

Head of Planning
Scottish Borders Council
Council Headquarters
Newtown St Boswells
TD6 0SA

27 February 2024

Dear Sir

**Proposed Variation to Condition 2 of Consent 19/00182/PPP,
Submitted Under Section 42 of the Town and Country Planning
(Scotland) Act 1997
Site in Grounds of Kingsmeadows House, Peebles**

This statement is in support of a planning application to vary condition 2 of planning permission 19/00182/PPP relating to the erection of residential apartments as a renewal of consent 15/00822/PPP. The planning application is made under Section 42 of the Town and Country Planning (Scotland) Act 1997. The Planning Permission in Principle is extant and requires conditions to be satisfied prior to development. This application is being lodged by the same owner and applicant of the land in question, Granton Homes. A copy of the consent notice is lodged along with the location plan and required fee.

Condition 2 reads as follows:

2 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 insertion of the word 'except' means that the condition is not precise and open to misinterpretation. It is assumed that the condition should read as follows:

2 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 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 omission of the word 'except' makes it clear and precise that development should not commence until all matters specified have been submitted and approved and that it is only those details that have been approved that shall be developed. The use of the word 'except' suggests that it is some other unspecified details that would be developed. The wording of the condition therefore leads to confusion and is imprecise and as such fails the tests of circular 4/1998. The condition requires adjustment through this application under Section 42 to make it precise.

In Section 42 the legislation states:

(2) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The section therefore makes it clear that such an application shall only consider the conditions of the consent and not revisit the original planning permission. Any representations relating to the principle of the development would not therefore be relevant or material.

We look forward to receiving confirmation that this application under Section 42 is being processed.

