

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

1 March 2024

Dear Sir

**Proposed Variation to Conditions 2 and 7 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 conditions 2 and 7 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 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 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 using the above proposed wording.

Condition 7 reads as follows:

7 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.

The condition fails the tests of circular 4/1998 as the condition is not relevant to the development proposed, is not necessary to make the development acceptable and is not reasonable in all other respects. It is proposed that the wording be adjusted to:

7 The first application for matters specified as conditions application should be supported by a management plan for the woodland within application site.

Reason: To protect the character and appearance of the remainder of the woodland within the site.

Reasoning

The wider management of the site under the applicant's control is not an issue that arises from the granting of planning permission for this development which has been considered to be acceptable. Condition 6 refers to a tree survey showing impact on trees within the application site and requiring a method statement which shows how any development would be carried out whilst minimising impact on retained trees. The reason given for condition 6 is reasonable in that it seeks to ensure that existing trees within the site are safeguarded and protected. Condition 7 goes further than is necessary to address the impact of the proposed development and is not therefore necessary. It also relates to an unspecified area.

As the trees in the wider site lie within a conservation area there is a general protection on these trees through conservation area legislation. It is not

necessary to seek to further protect existing trees out with the application site boundary that are not affected by the development consented.

The wording of the condition fails the test of being relevant to the development proposed. The development refers to the erection of residential apartments on a specific site where the proposed site plan has been approved. It is therefore clear where development has been consented. Condition 8 also refers to the general design principles shown in supporting plans and the design statement which also makes it clear where development has been consented. Any need for management of trees on the wider area (an area undefined in the condition) is not required because of this development.

In addition to the unnecessary and unrelated management plan for the unspecified area of parkland/woodland the condition also refers to restrictions on garden ground being formed along the riverbank north of the development. Such a restriction is unnecessary as garden ground would form part of the apartment's curtilage and as such change of use would be required to form garden ground from the open land that currently exists along the river bank out with the development site. This part of the condition is unnecessary as planning permission would be required for this form of use in this area and this is not within the consented area.

The condition requires adjustment through this application under Section 42 to ensure that the planning permission is controlled in an acceptable manner.

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. Legislation allows for a single application to vary more than one condition.

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

Yours faithfully



Phil Pritchett