



Tree Consultancy Group

Arboriculture - Urban Forestry - Planning

**OBSERVATIONS AND COMMENTS
ON
PLANNING APPLICATION
24/00031/FUL
SUBMITTED TO SCOTTISH BORDERS COUNCIL
BY GRANTON HOMES LTD
FOR PROPOSED DEVELOPMENT
AT
KINGSMEADOWS HOUSE
PEEBLES**

**Prepared on Behalf of
Peebles and District Community Council**

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1 INTRODUCTION

Background and Experience

- 1.1 My name is Kenneth Harvey. I am a Chartered Arboriculturist and formerly a Registered Consultant of The Institute of Chartered Foresters. I have been fully engaged in forestry and arboriculture for the past 45 years. Originally starting in forestry with The Forestry Commission in South Scotland and subsequently as a Forest Officer for South Kintyre, I moved into arboriculture in 1988 working as an arborist with Hampshire County Council. I was then an Arboricultural Officer with The London Borough of Wandsworth and from there took up the post of Tree and Landscape Officer in the Development Control section of the Planning Department at Lewes District Council in East Sussex. Since leaving Local Authority employment in 1996 I have been a self-employed arboricultural consultant, working primarily in development and safety/risk management. In that capacity I have carried out well over two thousand pre-development (BS5837) tree surveys for sites ranging from single-storey kitchen extensions to large scale, multi-use, multi-occupancy developments and a similar number of tree safety surveys for a wide range of private and commercial clients including MoD, Metropolitan Police, NHS, Sainsbury's, Tesco, Q8 Petroleum, WWF, British Legion, Pfizer, Capability Scotland, Scottish Enterprise and numerous local authorities and Government Departments in England and Scotland. In addition, I have extensive experience of giving expert witness evidence at planning appeals and Public Inquiries.
- 1.2 More recently, I carried out the review of Tree Preservation Orders for Scottish Borders Council (Contract Ref SBC/CPS/1235) between 2016 and 2020, and carried out the tree safety survey and risk assessment contracts for SBC between 2016 and 2019 (Ref: SBC/CPS/1256) and again from 2020 to 2024 (Ref: SBC/CPS/1932). I have also regularly carried out numerous ad hoc surveys and consultancy work for the Council to supplement their in-house staff.

Instructions

- 1.3 I have been instructed by Peebles and District Community Council to review and comment on the arboricultural aspects of the planning application 24/00031/FUL submitted by Granton Homes Ltd. for the Kingsmeadows House site, now being appealed. I understand that this is a renewal of 19/00182/999 which was itself a renewal of 15/00822/PPP.

2 OBSERVATIONS

- 2.1 In 2015, in support of application 15/00822/PPP Granton submitted a Tree Survey (Arboricultural Assessment) in accordance with BS5837: 2012 "*Trees in relation to design, demolition and construction - Recommendations*" prepared by Donald Rodger Associates Ltd in August 2015. This also included an Arboricultural Impact Assessment (AIA) at Section 4, describing the likely implications on the trees of the proposals under consideration. The Tree Survey appears to be an honest and accurate assessment of the tree cover as seen at the time of the surveys and seems to be to Mr Rodgers' usual high standard. It's very good, and I have no further comment to make on that part of the document. However, I am not so enamoured with the included AIA.

- 2.2 The AIA part of the report is very brief, and is presented in two parts. The first part titled "Proposed Development Site" simply states that all trees within the proposed development area, described as mainly comprising "*self-seeded growth of relatively low retention value*" would be removed but that the mature trees to the east would be retained and protected. That's all. No list of the trees which would actually be removed, their age, species, or, most importantly, their retention/value categories according to BS5837 (i.e. 'A', 'B', 'C' or 'U') is provided, and he gives no detail whatsoever of exactly how the "*mature trees to the east*", are to be protected, only asserting that they will be.
- 2.3 So, we're told the development will only mean losing some low value, self-sown trees and important trees nearby will be protected. However, referring to the Tree Survey schedule included in the report perhaps explains the reticence. The proposed development itself would require the direct removal of 34 trees (Nos. 3102 to 3135). These are mostly yews, Wild cherry and birches. Cross-reference to the tree survey schedule shows they are in fact 28 x 'B' category (Moderate), 5 x 'C' category (Low) and 1 x 'U' category (Fell) trees. The "*mature trees to the east*," which would somehow be protected, include 6 x 'A' category beeches, 1 x 'A' category lime, and 1 x 'B' category Douglas fir. While these may not be lost immediately, I believe they would almost certainly end up being lost as collateral damage later on as a result of root damage sustained during development.
- 2.4 The second part of the AIA is titled "Access Route" and outlines the implications of the proposed access from Kingsmeadows Road. The existing, disused track is described as being heavily overgrown with leaf litter but "*the underlying surface is of tarmac which appears to be in good condition*". It goes on to say "*In arboricultural terms it is desirable to utilise the existing roadway and footpath, as this will have minimal impact* (my emphasis). *The trees have historically adapted to the presence of these structures throughout their lives. The existing surface could be utilised* (my emphasis) *and the roadway locally widened to provide passing spaces where there are obvious gaps between the trees. Only two large, mature lime trees (3157 and 3158) would need to be removed to form the bell-mouth junction and allow for sightlines*".
- 2.5 So we're led to believe the existing road is in good condition, that the trees have grown used to it, and that it can be used as it is to serve the development. It may have to be widened where there are gaps between the trees but otherwise it's in quite adequate structural condition. The sole negative issue foreseen is that it will "*only*" mean losing two mature limes to form the bell-mouth junction. We have to refer to the survey schedule to find that these two trees, which stand right next to Kingsmeadows Road, are actually large, mature, 'A' category trees of 27m and 25m height respectively with more than 40 years of safe useful life expectancies ahead of them. One wonders how much more significant can trees get?
- 2.6 All in all the AIA is a minor masterpiece of client-friendly, disingenuous writing. It claims the whole proposed development can all be achieved with minimal effect on the existing tree cover but, unsurprisingly, no back-up detail is given to support those assertions.
- 2.7 The Council's Landscape Architect, Siobhan McDermott, was asked to comment on the arboricultural aspects of the proposals. In her consultation response of 10th September 2015 to

Craig Miller regarding 15/00822/PPP she said: *"The access road southward from the site of the proposed apartments to the B7062 is supposedly located along the line of a pre-existing path. While this may be the case, it is unlikely that an access road to a standard to satisfy the Council's roads section will be achievable without damage to adjacent trees."* I fully agree with that assessment. She goes on to say: *"Again no information on existing trees or those that will need to be felled has been submitted and no effort has been made to avoid encroaching on the Root Protection Areas (RPAs) of existing trees by, for example, curving the road around the trees into the open space to the west"*. Again, I fully concur with that assessment - it's clear and unambiguous.

- 2.8 Granton's subsequent application 19/00182/PPP (a renewal of 15/00822/PPP) included another Tree Survey report prepared by Donald Rodger Associates, dated October 2018. This report, according to the introduction, updated and superseded previous surveys but for some strange reason omits all the trees in the vicinity of the proposed development it was submitted to support. As it includes all the trees in the eastern half of the Kingsmeadows House site unrelated to, and well away from, the proposed development under consideration, it appears that this updated version may not have been intended to be a part of the 19/00182/PPP application at all. However, as it is included in the list of documents given on the Council's Public access portal for that application, we have to assume it was submitted by the applicants as a supporting document even if that was done by mistake. Just to add to the confusion, it also re-numbers some trees included in the earlier survey where the two surveys overlap, so some trees now have two tags nailed to their trunks and appear in different reports under different numbers (but at least the descriptions and categories remain consistent). This updated report did not include an AIA (further reinforcing the probability that it was submitted in error) nor was a separate AIA submitted in support of the application. As the proposed development was essentially the same as in application 15/00822/PPP with regard to trees, it is therefore assumed that the AIA submitted as part of the 2015 survey also applies to the 2019 application.
- 2.9 In her subsequent consultation response of 5th June 2020 to Ranald Dodds regarding application 19/00182/PPP Ms McDermott said: *"I would like to see the AIA section of the report reinstated as this assesses the impact of the development on the trees, including showing the trees that will require to be removed as a result of the development as well as location of protective fencing to be installed. I would also want to see an Arboricultural Method Statement (AMS) which would show how any development, including the upgrading and widening of the access from Kingsmeadows Road and parking areas would be carried out while minimising impact on retained trees"*. She went on to say: *"The easterly communal parking area has been amended from what was consented and appears to have a much greater impact on the immediately adjacent trees - T818, T822 and T823, all of which are category A beech trees. Consideration should be given to moving these spaces and the access to them wholly outwith the RPAs – this could be achieved by moving the parking slightly further to the west, into the lawn area and by moving the 4 spaces on the RHS (east side of track) to the north of and same side as the other parking spaces"*.
- 2.10 The requested AIA and supporting information regarding the access does not appear to have ever been forthcoming, and the changes to the car parking layouts were not made.

3 COMMENTS

- 3.1 The applicants have not produced any further specialist arboricultural information in support of the application since Donald Rodger Associates' reports noted above. With regard to the proposed access road, I note that no Arboricultural Method Statement (as requested by Ms McDermott) or relevant engineering specifications appear to have been submitted. No trial pits appear to have been dug to see how deep the tarmac is and what substrate there is, so it seems that no effort has actually been made to back up the assertion that the existing surface could be utilised. If it was indeed feasible, it shouldn't have taken much to provide this information and one would have expected the applicants to have gladly provided such detail. The mere fact that it still has not been submitted suggests that they may have been unable to find a suitably qualified and credible engineering consultant willing to prepare the necessary documents.
- 3.2 The existing access probably has never carried a vehicle heavier than a Rolls-Royce, and even that many decades ago. A fully laden 8 x 4 tipper, as is typical of construction site traffic, weighs around 32 tonnes, and there would be multiple such movements every day throughout the whole development phase, which could take a year. The existing roadway is simply incapable of supporting such a weight and use, nor could it be 'upgraded' to do so safely. The existing road surface would be completely and utterly destroyed after only a few passes and the compaction that would result would cause extensive and irreparable damage to the roots of adjacent trees.
- 3.3 In order to accommodate development traffic and subsequently serve the proposed multi-occupancy development, the access would have to be constructed to fully engineered, adoptable highway specifications. As a minimum, this typically involves excavations to a depth of around 800mm to remove all the topsoil and organic matter followed by the installation of a compacted aggregate sub-base, a base course, a binder course and a surface course as a minimum. This would obviously mean the complete loss of any tree roots present and either render adjacent trees unstable and liable to collapse or kill them due to root loss. If services are required for lighting and drainage, these would require further excavations. As a side note, it is interesting to note that this appears to have been acknowledged with the later application in 2022 (22/00422/AMC) which proposed installing the new road to the east of the existing track road, necessitating the removal of significant trees which were, memorably, glibly described in a later AIA from Donald Rodger Associates as *"not being significant when viewed from outside the site"*.
- 3.4 Apart from the access road, a development of the proposed size and scale involves compounds, areas for the storage of materials, site huts, parking areas etc. all of which take up space and need to be kept away from trees scheduled for retention. These areas should be delineated by robust protective fences erected prior to the commencement of construction works, with their precise locations being provided as an essential part of the AIA. No such details appear to have been submitted.
- 3.5 There is also the well known phenomena of 'development creep'. Although a pre-development AIA may claim that fencing would be installed at positions x and y to respect the RPAs of retained trees, it very rarely happens that way, as actual requirements cannot be determined in advance by the

arboriculturist. If fencing actually does get erected, it will be flimsy, easily moved, and be closer to the trees than originally stated "because we need to get access etc." and nobody ever seems to enforce it. Unless someone is on-site throughout the whole process monitoring things (which never, ever happens) there are inevitably "accidents". So by the end of the development phase, half the trees originally scheduled for retention are either lost already or so badly damaged or otherwise compromised that they have to be removed. Details such as drainage runs and soakaways are rarely known at the planning stage, and the first anyone knows about them is when a deep drainage trench has been excavated through the RPAs "because it had to go there". Some may say this is just being cynical but any arboriculturist with development experience knows this happens time and time again. One way to limit such creep (apart from regular inspections by the Tree Officer) is to have a Tree Preservation Order in force, and signs up on the fencing making clear that damage is a criminal offence with fines up to £20,000 for contravention. It may not stop anything happening but it helps. With no TPO there's no effective penalty when 'the bloke in the JCB' carelessly ruins a tree, and once the damage has been done, it can't be undone.

4 TREE PRESERVATION ORDERS

- 4.1 Both Scottish Ministers and the planning authority have a duty to ensure, wherever it is appropriate, that in granting permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. As part of this, planning authorities have a duty to make such tree preservation orders (TPOs) as appear to the authority to be necessary with the grant of such permission. A planning authority may make a TPO if it appears to them to be expedient in the interest of amenity and/or that significant trees, groups of trees or woodlands which could be affected are of cultural or historic significance. Section 160 (1) of The Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc. (Scotland) Act 2006 gives planning authorities powers to make TPOs and section 160 (3) sets out what provisions a TPO may include.
- 4.2 If any trees warrant such protection, many of the trees at Kingsmeadows House must surely qualify by any conceivable metric. They fully deserve a TPO, they are at risk, and the residents of Peebles have been asking Scottish Borders Council to make an Order for years. And yet there is still no TPO, no indication that one may be made, and no explanation as to why.
- 4.3 In view of the likelihood of future applications (and the inherent weakness of relying on the Conservation Area legislation to protect them), it would be expedient in the interest of amenity for Scottish Borders Council to make a Tree Preservation Order on all 'A' and 'B' Category trees at the site. The survey data identifying the relevant trees is available to the Council so it would be a simple and straightforward process.

5 CONCLUSIONS

- 5.1 Amongst the raft of relevant policies applicable to the case is Scottish Borders Local Plan - Supplementary Planning Guidance on Trees and Development (October 2020). It states:

"Development which would result in the unjustified felling, or which would result in damage to important trees or woodland resources, will not be permitted". That seems pretty clear and does not leave much room for debate. Yet consent was granted for a proposed development which would clearly have had such an impact. The earlier version of the SPG dated March 2008 (which was current at the time consent was originally granted) carried exactly the same wording.

- 5.2 SBC planners do not seem to have sought the advice of their own, in-house Tree Officer, which is frankly astonishing given it is such a high-profile and important site in the heart of the Peebles Conservation Area with so many magnificent, rare and notable trees. Instead they have given responsibility to assess the impact on trees to their Landscape Architect who, with all due respect, does not have, and cannot in all fairness be expected to have, the specialist knowledge and understanding of the issues involved that their own arboriculturist would have provided, had he been consulted. Why he has never been consulted is not just a minor detail, it is crucial to understanding the whole sorry mess the planning history at Kingsmeadows House has become. Had he been involved from the beginning, I doubt that the Applicants would have passed first base with such a clearly impossible scheme and the AIA supplied by Donald Rodger Associates would have been kicked into touch on day one. Add to that the fact that it is now 10 years on, and he still has not been consulted. It would be interesting to know why.
- 5.3 I believe that there is no feasible way to construct the access road to the required standard needed to serve such a development without losing the majority of the trees in the vicinity, either through direct loss or subsequently as a result of damage caused. The consent given under 19/00182/PPP was predicated on the erroneous assumption that there would somehow be a technical solution to the problems raised, and that it would only be a matter of supplying the correct engineering input to design a feasible way to implement the proposed new access while retaining the trees in a healthy and viable condition. A Condition was to be submitted requiring details of how this was going to be achieved. The Council did not insist on convincing proof, up front, that it could be achieved - details which have still not been provided by the applicant. This should have been insisted upon before making a decision, not left to a Condition, and if it had been, it would have been obvious at that stage that it simply couldn't be done and consent should never have been granted.
- 5.4 I believe that considering the number and quality of trees likely to be lost, the application would have an unacceptable impact on the existing tree cover at the site. Granting permission would be contrary to numerous relevant policies and should therefore be refused.

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for Tree Consultancy Group
22nd December 2025