

From: Ben Christman
Sent: 03 November 2025 12:00
To: Dods, Ranald <...@scotborders.gov.uk>
Subject: RE: [OFFICIAL] Proposed development at Kingsmeadows House, Peebles - appropriate assessment duty (185.0625)

Dear Ranald,

Thank you for your response.

You did not confirm whether any appropriate assessments have been carried out with respect to the proposed development. I assume no appropriate assessment has been carried out.

Dr Marshall has asked that we request the Council to reconsider its position on the need for an appropriate assessment.

There are two reasons why an appropriate assessment is required.

First, NatureScot appears to have misunderstood the nature and implications of 24/00031/FUL and 24/00247/FUL. NatureScot's advice should be interpreted accordingly.

Second, advice received from the Council's ecology officer indicates that 24/00031/FUL and 24/00247/FUL are likely to have a significant effect on the River Tweed SAC.

1. NatureScot's advice

24/00031/FUL and 24/00247/FUL are both applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997.

Granting a S42 application creates an independent permission to carry out the same development as previously permitted and does not affect the original planning permission. This is explained in the [Scottish Government's Planning Circular 3/2022](#) (Annex H, paragraph 2).

NatureScot's 16 July 2025 advice to the Council appears to be based on the incorrect assumption that 24/00031/FUL and 24/00247/FUL are applications to vary planning conditions in 19/00182/PPP. Both of NatureScot's emails to the Council on those applications begin "Thank you for consulting NatureScot on this proposed variation to a planning condition applied to application 19/00182/PPP".

S42 is titled "Determination of applications to develop land without compliance with conditions previously attached". A S42 application is not an application to vary a prior consent.

The variation of planning permissions is dealt with under a separate provision in the 1997 Act (Section 64).

When it advised the Council, NatureScot does not appear to have understood the nature and implications of 24/00031/FUL and 24/00247/FUL. NatureScot's advice should therefore be interpreted with caution.

The original planning application is 19/00182/PPP. That permission cannot be implemented for the reasons set out at page two of Sandy Fowler's 26 March 2024 letter to the Council (see attached).

The Council's duty under Regulation 48(1) of the Habitats Regulations requires it to consider the implications of giving consent for the River Tweed SAC.

The proposed development cannot be built without a new consent. If the Council was to grant consent for 24/00031/FUL or 24/00247/FUL, that decision would provide a new consent for the proposed development.

In order to discharge its Regulation 48(1) duty, the Council must consider the overall effect of granting a new planning permission for the River Tweed SAC.

NatureScot's advice is clear that construction of the residential development is likely to have a significant effect on the River Tweed SAC. An appropriate assessment is therefore necessary.

2. Ecology officer advice

Even if the Council disputes the argument made above, an appropriate assessment remains necessary for 24/00031/FUL and 24/00247/FUL.

The Council received a consultation response from its ecology officer Raffaela Diesel dated 17 July 2025 (see attached). Your response did not mention this.

Ms Diesel's response explains that the proposed removal of the requirement for an open plan area from condition 7 would have the following consequences:

- It "would go against the no-development buffer required to protect the river Tweed SAC".
- It would make the implementation of the requirement of 19/00182/PPP condition 10 to protect the River Tweed SAC "a lot more difficult".
- It would "be in direct contradiction to condition 13 which requires a Landscape and Habitat Management Plan".
- If the open plan strip of land which is currently required by condition 7 is turned into private gardens, she noted that "I'm not sure how an appropriate level of habitat management can be achieved. I can't comment on the landscape impacts private gardens would have, I expect it would be negative".
- She concluded that, "if there were gardens along the river, divided by

fences, walls etc, it would likely impact otters and possibly also water quality, depending on the details. Thinking about it now, with regards to fences, any application for such fences would, in my opinion, likely fail and HRA/Appropriate Assessment because of potential impacts on otters.”

Ms Diesel’s response indicates that 24/00031/FUL and 24/00247/FUL are likely to have a significant effect on the River Tweed SAC.

There is caselaw to the effect that if it cannot be excluded on the basis of objective information that a project will have a significant effect on a European site (such as the River Tweed SAC), that project must be subject to an appropriate assessment (*Waddenzee* [2004] C-127/02).

Having received this response from its ecology officer, the Council is unable to exclude that there will be a significant effect on the SAC. An appropriate assessment should be carried out for 24/00031/FUL and 24/00247/FUL.

3. Appropriate assessment duty

Our view is that if the Council determines 24/00031/FUL and 24/00247/FUL without an appropriate assessment, there would be grounds for a judicial review arising from a breach of the Regulation 48(1) duty.

We would be grateful if you could confirm that the Council will reconsider its position on this matter.

Kind regards,

Ben Christman

In-house solicitor

Mobile: ...

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From: Dods, Ranald <...@scotborders.gov.uk>
Sent: 17 October 2025 08:24
To: Ben Christman <...@ercs.scot>
Subject: [OFFICIAL] Proposed development at Kingsmeadows House, Peebles - appropriate assessment duty (185.0625)

Dear Dr Christman,

Thank you for your emails. I apologise on behalf of the council for the delay in responding.

The Screening Opinion to which you refer related to a proposed development

of 14 flats and 5 houses. No application was submitted for that proposal. The HRA referred to in the Screening Opinion 21/01563/SCR was not, therefore, undertaken. It follows that an appropriate assessment was not carried out.

In terms of 24/00031/FUL and 24/00247/FUL, the council having consulted the relevant bodies, is entitled to determine the applications based on the responses received. In these cases, the council notes NatureScot's consultation response and the advice contained therein that an HRA is not required for either application. The council is therefore minded to determine the applications without an appropriate assessment being carried out.

Again, apologies for the length of time it has taken to provide a response.

Yours sincerely,

Ranald Dods

From: Ben Christman <...@ercs.scot>
Sent: 14 August 2025 16:57
To: Dods, Ranald <...@scotborders.gov.uk>
Cc: Planning & Regulatory Services <prs@scotborders.gov.uk>
Subject: RE: Proposed development at Kingsmeadows House, Peebles - appropriate assessment duty (185.0625)

CAUTION: External Email

Dear Mr Dods,

I refer to my 9 July e-mail below.

I don't appear to have received a response from you.

I would be grateful if you could indicate when you intend to respond.

Kind regards,

Ben Christman

In-house solicitor

Mobile: ...

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