

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

5 JUNE 2023

APPLICATION FOR PLANNING PERMISSION

ITEM: **REFERENCE NUMBER:** 23/00131/PPP

OFFICER: Mr C Miller
WARD: Mid Berwickshire
PROPOSAL: Residential development with access, landscaping and associated works
SITE: Land East of Kirkwell House, Preston Road, Duns
APPLICANT: Robert Lamont
AGENT: Ferguson Planning

PLANNING PROCESSING AGREEMENT

No processing agreement in place as the application is being presented for determination within the statutory 4 month period.

SITE DESCRIPTION

The site is located on the northern edge of Duns, north-west of the A6112 road to Preston and the A1. It consists of 2.48 HA of arable agricultural land that slopes moderately down to the road from north-west to south-east, then more steeply in the form of grassed embankment adjoining the road. The embankment is steeper and more substantial to the south-western edge of the site, becoming lower and the levels less pronounced to the north-east. The embankment contains sporadic trees and there is a footpath between the embankment and the road. A small stone retaining wall runs with decreasing height along part of the site frontage from the south-west. A more established hedgerow borders the north-eastern end of the site and trees and shrubs border the south-western boundary with Kirkwell House. There is no defined boundary to the north-west, this being an open continuation of the agricultural field sloping up to Duns Law. To the south of the A6112, lies a row of established dwellinghouses lying at a lower level than the site, terminating in the cemetery to the north-east. A field access enters the site from the A6112 at its north-eastern edge.

The site is peripheral to the town and not within the Conservation Area. It consists of prime quality agricultural land (see later section in this report) and also lies within the designated Duns Castle Garden and Designed Landscape, the whole of Duns Law hill lying within the designated boundary, the A6112 forming the south-eastern extremity of the designation. Duns Law stands above the site 400m to the north and contains a designated Scheduled Monument, the designated boundary some distance outwith the application site boundary. There are also a number of B and C Category Listed Buildings to the south and west of the site, the nearest being Kirkwell House and Wellfield Cottage.

PROPOSED DEVELOPMENT

The application is submitted as planning permission in principle for residential development on the site with associated works including access and landscaping. The location plan has been accompanied by a conceptual layout plan that indicates a row of ten detached houses, following the extent of housing to the south-east of the A6112. The houses are expected to provide accommodation over two floors, though not necessarily in full two-storey form. The applicant aims to provide family housing of private tenure, which is claimed to be in demand in Duns.

The site is intended to be provided within one vehicular access taken from the A6112 at the north-eastern corner of the site, the access running above and along the back of the houses, parallel with the public road. Turning heads would be provided at each edge of the roadway. This access road would provide a footpath along its southern edge but the main pedestrian access to each plot would be taken from the existing roadside footpath. Further connectivity would be provided by a footpath and steps leading from the western edge of the proposed roadway, back to the A6112.

The dwellinghouse plots only take up approximately half the depth of the site, the remainder consisting of the rear roadway and new planting to the north-western boundary of the site. Indicative planting is also proposed to the north-east of the proposed roadway and along the edge of the housing with the proposed roadway and footpath.

The drainage proposals have been explained in Drainage Strategy and Flood Risk Assessment reports. Foul sewerage from the development will be conveyed to the public network. Surface water run-off will incorporate SUDS measures to attenuate with outfall via 1.8km of new pipe to watercourses away from flood risk or via 12m borehole soakaway on site. There is little risk of fluvial flooding given the elevation of the site from the Cumledge Burn. With regard to surface water flooding, the Assessment states that the proposals will provide sufficient attenuation to accommodate a 1:200 year (plus 40% climate change) return period storm, or limit the peak discharge rate from the site.

The application is classed as a 'Major' development under the Hierarchy of Developments (Scotland) Regulations 2009. The applicants publicised and held an online public event prior to the application being submitted, as well as consultation with Duns Community Council. The outcome of the public consultation exercise has been reported in a Pre-Application Consultation Report submitted with the application. The requirements of the Development Management Procedure (Scotland) Regulations 2013 have been satisfied.

In addition to the submitted plans and drawings, there are also statements and reports in support of the application, as follows:

- Planning Statement
- Landscape and Visual Appraisal
- Pre-Application Consultation Report
- Design and Access Statement
- Preliminary Ecological Appraisal
- Access Appraisal
- Drainage Strategy
- Flood Risk Assessment
- Archaeology Impact Assessment

PLANNING HISTORY

A planning application was submitted for 9 houses on the site in October 2005 but was withdrawn before being registered. The more recent history is explained by Forward Planning in their consultation response:

'The site was previously submitted for consideration as part of the Housing SG and was not taken forward. The site was then submitted at the 'Pre MIR' stage of the LDP2 process and was not included within the MIR for the reasons outlined below. The site was recently re-submitted at the 'MIR consultation' stage, as part of the LDP2 process. It is acknowledged that the agent has submitted a response to the points raised in the previous site assessment conclusion. However, it is not considered that any additional or new information was submitted which required a re-consultation. Therefore, the conclusion from the 'Pre MIR' stage remains valid and is outlined below.'

The site was also the subject of a pre-application enquiry for housing development in 2021, which elicited a negative response from the Department due to contravention of Policy PMD4 and failure to meet any of the exception criteria. There was also a Screening approach (which concluded no EIA was required) and a PAN in 2022 preceding the community consultation procedures.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Roads Planning Service: No objections. Site has been subject of consideration under the Proposed LDP and a pre-application enquiry. Concerns over indicative layout which does not integrate with existing dwellings and creates an isolated street against Designing Streets guidance. Layout should have houses closer to street frontage with direct individual accesses and/or communal parking. Embankment not used for access will need stopping up through Orders. Future application will need detailed drainage proposals to mitigate against surface water drainage problems in the area.

Education Officer: Response awaited.

Landscape Architect: Objection. The proposals underestimate substantial changes to local landscape character, diminishing the strong containing edge to Duns as identified in the Landscape Capacity Study, regrading the open slopes to Duns Law and unacceptably altering the distinct landscape gateway entrance to Duns. The viewpoints do not indicate the full impacts of the development, not accounting for the slower growth rate of backdrop planting and there being no indication of the significant and overbearing visual amenity impacts on the existing residents south of the A6112. Also expresses concerns over layout and design of plots not complying with the Placemaking and Design SPG and the significant landscape and engineering impacts caused by the requirements of the Roads Officer in creating a stronger street frontage.

Housing Strategy: No comment.

Flood Protection: No objections. Site not at risk from fluvial flooding but have been issues with surface water flooding due to site topography. If development is approved, condition required for a detailed drainage system to ensure no increase in greenfield run-off rate, boundary drainage and ensure capacity of receiving system

Ecology Officer: No objections, the Preliminary Ecological Assessment revealing low suitability for protected species. Hedge and trees should be retained with Arboricultural

Impact Assessment and avoidance of tree root protection areas. Welcome new planting but seeks further details. Checking surveys for protected species may be necessary.

Access Officer: Core Path 52 uses the public footpath on the north side of the A6112, part of the circular Duns Law Route 2 and also used for locals to the cemetery. Should be preserved free from obstruction, albeit refuse storage should be designed to take into account the amenity of path users. Footpath link to west of site welcomed, design and maintenance controlled by condition.

Archaeology Officer: No objections subject to a condition seeking a written scheme of investigation including field evaluation. The Archaeology Assessment indicates moderate potential for further finds within the site, necessitating trial trenching across the site and adjustment to house locations and positions if any discoveries justify that. Some indirect impacts on the scheduled monument and other monuments on the summit and slopes of Duns Law, choice and location of screen planting to be the subject of further condition, to respect the monument locations and settings.

Heritage Officer: No objections but concerns over appropriate details of design and layout to minimise impact on varied group of listed buildings at the site. Uniformity and rear gardens fronting onto the public road could erode streetscape character and the setting of the listed buildings. Concerns should be addressed should the application reach the detailed planning stage.

Forward Planning: Opposes the application. The site is outwith the settlement boundary for Duns as shown in the Proposed Local Development Plan and does not comply with any of the four exceptions in Policy PMD4. It is not job-generating, affordable housing nor does it offer significant community benefits worth outweighing protection of the boundary. Although the Planning Statement is noted in relation to perceived housing land supply shortfall, the 2021 SBC Housing Land Audit confirms a 5-year effective land supply and 14 years supply in the Berwickshire Housing Market Area.

Response also confirms the site has been rejected at the current LDP, Housing SG, pre Main Issues Report (MIR) and MIR Consultation stage, repeating the reasons based mainly on landscape impacts. The height and prominence of the site would result in significant detrimental landscape impact at this location, also identified by the Reporter as a result of the LDP Inquiry, who was concerned at the views, character and setting of Duns being adversely impacted. There was sufficient housing development opportunity within Duns without the need to allocate this site for further housing development.

Further response clarifies that the 14 years supply did in fact refer to the 2020 HLA whereas the 2021 HLA reveals 869 units in the Berwickshire Housing Market Area, which equates to 12 years effective housing land supply. Disagrees with applicant methodology of calculating land supply, the undelivered backlog from SESPlan should not be added in, this gives an unrealistic and unjustified housing land requirement.

Explains that calculations should be derived from 2021 HLA and that the Council's methodology for the Audit is set out in the adopted LDP and was accepted by the Reporter. Reiterates that PMD4 exception on housing land supply is only if the Council have identified a shortfall through the HLA – it is not appropriate for applicants or agents to provide their own calculations. There is no justification for exception to PMD4 and continues to oppose application.

Neighbourhood Services: Response awaited.

Waste Services: No objections but bins to be presented for collection at kerb on main Preston Road.

Statutory Consultees

SEPA: Relies on standing advice in relation to surface water flood risk.

Scottish Water: No objections. Water and foul drainage capacity subject to formal application. No surface water connection allowed into combined sewer system except in exceptional circumstances for brownfield sites. Provides further general notes and advice.

Historic Environment Scotland: No objections. Some visibility to Duns Law Scheduled Monument but viewed as extension to Duns with no significant impact on setting. Site is within Duns Castle Garden and Designed Landscape, along outer agricultural part of the designation. Provided the stone retaining wall is retained, no significant negative impact on the designation is envisaged.

Duns Community Council: Objection on grounds of being outwith the LDP settlement boundary, ribbon development, prime arable land, inadequate surface water proposals to deal with problems, errors in reports, impact on health services, traffic issues at cemetery junction etc.

Non Statutory Consultees

Berwickshire Civic Society: Response awaited.

REPRESENTATION SUMMARY

As a result of the neighbour notification and press advertisement, a total of twelve households lodged objections to the application and two were in support. The full representations can be viewed in Public Access and the main comments included the following:

Objections

- The housing is not affordable and does not meet local needs
- The loss of prime quality agricultural land which has not been laid fallow
- Site access risks road and pedestrian safety, forming a crossroads, in a blind spot with poor sightlines, with a narrow carriageway, high traffic volumes, exacerbated when there is a funeral being opposite the cemetery access and with speeding, lack of parking and agricultural traffic being an issue
- Unattractive walk into Duns town centre from site, due to narrow road, speeding and volume of traffic
- Inadequate and lack of detailed surface water drainage provision, failing to take into account flooding events such as May 2021 which caused damage to property, not detailing the SUDs arrangements, overwhelming existing surface water and foul drainage, lack of knowledge of existing surface water drains etc
- Contravention of SPP in relation to brownfield, suburbanisation, prime agricultural land, listed building and Scheduled Monument Policies
- Contravention of LDP settlement boundary for Duns
- Will place strain on local health services

- Ribbon development
- Detrimental dominant impacts on landscape setting of Duns and Duns Castle scheduled monument and designed landscape
- Detrimental impacts on setting of listed buildings
- Visual amenity impacts breaking beyond a clear urban edge
- Lack of development detail including cross sections
- Residential amenity impacts including overlooking, loss of daylight, vehicle disturbance, impacts of footpath
- No demonstrated need for new housing, allocations providing for 293 homes in Duns
- Proposed housing out of character with existing, presenting rear gardens to the main road and of greater height
- Precedent for further development if approved
- Committee site visit recommended
- The requests of the Roads and Refuse Officers will exacerbate visual and road safety impacts
- Impacts on hydrology and wildlife of area, including Wellfield House and Common Myres
- Local MP in conflict of interest as site is owned by his family

Support

- Improves family housing choice in Duns, especially self-build detached housing
- Will offer construction jobs
- Improves local economy by increasing housing
- Development will resolve surface water flooding problems

DEVELOPMENT PLAN POLICIES:

Scottish Borders Local Development Plan 2016

- PMD1 Sustainability
- PMD2 Quality Standards
- PMD4 Development Outwith Development Boundaries
- IS2 Developer Contributions
- IS4 Transport Development and Infrastructure
- IS5 Protection of Access routes
- IS6 Road Adoption Standards
- IS7 Parking Provision and Standards
- IS8 Flooding
- IS9 Waste Water Treatment Standards and Sustainable Urban Drainage
- ED10 Protection of Prime Quality Agricultural Land and Carbon Rich Soils
- EP3 Local Biodiversity
- EP7 Listed Buildings
- EP8 Archaeology
- EP10 Gardens and Designed Landscapes
- EP12 Green Networks
- EP13 Trees, Woodlands and Hedgerows
- EP15 Development Affecting the Water Environment
- HD1 Affordable and Special Needs Housing
- HD2 Housing in the Countryside
- HD3 Protection of Residential Amenity

Scottish Borders Proposed Local Development Plan 2022

- IS5 Protection of Access Routes
- IS6 Road Adoption Standards

NATIONAL PLANNING FRAMEWORK 4

- Policy 1 – Climate Crisis
- Policy 2 – Climate Mitigation
- Policy 3 – Biodiversity
- Policy 4 – Natural Places
- Policy 5 – Soils
- Policy 6 – Forestry, Woodland and Trees
- Policy 7 – Historic Assets
- Policy 12 – Zero Waste
- Policy 13 – Sustainable Transport
- Policy 14 – Design Quality and Place
- Policy 15 – Local Living
- Policy 16 – Quality Homes
- Policy 18 – Infrastructure
- Policy 20 – Blue and Green Infrastructure
- Policy 21 – Play and Recreation
- Policy 22 – Flood Risk
- Policy 23 – Health and Safety

OTHER PLANNING CONSIDERATIONS

- Scottish Borders Development and Landscape Capacity Study – Duns 2007
- PAN 44 Fitting New Housing into the Landscape 2005
- PAN 61 Planning and Sustainable Urban Drainage Systems 2001
- PAN 65 Planning and Open Space 2008
- PAN 67 Housing Quality 2003
- PAN 75 Planning for Transport 2005
- Designing Streets 2010

- SPG Affordable Housing 2015
- SPG Development Contributions 2023
- SPG Trees and Development 2020
- SPG Landscape and Development 2008
- SPG Green Space 2009
- SPG Placemaking and Design 2010
- SPG Guidance on Householder Development 2006
- SPG New Housing in the Countryside 2008
- SPG Waste Management 2015
- SPG Biodiversity 2005
- SPG Local Biodiversity Action Plan 2018
- SPG Sustainable Urban Drainage Systems 2020

KEY PLANNING ISSUES

The main determining issues with this application are compliance with Development Plan Policies and Supplementary Planning Guidance on development outwith settlement boundaries, landscape, cultural heritage, road safety, residential amenity and infrastructure.

ASSESSMENT OF APPLICATION

Planning Policy

The principle of the development should be assessed primarily against the provisions of the Development Plan in the first instance, as required by Section 25 of The Town and Country Planning (Scotland) Act 1997. It is only if there are material factors of sufficient significance that outweigh the provisions of the Development Plan, then determination could be against the provisions of the Plan.

The application site lies wholly outwith the settlement boundary for Duns as defined within the LDP. Policy PMD4 "Development Outwith Development Boundaries" is, therefore, the most relevant Policy to be applied to the site. This policy states that any development should be contained within that defined boundary and that any development outwith will normally be refused. Forward Planning also confirm that the site lies outwith the settlement boundary within the Proposed Local Development Plan and that, as the settlement boundary is not contested, it is a material factor in determining this application.

NPF4 contains a number of relevant Policies relating to large housing developments and their impacts within settlements, including Policy 3 Biodiversity, 4 Natural Places, 9 Brownfield, 13 Sustainable Transport, 14 Design Quality and Place, and especially 15 Local Living and 16 Quality Homes. The applicant has also commented on NPF4 within their Planning Statement, stating the compliance of the proposals with the Local Living and Green Belt Policies.

Members will note the planning history of the proposed development on this site as mentioned earlier in this report. A planning application was submitted for nine houses on the site in October 2005 but was withdrawn before being registered. The site was also considered under the preparation of the current adopted Local Development Plan but rejected at Inquiry by the Reporter. The more recent history is explained by Forward Planning in their consultation response:

"The site was previously submitted for consideration as part of the Housing SG and was not taken forward. The site was then submitted at the 'Pre MIR' stage of the LDP2 process and was not included within the MIR for the reasons outlined below. The site was recently re-submitted at the 'MIR consultation' stage, as part of the LDP2 process. It is acknowledged that the agent has submitted a response to the points raised in the previous site assessment conclusion. However, it is not considered that any additional or new information was submitted which required a re-consultation. Therefore, the conclusion from the 'Pre MIR' stage remains valid and is outlined below."

That conclusion took into account the following constraints:

- The site is located within an area of Prime Quality Agricultural land;*
- Consideration to surface water runoff;*
- The site is located within the Designed Landscape 'Duns Castle';*
- The site is located within the SBC Designed Landscape 'Duns';*
- The site is constrained within the Landscape Capacity Study;*
- There are a number of Historic Environment Records identified within the site;*
- The site lies adjacent to the Category C listed building, 'Wellfield Cottage'; and*
- Archaeological investigations are required."*

The conclusion at pre-MIR stage was considered pertinent and valid at MIR stage, resulting in the settlement boundary in the Proposed Local Development Plan not being altered to accommodate the site. The conclusion was as follows:

“In respect of landscape and visual impacts, the bank rises up steeply and therefore, any development would be quite a prominent addition to the settlement in terms of visual impact. It is therefore doubtful as to how well the site would integrate within the landscape. A slightly smaller site boundary was considered as part of the Local Plan Inquiry, where the Reporter endorsed the Council's assessment that its development would have an adverse impact on the views, character and setting of Duns and would unnecessarily elongate the town away from local services and facilities.”

The site was also the subject of a pre-application enquiry for housing development in 2021. This elicited a negative response from the Department due to contravention of Policy PMD4 and failure to meet any of the exception criteria. There was also a Screening Opinion (which concluded no EIA was required) and a Proposal of Application Notice (PAN) in 2022 preceding the community consultation procedures.

This history demonstrates that the site has consistently been rejected at all stages in the LDP and pre-application processes in recent years and Members should be aware of this. Until now, there has not been any planning application taken to a decision. What is important in assessing this planning application is to be both fully aware of the Development Plan position and the planning history of the site, but also to ensure that all material issues are assessed as they now stand. This includes the submission of any additional or enhanced information and whether there has been any Policy or other changes that would have a bearing on the determination of the application. This should take into account all submissions made in support of the planning application by the applicant, as well as the advent and application of NPF4.

The applicant makes reference to Policy PMD4 being the most directly relevant LDP Policy to the proposal. This Policy will normally advise rejection of applications outside the defined development boundary of settlements unless one or more qualifying criteria can be met. Only then, would secondary criteria then also need to be met. The main qualifying criteria are discussed as follows:

A job generating development with economic justification

Whilst a new housing development will deliver construction employment opportunities and, thereafter, will feed into the local economy through additional population, it is not, in itself, a job-generating development meant in the context of this criterion.

An affordable housing development

The agent has not stated that this will be an affordable housing development and, indeed, has contended it could provide market family housing. Whilst, if approved, there would need to be commuted sum payments towards the offset provision of affordable housing in the locality away from the site, this criterion refers to a wholly affordable housing proposal which is not the case with this application.

A housing shortfall identified by the Council in the Housing Land Audit in provision of an effective five year land supply

This is the main criterion that the agent considers is met by the proposal, considering that the site could provide an important contribution to the local housing land supply. The Planning Statement contends that the site is in compliance with Scottish Planning Policy, providing family housing and contributing to a perceived shortfall in the 5 year supply of effective housing land. It examines the Council's 2020 Housing Land Audit

(HLA) and quotes from a Reporter's Decision Notice on a Peebles site in May 2021 where the Reporter concluded a shortfall of 631 housing units.

The agent assesses the Council's housing land supply in Appendix 1 of their Planning Statement, concluding that a shortfall of 5,062 units equates to a housing land supply of 2.49 years. However, it is noted that figure (k) contained within the table is incorrect and should total 7,210 units and not 8,647 units, based on the calculation (j*5). As a result, figure (n) is also incorrect and should be 3,625, based on the agent's calculations. The agent, thus, contends that the site is needed to help bring the total back up to five year's supply and that justification is provided to meet the relevant qualifying criterion in Policy PMD4. Their assessment was based upon the most recent Housing Land Audit (2020) at the time of their report preparation.

Within paragraph (5.9) of the Planning Statement, the agent states they assess that more than 125 sites of the identified effective housing land supply sites are not deliverable within five years. However, it should be noted that the agent has not provided any further information regarding which sites are being referred to, where they are located or the reasons why these sites are not deliverable. Furthermore, they have not deducted these sites from the calculations set out within the table and have used the Council's five year effective housing land supply figure (3,585 units), as referred to under figure (l).

The agent's submissions on housing land supply have been considered and the views of the Forward Planning Team, who prepare the Housing Land Audit, are as follows: *"In respect to Housing Land Supply, it is noted that the Planning Statement (Paras 4.39-4.41, page 23) make reference to an appeal decision (LPA ref: PPA-14-2088) published on 18th May 2021 in relation to the erection of 22 dwellings at 54 Edinburgh Road, Peebles, where the reporter concluded that there was a "Significant five-year effective land shortfall". However, it is noted that the Housing Land Audit 2021 concludes that the Scottish Borders has a 5 year effective housing land supply. As part of the Housing Land Audit process, the Council engages with Homes for Scotland and house builders for information regarding programming for development and any potential constraints on sites. This is taken into consideration in the programming of individual sites within the audit annually. In respect of the Berwickshire Housing Market Area, the 2021 Housing Land Audit found that there are 14 years supply when completions are compared to the five year effective land supply."*

In a further response to the applicant's submissions, the Forward Planning Team have clarified that the 14 years supply did in fact refer to the 2020 HLA whereas the 2021 HLA reveals 869 units in the Berwickshire Housing Market Area which equates to 12 years effective housing land supply. They continue to disagree with the applicant's methodology of calculating land supply and contend that the undelivered backlog from SESPlan 2013 should not be added in, which gives an unrealistic and unjustified housing land requirement.

Forward Planning explain that calculations should be derived from the 2021 HLA and that the Council's methodology for the Audit is set out in the adopted LDP and was accepted by the Reporter at the time of adoption. They state that the PMD4 exception on housing land supply is only if the Council have identified a shortfall through the HLA – it is not appropriate for applicants or agents to provide their own calculations. For the full Forward Planning response, Members should look on the Public Access Portal at the document tagged 18 May 2023.

Given that exception criterion c) of Policy PMD4 requires there to be a shortfall in provision of a five year effective housing land supply as identified by the Council in their Housing Land Audit, this is not the case with the application. The Council, through

Forward Planning, have maintained there is no shortfall when based upon the 2021 HLA – indeed, there is 12 years supply. The agent’s conclusions have been based upon one Reporter’s decision of more than two years ago and their own assessment - through the discounting of numerous sites from the effective supply without any further explanation or detail and the rolling over of undelivered backlog. There is a risk of lack of objectivity and accuracy in third party assessment of the Council’s housing land position and this was also recognised by the Reporter on the Venlaw decision in Peebles, who sided with the Council’s assessment on site effectiveness, stating:

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

The agent does assess one allocated housing site in Duns, arguing that the allocation ADUNS023 has been sterilised by flooding and has resulted in the loss of 60 units to the local housing land supply, part of a wider issue where it is claimed the Council has failed to ensure sufficient land for housing choice in Duns. They claim that active development across three other allocated sites in Duns shows that there is healthy demand. The application referred to by the agent on allocation ADUNS023 was submitted on only part of the allocation and, whilst there were flood risk issues, this did not apply to the whole of the application site. As the Officer stated in his Committee Report:

“The findings of the FRA may not have been positive for this development, nevertheless there are no suggestions that residential development cannot take place in the remainder of the allocated site and it may be possible that a co-ordinated development across the whole of the allocation can address the wider flood issue which has been identified.”

The conclusion of the agent that the allocated site ADUNS023 has been sterilised by flooding is, therefore, not fully accurate nor should it justify the automatic deduction of 60 units from the housing land supply. It is still reasonable to conclude that 60 units could be achievable across the whole allocation, including those parts of the planning application site that were not subject to flood risk.

Including allocation ADUNS023, the Proposed Local Development Plan identifies five allocated sites for development, totalling a potential 232 units. Whilst it is accepted some development has since occurred on some of these sites, this figure does not take into account other infill sites with permission in Duns, redevelopment allocations or, indeed, the longer term identification of housing land south of Earlsmeadow. It is, therefore, considered that there is sufficient housing land within Duns which contributes towards maintaining a five year effective housing land supply and provides housing choice without the need to breach the settlement boundary north of the town to find more land.

The Council stands by the HLA 2021 and maintains there is an effective five-year housing land supply in line with all current guidance and the Development Plan. The agent’s justification does not provide a robust baseline for establishing there is a housing land shortfall, nor should it be a position that can be objectively established by third parties. Consequently, the relevant exception clause in Policy PMD4 is not complied with and the development is contrary to the Local Development Plan.

Significant community benefits outweighing the need to protect the development boundary

There has been insufficient evidence advanced within the application to suggest that this criterion would be met. Whilst the applicant estimates construction costs of £1.5m, net additional household expenditure per annum of £297,500 and more housing land supply to meet with national and local needs, the visual, landscape, access and agricultural land impacts together with the need to contribute to meeting the impacts on local infrastructure and services, determine that there is insufficient demonstration of net community benefits arising from the development to outweigh the need to protect the development boundary in this instance. The existence of adequate housing land supply in the area adds weight to the protection of the current development boundary. Only one of the four qualifying criteria would need to be met under Policy PMD4 to then consider it as an exceptional approval outwith the settlement boundary, against which secondary criteria would then need to be applied and met. As none of the qualifying criteria are met, the secondary criteria do not need to be applied or considered regarding the proposal. Nevertheless, of those criteria that relate to logical settlement extensions, character of the built-up edge and adverse effects on the landscape setting of the settlement, it would be unlikely that the proposed site would meet one or more of these secondary criteria. Similarly, of the three matters that would be taken account of in deciding whether to grant an exceptional approval, the settlement profile for Duns identifies the strong landscape framework of the town and the impediment to longer-term housing development to the north due to the Duns Castle Designed Landscape and associated steep slope. The Settlement Profile also mentions the surrounds of Duns being prime agricultural land. These are, therefore, further reasons within one of the additional matters to be taken account of under Policy PMD4, not to grant an exceptional approval for development in this instance.

NPF 4 Policies have also been considered in relation to whether the breaching of the development boundary would be outweighed by other aims and provisions but it is concluded that there are no Policies that are incompatible with Policy PMD4. Whilst the Policies on sustainable transport (13) and local living (15) could apply to the application as outlined by the agent, they equally apply to other allocated sites within Duns and do not provide a justifiable case for allowing a breach of the boundary in this instance. Other Policies relating to protection of the natural and cultural heritage environment (4, 7), land quality (5) and avoidance of greenfield development (9) add more weight to the protection of the development boundary in this instance.

Landscape

The site lies at, and within, the southern edge of the Duns Castle Garden and Designed Landscape, which is centred on Duns Castle, featuring extensive parks, woodland and a loch dating from the 18th Century. The boundary of the designated area is formed by the A6112 road and the site forms part of the outer agricultural fringe of the area. LDP Policy EP10 seeks to safeguard or enhance the landscape features, character or setting of such areas. Design Statements are sought for any development affecting Designed Landscapes and any development with an unacceptable adverse impact will be refused. Landscape impacts must also be considered in relation to the relevant LDP Policies PMD2, PMD4 and EP13, relating to landscape setting of settlements and protection of features such as trees, woodlands and hedgerows. Similarly, NPF4 Policies 4 Natural Places, 7 Historic Assets, 9 Brownfield and 14 Design Quality apply.

The applicant and agent have addressed Designed Landscape and local landscape impacts by submitting a Landscape and Visual Appraisal and an Archaeology Impact Assessment. These summarise that the proposal would not be visible from Duns Castle or associated loch. Whilst there would be a landscape impact, this would be mitigated by relationship with the rest of the town. The agent contends that with new

planting, the development will integrate with the natural and built setting of Duns from various viewpoints assessed and that, as landscape impacts will be no more than moderate, the development can be considered to comply with Policies EP10 on Designed Landscapes and EP12 on Green Networks.

The application is submitted as an application for planning permission in principle and, apart from the location and dimension of the site, the layout, number and design of houses within the site would still be for further agreement, should the application be approved. Nevertheless, given the sloping nature of the site, the elevation above the A6112 and the indicative details of the layout provided, various assumptions about single sided development and housing above single storey can be made. Allowing for this nature of development, it is necessary to consider the impacts both on the Duns Castle Designed Landscape but also on local landscape character, in how the site contributes to the rural fringe and character of Duns at its northern edge.

Historic Environment Scotland raise no objections to the application, accepting that the development will change the character of this part of the Designed Landscape but that there would be no significant negative impact on the inventory site. They do identify mitigation through the retention of the modest stone retaining wall along the edge of the site bordering the A6112, albeit as has been mentioned elsewhere in this report, the integrity and retention of the wall is adversely impacted by the access requirements expected by the Roads Officer. Nevertheless, in terms of impact on the Designed Landscape, it is accepted that the impacts would not be significant given the distance from Duns Castle and loch, the agricultural fringe character of the site and the concealment from the heart of the designation. The Landscape Officer does comment on various adverse impacts on the Designed Landscape but does not object in terms of impacts on the designation itself. There is also no evidence that Historic Environment Scotland would have objected, had they known the potential impacts on the roadside retaining wall. It is, therefore, concluded that the proposal complies with Policy EP10 and Policy 7 of NPF4.

Whilst it is accepted that the landscape impacts of the development are not likely to be significant on the integrity and character of the Duns Castle Designed Landscape, the site must also be assessed in terms of local landscape character and how it contributes to the rural fringe and character of Duns at its northern edge. Policies PMD2, PMD4 and EP13 apply, as do Policies 9 and 14 of NPF4. The LDP Policies require compatibility with the landscape character, attractive boundary treatments and avoidance of adverse impacts on trees and landscape setting of settlements.

NPF4 Policy 9 relates to brownfield development but includes criterion b) which states: *“Proposals on greenfield sites will not be supported unless the site has been allocated for development or the proposal is explicitly supported by Policies in the LDP”*. NPF4 Policy 14 lists six qualities of successful places, but also has a concluding requirement stating : *“Development proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places will not be supported.”*

The agent contends that the proposed is simply extending the line of built development to mirror the existing development south of the A6112, whilst accepting that there is a level difference between the north and south sides of the road in this location. The various viewpoints in the LVIA show the expected impacts on the overall integrity and landscape setting of the settlement. Their submissions conclude that whilst there would be a landscape impact, this would be mitigated by relationship with the rest of the town. The agent contends that with new planting, the development will integrate with the natural and built setting of Duns from various viewpoints assessed and that

landscape impacts will be no more than moderate and, therefore, acceptable in the overall planning balance.

However, it is clear that landscape impact and prominence have been influential in the reasons why the site has not been accepted as a suitable extension of the Duns settlement boundary, in previous stages of the current adopted and Proposed LDP processes. The Forward Planning Team refer to the location of the site within the Designed Landscape of Duns Castle but also to constraint within the Landscape Capacity Study. They reiterate that the Reporter rejected the site at the stage of adoption of the current LDP, endorsing the Council's assessment that its development would have an adverse impact on the views, character and setting of Duns and would unnecessarily elongate the town away from local services and facilities.

The aforementioned Landscape Capacity Study was one of eleven carried out for the Council and NatureScot in 2007, covering different settlements and aimed at guiding the Council on suitable locations for future housing development in landscape terms. The findings of the report were used to guide the location and allocation of new developments within those 11 settlements, as the previous LDP process evolved. The Duns Landscape Capacity Study findings on page 24 recognised the boundaries of the Duns Castle Designed Landscape as a constraint, but also stated:

“The steep slopes of Duns Law also provide a strong containing edge to existing settlement lying at its foot and development of these slopes would be physically difficult and result in significant modification of the distinct landform of this focal hill. In addition, development on steeper hill slopes would be contrary to existing settlement form which is associated with more gently sloping ground to the south”.

It is clear that these findings were accepted by the Council in relation to the exclusion of the application site from the settlement boundary and the subsequent attempts to have the site included in the LDP and Proposed LDP process. The resistance to the site was also backed by the Reporter at Inquiry stage during the adoption of the current LDP. Whilst all landscape impacts have been fully reconsidered with this application, including consideration of the Design and Access Statement and LVIA, there is nothing in the submissions nor in current Development Plan Policy that would make the proposals more acceptable now than they were previously.

The local landscape character formed by the rising land leading to Duns Law, the initial steep grassed embankment, occasional roadside trees and partial stone retaining wall would all be significantly and detrimentally altered by development of the site. Whilst in plan and geometrical form there would appear to be logic in allowing single sided development to extend up the Preston Road to the extent mirrored on the south side of the road, full consideration of the level differences and landscape features of the site determine that landscape capacity does not exist at this location without significant change and harm to the character and quality of the landscape and adverse visual impacts.

It is clear that access works and development platforms will cause significant alterations to landform, irrespective of how the site is accessed and laid out. It is also likely that there would be even more visual intrusion and impacts caused by the methods of accessing the site that would be required by the Roads Planning Service. Given RPS has stated they would object to the suggested single access point and rear access road, the landscape impacts of the alternative direct accesses they consider would be acceptable in road safety terms, must be considered when assessing the likely landscape and visual impacts of the development at this PPP stage. This would involve repeated breaching of the embankment and retaining wall, formation of visibility

splays, associated earthworks to the embankment, loss of trees and significant cuttings to form the required gradients for the accesses. There would also then be issues with pedestrian access to the houses and what level the houses would be set at on the site.

The Landscape Officer has also objected to the application on grounds of local landscape character impacts. The officer identifies a number of the issues mentioned above, stating that the proposal underestimates what are substantial changes to local landscape character, diminishing the strong containing edge to Duns as identified in the Landscape Capacity Study, regrading the open slopes to Duns Law, impacting on regionally important views and unacceptably altering the distinct landscape gateway entrance to Duns. The Officer provides commentary on the viewpoints that do not indicate the full impacts of the development, nor the slower growth rate of backdrop planting. She also considers there is no indication of the significant and overbearing visual amenity impacts on the existing residents south of the A6112. She also expresses concerns over the layout and design of plots not complying with the Placemaking and Design SPG and the consequent significant landscape and engineering impacts caused by the requirements of the Roads Officer in seeking a stronger street frontage that would be more compliant with the SPG and "Designing Streets".

Whilst the applicant's landscape submissions are noted and have been considered fully, there is no reason not to accept the advice of the Council Landscape Architect and reflect previous expressed concerns that the development of this site should be opposed on grounds of significant landscape and adverse visual impacts, within designated landscape on a sensitive edge of the town settlement boundary and against LDP Policies PMD2, PMD4, EP13, the Placemaking and Design SPG and Policies 9 and 14 of NPF4.

Residential Amenity

Local Development Plan Policies PMD2 and HD3 contain safeguards regarding residential amenity, both in terms of general use compatibility but also direct impacts such as privacy and light. This is explored further in the Council's "Privacy and Sunlight" SPG. NPF4 contains limited guidance on residential amenity, concentrating within Policy 16 "Quality Homes" on the impacts of householder developments on their neighbours. A number of neighbouring objectors also raise issues relating to residential amenity including the height of the proposed houses above existing houses, privacy, daylight and sunlight impacts.

Unless it is absolutely unavoidable that development of land will cause residential amenity issues through a combination of scale, location, proximity, elevation and position of neighbouring properties, then it would not normally be justifiable to refuse planning permission in principle. Issues of privacy, daylight and sunlight can only properly be examined when there are detailed proposals for development submitted, indicating height, window positions, separation distances etc. Policy HD3 does refer to the details of development within its criteria including impacts as outlined above. However, it also asks for consideration of the level of visual impact which is a valid concern at this site where the development will inevitably be elevated above the Preston Road and the houses on the southern side of the road.

These houses will experience the greatest visual impact. Some have generous setbacks and screening from the public road whilst others are immediately on the roadside with windows facing the site. The fact that the site is elevated determines that increased privacy separation distances are normally sought above the 18m minimum

when measuring directly between habitable room windows. The figure rises by two metres for every one metre difference in window levels. However, even allowing for the fact that windows, especially to upper floors, may be several metres higher than the existing windows, the proposed plots are sufficiently sized to allow privacy setbacks in line with those advised in the supplementary planning guidance. Even where affected existing houses are adjoining the roadside, the application site is sufficiently deep and long to enable design solutions to avoid breaching the required separation distances.

Residents have also raised the issue of daylight and sunlight impacts which are addressed in the SPG. Whilst proposed houses will be on elevated ground, the length and depth of the application site would allow for adequate separation from the affected houses. Daylight assessment is usually measured from the mid point of affected windows in a 25 degree line from the horizontal. Given the separation distances and the location of the proposed houses within the north-western quadrant from the existing houses, it is not envisaged that there would be daylighting impacts to any adverse extent. Similarly, sunlight would only be affected in the evenings and, even then, the existing houses are sufficiently separated with unaffected main south-easterly aspects.

Impacts to the adjoining house to the south-west, Kirkwell House, are also mitigated by separation distance, intervening screening and fewer windows on the existing house side elevation. The design of the nearest plot to Kirkwell House could also be adjusted to respect privacy by ensuring a blank gable and additional separation distance, with further intervening planting. Whilst the application submissions have not concluded upon residential amenity impacts, it is considered that in terms of privacy, daylight and sunlight impacts, there are no grounds to oppose a PPP application on the basis of the length and depth of the site.

Whilst it is also accepted that the development complies with other criteria set out in Policy HD3, such as being residential development in an adjoining residential area, the elevation and constantly rising levels of the site from the existing houses will cause inevitable visual impacts. This has been identified by Forward Planning in their response to the planning application when reiterating the history of landscape concern over previous approaches to extend the settlement boundary, stating:

“In respect of landscape and visual impacts, the bank rises up steeply and therefore, any development would be quite a prominent addition to the settlement in terms of visual impact. It is therefore doubtful as to how well the site would integrate within the landscape. A slightly smaller site boundary was considered as part of the Local Plan Inquiry, where the Reporter endorsed the Council's assessment that its development would have an adverse impact on the views, character and setting of Duns and would unnecessarily elongate the town away from local services and facilities.”

The embankment and rising field are very much part of the northern aspect of the houses located south of the road, with little screening to interrupt visibility up towards Duns Law. Given the concerns expressed elsewhere in this report over landscape, embankment and gateway entrance impacts in this part of Duns, there will be levels of visual impact experienced by the houses south of the road which, in the overall planning balance, would be considered adverse and unjustified in relation to the need to breach the settlement boundary in this location. There will be unacceptable elements of prominence and dominance caused by developing this rising field, exacerbated by the engineering works required for access, development platforms etc. It is, therefore, concluded that in terms of levels of visual impacts, the application would not comply with Policy HD3 of the Local Development Plan.

Access

Policies PMD2 and IS6 require safe access to and within developments, which should also be capable of being developed to the Council's adoptable standards and in accordance with the guidance in "Designing Streets" and various other relevant Government publications and Guidance Notes. NPF4 Policies 13 Sustainable Transport, 14 Design Quality and Place and 15 Local Living also provide a framework requirement for local access connectivity and sustainable transport methods. In terms of compliance with relevant Policies and Guidance, it is necessary to consider the potential impacts of the development on the traffic network leading to the site, then the actual road, footpath and parking layout of the development itself.

The application is submitted for planning permission in principle and the road access and number of units proposed would still require to be determined at the stage of Approval of Matters Specified as Conditions. However, the applicant has submitted an indicative layout to suggest that the houses would be accessed via a single roadway to the rear, entering the field at the existing field gate opposite the road serving the cemetery. The roadway would have two turning heads and also provide a footpath, albeit the applicant also expects each property to have direct pedestrian connections onto the existing footpath alongside the A6112.

The application was also supported by an Access Appraisal based upon the indicative layout of a single roadway. The Appraisal anticipates low traffic generation in the morning and evening peak hours not exceeding 9 vehicles (two-way) which they consider will have no material impacts on road safety either at the new junction or on the A6112 itself. The Appraisal confirms the access is already a field access and that suitable visibility splays can be formed to achieve required safety standards. The applicant also submits information in the Design and Planning Statements to contend the site is within Government NPF4 Policies relating to local living, the site being a six minute walk from the town centre and readily accessible to a range of different transport modes.

Members will note that the traffic impacts associated with the proposal have led to a number of objections from local residents and also from the Community Council. The concerns are in relation to capacity on the A6112, traffic volumes, speeds, HGVs and the impacts of forming an effective crossroads at the cemetery, especially on funeral days. However, there has been no road safety objection from the Roads Officer on the principal of the development for ten houses as this site. He accepts that the public road has the capacity to accept the development albeit it is a qualified acceptance, based upon any detailed application being submitted on an entirely different access basis. This would be a series of individual or communal, direct vehicular accesses through the embankment and out onto the A6112, with the houses moving nearer to the road. This would be to comply better with Government Policy such as "Designing Streets", aiming to achieve active street frontages and also introduce an element of traffic calming. The Officer states:

"If an application with a street layout similar to the indicative layout shown in this proposal were to be submitted in the future, I would be minded to object to this because it doesn't address the principles outlined in the Scottish Government policy document "Designing Streets"."

Clearly, the Officer does not object to the application as the application is for Planning Permission in Principle only, the precise road and pedestrian access arrangements to be detailed and agreed in any follow-up application. It is also clear, however, that he would not support such an application if based upon the arrangements currently

proposed. Given the issues and concerns outlined elsewhere in this report, to make this site suitable in terms of road access and road safety, there would be adjustments and alterations that will simply exacerbate the issues already identified. These would include the following:

- Significant loss, disturbance and adjustments to the roadside embankment for the formation of accesses, with associated creation of visibility splays.
- Loss of roadside trees and impacts on a retaining wall sought to be retained by Historic Environment Scotland.
- Impacts on Core Path 52 in terms of attraction and amenity to users, potentially conflicting with the requirements stated by the Access Officer and Policy IS5
- Significant additional engineering works to create several direct accesses, including the need for appropriate driveway gradients, surface water drainage etc.
- Greater visual impact and dominance of proposed houses in relation to the street scene and houses south of the site, potentially leading to overlooking and daylight/sunlight issues

Whilst there are no specific road safety reasons, therefore, to oppose this application and whilst the potential contribution to local living is noted, the alternative methods of road and pedestrian access would simply increase the adverse visual and landscape impacts to be expected at this site, which add further weight to those reasons why the proposal is not considered to be acceptable at this location.

Prime Agricultural Land

The applicant states at paragraph 5.34 of the submitted Planning Statement, that the site is Category 4.1 land according to the Macaulay Institute Soil classification and that it is, therefore, not resulting in the loss of any prime agricultural land – which are Categories 1- 3.1. However, the response from Forward Planning clarifies that the land is prime land. The applicant appears to have applied the information contained within the National Scale Land Capability map, which provides information on the types of crops that may be grown in different areas dependent on environmental and soil characteristics. However, on the same web page, there is a second, more detailed layer of map. This more detailed map is entitled ‘Land capability for agriculture (partial cover) map’, was published later and is at greater resolution. It is seen as the definitive mapped assessment. The note on the Government web page states:

“Where coverage exists, the Land Capability for Agriculture (Partial Cover) Map takes precedence over the National Scale Land Capability for Agriculture Map”.

The more detailed map shows that the majority of the site is Category 2 in the Macaulay Institute Soil classification and is, therefore, prime agricultural land. The lower slopes of Duns Law down to the A6112 appear as Category 2 in common with much of the land north-east of Duns, the remainder of Duns Law being non-prime Category 4.1. A smaller part of the site in the south-western corner is termed “Urban” and is greyed out from soil classification.

LDP Policy ED10 and NPF4 Policy 5 apply to the proposals. Policy ED10 states that the loss of such prime land will not be permitted unless the site is allocated in the LDP, meets an established need with no other site available, or is small scale and directly related to a rural business. None of these exceptions apply to this proposal – it is not allocated land, the need is not justified according to the 2021 HLA and the site is neither small scale (2.48 HA) nor related to a rural business. The land certainly appears to

have been ploughed and cropped in recent years and, given the prime land classification and the lack of compliance with the exceptions under Policy ED10, it is considered to be contrary to that Policy.

ED10 was augmented recently by Policy 5 of NPF4 with similar but, perhaps, even more stringent exclusions relating only to essential infrastructure, small scale development directly linked to a rural business or development associated with the land produce. There is no exclusion within Policy 5 to meet established need. The proposed development does not comply with any of these exclusions and is, therefore, also contrary to Policy 5.

Drainage and Flood Risk

Local Development Plan Policies IS8 and IS9 are the most relevant in consideration of the impacts of development of this site on the water environment. Policy IS8 relates to flood risk and IS9 to Waste Water Treatment Standards and Sustainable Urban Drainage. The Council have also produced a SUDs SPG. NPF4 Policies 20 Blue and Green Infrastructure and 22 Flood Risk and Water Management are also relevant to the proposals. Policy IS8 requires development not to be at risk of flooding but also not to materially increase the risk of flooding elsewhere.

The drainage proposals have been explained in Drainage Strategy and Flood Risk Assessment reports. Foul sewerage from the development will be conveyed to the existing publicly owned combined sewerage network. Surface water run-off from areas of new external hardstanding will incorporate SUDS measures to treat and attenuate the surface water run-off to the agreed discharge limit with attenuation features tested for 1: 200 year rainfall events with an additional uplift of 40% for climate change resilience. The discharge would then be via 1.8km of new pipe to watercourses away from flood risk or via 12m borehole soakaway on site.

Scottish Water has confirmed that there is capacity in the Rawburn Water Treatment Works for water supply and the Duns Waste Water Treatment Works for connection of the site to foul drainage networks. Whilst they state that direct approaches still need to be made to them by the developer at the appropriate time, there is no indication at this stage that water or foul drainage capacity would be an issue in approving the proposed development. Had the application been supported, it would be standard practice to impose suspensive conditions to ensure water provision and foul drainage are proposed in detail and approved by the Council, after liaison with Scottish Water, before any development can commence on the site.

In terms of surface water discharge, given the responses and evidence from the respondents, there can clearly be issues at this location with the discharge of surface water from storm events. Whilst there is a presumption from objectors that allowing development of the site will exacerbate the surface water flooding, the issue is whether the site can be developed without doing so. Some even suggest that development may be an opportunity to achieve betterment of attenuation and run-off from the site, compared to its undeveloped greenfield state.

Scottish Water have commented that they may not accept connection of surface water into their combined sewer system but that there may be exceptions in the case of brownfield sites. They also state:

“In order to avoid costs and delays where a surface water discharge to our combined sewer system is anticipated, the developer should contact Scottish Water at the earliest opportunity with strong evidence to support the intended drainage plan prior to

making a connection request. We will assess this evidence in a robust manner and provide a decision that reflects the best option from environmental and customer perspectives.”

The Drainage Strategy proposes attenuation and discharge rates in accordance with statutory requirements. The applicant accepts that if Scottish Water will not accept the outfall of storm water, then they will need to seek alternatives as outlined above – a long pipe to a non-flood risk watercourse or soakaway boreholes on site. SEPA rely on standing advice for such matters. The Council’s Flood Risk Officer has raised no objections. If development is approved, he requests a condition seeking a detailed drainage system to ensure no increase in greenfield run-off rate, boundary drainage and ensure capacity of receiving system is adequate.

There is little doubt that there is a surface water flooding issue in this locality, evidence having been submitted of storm water flowing down the field and over or through the roadside wall within the application site. However, had the application been supported for other reasons, then it would have been justified to impose a fully suspensive condition on the development to seek the design, agreement and completion of a surface water drainage system with attenuation, before the remainder of the development was commenced. In this way, the development would not place other property at flood risk, even during its construction phase.

There is no suggestion from the Council’s Flood Risk Officer that there would be any insurmountable flood risk issues in developing the site for housing, provided the drainage system met required attenuation and run-off rates. It is, therefore, concluded that the application could not be considered to be contrary to Development Plan Policies IS8, IS9, 20 and 22.

Ecology

The application requires assessment principally against Local Development Plan Policies EP1-EP3 covering international, national and local nature conservation and protected species and the Biodiversity SPG. NPF4 Policies also require to be considered, particularly Policy 3 Biodiversity and Policy 4 Natural Places. Policy 3 requires major applications to restore, conserve and enhance biodiversity.

The application has been supported by a Preliminary Ecological Assessment, which identified low suitability of habitat for protected species, the trees outwith the site not being affected by the development. The hedgerow to the east had some potential for breeding birds and the Assessment recommends works avoid the breeding bird season. Some ecological enhancements are also recommended including bat and bird boxes, bat-friendly lighting and native species planting. There were third party objections to potential impacts on wildlife including bats, badger and breeding birds.

The Council Ecology Officer responded to the submissions accepting the conclusions of the Preliminary Ecological Assessment. Had the proposal been supported, she would have requested that hedgerows and trees be retained, future submissions supported by an Arboricultural Impact Assessment which demonstrates avoidance of tree root protection areas. She welcomes the new planting but seeks further details, together with checking surveys for protected species that may be necessary if the time gap to submission is lengthy.

Given the findings of the Assessment and the responses from the Ecology Officer, it is not considered that the proposals would be contrary to Development Plan Policies with respect to ecology and wildlife.

Cultural Heritage

Archaeology matters are principally controlled by LDP Policy EP8 and NPF4 Policy 7, requiring any significant adverse effects to either be avoided or weighed up in the overall planning balance, when considering the other social or economic benefits of the proposal. This includes the setting of archaeological assets and proposals should be backed by Cultural Heritage Assessments or field evaluations where significant impacts are identified.

A number of third party representations object to the potential impacts of the development on the setting of Duns Law Fort and Covenanters' Camp Scheduled Monument. The applicant submitted an Archaeology Assessment with the application which identified that there would be no visibility from the summit of Duns Law but some visibility from the southern edge of the scheduled area. It concludes that given the open aspect from the summit and intervening screen landscaping filtering limited views of the development, there would be no adverse effects.

Whilst full assessment on setting could only be possible through consideration of a full planning application, including heights, designs and numbers of houses, there is sufficient information on location, layout, landscape screening and numbers of houses for Historic Environment Scotland to raise no objections to the application. They accept that some elements of the development may be visible from the monument but conclude that those elements would be read as an extension to Duns and there would not be a significant impact on the setting of the fort and camp.

The Archaeology Officer also raises no objections to the application after considering the site and supporting submissions. He recommends a condition seeking a written scheme of investigation including field evaluation. The Archaeology Assessment indicates moderate potential for further finds within the site, necessitating trial trenching across the site and adjustment to house locations and positions if any discoveries justify that. He identifies indirect impacts on the scheduled monument and other monuments on the summit and slopes of Duns Law, requiring the choice and location of screen planting to be the subject of further condition, to respect the monument locations and settings. Subject to relevant conditions, there is no objection from the Archaeology Officer to impacts on monuments or below-ground archaeology.

Cultural Heritage impacts are also relevant in relation to the proximity of the site to various listed buildings ie. nine to the south-west of the site, the town cemetery and within the GDL and setting of the Category A Listed Duns Castle. The closest to the site are Category B Kirkwell House to the east, Category B Wellfield House and Category C Coach House and Stables (Wellfield Cottage) to the south. A number of third party representations object to the potential impacts of the development on the setting of Kirkwell House and Wellfield Cottage in particular.

Policies EP7 of the Local Development Plan and 7 of NPF4 support development that respects the setting and integrity of statutorily listed buildings, supported by Government online advice from Historic Environment Scotland. NPF4 Policy 7 seeks submission of a specific heritage assessment where potentially significant impacts have been identified – and this was submitted by the applicant in the aforementioned Archaeology Assessment. The Assessment, however, makes no reference to impacts on the setting of the listed buildings, only stating the grades of sensitivity to change.

Whilst there are windows facing the site from the nearest listed buildings, especially from Wellfield Cottage, there is no question that the main aspects are looking away from the site and there would be extremely limited impact on any setting considered

important or integral to the listed buildings. The impacts would be more in relation to residential amenity than cultural heritage setting. The Heritage Officer also raises no objections although she does express concerns over the need for appropriate details of design and layout to minimise impact on varied group of listed buildings at the site, should the application reach the detailed planning stage. The indicative layout would suggest uniformity and rear gardens fronting onto the public road which the Heritage Officer considers could erode streetscape character and the setting of the listed buildings.

It is, therefore, concluded that in terms of potential impacts on cultural heritage both directly and indirectly, in relation to scheduled monuments, listed buildings and unknown archaeology, there is no reason to consider that the application would be contrary to Policy EP7 of the LDP and Policy 7 of NPF4. Precise design and landscaping could provide further mitigation, if needed, at the detailed planning stage.

Development Contributions

Local Development Plan Policy IS2 requires all housing developments to contribute to infrastructure and service provision where such contributions are considered necessary and justified, advised by the Development Contributions SPG. NPF4 Policy 18 “Infrastructure First” also states :

“The impacts of development proposals on infrastructure should be mitigated. Development proposals will only be supported where it can be demonstrated that provision is made to address the impacts on infrastructure.”

In addition, NPF4 Policy 16 Quality Homes requires any development to ensure at least 25% affordable homes on-site provision.

In relation to the development of this site for housing development, it is identified that mitigation in the form of developer contributions are required for education, play and affordable housing, to be secured by legal agreement.

For any development of fewer than 17 houses, affordable housing provision will require to be met by a one-off commuted sum payment, to be secured within a legal agreement, the money then to contribute towards affordable provision in the local area. This would be sought on the basis of total number of houses (minus one) divided by 25% then multiplied by the agreed figure for the Housing Market Area (£8,000) – bringing in a possible contribution figure of £18,000 based on a suggested 10 house development. Given the application is submitted only for Planning Permission in Principle, the figure will vary depending on the final number of houses that may be developed on the site, should the application have been supported otherwise.

The site also requires developer contributions to schools and play facilities in the area. The Council Policy is to seek a standard contribution per market unit where school capacity and rolls are of concern to Education and Lifelong Learning. Contributions towards Berwickshire High and Duns Primary Schools are advised – levied upon each house. For play, the standard contribution is £500 per house. These elements of development contribution Policy would also be met through the Section 75 Agreement.

The Community Council refers to the current health care provision in Duns and they are concerned at placing more pressure on the provision. Such concerns frequently arise in many towns across the Borders when faced with housing development and population growth. Whilst the Development Contributions SPG states that “...Any services, infrastructure or facilities may require contributions...” health care is not listed

in the examples of the predominant types of facilities that could be supported with contributions. There has hitherto been no identified need to oppose developments or seek financial contributions on the basis of health care capacity, perhaps reflecting the variety of reasons why there currently may be capacity issues. These may not only relate to population and development growth but also to funding and resource matters which lie outwith the control of the Local Authority or developers. There is also the difficulty of not only assessing how much contribution should be sought, but also how to ensure it is diverted to local facilities that may require it when such services are centrally funded. Ultimately, it would be difficult to establish a clear causal link (and justification to seek contributions) between a proposal to add 10 units to the town and the potential impact on health care in the town.

In summary, had the application been supported, then it is considered that the development could comply with the relevant Development Plan Policies, including IS2, 16 and 18, through contributions being secured by legal agreement.

CONCLUSION

The proposal is considered to be contrary to Policies PMD2, PMD4, HD3 and EP13 of the Local Development Plan 2016, Policies 9 and 14 of NPF4 and the “Placemaking and Design” SPG as the site is outwith the Development Boundary for Duns and the development would not constitute a justifiable extension to the settlement, in that it is not a job generating development, not affordable housing, there is no shortfall in the 5 year effective housing land supply and there are no significant community benefits sufficient to justify development outwith the Development Boundary. The proposed development would also cause significant adverse effects on the landscape setting of the settlement, local landscape character, visual and residential amenity, representing a prominent and elevated greenfield incursion out of character with the settlement pattern and surroundings.

The development is also considered contrary to Policy ED10 of the Local Development Plan 2016 and Policy 5 of NPF4 as the development would result in the permanent loss of prime quality agricultural land, which is a valuable and finite resource. Furthermore, the land has not been demonstrated to be necessary for housing or infrastructure development, alternative sites are available and the proposal is neither small scale nor directly related to a rural business.

Other issues relating to road safety, ecology, drainage, and cultural heritage are either acceptable or could be addressed by planning conditions, had the development been supported.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

I recommend the application be refused for the following reasons:

1. The proposal is contrary to Policies PMD2, PMD4, HD3 and EP13 of the Local Development Plan 2016, Policies 9 and 14 of NPF4 and the “Placemaking and Design” SPG as the site is outwith the Development Boundary for Duns and the development would not constitute a justifiable extension to the settlement, in that it is not a job generating development, not affordable housing, there is no shortfall in the 5 year effective housing land supply and there are no significant community benefits sufficient to justify development outwith the Development Boundary. The proposed development would also cause significant adverse effects on the landscape setting of the settlement, local landscape character, visual and residential amenity, representing a prominent

and elevated greenfield incursion out of character with the settlement pattern and surroundings.

2. The development is contrary to Policy ED10 of the Local Development Plan 2016 and Policy 5 of NPF4 as the development would result in the permanent loss of prime quality agricultural land which is a valuable and finite resource. Furthermore, the land has not been demonstrated to be necessary for housing or infrastructure development, alternative sites are available and the proposal is neither small scale nor directly related to a rural business.

DRAWING NUMBERS

Location Plan	100 Rev D
Site Layout Plan as Proposed	101 Rev A
Topography	
Illustrative Visualisations	

Approved by

Name	Designation	Signature
Ian Aikman	Chief Planning and Housing Officer	

The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

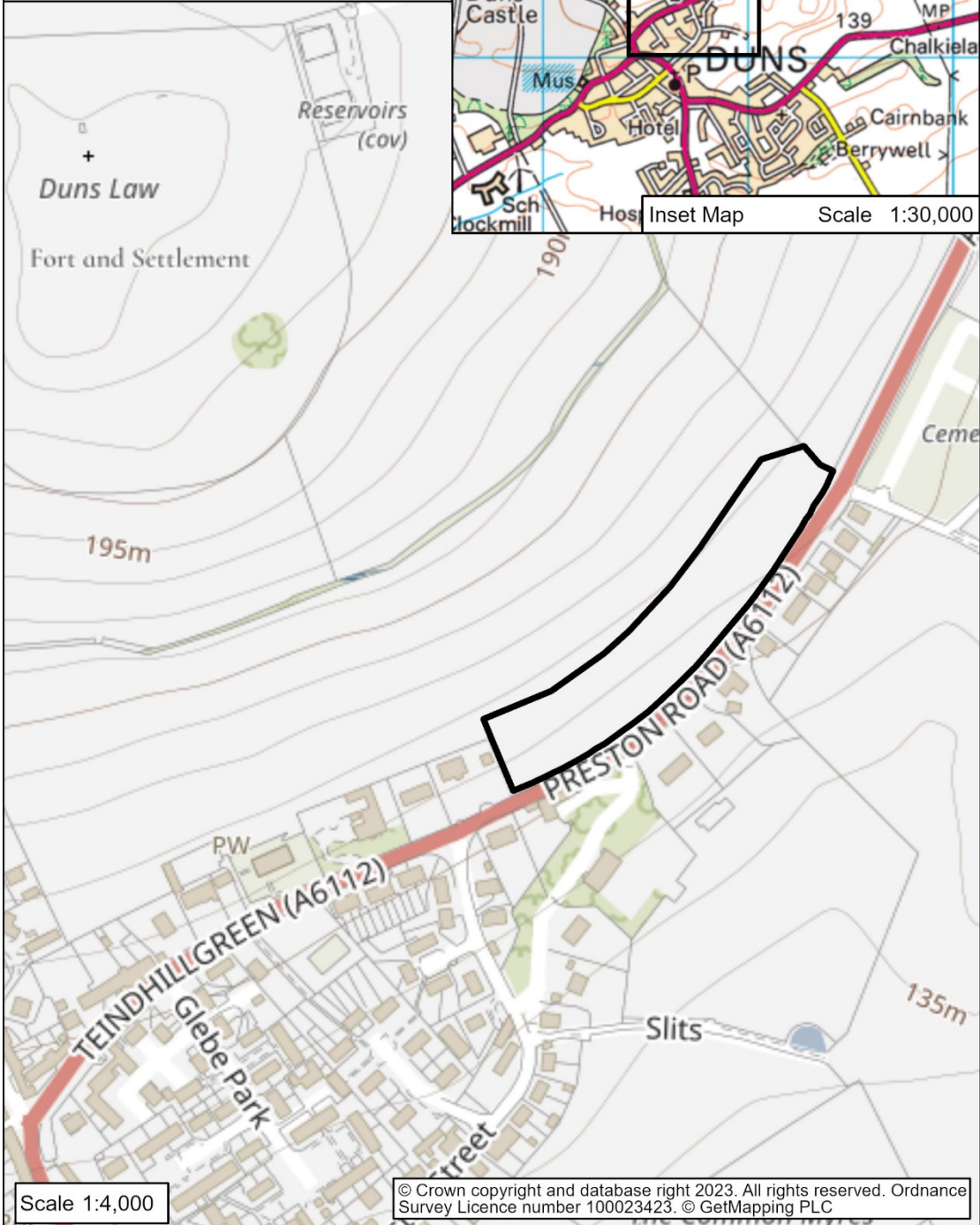
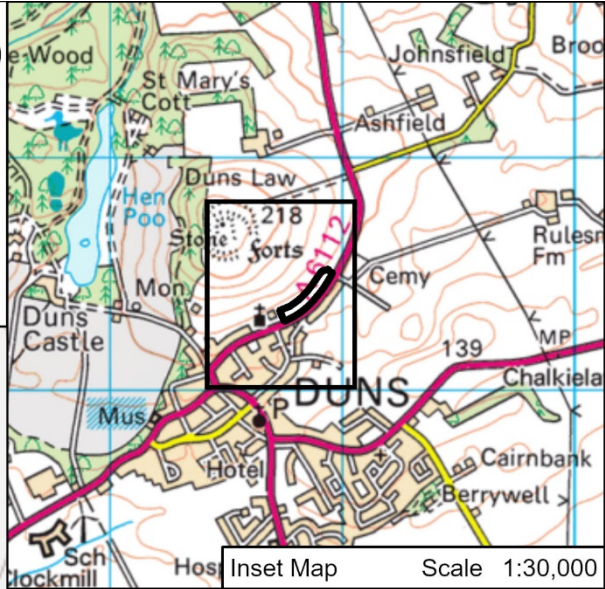
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Craig Miller	Principal Planning Officer



23/00131/PPP

Preston Road, Duns



Scale 1:4,000