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NEW DWELLING ON LAND ADJACENT TO CARNLEA,
MAIN STREET, HEITON

MARK GRAHAM

NOVEMBER 2023

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NEW DWELLING ON LAND ADJACENT TO
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EXECUTIVE SUMMARY

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This Statement is submitted on behalf of Mr Mark Graham (the Appellant/Applicant) against the decision by Scottish Borders Council to refuse planning permission for the erection of a dwellinghouse on land adjacent to Carnlea, Main Street, Heiton on 20th September 2023 (reference 23/01065/FUL).

Despite an established history of residential use at the application site, the planning application was refused due to concerns over road safety as detailed below .

“The proposed development would not comply with National Planning Framework 4 Policy 14 in that vehicular access to the site is poorly designed, detrimental to the amenity of the surrounding area and inconsistent with the six qualities of successful places. In addition, the proposal is contrary to Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 in that the development would result in additional vehicular traffic on a substandard private access to the detriment of road safety, both vehicular and pedestrian, and the proposed upgrade of the junction with the A698 is not supported as it would appear incongruous with the linear streetscape and any scheme in isolation may have a detrimental effect on road safety.”

The refusal on road safety grounds did not take into account that five residential dwellings have already used the access previously, without any reported issues, and that the Applicant is committed to provide traffic calming measures in the form of road markings and/or build out.

The Appellant would like to draw members of the Local Review Board attention to the following information that forms the grounds of this appeal:

- **There has been a residential dwelling on this site previously for a number of years, resulting in a total of five dwellings using the private access road and junction, with no known recorded road safety issues.**
- **Main Street along the A968 at Heiton has a permanent 20mph speed limit and there is no record or evidence of any accidents at this location.**
- **The site is located in a sustainable location and meets all other key policy requirements.**
- **Refusal of planning permission ensures the land will remain vacant and continue to negatively impact the character and vitality of the neighbourhood.**
- **There are no other objections to the proposed development from other consultees or the Community Council.**
- **The proposed development would actually improve the current access arrangements on the private access road through a dedicated turning space and road markings at the junction.**

Having considered the detail contained within this appeal statement and associated documentary evidence, members of the Local Review Body are respectfully requested to allow the Notice of Review and grant planning permission.

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INTRODUCTION

INTRODUCTION

- 1.1 This Statement supports a Notice of Review of the delegated decision of Scottish Borders Council to refuse to grant Planning Permission (23/01065/FUL) for the erection of a dwellinghouse, associated landscaping and infrastructure on land adjacent to Carnlea, Main Street, Heiton.
- 1.2 The site is located within the centre of the village of Heiton, which is located 2.5 miles to the south of Kelso (**Fig.1**). It is a linear settlement which has developed on either side of the A698 which runs south from Kelso to Hawick, where there is a mix of house types evident. According to the 2011 census, the population of Heiton is 204, an increase from the 2001 census of 71 people.
- 1.3 The site has been previously developed and is considered to be brownfield land and is presently covered in grass and occupied by a garage; several trees are located around the site boundary.
- 1.4 A private road links the site to Main Street on the A698 and the nearest bus stop is approximately 160m to the south on Main Street where services run to Kelso and Morebattle.
- 1.5 The surrounding area is characterised by several late 20th century residential properties, the majority of which are bungalows or 1.5 storeys (**Fig.2**).

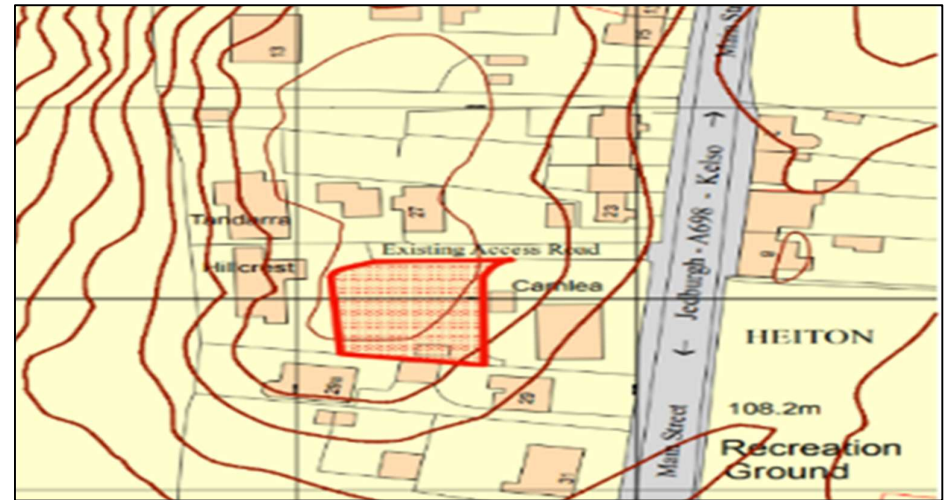


Figure 1: Location Plan



Figure 2: Aerial image of the proposed development site (outlined in red)

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- 1.6 Historically, the site was occupied by a residential dwelling known as 'Khansbur' (**Fig.3**), visible alongside the property 'Craimar' on historic mapping of the locality in 1965. A further three neighbouring houses were built in the 1970's while the property at Khansbar was removed. At present, there are four properties that comprise the existing building group in which the site is located: Craimar, Tandarra, Hillcrest and Carnlea.
- 1.7 The site has a long planning history going back to 1994 (R127/94), when permission was granted for a replacement dwelling, but subsequently lapsed in 1999. A further grant of permission was made for a replacement dwelling in 2004 (04/01984/OUT) and 2005 (05/00012/REM); the applicant maintains that these permissions were implemented however this is disputed by the Planning Authority.
- 1.8 A further planning application for a replacement dwelling was made in 2020 (20/01327/FUL) and was refused on the basis of vehicular traffic access; this decision was appealed, and the Local Review Body upheld the decision (21/00019/RREF). In 2022, the Planning Authority declined to determine a further application on the basis that there was no change from the previous application in 2020.

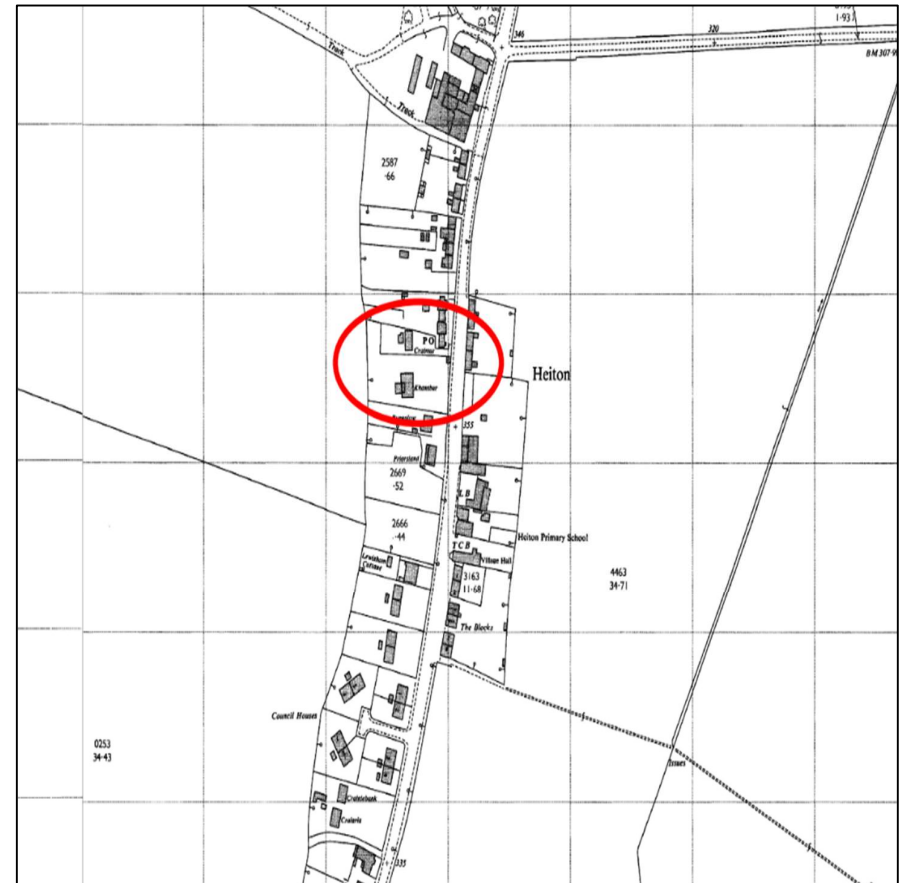


Figure 3: Historical Map (1965). Site is occupied by a property called 'Khansbur'

- 1.9 The current proposed development seeks to create a three-bedroom bungalow with additional patio and garden space to the rear; the existing garage on the plot will be removed to achieve this. A new driveway to accommodate two cars, and turning space will be created to the north of the site (**Fig.4**).
- 1.10 The current proposals take cognisance of the comments made by the Planning Authority on previous applications, specifically with regards to:
- the scale of the dwelling footprint has been reduced from 134m² to 128m² along with a reduction of the roof ridge height by 0.5m.
 - An additional turning area to the west of the proposed driveway, has been created and can be used by other residents in the private lane, which is now larger in size than the previous turning area proposed to allow for cars to manoeuvre in and out without encroaching on neighbour's land. This improves the existing situation on the lane for all residents by formalising the provision of a turning circle, allowing cars to enter and exit the lane in a forward gear.
 - The floor plan has been reconfigured so that no accommodation overlooks the west boundary to Hillcrest. Only a small bathroom window remains, which will be installed with privacy glass.
 - A new 1.8m high privacy hedge is now proposed to surround the property, ensuring the privacy of the proposed dwelling and neighbouring residences. Previously this hedge only encompassed the western boundary.
 - Traffic calming measures are proposed in the form of a small build out or paint markings, north and south of the junction of the access lane with the A698. An indicative layout for this is provided in Appendix 1 of the Transport Supporting Statement. Since the previous application, the 20mph zone is now formally established on the A698.
- 1.11 The proposal utilises a design based upon the surrounding dwellings, with similarity in materials and architectural style. Materials have been specifically selected to be sensitive to the site context and are outlined in the supporting Design and Access Statement and shown in the CGI images (**Fig.5**).
- 1.12 Services such as electricity and mains water will be extended to accommodate the ad-additional dwelling. Surface water and foul water drainage will be achieved by connection to the public sewer. Much of the drainage has already been prepared for development in advance of the previously approved application in 2005.
- 1.13 Despite the site being used historically and granted planning permission for residential use, the current application was refused by the Planning Authority on the grounds of road safety issues related to the existing junction from the private track to Main Street on the A698 road. Therefore, the remainder of this statement will set out the case for why the Local Review Body should allow the appeal as it is considered to be in accordance with the Statutory Development Plan which comprises National Planning Framework 4 and the adopted Local Development Plan (2016) and also any other material considerations such as the proposed Local Development Plan (2023) which has been approved but not yet formally adopted.

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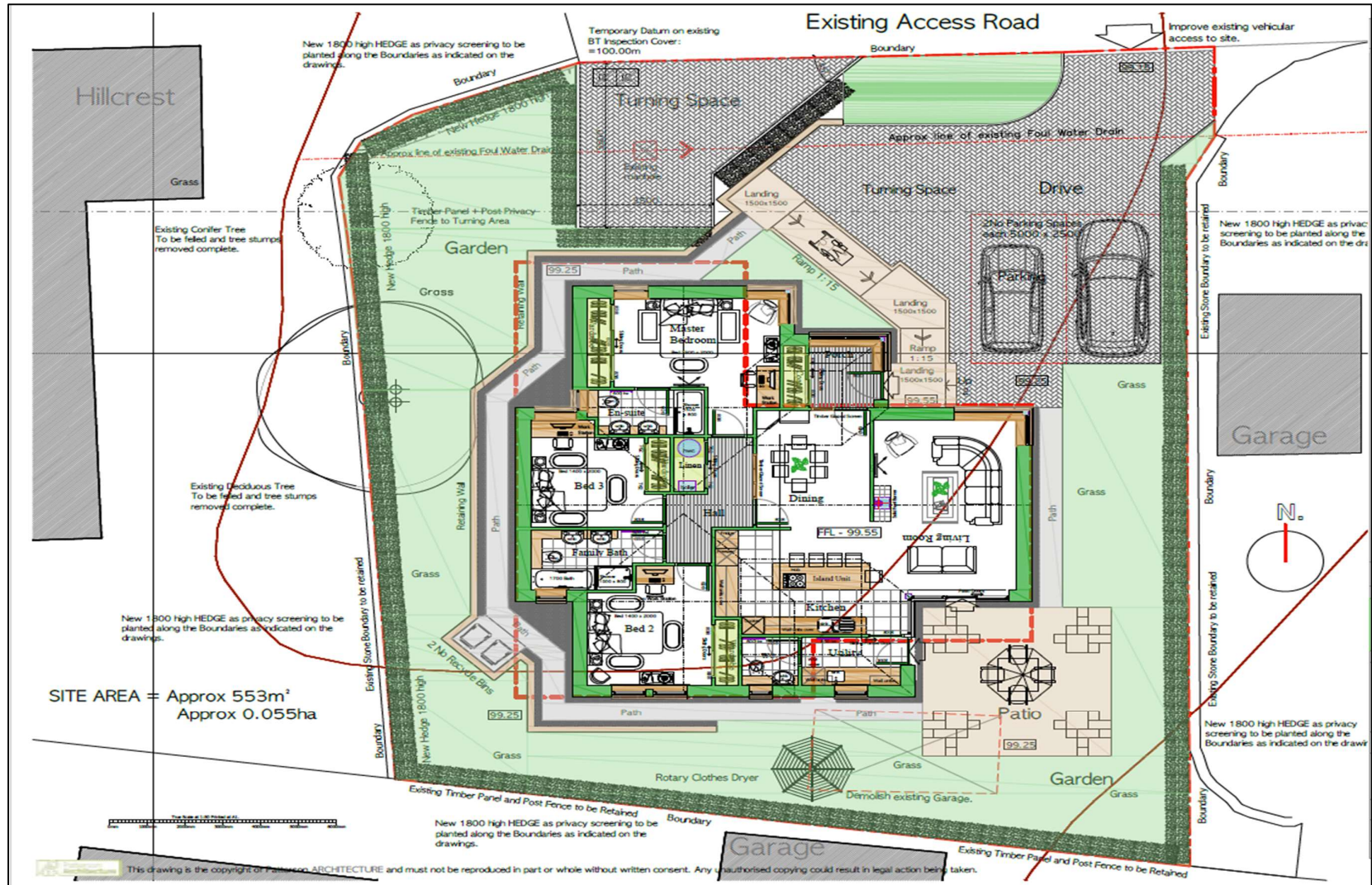


Figure 4: Proposed Site Layout



Figure 5: CGI of Proposed Development

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REASONS FOR REFUSAL AND
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2.1 Planning Application 23/01065/FUL was refused on 20th September 2023. The Decision Notice cited one reason for refusal, as set out below:

“The proposed development would not comply with National Planning Framework 4 Policy 14 in that vehicular access to the site is poorly designed, detrimental to the amenity of the surrounding area and inconsistent with the six qualities of successful places. In addition, the proposal is contrary to Policies PMD2: Quality Standards and PMD5: Infill Development of the Local Development Plan 2016 in that the development would result in additional vehicular traffic on a substandard private access to the detriment of road safety, both vehicular and pedestrian, and the proposed upgrade of the junction with the A698 is not supported as it would appear incongruous with the linear streetscape and any scheme in isolation may have a detrimental effect on road safety.”

SCOTTISH BORDERS LOCAL DEVELOPMENT PLAN (ADOPTED 2016)

Policy PMD2: Quality Standards

2.2 This policy sets out a range of sustainability, placemaking and design, accessibility and open space / biodiversity requirements, whereby the proposal must:

- Take appropriate measures to maximise the efficient use of energy and resources, in terms of layout, orientation, construction and energy supply.
- Make provision for sustainable drainage.
- Incorporate appropriate measures for separate storage of waste and recycling.

- Incorporate appropriate landscaping to help integration with the surroundings.
- Create a sense of place, based on a clear understanding of context.
- Be of a scale, massing and height appropriate to the surroundings.
- Be finished externally in materials, the colours and textures of which complement the highest quality of architecture in the locality.
- Be compatible with, and respect, the character of the surrounding area, neighbouring uses & neighbouring built form.
- Be able to be satisfactorily accommodated within the site.
- Provide for appropriate boundary treatments to ensure attractive edges, and to help integration with the surroundings.
- Incorporate access for those with mobility difficulties.
- Not have an adverse impact on road safety in terms of the site access.
- Incorporate adequate access and turning space for vehicles including those used for waste collection purposes.

Policy PMD5: Infill Development

2.3 This policy seeks to be generally supportive of infill development of all types, subject to proposals meeting the following criteria:

- Where relevant, it does not conflict with the established land use of the area; and
- It does not detract from the character and amenity of the surrounding area; and
- The individual and cumulative effects of the development can be sustained by the social and economic infrastructure, and

it does not lead to over-development or 'town and village cramming'; and

- It respects the scale, form, design, materials and density in context of its surroundings; and
- Adequate access and servicing can be achieved particularly taking account of water, drainage and schools capacity; and
- It does not result in any significant loss of daylight, sunlight or privacy to adjoining properties as a result of overshadowing.

NATIONAL PLANNING FRAMEWORK 4 (2023)

2.4 NPF4 was adopted in February 2023 and is part of the statutory development plan in the Scottish Borders for the purpose of sections 25 and 37 of the Act. The document provides and overarching national planning policy framework and outlines the Scottish Government's approach to achieving a net zero, sustainable Scotland by 2045.

2.5 NPF4 establishes "six overarching spatial principles", one of which is Rural Revitalisation, the principle which is most pertinent to the proposed development. Rural Revitalisation is defined as encouragement of "sustainable development in rural areas, recognising the need to grow and support urban and rural communities". Furthermore, NPF4 confirms that the associated strategy and policies "support development that helps to retain and increase the population of rural areas of Scotland."

Policy 14: Quality, design and place

2.6 This policy is relevant for all new development and seeks to "encourage, promote and facilitate well designed development that makes successful places by taking a design-led approach and applying the Place Principle"; good design should improve the quality of a place regardless of location or scale. Development

proposals will be supported where they are consistent with the six qualities of successful places: *healthy, pleasant, connected, distinctive, sustainable, and adaptable*.

OTHER MATERIAL CONSIDERATIONS

2.7 It is pertinent to note that the Report of Handling assessed the planning application on several other planning policies from the statutory development plan, and found that the proposed development to be in accordance with the following:

- HD3: Protection of Residential Amenity
- IS7: Parking Provision & Standards
- IS9: Waste Water Treatment Standards and Sustainable Urban Drainage
- Policy 1: Tackling the Climate and Nature Crises
- Policy 2: Climate Mitigation and Adaptation
- Policy 16: Quality Homes

This demonstrates that **there are no other constraints** to the proposed development over and above those contained in the single reason for refusal regarding road safety.

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GROUNDS OF APPEAL

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- 3.1 The decision of the Planning Authority to refuse the Application is challenged on the basis of the grounds of appeal set out below. It is the submission of the Appellant that the proposal accords with the relevant adopted policy of the statutory development plan that comprises National Planning Framework 4, the Local Development Plan and that there are no other material considerations which justify the refusal of the application.
- 3.2 The determining issue of this application is regarding access to the site, in particular the junction where the private access road meets the adopted road at Main Street on the A698; the report of handling states that *"The Roads Planning Service objections remains the key consideration"*. The recommendation for refusal is centred around an objection on road safety grounds by the Roads Authority who state in their consultation response that *"access from the private road is still unsuitable for this level of development"* and referring to the road calming measures put forward by the applicant road (markings and/or build out) that they *"would not support any scheme to narrow the carriageway along the A698 as this is incongruous with the road through Heiton and any scheme in isolation may have a detrimental effect on road safety"*.
- 3.3 Based on the assessment of the application by the Planning Authority in the report of handling along with the objection from the Roads Authority, the Applicant believes that there are six relevant grounds of appeal to consider as detailed below:
- **There has been a residential dwelling on this site previously for a number of years, resulting in a total of five dwellings using the private access road and junction, with no known recorded road safety issues.**

- **Main Street along the A968 at Heiton has a permanent 20mph speed limit and there is no record or evidence of any accidents at this location.**
- **The site is located in a sustainable location and meets all other key policy requirements.**
- **Refusal of planning permission ensures the land will remain vacant and continue to negatively impact the character and vitality of the neighbourhood.**
- **There are no other objections to the proposed development from other consultees or the Community Council**
- **The proposed development would actually improve the current access arrangements on the private access road through dedicated turning space and road markings at the junction.**

Each ground for appeal will be discussed in further detail below to demonstrate that, on balance, the proposed development is acceptable and should therefore be approved on appeal by the Local Review Body.

Ground 1 - Established Site History of Residential Use

- 3.4 As shown in the historical map (**Fig.3**), there has been a long-established history of a residential property at this location. Like many rural residential sites in the Borders, the private track and junction to the main road are typical in small rural settlements in the Borders and across Scotland, where the plot edges to the road are bound by the original stone boundary walls. This arrangement should not be used as a means to preclude development in sustainable locations where all other criteria can be met.

- 3.5 The private access road has been used by five residential dwellings in the past, with no known road safety accidents or complaints. This fact was openly acknowledged by the Director of Planning during the determination of the application (04/01984/OUT) at Planning Committee in 2004, who stated that ***"this application is not creating a worse situation to that which existed when the original chalet (house) was in use therefore I do not believe that there are sufficient grounds upon which to justify refusal of the application."***

This clearly demonstrates that the private access road can and has supported this level of development, without any impact on road safety or residential amenity, and is not a form of overdevelopment and thus complies with Policy PMD5: Infill Development.

Ground 2 - A698 Heiton 20mph Speed Restrictions & No record of Accidents at this location

- 3.6 Heiton is a small, rural settlement that has developed in a linear pattern along the main road of the A968. This reflects historical patterns of settlement in rural communities along the main access routes to nearby towns and employers. These roads have often evolved into busy trunk roads, such as Main Street at Heiton that connects Kelso with Jedburgh, with a speed limit that has historically been 30mph.
- 3.7 In January 2023, the speed limit of part of the A698 through Heiton was permanently reduced to 20mph. The section of road now benefits from several new elements of traffic calming and road safety measures in the form of road markings, speed limit warning signs and a vehicle activated speed sign. Current data from the Department of Transport confirms the low risk at this location as over a period of 24 years, there were no records of any accidents at the junction between the private access road and Main Street on the A698.

- 3.8 The current situation with regards to road safety at this location, is clearly that of a permanent, low speed environment, with several existing traffic calming and road safety measures in place, as well as no history or evidence of accidents. These measures all contribute to a significant reduction in the risk of road safety issues and that of potential accidents in what was already a low-risk environment. Moreover, due to the nature and scale of the proposals (residential), trips generated would be low and not significant enough to fundamentally increase the risk of adverse impacts on road safety at this location.
- 3.9 The Applicant has committed to providing measures in the form of road markings and/or build out, both of which are accepted, common means of traffic calming and road safety measures. Examples of road marking measures can be seen in **Fig.6** at Scott Street in Galashiels and also in **Fig.7** at Cairneyhill, Fife and are similar to what could be achieved at the application site. Heiton & Roxburgh Community Council also noted in their consultation response that *'It is noted that visibility splay is a key concern. If it is necessary, despite it not being an issue for the current dwellings, the suggestion of painted markings is reasonable'*.
- 3.10 These reasonable measures have been rejected outright by the Roads Authority in their consultation response as they *"may have a detrimental effect on road safety"*; no further explanation has been provided to substantiate this view. Despite the historical use of the private track and junction being used by five residential properties, the low-speed restrictions in place and data confirming no records of accidents, none of this important, factual context has factored into the response from the Roads Authority or indeed the report of handling. This has resulted in the application for the proposed development being refused on unreasonable and disproportionate grounds; it should therefore be supported as we respectfully consider it to meet the criteria of policy PMD2 and PMD5 with regards to access.



Figure 6: Road markings at junction to assist with visibility - Galashiels



Figure 7: Road markings at junction to assist with visibility - Cairneyhill

Ground 3 - Sustainable Location for Residential Development

- 3.11 Based on the objection from the Roads Authority, the report of handling concludes that *"the means of access to the public road network is not adequate"* and that a *"fifth dwelling served off this private road is best termed over-development"* and therefore the proposed development does not meet all of the criteria of Policy PMD5: Infill Development, specifically regarding access and overdevelopment. No further assessment has been made that takes into account the context and established site history of residential development, which is essential in order to reach a balanced, reasonable conclusion.
- 3.12 The application site, including its access and junction, has already been used for a fifth residential dwelling without any issue, is within the established settlement boundary at Heiton and is a readily definable infill site. Furthermore, the Planning Authority recognise in the report of handling that *"the scale, form, design, materials and density remain acceptable"* and that the proposed development is *"a suitable addition to the neighbouring built form"*. The proposed Local Development Plan, while not formally adopted but approved and as such is a material consideration in the determination of planning applications, further strengthens the argument against the definition of the proposals as overdevelopment as Policy IS6: Road Adoption Standards, now allows for a maximum of five developments to be accessed via a private access.
- 3.13 The refusal of the proposed development is therefore unsustainable and goes against the overarching principles of NPF4, and the South of Scotland Regional Economic Strategy which states that *In order to sustain rural villages support should be given the development of low impact housing 'to better integrate generations, attract new people to the area and ensure those farthest from the labour market have a stable platform from which to progress and prosper and development.'*

- 3.14 The Planning Authority should therefore be taking tangible steps to encourage sustainable development in rural areas; criteria that the proposed development can demonstrably fulfil.
- 3.15 Taken together, all these factors clearly demonstrate that the proposed development is sustainable in terms of its location, for its proposed use and therefore cannot reasonably be considered as overdevelopment. We consider that on this basis, the proposed development would meet the criteria of NPF4 Policy 14: Design, quality and place and PMD5: Infill Development in this instance.

Ground 4 - Negative Impact of Vacant Land

- 3.16 As can be seen by the planning history of the application site, it can be reasonably classed as a brownfield site on account of it being land that has previously been developed. The site has now lain vacant for a considerable amount of time and this latest refusal by the Planning Authority, merely facilitates the continuation of a vacant plot of brownfield land lying empty for the foreseeable future. The impact of this decision results in continued blight on the character and vitality of the surrounding neighbourhood, while the negative effects of living next to vacant land are well publicised through the recent excellent work of the Scottish Land Commission.
- 3.17 Furthermore, it is noted that Scottish Borders Council declared a climate emergency in 2020 and published a "Climate Change Route Map" in 2021 to work towards the goal of net-zero by 2045. The proposed Local Development Plan also contributes to the net-zero journey, with a stated aim of promoting the development of brownfield sites in order to address and be resilient to the effects of climate change. The proposed development meets this aim and should therefore be assessed with the climate emergency and stated aims of the Council in mind.

Ground 5 - No objections from other Consultees

3.18 As part of the application process, a total of three consultees were consulted including the Roads Authority, Heiton & Roxburghe Community Council and Scottish Water. The only consultee to object were the Roads Authority, the grounds of which have already been discussed. Of note is the response submitted by the Community Council who state that *“the suggestion of painted markings is reasonable”* in order to address concerns regarding visibility at the junction from the private access road to the A698. As stated previously, this mitigation has already been put forward by the Applicant and is still being offered, should the Local Review Body be minded to allow the appeal, as it represents a reasonable and effective means of traffic calming in terms of road safety.

Ground 6 - Improvements from provision of a dedicated turning space

3.19 Based on feedback from the Planning and Roads Authority, the Applicant has included as part of the proposed development, a specific turning area within their property curtilage (**Fig.8** and **Fig.9**) that can be used by all to ensure there is no need for vehicles to ever reverse onto the A698. This has been accepted by both the Planning & Roads Authority.

3.20 Until fairly recently, the application site, in full ownership of the Applicant, has been used unofficially as a turning area for vehicles primarily by neighbours and delivery drivers. It is noted that the three closest neighbours all objected to the proposed development siting road safety issues.

3.21 In a subsequent letter to the Planning Authority on the 27/08/2023, that was not included in the report of handling despite containing material considerations, the neighbours advised that the Applicant had erected a barrier on his land, which he is legally entitled to do, so they or other visitors were no longer able to use the site as an unofficial turning area.

3.22 The neighbours advised that *“As a result, vehicles are regularly having, if clear, to use our driveways to turn around but more importantly on several occasions large vehicles have had to reverse out onto the A698 which is clearly dangerous”*.

3.23 The neighbours therefore recognise that the proposed development, with its inclusion of a dedicated, official turning area would in fact significantly improve the current situation with regards to road safety. They request that the provision of the turning area be subject to planning condition to ensure its proper use. The Applicant is still committed to the provision of a communal turning space on his land, for all to use when necessary.

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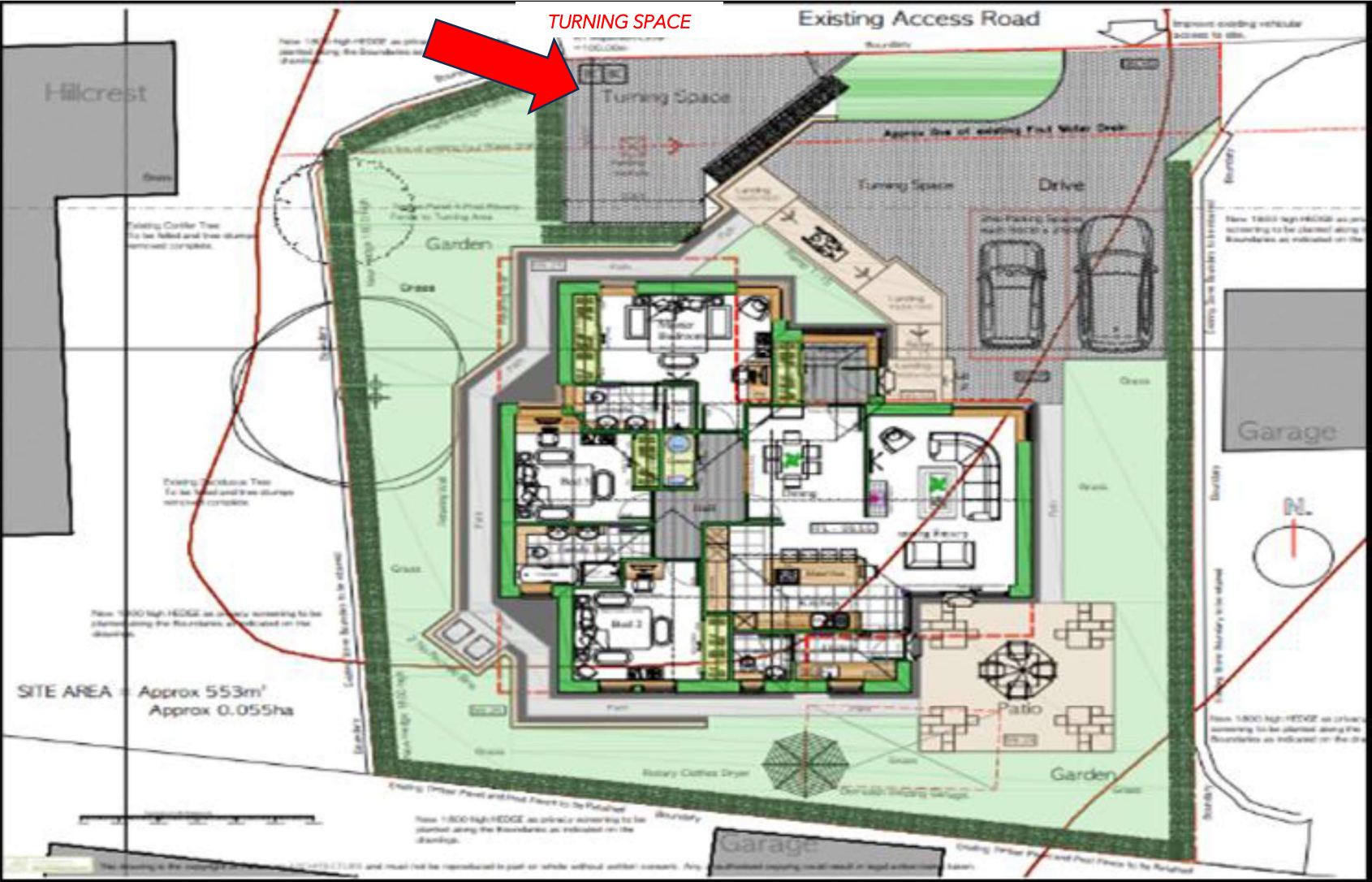


Figure 8: Proposed Site Layout - Turning Area

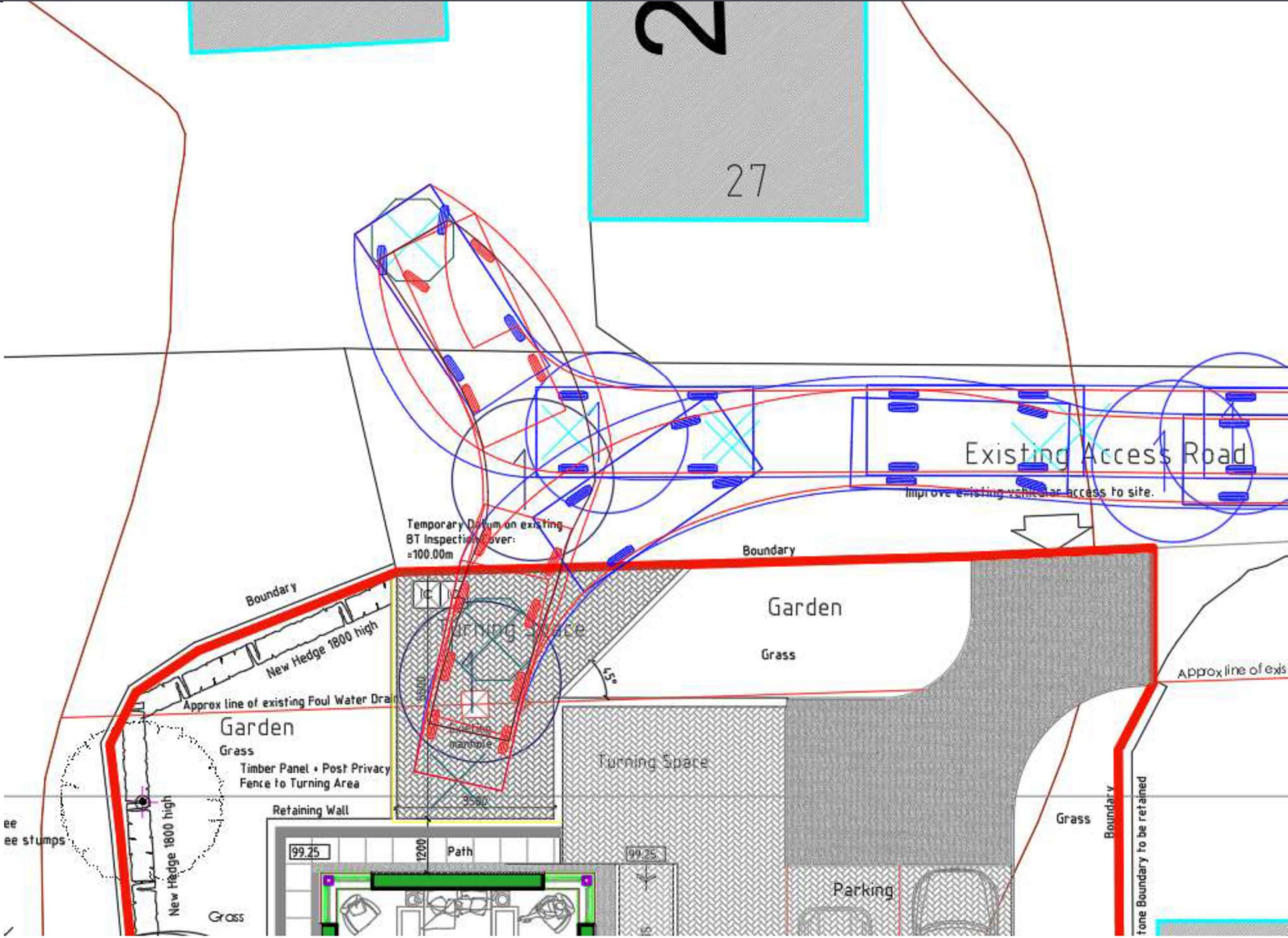


Figure 9: Swept Path Analysis - Turning Space

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CONCLUSION

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- 4.1 The Notice of Review, supported by this Statement, respectfully requests that the Council overturns the decision to refuse Planning Permission in for Application 23/01065/FUL and grant permission for the erection of a new dwelling at land adjacent to Carnlea, Main Street, Heiton.
- 4.2 The proposed development is for the erection of a replacement dwelling on a site that has lain vacant for a considerable amount of time and has previously been used for residential purposes. The proposed dwelling reflects the existing pattern of development, is well related to and within the existing housing group without any residential amenity issues, respects the local character of the area, represents a sustainable use of vacant, brownfield land and will contribute positively to the ongoing vitality and revitalisation of Heiton.
- 4.3 The proposals include a dedicated turning area for all vehicles to use, which would significantly improve the current situation for vehicles using the private access road. New road markings at the junction of the private access track and Main Street would also be installed to address comments by the Roads Authority regarding potential road safety issues; these measures are an accepted, proportionate and reasonable form of traffic calming for road safety in a location that has a permanent low speed limit of 20mph and with no recorded traffic accidents.
- 4.4 Given the site history of having five residential properties using the private access road and the existing junction arrangements without any issues, **the proposed development would therefore not result in a worse situation to that which existed when the original dwelling (Khansbar) was in use.**
- 4.5 Based on the evidence and arguments outlined in this statement that addresses and counter the recommendation for refusal by the Planning Authority, we submit to the Local Review Body that the proposed development is therefore compliant with the relevant planning policy of the statutory development plan comprising: National Planning Framework 4, Policy 14; adopted Scottish Borders Local Development Plan, Policy PMD2 and PMD5 and the approved Scottish Borders Development Plan Policy IS6.
- 4.6 Members of the Local Review Body are therefore respectfully requested to allow the appeal and grant planning permission for the proposed development of a new dwellinghouse adjacent to Carnlea, Main Street, Heiton.

APPENDIX - CORE DOCUMENTS

The following drawings, documents, and plans have been submitted to support the Notice of Review:

- Appeal Statement
- 23/01065/FUL:
 - Application Form
 - Transport Statement
 - Design & Access Statement
 - Planning Drawings
 - Roads Authority Consultation Response 07/08/2023
 - Community Council Consultation Response 12/08/2023
 - Further Representations (Neighbours) 27/08/2023
 - Report of Handling
 - Decision Notice
- Planning Committee Report 04/01984/OUT

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