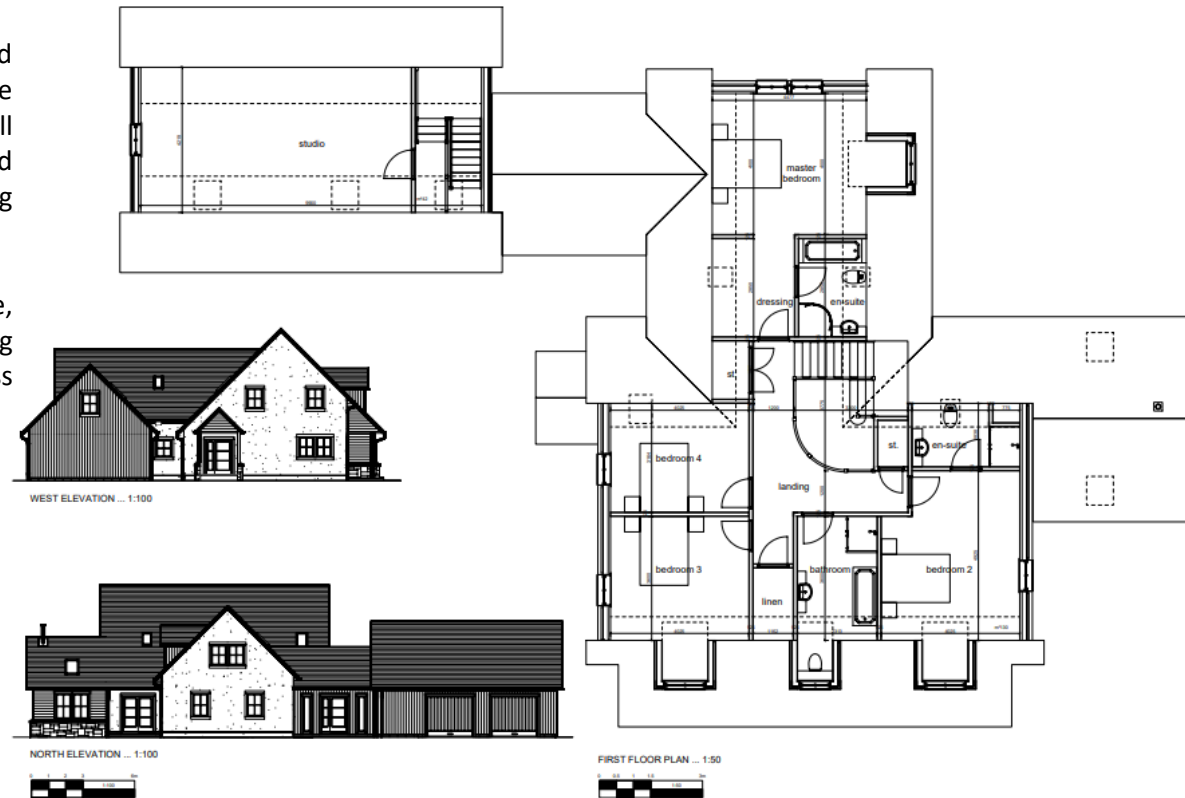
Figure 3: Proposed Elevations



3.6 The proposed built form does not extend beyond the building line of the neighbouring properties to the west, ensuring they are set back from the access road and do not impinge upon the streetscape of the area within its Countryside Setting. This is further supported by the height of the proposal, forming a 1.5 storey dwelling, stepping down to a single storey replicating the character of dwellings within the building group.

- 3.7 The proposal seeks to be of the highest architectural standard, with sufficient renewable technologies such as PV panels and Air Source Heat Pumps and represents appropriate rural housing development within the Scottish Borders.
- 3.8 In terms of the chosen materiality, the indicative design proposals include high-quality materials such as natural stone and timber on the façade of the property which are sympathetic to its rural location.
- 3.9 The private outdoor amenity provision for the proposed dwelling would complement the natural rural environment in which it surrounds. The site benefits from being bordered by existing trees and vegetation which will be retained where possible. It is proposed that an extensive hedge and landscaping would contain the site as shown on the drawings supporting this appeal statement.
- 3.10As this appeal relates to an application for Planning Permission in Principle, the requirement to submit detailed drawings to secure the outstanding elements of the design would be for the next stage of the Planning process is acknowledged.

Figure 4: Proposed First Floor Plans



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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 Policy HD2, as it would relate well to the existing building group, contributes to the building groups' sense of place, which would not adversely impact upon the composition and quality of the landscape character.
 - **Ground 2:** The proposed development complies with Policy ED10 as it would not result in the loss of prime quality agricultural land.
 - **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 and promote further rural housing and investment in the communities.
- 4.3 **Reason for Refusal Ground 1:** The proposed development complies with Policy HD2, as it would relate well to the existing building group contributing to the building groups' sense of place, which would not adversely impact upon the composition and quality of the landscape character.

- 4.5 Policy HD2: Housing in the Countryside: Section A of Policy HD2 is key to this proposal and has been replicated below:

(A) Building Groups

Housing of up to a total of 2 additional dwellings or a 30% increase of the building group, whichever is the greater, associated with existing building groups may be approved provided that:

- a) the Council is satisfied that the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use. Where conversion is required to establish a cohesive group of at least three houses, no additional housing will be approved until such a conversion has been implemented,*
- b) the cumulative impact of new development on the character of the building group, and of the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts,*
- c) any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.*

Appellant's Case

- 4.6 We have set out below the circumstances for why this development should proceed in line with policy. We first demonstrate that the site relates well to the existing building group, in line with Part A of this policy.
- 4.7 We then provide justification for the proposed development of the site being in keeping with the surrounding area whilst being within a building group which has capacity for a further dwelling, in accordance with Part B and C of this policy.

Policy HD2 A Part a) the site is well related to an existing group of at least three houses or building(s) currently in residential use or capable of conversion to residential use.

- 4.8 The site in question is positioned within and adjacent to the setting of the existing Building Group at South Laws. The Building Group comprises seven dwellings, immediately to the west of the site, to the south of the adopted road to the north of the site.
- 4.9 A review of the Council’s online planning records has indicated that one new dwelling has been approved within the current Local Development Plan period. Taking the 30% ruling into account, there is scope for a further dwelling within South Laws. There are no vacant properties or buildings that are capable of conversion within the building group, within the applicant’s ownership.
- 4.10 It is considered the proposal compliments to the character of the building group with the dwellings positioned to the south of the adopted road serving the properties. It is evident that a proposed plot to the north of the building group would not be considered a logical location for the expansion of the building group with the dense woodland that occupies this area that would be required to be removed. As such the chosen location is therefore deemed the most appropriate location for a property.
- 4.11 Furthermore, the following applications within Table 1 represent schemes that have been approved by the Scottish Borders Council that have formed ribbon development, setting a precedent for the acceptance of the proposed development this application relates to.
- 4.12 Within the Planning Officers and the Local Review Body’s conclusions to the schemes identified in Table 1, suggest that ‘ribbon’ development is considered acceptable subject to relating well to the existing building group and to which we consider this application does. The proposal is therefore considered to satisfy criteria a) of Section (A) of Policy HD2.

Table 1: Precedented Schemes

LPA Ref	Proposal	Decision
19/01432/PPP Land North West Of Quarry Bank Hume	Erection of two dwelling houses	Approved at Appeal 2nd March 2020. The Local Review Body concluded that the proposed development was considered to be an appropriate addition to an existing building group within its sense of place and enclosed by planting.
19/00132/FUL Land South West Of The Ashes Wester Ulston Jedburgh	Erection of dwelling house	Approved 10th April 2019. It was deemed the development accords with the relevant provisions of the Local Development Plan 2016 and there are no material considerations that would justify a departure from these provisions.
5/01191/PPP Land East Of East Boonraw Cottage Hawick	Erection of two dwellinghouses	Approved 22nd January 2016. It was concluded the proposal complies with LDP policies and the site is well related to the existing building group. Appropriate sitting and design would ensure that the proposal would not affect the residential amenities of occupants of neighbouring properties or the visual amenities of the area.
19/01000/PPP Land East Of Auburn Cottage Ashkirk	Erection of dwelling house and garage	Application Approved at Appeal 8 th October 2019. The LRB concluded the development was considered to be an appropriate addition to an existing building group within its sense of place and enclosed by the proposed planting.
18/00929/PPP Land North East Of Ladywood Lower Greenhill	Erection of dwelling house	Application Approved at Appeal 10 th December 2018. It was concluded the development was considered to be an appropriate addition to the building group, well related to, and in keeping with the character of the group.
20/00024/FUL Site Of Derelict Farm Cottages North West Of Townhead Farmhouse Yarrowfues Yarrow	Demolition of Existing steading and erection of dwelling house	Application Approved 19th November 2020. The Officers concluded the proposal accords with the relevant provisions of the LDP 2016 and there are no material considerations that justify a departure from these provisions.
18/00143/PPP Land East of 5 East Gordon Farm Cottages Gordon	Erection of a Dwelling House	Application Approved 8 th October 2018. The Officer concluded the proposal accorded with the relevant policies in the LDP.

Policy HD2 A Part b) *The cumulative impact of new development on the character of the building group, and of the landscape and amenity of the surrounding area will be taken into account when determining new applications. Additional development within a building group will be refused if, in conjunction with other developments in the area, it will cause unacceptable adverse impacts.*

- 4.13 The proposed landscape boundary bordering the site further ensures the proposal does not impinge upon the local character of the area, sitting well within the setting of the building group, whilst reducing the visual impact of the dwellings and safeguarding the amenity of residents from the adjoining properties to the west.
- 4.14 The proposed built form does not extend beyond the building line of the neighboring properties to the west, ensuring they do not impinge upon the open landscape. This is further supported by the height of the proposal, forming a 1.5 storey dwelling, not exceeding beyond the height of neighboring dwellings that extend up to two storeys in height.
- 4.15 The proposal will largely be unnoticed in landscape impact terms and from public receptor points (i.e., public roads and footpaths). As illustrated on Figure 2 above, the existing hedgerow adjoining the public road to the north of the site is sought to be retained and enhanced, acting as a natural shield, restricting the view from passers-by.
- 4.16 The proposed landscaping from the south and east will further soften the approach from afar, complying with the New Housing in the Countryside SPG where man-made boundaries are considered acceptable.
- 4.17 Overall, it is considered the site proposal is compliant with Policy HD2 A Part b).

Policy HD2 A Part c) any consents for new build granted under this part of this policy should not exceed two housing dwellings or a 30% increase in addition to the group during the Plan period. No further development above this threshold will be permitted.

- 4.18 Having reviewed the online planning portal and as previously referred to above, it is acknowledged there has been one dwelling that has been consented within the building group since 2016 (within the current Local Development Plan period). We therefore consider there is scope for an additional dwelling within the plan period taking the 30% ruling approach in accordance with section (A) of Policy HD2 Part c.
- 4.19 As such, we consider the site to be a logical location and a sustainable form of development relating well to the existing building group which has capacity for a further dwelling.
- 4.20 **Reason for Refusal Ground 2:** The proposed development complies with Policy ED10 as it would not result in the loss of prime quality agricultural land.

Appellant's Case

- 4.21 We set out below why this development should proceed in line with Policy ED10, demonstrating the proposal will not result in the loss of prime quality agricultural land.

Policy ED10 states development which results in the permanent loss of prime quality agricultural land or significant carbon rich soil reserves, will not be permitted unless:

- a) *The site is otherwise allocated within the local plan*
- b) *The development meets an established need and no other site is available*
- c) *The development is small scale and directly related to a rural business.*

4.22 It is acknowledged SBC considered the site to form part of the Grade 2 prime quality agricultural land. The site is situated on the field margins of the agricultural land, with the majority of the site not being used for agricultural purposes for a number of years as illustrated in Figure 5 and 6 below.

4.23 One will note in Figures 5 and 6 the neighbouring dwelling previously formed part of the agricultural field and which residential development was deemed acceptable.



Figure 5: Image illustrating the majority of the site is laid to grass and uncultivated for agricultural use



Figure 6: Image illustrating the majority of the site is laid to grass and uncultivated for agricultural use.

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 and promote further rural housing and investment in the communities.

- 4.25 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.
- 4.26 Our clients' aspirations are for this site to provide one new property, representing an opportunity to invest in the rural community 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.
- 4.27 The proposed development supports the ethos of the Draft NPF4 through the provision of rural housing. The draft NPF4 seeks to encourage rural investment, encouraging development to contribute to the viability, sustainability and diversity of rural economies and communities.

4.30 SPP 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 rural area within close proximity to the rural town of Duns. 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 rural 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 Duns. The additional residents the proposed dwelling will bring to the building group 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. The applicant also owns and runs a successful business (Countryside Kitchens) nearby in Kelso.
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 Duns.
Having regard to the principles for sustainable land use set out in the Land Use Strategy;	The proposed site is in a sustainable rural location, within cycling distance to Duns, 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 additional landscaping proposed 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

5.1 The submitted appeal, supported by this statement, seeks to overturn the Council's decision to refuse planning permission for the Planning Permission in Principle Application relating to the residential dwelling at the Plot to the East of South Laws, Duns, TD11 3HZ.

5.2 In summary:

- The proposal represents a logical extension of the Building Group adjoining the existing built-up area, which has the capacity to accommodate one additional dwelling within this local plan period, in accordance with Policy HD2.
- Planning Officers and members of the LRB has previously approved similar proposals within the Scottish Borders as demonstrated within Table 1 above.
- The proposal is sympathetic to the character of the building group, 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 site is primarily visible from the adopted road to the north of the site upon approach from the east and west, noting the visibility will be restricted due to the existing and proposed enhancement to the hedgerow bordering the site to the north, along with the proposed landscaping along the eastern and southern boundaries, further enhancing the aesthetics, screening views from the south. Overall, the visual impact of the proposal on the local area is considered to be minimal.
- The proposal will provide a high-quality family-sized dwelling within this desirable and sustainable location, within cycling distance to Duns which benefits from a school, shops, cafes, and other local services, supported by the Draft NPF. In addition to this, Swinton Primary School is 1.5 miles from the site, with the school bus route for both the primary and secondary school passing the site.

- There are no road safety concerns or objections from the Roads Officer or any other consultee.
- The proposal will utilise sustainable renewable technologies.
- The proposal will assist in meeting the strong demand for rural homes in the Scottish Borders.
- The proposal will enable a local family to remain in the area and within close proximity to the applicants established successful business in Kelso. The appellant also has the desire to live on site to look after their horse who is in the paddock on the adjacent plan.

5.3 As we have demonstrated through this statement, we consider that the proposal complies with the development plan, and LDP Policies HD2 and ED10 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 rural 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 4: Planning Statement

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