



Community Council of the Royal Burgh of Peebles & District

Ranald Dods
Planning and Regulatory Services
Scottish Borders Council
Newtown St. Boswells
Melrose, TD6 0SA
By email: DC Consultees

21 October 2026

Dear Mr Dods,

OBJECTION – [24/00247/FUL](#) – New material consideration NatureScot confirm likely significant effect & HRA required

Thank you for consulting us on the **new material consideration** consisting of NatureScot's confirmation on 6 Oct 2026 in respect of Habitats Regulation Appraisal (HRA)

"In our view, this proposal is **likely** to have a **significant effect** on all qualifying interests of the SAC. Consequently, Scottish Borders Council, as competent authority, is required to carry out an **appropriate assessment** in view of the site's conservation objectives for its qualifying interests."

NatureScot set out a raft of measures upon which the appropriate assessment must be based (new ecology baseline report, otter survey, species protection plan, construction environment management plan and pollution prevention plan) saying in summary

"These measures, and the HRA itself, should be completed **prior to determination of this application.**"

Your confirmation on 17 Oct 2025 that SBC is minded to determine this application without an appropriate assessment being carried out, and the fact that the mandatory reports NatureScot advise would need to be in hand prior to determination have not been performed, we assume you will refuse this application, citing the refusal reasons already stated in the refusal letters for 24/00030/FUL and 24/00031/FUL (25/00041/RNONDT).

In our opinion, the new material circumstance of NatureScot's confirmation that HRA is required, provides a regulatory imperative requiring SBC to reconsider the principle of this development, in light of which, the applicant's only arguments for approval melt away.

NatureScot's confirmation that the proposed site is Ancient Woodland is an additional new material consideration providing reassurance that SBC can refuse this application for the reasons cited in the two prior refusals (which separately considered the exact wording proposed in this application).

We are aware of the applicant's solicitor's letter dated 14 April 2026 which attempts to persuade SBC not to reconsider whether the proposal accords with the current development plan. We set out why that is wrong below, to provide SBC additional comfort.

Why the applicant's 14 April 2026 argument is wrong

Section 37 requires SBC to consider the following in determining this application:

1. The current statutory development plan (NPF4 and LDP 2024),
2. Provisions of the development plan engaged by material considerations, and
3. Any other material considerations.

We deal with these in the order 2, 3 then 1 (for reasons which will become apparent).

Since determination of the application sought to be renewed (19/00182/PPP)

2. New policies within the development plan have been engaged

Firstly, owing to NatureScot's determination that the woodland is ancient woodland, the following policies are engaged:

- NPF4 policy 6 "*Development proposals **will not be supported** where they will result in ... **Any loss of ancient woodlands**, ancient and veteran trees, **or adverse impact on their ecological condition.***"
- NPF4 policy 7 requiring significant trees in conservation areas be preserved;
- LDP2024 policy EP11 requiring protection of greenspace;
- LDP2024 policy EP13 prohibiting loss of or serious damage to woodland;
- LDP2024 policy EP7 requiring the setting of listed buildings to be respected;
- LDP2024 policy EP7 requiring conservation areas be preserved or enhanced;
- LDP2024 policy PMD2 requiring the character and environment be respected.

The ancient woodland status lends significant weight to the argument that 24/00247/FUL should be refused for the same breaches of the policies above as set out in SBC's refusals of 24/00030/FUL and 24/00031/FUL (25/00041/RNONDT).

NatureScot's determination of likely significant effect on the River Tweed Special Area of Conservation and the requirement for appropriate assessment under the HRA regime bring the following policies into play;

- LDP2024 policy EP1 and NPF4 policy 4 requiring appropriate assessment;
- LDP2024 policy EP2 requiring nationally protected species to be protected;
- NPF4 policy 3 requiring biodiversity enhancement;
- NPF4 policy 1 significant weight given to climate and biodiversity crises.

3. Material considerations expand now that NatureScot acknowledge the woodland is ancient and that appropriate assessment is required

SBC's Landscape Architect objects to proposed neutering of condition 7 (9 Apr 2024)

"I would not support this amendment to condition 7 as the condition is explicit in recognising the value of the designed landscape as a whole and all the elements which contribute to its amenity and sense of place, especially the extensive woodland element. Any amendment which would potentially allow separate management plans for different areas or components of the designed landscape and which could undermine its value as a designed landscape and sense of place, is not desirable and should not be encouraged." Ancient woodland status lends the landscape architect's objection even more weight.

Expert arboriculture report[†] showing unacceptable tree loss in what we now know is ancient woodland. A retired Chartered Arboriculturist and former Registered Consultant of the Institute of Chartered Foresters says “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.” “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 ... and should therefore be refused.”

Expert ecology report[†] heavily criticising “the absence of up to date, contemporary ecological data” with the current application. A Chartered Environmentalist, Member of the Chartered Institute of Ecology and Environmental Management (CIEEM) calls out 5 reasons for SBC to refuse this application “1. Absence of HRA. 2. Inadequate ecological survey. 3. Deficient impact appraisal of woodland habitats on the site. 4. Non-compliance with environmental planning policies [EP1–3 & 10–13]. 5. Biodiversity crisis.” “In my expert opinion otter activity was significantly under recorded along this section of river.”

New material facts (ancient woodland and HRA is required) lend these reports significantly more weight. The applicant submits no up-to-date reports to challenge these views.

1. The current statutory plan has materially changed.

For both 24/00030/FUL and 24/00031/FUL (25/00041/RNONDT) officers recorded that “since the determination of the previous consent (19/00182/PPP), both NPF4 and a new LDP (2024) have been adopted and now both form part of the Council’s development plan.” Having been present at both decisions, I believe the hardworking officers were simply mistaken in recording “members were content that there had not been any material change in the development plan policies since the 19/00182/PPP consent was granted” – my recollection is that this was just one of a very large number of comments in the officers’ reports on which the committee was silent.

We suggest that, for this decision, officers **ought** to determine that the development plan has materially changed and that the principle of the development **ought** to be revisited. Given the major new material circumstances (ancient woodland and HRA required), the new policies engaged in the development plan (outlined above at 2) and other material changes in circumstance (outlined above at 3) there is a **duty** to reconsider the principle in any event – *whether the development plan has changed or not*.

The *Granton* legal precedent [2020] CSIH 13 tells us (following *Pye*, not *Allied London*) that where the applicant could still implement their original permission even if the section 42 application was refused, it makes very little sense to revisit the principle of development. However, in cases such as this, where the underlying permission can’t be implemented if the s.42 is refused, and “the practical effect of granting a planning permission under section [42] or a renewal of planning permission is the same, it makes good sense to apply the same policy approach in deciding whether to grant planning permission in either case.”

For these reasons, we submit that the applicant is simply wrong to assert that SBC cannot reconsider the principle of the development in the current decision.

Yours sincerely
Peebles & District Community Council
Michael Marshall, PhD, Planning Convener

[†] Prepared for Peebles & District Community Council, submitted to SBC on 31 Dec 2025 (avail. appendix 1)

Appendix 1 – References

Documents are available on the planning portal for [24/00247/FUL](#) and hyperlinks below:

Date	Document
6 Oct 2026	NatureScot Habitats Regulations Appraisal (HRA) advice, see page 4
20 Oct 2026	NatureScot Habitats Regulations Appraisal (HRA) clarification, see page 6
16 Sep 2026	Woodland Trust Scotland objection
14 Sep 2026	NatureScot reconfirm Ancient Woodland
31 Aug 2026	PCC objection re Granton's solicitor's 14 Apr 2026 letter
17 Aug 2026	PCC submit NatureScot confirmation of Ancient Woodland.
12 Mar 2026	PCC object for consistency with refusals of conditions 2 and 7
31 Dec 2025	PCC detailed comprehensive objection (32 pages)
24 Dec 2025	Expert ecology report (prepared for PCC, 6 pages)
22 Dec 2025	Expert foresters report (prepared for PCC, 6 pages)
9 Apr 2020	[2020] CSIH 13 (<i>Ed CC v Scot Min & Granton</i> , paragraphs 35-38 & <i>Pye</i>)

Appendix 2 – NatureScot advice 6 October 2026

From: informed@planning.nature.scot <informed@planning.nature.scot>

Sent: 06 October 2026 12:52

To: ...

Cc: ...

Subject: 24/00247/FUL - Section 42 for grounds of Kingsmeadow House - NatureScot response

Our ref: 106938

Your ref: 24/00247/FUL

Dear Ranald

Thank you for consulting NatureScot on the s42 proposal at Kingsmeadow. We initially responded in July 2025, but this consultation allows us to update our advice, which focusses on the River Tweed Special Area of Conservation (SAC). A summary of our separate advice on Ancient Woodland is also provided.

This proposal could be progressed with appropriate mitigation. **Because it could affect internationally important natural heritage interests, the proposal requires to be made subject to conditions so that the works are done strictly in accordance with the mitigation detailed in our appraisal below, including:**

- Impacts of variation to conditions 2 and 7 need to be considered, with potential requirement for submission of a landscape / habitat management plan.
- Requirement for a Construction Environment Management Plan / Pollution Prevention Plan
- Species Protection Plan informed by updated otter survey

These measures, and the HRA itself, should be completed prior to determination of this application.

Appraisal

River Tweed SAC

The proposal is close to the River Tweed SAC, designated for its fish, otter and habitat. The river is further notified as a Site of Special Scientific Interest (SSSI) for its vascular plants and aquatic invertebrates.

In our view, this proposal is likely to have a significant effect on all qualifying interests of the SAC. Consequently, Scottish Borders Council, as competent authority, is required to carry out an appropriate assessment in view of the site's conservation objectives for its qualifying interests. We advise that, if the proposal is undertaken strictly in accordance with the following mitigation, then the proposal will not adversely affect the integrity of the site.

Variation to Condition 2 and 7 and implications for the SAC

The s42 application requests full permission for the proposal set out in application 19/00182/PPP subject to variation in condition 2 and condition 7. Variation of condition 2 appears relatively minor, but the implications on the SAC should still be considered in the appropriate assessment.

Since our initial response, the Council's ecology officer raised concerns about condition 7, specifically: loss of a no-development buffer (required to protect the River Tweed SAC); a contradiction between a revised condition 7 and condition 13 (making it difficult to provide an appropriate level of habitat management along the river); the possible impact of fencing or other garden divisions on otter and possibly water quality. Other typical garden infrastructure may also apply to this last point. The conclusion of the Ecology Officer is that 'any application for such fences would likely fail [an] HRA/Appropriate Assessment because of potential impacts on otter'.

The Ecology Officer has raised reasonable concerns about variation of condition 7 which need to be considered further. It would be appropriate for the applicant to submit a landscape / habitat management plan or similar to demonstrate how the area along the riverbank will be managed in the long term in a manner that secures a suitable ecological corridor and does not otherwise compromise the interests of the SAC.

Construction Environment Management Plan / Pollution Prevention Plan

A CEMP / PPP which is in accordance with SEPA guidance (available on the [SEPA website](#)) and includes site specific measures to avoid the risk of impacts on the species and habitat for which the site is designated, is produced with implementation secured through planning conditions. These measures should ensure there is minimal direct disturbance of the qualifying features and protect against adverse indirect impacts on important ecological requirements such as on water quality, water flow and/or river channel substrate.

Please note that we do not wish to be consulted on the detailed CEMP/PPP; we are content that Scottish Borders Council ascertain that this is adequate, with advice from SEPA if necessary.

The appraisal we carried out considered the following:

- Supporting habitat for the qualifying species. The standard mitigation measures ensure that there will be minimal direct disturbance of the species' supporting habitat.
- Water quality. The qualifying features require good water quality and the mitigation measures ensure that construction will not lead to a deterioration in water quality that would affect the qualifying features.
- River flow. The mitigation measures will not lead to changes in water depth or water flow that would otherwise risk adversely affecting the qualifying features.
- Channel form and substrate. The mitigation measures will ensure that the channel's morphological diversity and substrate composition will not be adversely affected. The natural functioning and morphology of the river channel are key elements supporting the species' habitat.

Species Protection Plan

There is a strong likelihood that otter will be in the vicinity of the proposal site, including the possible presence of holts. An Ecology Baseline Report from 2019 was submitted in support of proposal 19/00182/PPP. We consider that this survey is now out of date and that the appropriate assessment should be based on updated survey information.

Our general advice is that otter surveys remain valid for up to two years only. Otter populations can change relatively quickly, requiring submission of fresh survey data in this case to inform the appropriate assessment.

A new otter survey should be carried out, with the subsequent report including a species protection plan to ensure that the construction methodology does not compromise the interests of otter. Other protected species should be considered similarly,

notably bats and badger, although that is not within the scope of the HRA. Depending on survey results, a license from NatureScot may be required to disturb protected species.

River Tweed SSSI

Measures discussed in the appropriate assessment will be adequate to protect the River Tweed SSSI.

Ancient Woodland

On 14 September 2026 we responded to a consultation from Scottish Borders Council and considered that historic map evidence for the grounds of Kingsmeadow House was consistent with ancient woodland. That advice was based on the 1823 (John Wood) map of the area and subsequent maps showing consistent woodland coverage. We have not visited the site to consider its current condition. In planning terms, Ancient Woodland is addressed through NPF4, policy 6.

Yours sincerely

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Operations Officer

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[NatureScot is the operating name of Scottish Natural Heritage](#)

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Thoiribh an aire airson adhbharan gnothaich, 's dòcha gun tèid sùil a chumail air puist-dealain a' tighinn a-steach agus a' dol a- mach bho NàdarAlba.

Appendix 3 – NatureScot clarification 20 October 2026

From: ... <...@nature.scot>

Subject: RE: 24/00247/FUL - Section 42 for grounds of Kingsmeadow House - NatureScot response

Date: 20 October 2026 at 19:30:08 BST

To: Michael Marshall <...>

Dear Michael

Thank you for your query about our recent response to the Kingsmeadow proposal. For such cases we typically use standard wording supplemented with specific text where required, so apologies if this has created ambiguity. In simple terms, the second interpretation used in your email below is correct, but please read the following explanation.

Where any plan, strategy or proposal could affect a European Site it must be assessed through a Habitats Regulations Appraisal, with all necessary information available, before it

can be determined or approved. This is to ensure that the proposal in its entirety is considered, rather deferring any aspect of design or mitigation until after permission is granted, e.g. through a planning condition. Since the Kingsmeadow s42 application is a planning proposal, it must be subject to its own HRA prior to determination.

For a proposal to be approved or implemented, the HRA must conclude that it will not affect the integrity of any European Site. If that conclusion is not possible, for example due to design issues or where mitigation is not adequate, then the proposal cannot be approved. In such cases, mitigation can be added or revised, to be reviewed again through the HRA.

Where a proposal is subsequently given permission, conditions must be applied to ensure that it is implemented in accordance with the reports and mitigation that informed the HRA. That was the intended meaning of our response for Kingsmeadow. The sentence that you query in your email ('We advise that, if the proposal is undertaken strictly in accordance with ...') is standard text which introduces a discussion about the required mitigation. This wording is used where we consider that a proposal is of a sort where standard mitigation is typically appropriate. Irrespective of the scale and type of proposal, that mitigation must still be submitted, based on local circumstance, and assessed through the HRA. If the submitted mitigation is found to be substandard, the HRA must conclude that a proposal cannot go ahead. Similarly, the HRA may identify the need for additional mitigation not mentioned in our response, although the scale and type of proposal suggests that this will not be case.

I hope this helps address any uncertainties, but please get back in touch if you would like to discuss this further.

Regards

...

... | ...

NatureScot | SPPA building | Tweedbank | Galashiels, TD1 3TE | ...

nature.scot | @nature_scot | *Scotland's Nature Agency* | *Buidheann Nàdair na h-Alba*

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