

Michael Marshall
Eastgate Theatre and Art Centre
Eastgate
Peebles
EH45 8AD

Please ask for:

Our Ref:

Your Ref:

E-Mail:

Date:

Nuala McKinlay

CPI003263

CPT003263

@scotborders.gov.uk

3rd April 2026

Dear Mr Marshall

Complaint Reference No: CPT003263

Thank you for taking the time to raise a complaint on 21st November 2025.

Your complaint has been considered under our complaint handling procedure and our investigation into the following point(s) has been completed:

1. You believe that the Planning Authority has not handled applications 24/00031/FUL , 24/00247/FUL, 24/01016/FUL and 25/00974/FUL in accordance with relevant legislation (Town and Country Planning (Scotland) Act 1997 and The Conservation (Natural Habitats, &c.) Regulations 1994) and that an appropriate assessment should have been carried out.

I will address this point below.

Thank you for your recent complaint, reference number CPT003263, regarding the Council's handling of planning applications 24/00031/FUL and 24/00247/FUL, Kingsmeadows House, Peebles. Please accept our apologies for the time taken to provide a respond.

I can advise you that following a thorough investigation, your complaint is partially upheld. I will explain below how we have arrived at this decision.

In your complaint you raise a number of procedural matters relating to the Council's handling of a number of planning applications, including those at Kingsmeadows House referenced above, and at South Park Industrial Estate (24/01016/FUL) and Ballantyne Place (25/00974/FUL). With regards to the South Park decision, I note that you wrote to Mr Roberston on 26 February 2025 and received his reply of 4 March 2025 but never received a follow up response. Please accept our apologies for this oversight. I have however considered the matters raised, discussed this with relevant colleagues and I am satisfied that the planning application process is legally compliant and that all relevant information relating to planning applications is available on our Public Access portal.

In terms of application reference 25/00974/FUL, I note that you raised legal concerns in respect of the Town and Country Planning (Scotland) Act 1997 (the Act) and did not receive a response from our Legal Services Team. Please accept my apologies for this oversight. As far as I am aware, your concerns centred around the Section 42 process and whether the application was being handled correctly and in accordance with regulations. Having discussed matters with relevant officers and our Legal Services team, I am satisfied that the application was handled correctly and

in accordance with the terms of the Act, and the Development Management Regulations. Members were made fully aware of the proposed development, and this was rehearsed in the committee report presented to Members in advance of the meeting. The case officer makes it clear that, if the Council were minded to agree the removal of condition 4 of planning consent 25/00974/FUL, it would issue a revised and updated decision notice to that effect. It would, therefore, issue a new Planning Permission for the development of the site that does not require compliance with condition 4 – and therefore not require the provision of land for the purposes of open space.

I would refer you to Annex H of Circular 3/2022 which explains the scope of Section 42 powers, most pertinent being from paragraph 2 – “The effect of granting permission for a section 42 application is such that a new and separate permission exists for the development. The planning authority must refuse the application if it decides that planning permission should be subject to the same conditions as the previous planning permission. The previous planning permission remains unaltered by, and is not varied by, the decision on the section 42 application.” Members agreed that the proposed development, minus the requirement to provide open space, should be granted, and therefore (subject to completion of a legal agreement) will allow the planning authority to issue a new consent. I remain satisfied that the planning authority has managed this application correctly, and in accordance with the terms of the Act and regulations and trust this now clarifies matters.

Your complaint is principally concerned with the way in which the Council has managed Section 42 planning applications 24/00031/FUL and 24/00247/FUL relating to Kingsmeadows House. I would suggest that the matters raised can be addressed under the following subject areas:

1. The Council were wrong not to carry out the environmental assessments and have failed in their duties
2. The Council have failed to take account of the Harper Macleod letter 26 March 2024
3. The Council have failed to publish material relevant information (ERCS correspondence)
4. The Council have misunderstood s42

Under Part 1 above I have discussed this matter with the case officer and believe that the Council followed correct procedure and that appropriate environmental assessments were not required to support applications 24/00031/FUL and 24/00247/FUL.

The case officer has confirmed that as the site is in proximity to The River Tweed Special Area of Conservation (SAC) advice was sought from NatureScot and the Council’s Ecology Officer. NatureScot advised that the application would not give rise to a likely significant effect and advised that there was connectivity between the site boundary but “standard grounds maintenance operations have limited impact on the SAC. NatureScot has no opinion about future changes to the maintenance regime, provided they do not damage the structure of the riverbank or riverbed, or cause pollution or siltation. In the context of the SAC, therefore, changing the wording of condition 7 has no likely significant effect and a Habitat Regulation Assessment (HRA) is not required.” I would therefore disagree with your assertion at paragraph 16 of your complaint because, in the opinion of NatureScot (who are the relevant regulatory body for the natural environment), an appropriate assessment is not required in this case.

Regulation 48(5) of The Conservation (Natural Habitats, &c.) Regulations 1994 requires there to be an appropriate assessment only if the proposed development is not directly connected or necessary to the management of the site and it is likely to have a significant effect (my emphasis) on the SAC. Given the proposed development would have no likely significant effect on the SAC, the requirement for an appropriate assessment is not there and I am satisfied that the Planning Authority has managed the application correctly in accordance with the regulations. There is no requirement for an HRA to be carried out and submitted in support of this application. This part of your complaint is not upheld.

Under Part 2 above, regarding the failure to take account of the Harper Macleod letter, dated 26 March 2024, the Council offer the following response. When the letter from Harper Macleod was received, the planning officer sought legal advice on its content. The Director of Corporate Governance/Chief Legal Officer, met with both Harper Macleod and legal representatives for the applicant. Following this, advice was given to the planning officer which informed the determination of this application and other associated Section 42 applications. This part of your complaint is not upheld.

Under Part 3 above, regarding the concern about the Council not publishing ERCS correspondence, we consider that this correspondence relates to procedural issues rather than the merits of the applications. Development Management Regulations do not require publication of correspondence that is not material to planning considerations or falls outside statutory representation. The matters raised in the ERCS letter were addressed separately and dealt with outwith the application process. This part of your complaint is not upheld.

Under Part 4 above, it is not considered that the Council have misunderstood the Section 42 process and we are satisfied that our interpretation of the Act and Regulations is correct. Additionally, we believe the applications have been handled correctly and in accordance with current procedure. We also recognise that you have previously received correspondence outlining our rationale, and we do not have anything further to add. This part of your complaint is not upheld.

Once again, we apologise for the delay in responding to the concerns raised. We acknowledge that these applications have been complex and required more time to process than we anticipated. Accordingly, due to the extended response time, the complaint has been partially upheld.

If you remain unhappy with our response your next step is to contact the Scottish Public Sector Ombudsman (SPSO). They are the independent organisation that deals with the final stage for complaints about Scottish public services.

You can ask the SPSO to look at your complaint if:

- less than 12 months have passed since you became aware of the matter you're complaining about, and
- the matter has not been (and is not being) considered in court.

There's information about the SPSO, including how to write to them and their role in complaints on their website www.spsso.org.uk/spsso. You can contact them online at www.spsso.org.uk/contact-us or on Freephone 0800 377 7330.

You can find more information about our complaint handling procedure and how to get support to raise your issue with the SPSO at www.scotborders.gov.uk/complaints.

Yours sincerely

Nuala McKinlay
Director, Corporate Governance