

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
CHIEF PLANNING OFFICER**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 22/00093/PPP

**APPLICANT :** Mr James Hewitt

**AGENT :** Ferguson Planning

**DEVELOPMENT :** Erection of dwellinghouse and associated works

**LOCATION:** Land East Of 16  
Hendersyde Avenue  
Kelso  
Scottish Borders

**TYPE :** PPP Application

**REASON FOR DELAY:**

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
1072-0-02	Proposed Site Plan	Refused
A location plan	Location Plan	Refused

**NUMBER OF REPRESENTATIONS: 2**

**SUMMARY OF REPRESENTATIONS:**

17 neighbours were notified. Two representations have been received objecting to the proposal and raising the following planning issues:

- Detrimental to the environment and wildlife
- Increased traffic
- The land is currently grassland
- Noise nuisance
- Overlooking/privacy of neighbouring properties affected
- Trees/landscape affected
- Concerns for size/ height and aesthetics of the proposed property
- Loss of public open space and play area
- Contrary to Local Plan
- Inadequate drainage
- Loss of light
- Would envelope gardens

**CONSULTATIONS:**

Community Council: Support.

Education: No response

Roads Planning: Further information required. No objections in principle to this proposal, however before I am able to offer full support, I shall require a more detailed site plan that adequately shows the existing situation, in particular the footway around the turning head. The proposed access and parking for the plot should ensure that it does not result in a vehicle reversing along the public footway to exit the site.

Confirmation is also required that the applicant has control/agreement to provide the replacement parking for No 16, which is out with the site boundary, and to take access over what appears to be their land.

Scottish Water: Foul only connection and public water supply are available. There is infrastructure (90mm distribution water main) with the site and a 3m stand-off distance is required from any property and structure. There is a 100mm and a 300mm diameter surface water sewer within the site boundary and no buildings, structures or other obstructions should be located within the 3m access distance of a public sewer.

Flood Risk Officer: A Flood risk assessment and/or drainage assessment is required to address surface water flooding concerns.

### **PLANNING CONSIDERATIONS AND POLICIES:**

Local Development Plan 2016

PMD2: Quality Standards

PMD5: Infill Development

HD3: Protection of Residential Amenity

EP11: Protection of Greenspace

EP13: Trees Woodland and Hedgerows.

IS7: Parking Provision and Standards

IS8: Flooding

IS9: Waste Water Treatment Standards and Sustainable Urban Drainage

Supplementary Planning Guidance:

Developer Contributions, 2021

Guidance on Householder Developments, July 2006

Placemaking and Design, 2010

Trees and Development 2020

**Recommendation by** - Euan Calvert (Assistant Planning Officer) on 27th April 2022

Site and Proposal

This is an application for planning permission in principle for a dwellinghouse within greenspace at Hendersyde Drive and Hendersyde Avenue, Kelso.

This is a relatively flat grass site within a residential cul-de-sac located between number 16 and 18 Hendersyde Drive. The land is set behind 5 no visitor parking bays, which form an end to a hammerhead turning area.

A site plan has been submitted for an irregular shaped strip of land measuring 50m or so in length x 14-19m in width. A timber-board hit and miss fence has been erected (without planning permission) on the western boundary dividing the site from the public realm. Timber fences enclose the site from the neighbouring gardens. The site plan shows proposals to use a 6m square area of the in-curtilage parking belonging to no 16 as vehicular access to this site. Parking for no. 16 would be moved back onto the plot and would share this access. A rectilinear planned dwellinghouse has indicatively been shown measuring 6.5m x 12m in plan.

The building layout is indicatively shown as being 5m offset from the woodland. The woodland would form the south east boundary of the plot.

#### Planning Policy

This site is allocated in the Local Development Plan 2016 as an area of Structure Planting/Landscaping and is identified in the Planning Brief as such in the adjacent housing development site (Broomlands East, Kelso Supplementary Planning Guidance, March 2007).

The determining consideration in this case is whether proposals are in accordance with Policy PMD5: Infill Development. This policy identifies criteria for assessing potential development opportunities within settlement boundaries. This application seeks to test whether this is a potential infill development opportunity on a non-allocated site within the Kelso Development Boundary and discussion will surround whether development can be accommodated without recourse to residential amenity and character.

A second consideration is Policy EP11: Protection of Greenspace. A previous committee report of September 2006, 04/00763/COU had considered change of use of this site to garden ground. The application was refused due to the resultant loss of valuable public open space (to the detriment of the amenity and appearance of the locality) contrary to the policy of the time.

The application will be assessed against the criteria of Policy EP11.

#### PMD2: Quality Standards and Supplementary Planning Guidance: Placemaking and Design

The character of the surrounding area and the visual amenities of the area are material considerations and regard will be had as to whether the proposal is in accordance with scale, character and appearance being sought by the SPG. All development must be high quality, integrate into landscape surroundings and not negatively impact on existing buildings.

#### IS7: Parking

The Roads Planning Officer has been invited to comment on road safety and sufficiency and parking.

#### HD3: Residential Amenity

Siting, scale and location of development is considered with regard to protecting neighbouring residential amenity.

#### EP13: Trees Woodland and Hedgerows and Supplementary Planning Guidance: Trees and Development 2020

The impacts to the woodland resource in terms of the landscape, ecological, recreational, historical or shelter value will be considered.

#### Assessment

##### Criterion a) of policy PMD5

In principle, proposal for a further dwellinghouse in this established residential estate would be a compatible use. There would be no conflict in land use in so much as it would not appear incongruous or conflict with established levels of residential amenity of neighbours. However, I must be cognisant to wider pattern of development and the reasons for this space being undeveloped in the first instance. This area was shown on the approved layout for the wider housing development as public open space and a play area, approved in November 1997 (ref 97/0788/C). In 2006 the committee report stated that the developer had fulfilled their obligation to landscape the site for use as public amenity open space.

The site has been enclosed with a timber hit and miss fence in the interim period (Planning Committee, September 2006).

The land was allocated as and has continued to be green space or open space and this proposal is in direct conflict with the use it was laid aside for (criterion a).

Policy EP11 specifically states (criteria a, b and c) that Greenspace within the development boundary will be protected where it can be justified to have environmental, social or economic value. A second consideration

is the role that the greenspace plays in defining the landscape and townscape structure and identity of the settlement. Lastly, the function that the greenspace serves must be considered.

I have considered both neighbouring objections and must conclude that the site remains valuable open space. This site continues to deliver environmental and social benefits to the local community, especially those in the immediate environs. Both objections highlight that the site is grassland and delivers wildlife benefits and acts as an informal recreation space. Both comments highlight the role the site plays in defining the appearance (the visual amenity) of the cul-de-sac and as a foreground to the mature woodland. The site is said to also be used for informal recreation therefore delivers wider societal benefits.

I conclude that this loss of greenspace (open space) is not acceptable and is not in accordance with policy EP11. There has been no consultation with user groups and no advice presented from relevant agencies, as required by Policy EP11.

The agent has not demonstrated that the Greenspace use has ceased since 2006. They have not presented an argument for this greenspace to be retained or relocated to an alternative location (EP11, criterion f). A case has been presented that there is a shortfall in effective housing land supply therefore this site is appropriate to meet local housing need and economic benefit. However there has been no consultation with the user groups to substantiate that the loss of greenspace is either acceptable in principle or outweighed by need to meet these national housing targets.

#### Criterion b) of policy PMD5

I must conclude that loss of greenspace (open space) will detract from character and amenity of this part of Hendersyde cul-de-sac. Loss of greenspace will adversely impact visual amenity of the cul-de-sac and is directly in conflict with a pattern of development established in 1997 and vindicated in 2006.

The Committee report from 2006 reads; "Landscaping has now been carried out and the area will be managed and maintained as public open space". As a greenspace, it has not been demonstrated in this application that there is an economic, social and community justification for its loss (policy EP11).

#### Criterion c) of policy PMD5

No tree survey or tree retention plan has been produced to demonstrate the relationship or potential impacts to adjacent trees. This is a minimum requirement of policy EP13, Supplementary Planning Guidance: Trees and Development and BS5837:2012. I have concerns that this site is marginal in size and may not provide adequate levels of residential amenity in terms of natural light. Close relationship to the mature woodland to the south is liable to result in adverse residential amenity impacts for the occupants of any proposal (overshadowing and poor daylighting), contrary to policy PMD2.

On account of these concerns I conclude that the proposals represent over-development or 'town cramming' which Policy PMD5 specifically guards against.

This is a balanced decision. I have considered the value that an additional dwellinghouse will contribute to housing stock of the local area. It is the Planning Authority's duty to mediate space and ensure making of place and in this instance the individual and cumulative negative effects to character and amenity outweigh any social and economic infrastructure benefits to Kelso. A further dwelling may contribute to local housing stock; may raise the standard of living for a local member of the community; may contribute to economic growth through direct jobs in its construction; or by providing a house for an essential worker but none of these strategic changes should outweigh the negative character and amenity impacts in this instance.

#### Criterion d) of policy PMD5

I acknowledge the agent's comment regarding scale, layout and density. They highlight that the choice of position, size and separation distances to neighbouring houses, which would protect residential amenity in principle (policy HD3). In principle, this plan demonstrates a layout which would reflect adjacent plot/building ratios but it ignores the tree/ natural light constraint, which I highlight above, and further it ignores to potential conflict with the public sewer location which is commented below.

#### Criterion e) of policy PMD5

The site plan has not successfully demonstrated protection and connection to the public water and sewerage networks. Whilst these issues are usually reserved for further consideration by planning condition, serious concerns are raised by Scottish Water in this instance that there is existing water and sewer

infrastructure within site. The site presently houses two sewers and would be incompatible with the proposed use change to garden ground. Scottish Water specifically prohibits the land above sewer pipes becoming garden ground. In addition, a 3m stand-off distance is required to both sides of any sewer. There are also concerns for a 90mm HPPE diameter distribution water main. The application is insufficient in detail to understand whether the access distance and stand-off distances to water mains can be accommodated. The proposals are not considered to be in compliance with Policy IS9 in this instance.

Vehicular access has been considered by the Roads Planning Officer. More detailed site plans are required to consider standards set by Policy IS7 in the interest of protecting road sufficiency and safety. Accessing of the site in this proposal is reliant on relocation of the parking and use of part of the drive of no.16. The precise details of the pavement crossing have not been established. There is a concern that the existing pavement at this location may be crossed or lost to a driveway, to the detriment of road safety. Furthermore, there is also concern that the right to use the drive of no.16 has not been established. Presently the plans do not satisfy Policy IS7 in so much as parking provision and standards have not been met.

A further consideration with this site is flood risk and drainage concerns, highlighted by neighbours, and I have considered Policy IS8 and consulted the Flood Risk Officer. The site is at risk from surface water flooding and a Flood Risk Assessment and/or Drainage Impact Assessment (FRA/DIA) is required to substantiate the suitability of this site in future. Finished floor levels would be required, as would any compensatory storage requirements. Presently the application is not in accordance with Policy IS8 as it presents development of land with known surface water flooding potential.

Criterion f) of policy PMD5

Loss of daylight, sunlight and privacy of neighbours has been considered. Overshadowing and overlooking are considered to be acceptable and in accordance with the SPG on Householder Developments, 2006 and policy HD3.

The issue over overshadowing and loss of light to future occupants of the proposed house due to the woodland has been discussed above.

Developer Contributions

There is requirement for contributions in respect of policy IS2 towards Broomlands Primary and Kelso High School.

Conclusion

This site plays an important role in defining the landscape and townscape structure and setting of this part of Hendersyde residential estate and it is considered that this should be protected for its value as greenspace (policy EP11)

In essence, a new dwelling may be physically able to be accommodated on this site, but Infill Policy development opportunities are not to be at all cost or to the detriment of the public's enjoyment of the current levels of visual amenity or greenspace enjoyed in this residential area.

I conclude that, whilst the privacy and amenity of neighbours can be satisfied, this proposal is not in accordance with Infill Development Policy PMD5.

The quality of the area would be compromised and as a result it is considered development will not assimilate successfully with the surroundings (Policy PMD2: Quality Standards and the Supplementary Planning Guidance on Placemaking and Design).

## **REASON FOR DECISION :**

The proposal would be contrary to Policies PMD2, PMD5, EP11, EP13, IS8 and IS9 of the Local Development Plan 2016 and the Placemaking and Design 2010 Supplementary Planning Guidance in that it would result in development that is out of character with the existing development pattern, would represent

over-development and town cramming to the detriment of the amenity and character of the surrounding area.

Development would cause a loss or detrimental impact to the woodland resource to the detriment of the visual amenity of Kelso and it not been demonstrated that the public benefits of the development outweigh the loss of this landscape value.

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 development outweighs the need to retain the space. No comparable or enhancement of existing open space has been provided to mitigate the potential loss.

The site is at risk from surface water flooding therefore contrary to Policy IS8 whereby avoidance is the first principle for managing risk. No FRA/DIA has been presented to substantiate the potential impacts or mitigation measures required to satisfy flooding policies.

The site is occupied by waste water sewerage and water supply infrastructure and it has not been demonstrated that the proposal can be accommodated while maintaining Scottish Waters infrastructure standards in accordance with policy IS9, which seeks to maintain and improve public health standards.

**Recommendation:** Refused

- 1 The proposal would be contrary to Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 and the Supplementary Planning Guidance 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.
- 2 The proposal would be contrary to Policy EP13: Trees, Woodlands and Hedgerows of the Local Development Plan 2016 and the Supplementary Planning Guidance: Trees and Development 2020 as the development would result in a 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 asset.
- 3 The proposal would be contrary to Policy EP11: Protection of Greenspace of the Local Development Plan 2016 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 retain the open space. No comparable replacement or enhancement of existing open space has been provided to mitigate the potential loss.
- 4 The proposal would be contrary to Policy IS8: Flooding of the Local Development Plan 2016 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.

**“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.**