

2. Condition 7: vital protection for conservation area woodland/SAC

- 2.1. The proposed construction site is situated within the much larger woodland, parkland, gardens and designed landscape of Kingsmeadows House, prominently visible on the South bank of the River Tweed. Those wider grounds form part of the Peebles conservation area setting which the proposal is designed to integrate with. Condition 7 was imposed by SBC to ensure that this building integrates into its setting:

2.1.1. *“7 ... 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.” [APRV19]*

- 2.2. The applicant does not provide expert reports or evidence in support of their current application. Instead, the applicant's agent attempts to assert that the proposal would fail the tests of circular 4/1998. But it is quite clear from the permission that the “remainder of the parkland/woodland” are within the grounds of Kingsmeadows House under the applicant's control by virtue of the location in the permission:

2.2.1. *“at: Site in Grounds of Kingsmeadows House Kingsmeadows Road Peebles Scottish Borders” [APRV19]*

- 2.3. We draw the LRB's attention to Annex A paragraph 3 of Circular 4/1998:

2.3.1. ***“Powers for conditions on land outside application site and temporary permissions***
3. Section 41(1) amplifies the general power in section 37(1) in two ways. It makes clear that the planning authority may impose conditions regulating the development or use of land under the control of the applicant even if it is outside the site which is the subject of the application.” [Circ4]

- 2.4. The relevance of the condition to the proposal is explained by DWA Landscape Architects in the applicant's own Estate Management Plan dated March 2022, submitted in support of 22/00422/AMC, explaining that a management plan is necessary to realise the benefits behind the proposal's architectural and landscape vision:

2.4.1. *“1.1 ... The estate consists of mature woodlands, parkland trees and areas of grassland.*

1.2 Mature woodland surround the estate. The woodland is therefore considered an integral part of the landscape strategy and greenspace infrastructure of the new residential area. The woodland provides a significant degree of screening to the new development and helps to integrate it into the landscape. This mature setting for the new development offers an opportunity for recreation and for habitat creation, and ties in with the other areas of proposed greenspace and parkland throughout the site. The objectives of the detailed landscape design are to create a green living environment that promotes health living and bio-diversity.

1.3 To ensure that these benefits are realised and protected in the future as the woodland and other features becomes part of a larger managed landscape, this Estate Management Plan seeks to set out the required actions, both initially and going forward.” [EMP1]

- 2.5. We agree with DWA Landscape Architects of the necessity of ensuring that this proposal sits coherently within the garden and designed landscape of its conservation area setting.
- 2.6. The provision of a management plan also serves the legitimate purpose of protecting the character and appearance of the conservation area from the cumulative impact of piecemeal planning applications. That is, if this proposal is justified by reference to its setting within the wider woodland, then that woodland setting must be protected from further development – such as that proposed by the applicant with 20/00275/FUL. The diagram below (from developer's public consultation event 29 Apr 2021 [\[PAN21\]](#)) shows the relationship between 19/00182/PPP and 20/00275/FUL



February 2019 - March 2020 (Zone Architects Design)

Apartment Scheme (19/00182/PPP) + Dwellinghouse Scheme (20/00275/FUL)

- 2.7. One of the quintessential features this site contributes to the landscape are the many, centuries-old trees on the Woodland Trust Ancient Tree Inventory. The Wildlife Information Centre (TWIC) contributed the following map showing the locations of 37 notable and 3 veteran trees within the site boundary plus appropriate buffer – potentially at risk from this proposal.

- 2.10.2. **Conditions 10–14 were designed to meet requirements of LDP 2016** policy (reasoning in the decision notice [\[APRV19\]](#) begins “To protect the ecological interest in accordance with LDP policies”). The SDP has materially changed with the introduction of NPF4. Mitigation of ecological risk is no longer acceptable under NPF4. Policy 1 requires significant weight be given to the global climate and nature crises, and policy 3 requires development proposals to contribute to the enhancement of biodiversity.
- 2.10.3. **The presence of European Protected Species** [\[NBN1\]](#) and the **requirements of the Habitats Regulations** require that the impact on EPS is fully understood prior to determination (see section 5 below).
- 2.10.4. **It is inappropriate to delegate biodiversity enhancement to conditions**, as DPEA reporters have previously found.
- 2.10.5. *“There are no proposals aimed at addressing NPF4 policy 3 (Biodiversity): specifically the requirement for all developments to restore and enhance biodiversity ... in addition to any proposed mitigation measures. Without more detail I cannot be confident that simply applying a condition that seeks biodiversity enhancement would meet the “demonstrably better” expectation set by policy 3.”* [\[DPEA1, para 33\]](#)

2.11. It is not possible to mitigate ecology and biodiversity risks of this magnitude via condition and in the absence of HRA. Permission must therefore be refused.

3. Reconsidering the principle of this development

- 3.1. The remainder of this submission looks at the full implications of this request.
- 3.2. Summarising Annex H of Planning Circular 3/2022 [\[Circ3\]](#), if this review were upheld, the effect of granting permission 24/00031/FUL would not be to change condition 7 of 19/00182/PPP. That permission in principle expired on 4 Mar 2024 and cannot be implemented (regardless of the outcome of this review). Grant of 24/00031/FUL would instead result in new permission in principle, for the same development consented by 19/00182/PPP, by default for 5 years. The LRB would need to ensure that all conditions (not just condition 7) are appropriately adjusted for the current SDP, which has materially changed since 19/00182/PPP. A new section 75 agreement would need to be secured.
- 3.3. In these circumstances, where the referenced permission 19/00182/PPP has expired without the development having begun, it is appropriate to reconsider the principle of the development:
- 3.3.1. *“[37] 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.”* [\[Prec1\]](#)
- 3.4. Detailed arguments are contained in the legal advice from Harper Macleod [\[HM1\]](#), (particularly the section “Considering the principle of the development”). Consideration

of this advice by SBC's chief legal officer led to the deferral of 24/00030/FUL to the 9 Dec 2024 planning committee, the officer's report for which acknowledged:

- 3.4.1. *“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, ... 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.”* [\[RPT24\]](#)