

Dr Catriona McKay and Michael Marshall  
The Lodge House  
Kingsmeadows  
Peebles  
EH45 9HR

Planning and Regulatory Services  
Scottish Borders Council  
Council Headquarters  
Newton St Boswells  
Melrose  
TD6 0SA

Wednesday 17 January 2024

Dear Sir/Madam

## **Objection to planning applications 24/00030/FUL and 24/00031/FUL Site in grounds of Kingsmeadows House**

We write in relation to the above referenced planning applications. Please register our objection, and this letter, against both applications.

This proposed development has an extensive planning history. Planning permission in principle 15/00822/PPP was granted on the 30/3/2016. Application 19/00182/PPP, submitted in 2019 and granted on the 5/3/2021, was itself a renewal of this previous 2016 permission. To date, the applicant has had a period of 8 years to satisfy the various matters specified by conditions imposed by these permissions and has, thus far, failed to do so.

On 17/3/2022, the applicant made an application to satisfy the matters specified under the planning permission in principle 19/00182/PPP. This was refused on 19/5/2022 for failing to satisfy conditions 1, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Planning Permission in Principle.

Under the decision notice granted for 19/00182/PPP, the applicant has until the 5/3/2024 to submit a further application for approval of the matters specified in the conditions set out in the decision notice.

In our view, applications 24/00030/FUL and 24/00031/FUL are an attempt to misuse S.42 of the Town and Country Planning (Scotland) Act 1997 (TCPA). As we are sure you're aware, under S.42(2)(a) of the TCPA, if the Local Authority decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted ... they shall grant planning permission accordingly. If these applications are successful then, it will result in the applicant being granted a fresh planning permission.

As successful applications would result in fresh planning permissions, under S.59(2A) of the TCPA, the grant of these applications would therefore, by default, allow the applicant a further 5 years to comply with the relevant conditions. This, more so than the substantive changes sought by the applications (particularly with application 24/00030/FUL) seems to be the applicant's objective. This would mean that the applicant could benefit from an overall time period of 13 years (from 2016–2029) to satisfy the matters specified in the conditions.

Given what strikes us as an obvious attempt to misuse S.42 and the wider planning system, we would therefore like to state our objections to each application for the following reasons:

In respect of application 24/00030/FUL:

- 1) It seems clear to us that the applicant submitting two separate applications in such a manner is an obvious attempt to manipulate the planning system by the unnecessary use of S.42 applications in order to benefit from a fresh planning permission being granted. This is not the intended purpose of S.42 of the TCPA.

- 2) Separately, the inclusion of the word 'except' within the condition does not result in any confusion to the condition as a whole, and the condition is therefore sufficiently precise. The wording of condition 2 as it stands, does not therefore fail the tests as set out in Circular 4/1998 and application 24/00030/FUL should be rejected on this basis.
- 3) Without prejudice to the above argument, we submit that if the relevant Planning Officer deems that the condition 2 wording should be altered, that this could be done by the Council confirming the change as a non-material application under S.64 of the TCPA.
- 4) Should the relevant Planning Officer choose not to treat the application to vary conditions 2 and 7 as non-material variations, we would urge that they use the discretion available to them under S.59(2A)(b) of the TCPA. This allows the Planning Authority to determine a different timeline to the 5-year default period that the applicant would otherwise be granted on receipt of a new planning permission. We would suggest, given the extensive history of the planning site as outlined above, that the applicant has had more than sufficient time to comply with and discharge the relevant conditions. Any fresh planning permission arising from a S.42 application should therefore include, under S.59(2A)(b) of the TCPA, a condition specifying a period ending 5/3/2024 (being the deadline for applying under existing permission 19/00182/PPP) for satisfaction of any conditions. In this way, the applicant would achieve the change they have requested. If the applicants aim had been to secure additional time to achieve a further period for making submission for satisfaction of conditions, then they could and should have been upfront about this and made the application on that basis.

In respect of application 24/00031/FUL:

- 1) Our position is that the condition as currently set out is a vital protection of the woodland against the proposed development and is therefore an entirely reasonable condition. This condition does not therefore fail the tests of Circular 4/1998 and should remain as it currently reads. If the relevant planning officer is in agreement with this, then under S.42(2)(b) of the TCPA, the application must be refused.

Furthermore, any watering down to this condition could result in the loss of trees over and above what was accepted in the planning permission in principle. As stated within the decision notice issued under 22/00422/AMC, this would be to the detriment of the character and appearance of the conservation area and the locally designated landscape.

- 2) Furthermore, submission numbered 1) in respect of 24/00030/FUL applies equally in respect of this application.
- 3) Lastly, submission numbered 4) in respect of 24/00030/FUL equally applies to this application.

We therefore submit that these applications should either be rejected on their merits or, in the case of application 24/00030/FUL, treated as non-material variation applications. If the relevant Planning Officer is of the mind to grant the applications, we urge that given the history of the application site, that any new permission should not benefit from a further extension of time period and that 5/3/2024 should be maintained as the deadline for complying with the conditions in any new permission.

Without prejudice on the above points, if any new permission is granted, then we would also like to remind the Planning Officer that there is a requirement that a new S.75 agreement will require to be entered into to capture developer contributions that fall due under any fresh permission in principle.

Yours faithfully,



Catrina McKay, PhD and Michael Marshall