

**SUPPORTING STATEMENT TO NOTICE OF APPEAL (LOCAL REVIEW)****In relation to Scottish Borders Council's Refusal to Grant Planning****Permission for****Erection of dwellinghouse with outbuilding and formation of new access  
(approval of all matters specified in conditions of planning permission  
21/00030/PPP)****Application ref: 22/01973/AMC****LAND AT RACHAN WOODLANDS, BROUGHTON**

on behalf of

Jim Warnock, Rachan Home Farm ML12 6HH (The Appellant)

25<sup>th</sup> April 2023

## 1.0 INTRODUCTION

### **The Refused Planning Application**

- 1.1 This Statement is submitted on behalf of the Appellant, Jim Warnock of Rachan Home Farm, Broughton against the decision of Scottish Borders Council to refuse to grant planning permission for erection of a dwellinghouse and outbuilding, together with the formation of access.
- 1.2 The house is a retirement home for the applicant who is passing Rachan Home Farm to a family member. The Warnock family has farmed at Rachan for 80 years. This is the first planning application for a house in all this time. Having worked the farm for many years, Jim Warnock desperately wishes to remain on-farm on the land he has cared for so many years.
- 1.3 The refused application was an application for matters specified in conditions (AMC) (formerly called a 'reserved matters' application). The principle of the acceptability of the house within the site was established by the Local Review Body in 2021 (ref: 21/00011/RREF). A legal agreement was concluded for the payment of education contributions in September 2021.
- 1.4 The purpose of the AMC application was to address each of the seven planning conditions set on in the LRB's decision notice of 31<sup>st</sup> August 2021. It is noted that the Planning Authority, in refusing the application consider every condition to have been satisfactorily addressed other than:
- the part of Condition 1 relating to the **siting** of the house within the application boundary which was approved at LRB in 2021.
  - fencing detail (specification) will be needed to completely satisfy Condition 4. The Planning Officer notes that this can readily be dealt with by a further planning condition on the AMC approval.
- 1.5 **The single matter which is thus preventing approval of this AMC application by the Planning Authority is the exact positioning of the house within the site approved by the LRB in 2021.**

- 1.6 There are 10 letters/ comments of local support for this application and none of objection. There are no objections from internal (Council Officers) or external consultees.
- 1.7 The single storey three bedroomed dwelling would be externally finished with harling and a natural slate roof. It is single storey as it is a retirement home. A moderately sized shed is included in the application and this will be of agricultural appearance.
- 1.8 Robust landscaping will take place to the south (from where the house can be seen from the minor public road), as shown on the Site Plan and 84 metres of hedging have already been planted on the western boundary alongside the access track.
- 1.9 This Statement seeks to:
- Summarise and explain planning history relating to the proposal.
  - Set out four grounds of appeal and demonstrate that the proposal meets with the requirements of the LRB's decision of the PPP (in principle) application.
- 1.10 The Grounds of Appeal set out the Appellant's reasoning in detail, but in short, the siting of the proposed dwelling is considered to satisfactorily address the LRB's comments in terms of wording in their 2021 Decision Notice. All other conditions have been satisfactorily addressed, as can be seen from the Planning Authority's Decision Notice and the accompanying Officer's report.
- 1.11 **It is important that this Statement be read in conjunction with the drawings and Planning Statement which was submitted with the planning application as well as the Statement titled "Explanation of Alterations" dated 14/02/23 which was submitted, together with revised drawings and the sheet of photographs of houses at Rachan, in response to the Planning Officer's comments upon the proposal during the processing of the planning application. The ten letters/ notes of support should also be acknowledged.**

## 2.0 BACKGROUND

2.1 The proposal for a single house and shed on this site was first submitted by the Appellant in January 2021. The first section below provides a summary timeline of the planning history whilst the following section provides some more relevant detail.

### Short Summary of Planning History

2.2 Application **21/00030/PPP** was validated on 13<sup>th</sup> January 2021 and refused by the Planning Authority on 5<sup>th</sup> March 2021.

2.3 Appeal ref **21/00011/RREF** was submitted on 1<sup>st</sup> June, 2021 and the Officer's decision was overturned to grant planning permission in principle for one house on the site on 31<sup>st</sup> August 2021, following the LRB meeting on 16<sup>th</sup> August.

2.4 The Applicant submitted a detailed (AMC) application **22/00899/AMC** to seek to address the planning conditions set out in the "in principle" permission and this was validated on 7<sup>th</sup> June 2022. The Planning Authority refused the application on 29<sup>th</sup> July 2022.

2.5 The applicant appointed Ericht Planning as agent and Richard Allen Architectural Design as architect. Together a fresh application was prepared to rigorously address the planning conditions in the 'in principle' permission. The resulting detailed (AMC) application **22/01973/AMC** was validated by the Planning Authority on 22<sup>nd</sup> December 2022 and refused on 17<sup>th</sup> April, 2023.

### Planning History Explained Further

2.6 Application **21/00030/PPP** was refused, in summary, on the basis that the Planning Authority felt that:

- The house wouldn't relate well to the building group and had not been carefully sited.
- No case had been made to show that there was no suitable existing house or other building capable of conversion.
- It would have an adverse impact on the landscape/ surroundings.

- 2.7 The appeal **21/00011/RREF** of the above application was allowed by the LRB (i.e. planning permission in principle was granted). The LRB, in summary, considered:
- There to be a building group adjacent to the site comprising at least 4 houses. Further houses in the wider grouping in woodland at Rachan were noted. Members were satisfied that, together, these constituted a building group.
  - There to be capacity for the proposed house in terms of housing in the countryside policy. The site was considered to be an appropriate addition to the building group.
  - “Similar spacing” as that between the bungalow “The Norlands” and the traditional courtyard of houses would be appropriate for the siting of the proposed house.
  - The positioning of the house and that of the shed as proposed on an indicative site plan should be transposed (swapped round) to result in a more westerly position for the house.
  - A robust planting scheme to the southern part of the site would enable it to be well contained within the landscape.
  - That whilst this would be a retirement house for the applicant, but usual ‘economic justification’ for such was not needed due to the conclusions regarding the building group.
  - The revised access proposed at LRB from the existing track to the west to be acceptable.
- 2.8 Application **22/00899/AMC** was refused, in summary, on the basis that the Planning Authority considered the proposal to be of unacceptable design and layout which would not to respect the rural character or appearance of the landscape.
- 2.9 The applicant, after careful consideration, felt that a fresh approach was needed to the proposal’s overall design and moved forwards to work with new consultants to address the reasons for refusal in this application and fully address planning conditions in the LRB decision.
- 2.10 Application **22/01973/AMC** which is subject to this appeal was prepared with great care by the applicant, the architect and the agent with rigorous regard to the

wording of the LRB's decision notice and associated narrative. As a team, it is felt that the LRB's requirements have been addressed in a positive manner.

- 2.11 During the processing of this application the Planning Officer's approach in formally communicating their views on the application was welcomed and the applicant was presented with the opportunity to address areas where the application was felt, by the Officer, to fall short of requirements. Revised drawings were provided in January 2023 which altered the house design and added significant landscaping, and the siting and design were explained in a supporting explanatory statement. The Officer, however, remained of the view that siting was not satisfactory as the house was not close enough to the bungalow The Norlands (despite the applicant explaining reasoning) and accordingly the application was refused on this single matter of siting. All other conditions were addressed.

### 3.0 REFUSAL TO GRANT PLANNING PERMISSION

3.1 Scottish Borders Council refused planning permission for the proposal on 17<sup>th</sup> April 2023.

3.2 The Council's stated reason was:

*"The **siting** of the proposed development would not be well related to the existing building group. As a result, the proposal does not fulfil the requirements of condition 1 of the planning permission in principle. In doing so, the application fails to comply with Scottish Borders Local Development Plan 2016 policies PMD2 and HD2; NPF4 policies 14; 16 and 17. In addition, the development does not comply with supplementary planning guidance on New Housing in the Borders Countryside and; Placemaking and Design. Other material considerations have been accounted for but these do not outweigh the harm that would result from the development".*

## 4.0 GROUNDS OF APPEAL

### 4.1 Summary of Grounds

**Ground 1:** The development would not be contrary to the provisions set out within the LRB decision and, specifically, does fulfill the requirements of condition 1 within 21/00030/PPP.

**Ground 2:** The Planning Authority is satisfied that all the PPP planning conditions can be met – other than the “siting” part of condition 1.

**Ground 3:** Other material considerations which affect siting must be taken into account.

**Ground 4:** There is material local support for the proposal.

#### **GROUND 1:**

THE DEVELOPMENT WOULD NOT BE CONTRARY TO THE PROVISIONS SET OUT WITHIN THE LRB DECISION AND, SPECIFICALLY, DOES FULFILL THE REQUIREMENTS OF CONDITION 1 WITHIN 21/00030/PPP

THE PROPOSAL IS NOT CONTRARY TO THE LDP POLICIES HD2 & PMD2 OR NPF4 POLICIES 14,16 & 17.

4.2 It is recognised that the LRB must look at the application on a ‘de novo’ basis and can consider all aspects. The 2021 planning permission in principle (PPP) is, however, firmly established and it is not the remit of this appeal to revisit that; rather it is the detailed “application for matters specified in conditions” which is the subject of this local review.

#### **NPF4**

4.3 National Planning Framework 4 (NPF4) was adopted on 13<sup>th</sup> February 2023. This was some 18 months after planning permission in principle was established for the proposed development and 2 months after the application which is subject of this appeal was submitted. Without an adopted NPF4 at the time of submission, the December 2022 application was unable to assess the proposal against NPF4.

4.4 The three NPF policies listed by the Officer are noted below. There is no assessment of the proposal against these policies in the Officer’s report, rather it



is, appropriately, focussed on the single matter that the Planning Authority does not accept – the siting of the house within the plot. Notwithstanding this, brief mention of NPF4 policies is warranted below.

- 4.5 The thrust of NPF4 Policies 16 17 deals with the principle of whether a house is acceptable in rural locations. Given that this principle was established on this site in 2021, Policy 17 has limited relevance to the detail (e.g. exact micro-siting) of this case.
- 4.6 NPF4 Policy 14 is also noted by the Officer, however this policy principally deals with design and the six qualities of successful places (healthy, pleasant, distinctive, connected, sustainable and adaptable). Given that the proposal is not one of a strategic nature (it's a single house) and the Planning Authority has accepted the house design, this policy would appear to have limited relevance to the proposal.

#### **Condition 1 of the Planning Permission in Principle**

- 4.7 Condition 1 reads:  
*No development shall commence until the details of the layout, **siting**, design and external appearance of the building(s), the means of access thereto and the landscaping of the site have been submitted to and approved in writing by the Planning Authority. The landscaping shall include tree planting to form a strong boundary to the north-west. Thereafter the development shall be carried out in accordance with the agreed details.*
- 4.8 The Officer's Report is clear that the Planning Authority is satisfied that all aspects of this condition have been met other than the siting.

#### **Siting**

- 4.9 The LRB, in considering the relationship of the site with the group required the house and garage to be positioned in a more westerly location than was shown on the indicative site plan provided with the PPP application. To achieve this, they required the shed and house/ garage to be transposed.
- 4.10 The positions of the shed and house/ garage have now been transposed, as asked. Consequently the house and garage is materially further west than it was within the PPP indicative site plan.
- 4.11 The position of the house is considered to be materially in accordance with the LRB's requirements. The applicant does not wish a move further west largely on account of the presence of a Victorian-built whinstone cundy. (It should be noted

this is not a pipe). This cundy is shown on the submitted drawings and was already noted within the Planning Statement (with photograph).

- 4.12 It has been noted that the only public view of the house will be from the minor public road to the south of the site. The house will be seen against the backdrop of The Norlands and woodland. Robust landscaping will lie to the south of the house which, once established, will reduce visibility of the house and assist with its integration into the landscape.
- 4.13 Notwithstanding the Officer's technical analysis of the daylight/ sunlight in the report, the Appellant having lived nearby for decades and having farmed the land is acutely aware of the frost hollow areas and the parts of the site which receive more sun during the short winter days. Passive solar gain is a huge benefit to warming a house the proposed location will allow this. Efficient use of energy is a paramount consideration in the ongoing climate crisis.
- 4.14 This rural house has a beautiful view and a south facing aspect so it is reasonable to anticipate that occupiers of a new dwelling will wish to take advantage of this in terms of fenestration as well as passive solar gain. The proposed siting also gives respect to the neighbouring bungalow "The Norlands".

**GROUND 2:**

THE APPLICATION SATISFIES THE PLANNING CONDITONS OF THE PPP APPROVAL OTHER THAN THE 'SITING' ASPECT OF CONDITION 1 \*

\* The Officer states that the further detail on fencing etc under condition 4 can be dealt with by planning condition were the application to be approved.

- 4.15 As the LRB may take a de-novo approach, brief review is made of other requirements of condition 1 (beyond siting) as well as the remaining 6 planning conditions attached to the planning permission in principle permission.

**Condition 1 – Comments on Design Aspects**

- 4.16 Whilst the house design has been accepted by the Planning Authority and does not form part of the reason for refusal, the Officer expressed some comments on design, before concluding it was acceptable, particularly within the context of more modern houses to the north.
- 4.17 In the application which is subject to the appeal, the applicant illustrated the wide range of house types, designs and scales at Rachan, both new and old, by providing

photographs and a map showing the houses' location. The 14 houses exhibited do share a common sense of place within the local landscape at Rahan, the supplied aerial image reinforcing their relationship.

- 4.18 It is acknowledged that single storey living, and allowing for visiting family, does result in a more extensive footprint than would a two storey property. The house is only three bedroomed, however, and it is for the appellant to retire into.
- 4.19 Positively, the Officer provided the opportunity for the applicant to reconsider aspects of design and the siting during the application's processing. Whilst alterations were not made to siting for the multiple reasons stated in Ground 1 and Ground 3, significant design revisions were made, including alterations to building width, windows and their positioning, sun room and roof pitch, all of which can be seen by comparing the drawings submitted in December 2022 with the revised January 2023 drawings.

**Condition 2**

- 4.20 *No development shall commence until all matters specified in conditions have, where required, been submitted to and approved in writing by the planning authority. Thereafter the development shall only take place except in strict accordance with the details so approved.*
- 4.21 This is addressed by submission of AMC application.

**Condition 3 - Trees**

- 4.22 *No development shall commence until an arboricultural assessment and tree protection plan are submitted to, and approved in writing by, the Planning Authority. The identified trees to be protected at all times during construction and building operations, by the erection of substantial timber fence around the trees or tree areas, together with such other measures as are necessary to protect the trees and their roots from damage. Details of the methods it is proposed to use shall be submitted by the applicant to the Local Planning Authority and be approved by them in writing. The approved protective measures shall be undertaken before any works commence on the site and must, thereafter be observed at all times until the development is completed.*
- 4.23 Following submission of a robust landscaping scheme by the applicant in January 2023, the Landscape Architect was satisfied with the tree survey, tree protection plan and the revised site plan showing robust structure planting along the southern boundary. The Planning Officer was content that the proposal complies with condition 3.

**Condition 4**

4.24 *"No development shall take place except in strict accordance with a scheme of hard and soft landscaping works, which has first been submitted to and approved in writing by the planning authority. Details of the scheme shall include (as appropriate):*

- i. existing and finished ground levels in relation to a fixed datum preferably ordnance*
- ii. trees to be retained within the site*
- iii. existing landscaping features, hedgerows and trees to be retained, protected and, in the case of damage, restored*
- iv. location and design, including materials, of walls, fences and gates*
- v. soft and hard landscaping works including new tree planting within the site and structure planting to the southern boundary*
- vi. existing and proposed services such as cables, pipelines, sub-stations*
- vii. a programme for completion and subsequent maintenance".*

4.25 The revised drawings submitted in January 2023 were assessed by the Landscape Architect who raised no objection to the proposed landscaping which comprises substantial tree and beech hedge planting. 84 metres of double row beech hedging has already been planted this season.

4.26 It is acknowledged that the Planning Officer, in his Report, notes requirement for further detail on fences and gates etc but states that he is content that this can be managed by a planning condition (on the AMC approval). It may be helpful to note, however, that the Planning Statement submitted with the application did provide the following detail about fencing at section 3.20:

- Albeit out with the application boundary, 84 metres of new beech hedging (double row at 40cm spacings) is to be planted to the south of the site as shown on the site plan. This will be protected from stock with a post and rylock with top barb fence.
- No new gate is proposed on the access driveway.
- The fence on the southern boundary of the plot is agricultural post and rylock fencing with top barb. There is a desire to keep the agricultural feel to the site and not introduce 'ranch-style' or other timber fencing.

**Condition 5**

4.27 *Notwithstanding what is shown on the approved drawings, access to the site shall only be taken from the section of track adjoining the western boundary of the site and there shall be no other access to the site from any other direction. No development to be commenced until further details of access and parking provision are submitted to, and approved in writing by, the Planning Authority. Thereafter the development to be completed in accordance with the approved details prior to occupation of the dwellinghouse unless otherwise agreed. The details shall include:*

- i. *A single access point into the site to include visibility splays, construction and levels details.*
- ii. *2 no. parking spaces, not including any garage, and turning area to be provided within the curtilage of the site and retained thereafter in perpetuity".*

4.28 The application has been assessed by Roads and no objection was made. The Planning Officer is content that the proposals comply with condition 5.

**Condition 6**

4.29 *No development to be commenced until the details of water and drainage provision are submitted to, and approved in writing by, the Planning Authority. Once approved, the development then to be completed in accordance with those details.*

4.30 The site is to be connected to the public water supply and Scottish Water has confirmed no objections or capacity issues. Foul drainage would be by means of a private system. The Flood Risk Officer has confirmed the drainage proposals to be acceptable. The Planning Officer was content that the information submitted met the requirements of this condition.

**Condition 7**

4.31 *No development to be commenced until a scheme of waste storage has been submitted to, and approved in writing by, the Planning Authority. Once approved, provision to be made in accordance with the approved details prior to occupation of the dwellinghouse.*

4.32 The Officer confirmed that location shown on the Site Plan for the storage of waste and recycling containers is acceptable and that the proposal therefore complies with this condition 7.

**4.33 Consultations - summary**

- No objection from Roads Planning Service on access/ road safety grounds
- No objection from the Flood Risk Officer on flooding grounds, including relating to drainage
- No objection from Landscape Officer in terms of impact on the local landscape now that robust landscaping proposed.
- No objection from Scottish Water

**4.34 Conditions - summary**

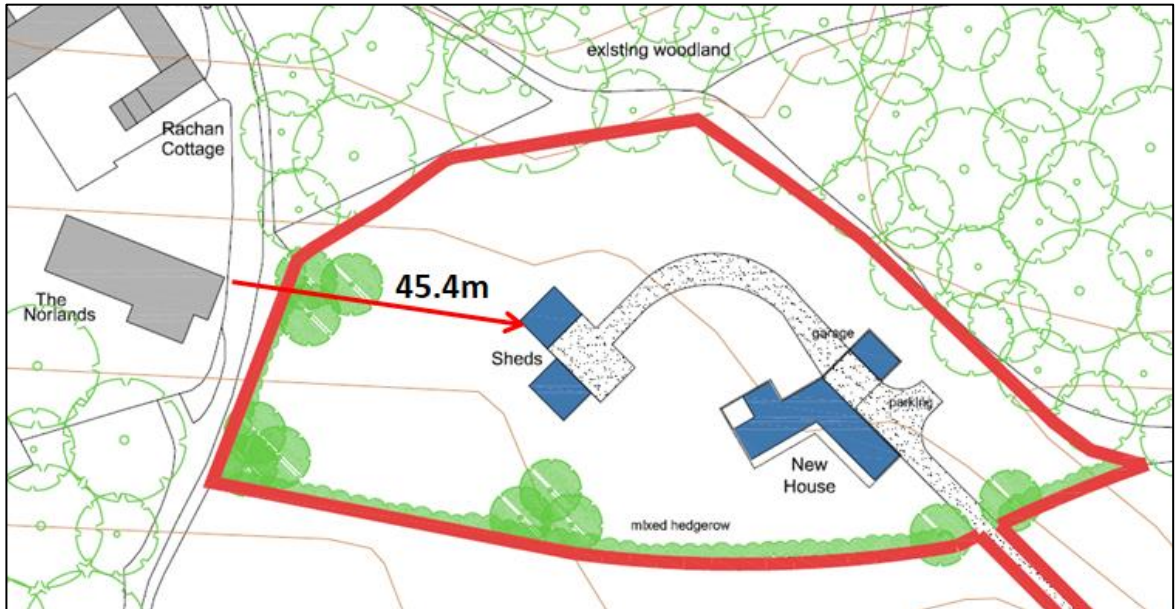
- Condition 1 – SATISFIED other than the exact **siting** of the house
- Condition 2 – SATISFIED
- Condition 3 – SATISFIED

- Condition 3 – SATISFIED
- Condition 4 – Can readily be satisfied with a planning condition to deal with gate, fencing and patio areas design
- Condition 5 – SATISFIED
- Condition 6 – SATISFIED
- Condition 7 – SATISFIED

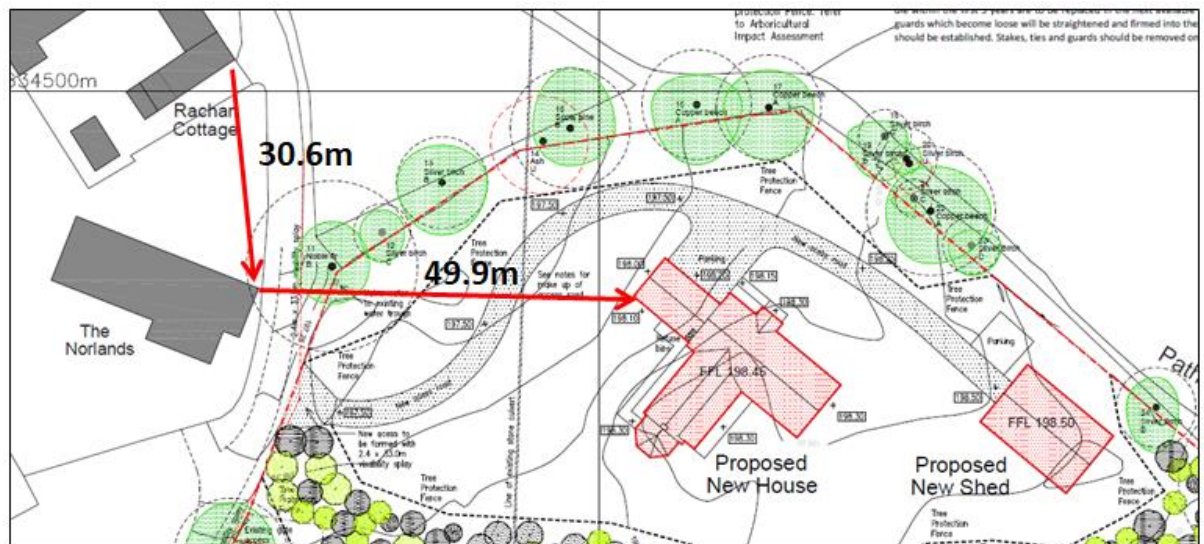
**GROUND 3:**

OTHER MATERIAL CONSIDERATIONS REQUIRE TO BE TAKEN INTO ACCOUNT WITH REGARD TO SITING (PART OF CONDITION 1)

- 4.35 The Planning Officer focusses on the exact separation of The Norlands and proposal. It is acknowledged the new house is further from The Norlands than the latter is from the converted steading but there is, in the intervening space, a track and the aforementioned Victorian stone built cundy. The root protection areas of boundary trees (shown within the Tree Survey and Site Plan) must be taken into account also.
- 4.36 The LRB's narrative in the Decision Notice requires "**similar spacing**" with no exact distance stated. Crucially, the LRB required "**transposition of the shed and house**" from how they were shown on the indicative site plan in the PPP application. **This has been done.** The house is now positioned further west, almost where the shed was indicated in the PPP application, as the LRB requested.
- 4.37 The LRB requirements have been met given the Victorian stone cundy position, tree RPAs, the track between The Norlands and the proposal, the need to maximise winter sunlight and reasonable privacy and amenity for both the new house and The Norlands.
- 4.38 At PPP stage, the indicative site plan showed the shed **45.4 metres** from The Norlands to be exact. With the shed and the house transposed, the house is now only very slightly further from The Norlands at **49.9 metres**. The small difference of 4.5 metres is not so material that it warrants the only reason for refusal. Please see images overleaf.



**Fig 1: Indicative Site Plan from approved PPP application (21/00030/PPP).**  
 Approved by LRB (Aug' 21) requiring shed and house to be "transposed".



**Fig 2: Proposed Site Plan from refused AMC application 22/01973/AMC showing house and shed transposed.**

**PLEASE NOTE THE MINIMAL 4.5 METRE DIFFERENCE IN SPACING FOLLOWING TRANSPOSITION**

- 4.39 The Appellant is unable to agree with the Planning Officer that the new house would be “isolated from the group”. The proposed house it is only 49.9 metres from The Norlands and 4.5 metres from where it seems the LRB was content for it to be. The steading houses are 30.6m from the Norlands at their most distant. The appellant asserts that the difference in spacing is so extreme to render the new house “isolated”.
- 4.40 There will be inter-visibility between The Norlands and the new house. Further there will be strong containment of the new house by the agreed robust landscaping to the south. This will enable the house to be well integrated into the landscape setting and will ensure that the large plot is limited to the development of this single house.
- 4.41 The only public view of the house will be from the minor public road to the south of the site. The house will, as noted, be viewed beyond robust landscaping and against the backdrop of The Norlands and woodland. Once the trees within the proposed landscaping are established, the house will be partly screened from public view.

**GROUND 4:**

THERE IS MATERIAL LOCAL SUPPORT FOR THE PROPOSAL.

- 4.42 There is unambiguous support for this proposal and no objections. Four letters of support from local residents were submitted with the planning application and a further six comments of support were submitted to the Planning Authority following the consultation period. Letters of support included one from the immediate neighbour at The Norlands.