

SCOTTISH BORDERS COUNCIL

PLANNING AND BUILDING STANDARDS COMMITTEE

4 NOVEMBER 2024

APPLICATION FOR PLANNING PERMISSION

ITEM:	REFERENCE NUMBER: 24/00030/FUL
OFFICER:	Mr Ranald Dods
WARD:	Tweeddale East
PROPOSAL:	Variation to condition 2 of planning permission 19/00182/PPP
SITE:	Site in grounds of Kingsmeadows House, Kingsmeadows Road, Peebles
APPLICANT:	Granton Homes Ltd
AGENT:	Pritchett Planning Consultancy

SITE DESCRIPTION

The application site lies immediately to the east of Kingsmeadows House which is listed category B and is within the Peebles conservation area. The building was developed into 12 flats under planning permission 14/01252/FUL and listed building consent 14/01253/LBCNN in June 2015. It is located on the south bank of the River Tweed, which is a special area of conservation (SAC) and site of special scientific interest (SSSI). The grounds of Kingsmeadows House are contained within the council's historic garden and designed landscape records.

PROPOSAL

The application has been submitted in terms of section 42 of the Town and Country Planning (Scotland) Act 1997, as amended (the Act) to amend a condition imposed on planning permission 19/00182/PPP for the development of residential apartments, granted on the 5th of March 2021.

The condition in question is condition 2. The applicant wishes to amend that through the deletion of one word. The condition states:

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.

Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.

The variation applied for would remove the word "except".

PLANNING HISTORY

15/00822/PPP – This application was for the erection of residential apartments. It was granted under delegated powers on the 30th of March 2016 after the conclusion of a legal agreement to secure developer contributions.

19/00182/PPP – The application was made to “renew” the above permission. A new permission was granted on the 5th of March 2021, again after the conclusion of a legal agreement to secure developer contributions.

22/00422/AMC – This application was for the approval of all matters specified in planning permission 19/00182/PPP and was for the erection of block of residential flats comprising 14 units. That application was refused.

24/00031/FUL – Section 42 application to vary condition 7 of planning permission 19/00182/PPP. This application is still under consideration.

24/00247/FUL – Section 42 to vary conditions 2 & 7 of planning permission 19/00182/PPP. This application is still under consideration.

In relation to the current application, the applicant submitted a revised application form. That form made it clear that the application was made under section 42 of the Act. The application was subsequently re-advertised and neighbours re-notified.

REPRESENTATION SUMMARY

79 material representations were received in relation to the initial submission and 16 to the revised submission.

The material planning grounds contained in the above representations can be summarised as follows:

- Contrary to the development plan,
- loss of trees / woodland,
- impact on wildlife,
- increased traffic,
- road safety,
- impact on conservation area,
- the permission has expired and is incapable of being implemented, and
- proposed variation is non-material.

APPLICANTS' SUPPORTING INFORMATION

The application has been supported by a covering letter to explain the variation applied for in relation to condition 2.

DEVELOPMENT PLAN POLICIES:

National Planning Framework 4

Policy 1 - Tackling the climate and nature crisis

Policy 2 - Climate mitigation and adaptation

Policy 3 - Biodiversity

Policy 4 - Natural places

Policy 6 - Forestry, woodland and trees
Policy 7 - Historic assets and places
Policy 13 - Sustainable transport
Policy 14 - Design, quality and place
Policy 15 - Local living and 20-minute neighbourhoods
Policy 16 - Quality homes
Policy 18 - Infrastructure first
Policy 22 - Flood risk and water management

Local Development Plan 2024

PMD1 - Sustainability
PMD2 - Quality standards
PMD5 - Infill developments
HD3 - Protection of residential amenity
EP1 - International nature conservation sites and protected species
EP2 - National nature conservation sites and protected species
EP3 - Local biodiversity and geodiversity
EP7 - Listed buildings
EP8 - Archaeology
EP9 - Conservation areas
EP10 - Designed gardens and landscapes
EP12 - Green networks
EP13 - Trees, woodlands and hedgerows
IS2 - Developer contributions
IS6 - Road adoption standards
IS7 - Parking provision and standards
IS8 - Flooding
IS9 - Waste water treatment standards and sustainable urban drainage

OTHER PLANNING CONSIDERATIONS:

Circular 4/98 Use of Conditions

Supplementary Planning Guidance

Biodiversity;
Development contributions;
Green space;
Local biodiversity action plan: Biodiversity in the Scottish Borders;
Local landscape designations;
Placemaking and design;
Privacy and sunlight guide;
Sustainable urban drainage systems;
Trees and development;
Waste management.

CONSULTATION RESPONSES:

Scottish Borders Council Consultees

Flood Risk Officer: No objection.

Roads Planning Service: No objection. Any consent issued with the amended condition 2 should also include all other conditions laid out in the Roads Planning

Service's response to the original application, namely conditions 5 and 9, as well as the recommended informatives.

Statutory Consultees

SEPA: No specific comments.

Scottish Water: No objection.

KEY PLANNING ISSUES:

- Whether there is justification to vary condition 2.
- Any other material changes since the original decision.

ASSESSMENT OF APPLICATION:

The application was made in terms of section 42 of the Act. That section deals with the determination of applications to develop land without compliance with conditions previously attached.

The principle of a residential development on the site has already been established through the grant, on the 5th of March 2021, of 19/00182/PPP, which was itself a "renewal" of the previous planning permission in principle (15/00822/PPP) which was granted on 30 March 2016. The application under consideration was validated on the 5th of January 2024. That is, before the expiry of the "parent permission" and whilst it was still implementable. It is therefore a competent application which the planning authority is bound to determine. It is accepted however, that the parent permission has now expired and cannot be implemented.

Under normal circumstances with section 42 applications, a planning authority can consider only the question of the conditions to be attached to any resulting permission. However, between the submission of the application and it being presented to Committee, there has been a material change in circumstances, namely a change in the statutory development plan (SDP). That is now comprised of National Planning Framework 4 (NPF4) and the Scottish Borders Local Development Plan 2024 (LDP). As a result, it is appropriate to consider the new SDP in the determination of this application. Members are at liberty to depart from the terms of the development plan if they consider there are material considerations to do so.

Those current SDP policies relevant to the proposed development are set out above. Whilst the SDP has changed, the terms and general tenor of the policies in the LDP element reflect broadly those of its previous iteration. Assessing the proposal against the LDP, there is no material consideration which would lead to a different conclusion than that previously reached. Assessing the proposal against the policies contained within NPF4, including amongst others those relating to the natural and historic environment, trees and biodiversity as with the LDP, there is no material consideration which would lead to a different conclusion than that previously reached.

Therefore, subject to conditions and a legal agreement, the development proposed in the parent permission would comply with current SDP policies and would result in a development in a location where, subject to suitable design, the character of the listed building and amenity of the conservation area would be preserved and where issues of flooding, trees, access and developer contributions could be addressed through the determination of an application for approval of matters specified in conditions. The application under consideration, however, is to delete a single word from condition 2.

The effects of the development would not be altered by this, and as such, it would not have any bearing upon the principle of the consented development.

For section 42 applications such as this, where it is considered that permission should be granted subject to different conditions, a new permission would need to be granted with all the conditions to which the development should be subject attached. If, however, it is considered that planning permission should be granted subject to the same conditions as had previously been imposed, the application should be refused.

The current application is made to amend condition 2 (submission of matters specified in conditions) and it is that alone which Members must consider. The condition states, with emphasis added:

*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.*

Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.

The variation applied for would remove the word “except”. The applicant has provided a suggested wording although that would contain a minor grammatical error with the placement of the word “only”. In order to correct that, after advising the applicant, the suggested wording has been amended to, again with emphasis added:

*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 take place only** in strict accordance with the details so approved.*

Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.

The deletion of the word “except” would avoid any perceived confusion. It would also be more precise, thereby complying with the terms of Circular 4/1998, “The Use of Conditions in Planning Permissions”.

CONDITIONS IMPOSED ON PREVIOUS PERMISSION

The previous permission had 14 conditions attached. Many of those were suspensive and covered matters relating to, amongst other things: the layout, siting, design and external appearance of the buildings; the means of access; car parking; landscaping of the site; archaeology; the minimum finished floor level; drainage; tree survey and protection and; ecology.

If Members are minded to grant the application, the result would be that a new planning permission in principle would have to be issued. Conditions which mirror those applied previously, albeit with condition 2 varied, should be applied on any new permission. In addition to those, a condition relating to the expiry of the permission must be imposed. In terms of section 59(2A) of the Act, that should be for 5 years or, if Members so wish, for a shorter or longer period.

Included in the conditions applied previously were those relating to tree surveys, arboricultural impact and method assessments. Also covered was the requirement for

a management plan for the site and the remainder of the parkland / woodland. Whilst Members are entirely at liberty to impose a similar condition requiring a management plan, it should be noted that there are two further applications (24/00031/FUL and 24/00247/FUL) which are still under consideration and in which the applicant has applied to vary that condition (Condition 7). Those applications will be considered separately and on their own merits if and when they come before committee. They do not preclude determination of this current application.

If, however, Members considered that planning permission should be granted subject to the same conditions as had previously been imposed, (without the suggested amendment to Condition 2) then the application should be refused.

LEGAL AGREEMENT

As the application is made to vary condition 2, if granted, the reference number of the permission issued would be the same, consequently, the existing section 75 legal agreement could still be relied upon. The current section 75 covers developer contributions and provides for indexation which would be taken into account when the relevant trigger points set out in the agreement for the collection of contributions are reached.

CONCLUSION

The variation proposed to condition 2 of planning permission 19/00182/PPP would avoid any perceived confusion and would be more precise, thereby complying with the terms of Circular 4/1998, "The Use of Conditions in Planning Permissions". Subject to compliance with the schedule of conditions, the development would accord with the relevant provisions of the statutory development plan. There are no material considerations that would justify a departure from these provisions.

RECOMMENDATION BY CHIEF PLANNING AND HOUSING OFFICER:

I recommend the application is granted subject to the following conditions and applicant informative:

- 1 The development hereby permitted shall be begun before the expiry of five years from the date of this permission.
Reason: To comply with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.
- 2 No development shall commence until the details of the layout, siting, design and external appearance of the building(s), the means of access thereto, car parking, bin storage and the landscaping of the site have been submitted to and approved in writing by the planning authority.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.
- 3 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 take place only in strict accordance with the details so approved.
Reason: To achieve a satisfactory form of development, and to comply with the requirements of section 59 of the Town and Country Planning (Scotland) Act 1997, as amended.

- 4 No development shall take place within the development site as outlined in red on the approved plan until the developer has secured a written scheme of investigation (WSI) detailing a programme of archaeological works. The WSI shall be formulated and implemented by a contracted archaeological organisation working to the standards of the Chartered Institute for Archaeologists (CIfA). The WSI shall be submitted no later than 1 month prior to the start of development works and approved by the planning authority before the commencement of any development. Thereafter the developer shall ensure that the programme of archaeological works is implemented fully and that all recording, recovery of archaeological resources within the development site, post-excavation assessment, reporting and dissemination of results are undertaken per the WSI.

Reason: The site is within an area where development may damage or destroy archaeological remains, and it is therefore desirable to afford a reasonable opportunity to record the history of the site.
- 5 No finished floor levels to be below 159.02m AOD.

Reason: The site is partially at risk from flooding.
- 6 The development hereby permitted shall not be commenced before fully detailed design proposals for foul and surface water drainage, including SUDs measures, have been submitted to and approved by the planning authority.

Reason: To ensure the site is adequately serviced.
- 7 The first application for matters specified as conditions application should be accompanied by: An updated and detailed tree survey in accordance with BS 5837:2012 clearly demonstrating the impacts of the proposed development on existing trees within the site. The tree survey must include an arboricultural impact assessment (AIA); an arboricultural method statement (AMS) which show how any development, including the upgrading and widening of the access from Kingsmeadows Road and parking areas would be carried out while minimising impact on retained trees; the easterly communal parking area to be located wholly out with the root protection areas of trees T818, T822 and T823.

Reason: To ensure that existing trees within the site are safeguarded and protected from and during the development, in the interest of the setting of the listed building and the character and appearance of the conservation area.
- 8 The first application for matters specified as conditions application should be supported by a management plan for the site and the remainder of the parkland/woodland, detailing maintenance, curtilage, access and boundary treatment proposals. That should include for an open plan area along the riverbank north of the development, free from individual gardens, fences, gates and other structures.

Reason: To maintain the character and open nature of the grounds within and surrounding the site and to protect the character and appearance of the conservation area.
- 9 The development submitted with the application for approval of matters specified as conditions to be based upon the location, scale and general design principles shown in the supporting plans and design statement submitted with this application.

Reason: To ensure a form and scale of development appropriate to the setting of the listed building and the character and appearance of the conservation area.

- 10 The development to be served throughout by roadways, footpaths and parking to adoptable standards. Included within the requirements are the following:
- Detailed route of the proposed access road, including detailed design of the junction with Kingsmeadows Road;
 - visibility splays of 2.4 by 43 metres to be provided in both directions onto Kingsmeadows Road at the new junction;
 - proposed access road to be 5.5 metres wide for the first 15 metres or other agreed distance. Thereafter the road may taper down to a minimum width of 3.7m and can be shared surface in nature - or 3.2m with a remote footpath/service strip of a minimum of 2m width;
 - new road to include satisfactory drainage measures and appropriate SUDS feature;
 - allowance to be made for street lighting and other utilities. The detailed layout of street lighting will be covered by Road Construction Consent which is required for the development;
 - parking provision to be 175% for communal parking - only 25% to be adopted;
 - swept path analysis to be provided to demonstrate that the turning area at the end of the proposed public road
- all details to be agreed in writing with the planning authority before the development is commenced and completed before the fifth residential unit is occupied.
- Reason: In the interest of road and pedestrian safety.
- 11 No development shall commence until a construction environmental management plan (CEMP) incorporating the latest good practice guidelines and statutory advice (as outlined in Ecology Baseline Report, ITP Energised, November 2019 and GPP5: Works and maintenance in or near water) to protect the River Tweed SAC/SSSI has been submitted to and approved in writing in writing by the planning authority. Any works shall thereafter be carried out strictly in accordance with the approved in writing scheme
- Reason: To protect the ecological interest in accordance with the statutory development plan.
- 12 No development shall commence until the following has been provided to the planning authority:
- copy of the relevant European Protected Species licence (or Bat Low Impact Licence confirmation, as appropriate) or;
 - a copy of a statement in writing from NatureScot (licensing authority) stating that such a licence is not necessary for the specified development.
- Reason: To protect the ecological interest in accordance with the statutory development plan.
- 13 No development shall commence until a species protection plan (SPP) for bats, otter, badger and breeding birds has been submitted to and approved in writing by the planning authority. The SPP shall incorporate provision for a pre-development supplementary survey and a mitigation plan. No development shall be undertaken except in accordance with the approved in writing SPP.
- Reason: To protect the ecological interest in accordance with the statutory development plan.
- 14 No development shall commence until a landscape and habitat management plan (LHMP) has been submitted for the written approval of the planning

authority. Thereafter, no development shall take place except in strict accordance with the approved LHMP.

Reason: To protect the ecological interest in accordance with the statutory development plan.

- 15 No development shall commence until a conservation lighting scheme for bats, in accordance with good current practice, has been submitted to and approved in writing by the planning authority. Thereafter, no development shall take place except in strict accordance with the approved plan.

Reason: To protect the ecological interest in accordance with the statutory development plan.

Informative

- 1 With regards to Condition 7 above, reference should be made to the "Tree Survey and Arboricultural Constraints" report prepared by Donald Rodger Associates Ltd dated October 2018. For the avoidance of doubt, this report is dated 11 Feb 2109 within planning application reference 19/00182/PPP.

DRAWING NUMBERS

Location Plan 329-002

Approved by

Name	Designation	Signature
John Hayward	Chief Planning and Housing Officer	

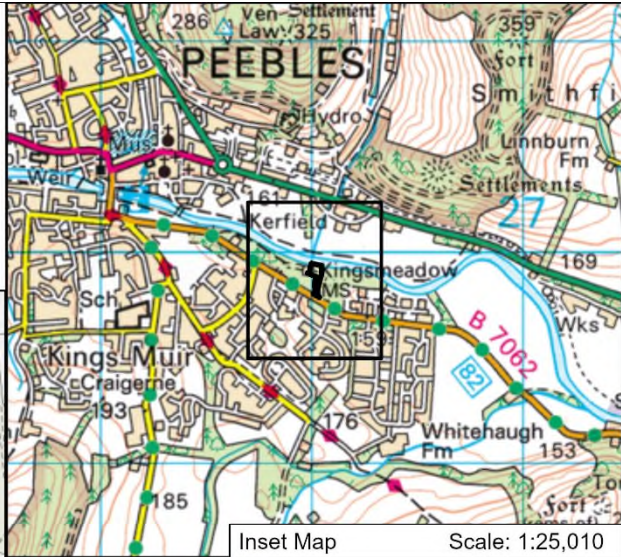
The original version of this report has been signed by the Chief Planning and Housing Officer and the signed copy has been retained by the Council.

Author(s)

Name	Designation
Ranald Dods	Planning Officer



24/00030/FUL
Kingsmeadows House,
Peebles



Scale: 1:3,010