



Community Council of the Royal Burgh of Peebles & District

DC Consultees
Planning and Regulatory Services
Council Headquarters
Newtown St. Boswells
Melrose
TD6 0SA

19 Dec 2024

Dear Planning and Regulatory Services

24/00031/FUL and 24/00247/FUL Objection
Applications under Section 42 to vary planning conditions 2 and 7 of planning permission 19/00182/PPP (erection of residential apartments)

With reference to the Planning and Building Standards Committee's decision of 9 Dec 2024 to refuse related application 24/00030/FUL, we note that the Committee reconsidered the principle of this development in light of the materially changed Statutory Development Plan – as required under Section 37 (2) of the Town and Country Planning (Scotland) Act 1997.

We note Committee's right to make such a determination has been upheld by the courts:

“In a case where the development has not yet commenced and the effect of a refusal would mean that the original permission cannot be implemented, this may involve a reconsideration of the principle of development in light of any material change in the development plan policies. That is so even if section 42(2) stipulates that it is only the question of the condition, from which compliance is sought to be avoided, that is to be considered.” *City of Edinburgh Council v Scottish Ministers and (first) Granton Developments Ltd and (second) Lester Gibbons [2020] CSIH 13.*

The SBC Planning and Building Standards Committee's decision establishes, as a matter of fact, that the proposed development is contrary to policies within both the Local Development Plan (LDP) and the National Planning Framework (NPF4) in respect of trees, green spaces, landscape, ecology, historical value and the woodland resource.

The Committee's refusal reason 1 establishes that “the need for development does not outweigh the need to protect or retain the existing mature trees and green space”. We know (from the recording of the Committee's debate and members of the public present) that the Committee carefully weighed other material factors, including the affordable housing emergency, before reaching their conclusion. As a result, this decision establishes, as a matter of fact, that the protection of this greenspace is the overriding consideration per policy EP11 in the LDP.

The Committee's refusal reason 2 makes a further finding of fact that, in relation to policy EP13, “the benefits of development do not outweigh the loss of landscape, or the ecological and historical value of the woodland resource.” Now that the Committee has

determined that the serious damage to the woodland resource envisaged by this proposal outweighs any public benefit, officers' duty under EP13 for the remaining applications is clear:

“The Council will refuse development that would cause the loss of or serious damage to the woodland resource unless the public benefits of the development clearly outweigh the loss of landscape, ecological, recreational, historical or shelter value.”

The Committee's refusal reason 3 further finds that the proposal would result in the loss of woodland and cause ecological impact on trees, and that the proposal is contrary to Policy 6 of NPF4, which includes:

“b) Development proposals will not be supported where they will result in: ...
ii) Adverse impacts on native woodlands, hedgerows and individual trees of high biodiversity value”

Each of these findings of fact has direct relevance to applications 24/00031/FUL and 24/00247/FUL, both of which request removal of protection afforded the wider woodland.

The Principle of Development that had been established under the 2011 Consolidated Local Plan (two iterations ago of the Statutory Plan) is now a distant memory. Having evaluated the principle of this development against the current Statutory Development Plan and refused application 24/00030/FUL, the Planning and Building Standards Committee has extinguished the principle of this development on this site.

Recent planning history includes another significant refusal, in 2022 of 22/00422/AMC under the 2016 Local Development Plan, on grounds including loss of trees and ecology.

We remind officers of the need for consistency of decision making underlined by decisions such as *Ogilvie Homes Limited v The Scottish Ministers* ([2021] ScotCS CSIH_8).

We urge planners to refuse these two strongly opposed applications on their merits, and for consistency with both the Planning and Building Standards Committee's findings of fact and the relevant planning history.

Yours faithfully
Peebles & District Community Council

Michael Marshall, PhD
Planning Convener