

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND)
ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW
PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 25/00041/RNONDT

- **Planning Application Reference:** 08/01081/FUL

Development Proposal: Application under section 42 to vary planning condition 7 of planning permission 19/00182/PPP (erection of residential apartments) to vary wording of condition

Location: Site In Grounds of Kingsmeadows House, Kingsmeadows Road, Peebles, Scottish Borders

Applicant: Granton Homes Limited

DECISION

The Local Review Body refuses planning permission as explained in this decision notice and on the following grounds:

1. The variation of condition 7 of planning permission 19/00182/PPP would result in consent being granted for a development which would not maintain the character and open nature of the land, which is within the control of the applicant, within and surrounding the site. This would have an adverse impact on the woodland setting of Kingsmeadows House and would, in turn, be detrimental to the character and appearance of the conservation area and the setting of the category B listed building. The development would be contrary to policies 6 and 7 of National Planning Framework 4 and policies PMD2, EP7 and EP9 of the Scottish Borders Local Development Plan 2024. These conflicts with the development plan are not overridden by other material considerations.

DEVELOPMENT PROPOSAL

The application relates to a Section 42 Application seeking to vary planning condition 7 of planning permission 19/00182/PPP (erection of residential apartments), by varying the wording of condition 7 at a site in the Grounds of Kingsmeadows House, Kingsmeadows Road, Peebles, Scottish Borders. The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location Plan	329-002

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 23 February 2026.

After examining the review documentation at that meeting, which included a) Notice of Review; b) Papers Referred to in the Applicant's Review Submission; c) Related Decisions; d) Consultation Replies; e) Public Comments; and f) List of Policies, the Review Body proceeded to determine the appeal.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan; and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: the Scottish Borders Local Development Plan 2024 (LDP) and National Planning Framework 4 (NPF4). The Local Review Body considered that the relevant listed policies were:

- LDP policies: PMD1, PMD2, PMD5, HD3, EP1, EP2, EP3, EP7, EP8, EP10, EP11, EP12, EP13, EP15, IS6, IS7, IS8 and IS9;
- NPF4 Policies: 1, 2, 3, 4, 6, 7, 8, 9, 13, 14, 15, 16, 18, 20 and 22

Other Material Considerations

Town and Country Planning (Scotland) Act 1997 (as amended)

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (as amended)

Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 (as amended)

The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Circular 4/1998: Use of Conditions in Planning Permissions

Circular 3/2022: Development Management Procedures

Chief Planners Letter, National Planning Framework 4 Policy 22 (Flood risk and water management), 13 October 2025

SBC Housing Land Audit 2023 (April 2025)

SBC Delivery Programme (2024)

SBC Submission on the Housing Emergency, 24 July 2024

SEPA - Climate change allowances for flood risk assessment in land use planning V.6, 25 February 2025

Scottish Borders Council's Supplementary Planning Guidance on:

- Biodiversity (2005)
- Development Contributions (2011, Updated April 2025)
- Green Space (2009)
- Local biodiversity action plan (2018)
- Local Landscape Designations (2012)
- Placemaking and Design (2010)
- Privacy and sunlight guide (2006)
- Sustainable Urban Drainage Systems (2020)

- Trees and development (2008)
- Waste Management (2015)

The Local Review Body sought clarifications on the existing level of protection for trees on the Kingsmeadows Estate which included the site. The LRB noted that there were existing protections to the trees within the estate as they were in the Peebles Conservation Area, whereby the landowner (i.e. Applicant) would need to give prior notification to the Planning Authority (PA) that they are seeking to complete Works to tree(s) within a Conservation Area at least 6 weeks before doing such works. Within that 6-week period the PA have the legal authority to place a Tree Preservation Order (TPO) on the subject trees and thereafter a TPO application would require submission from the landowner (i.e. Applicant) to the PA for such works to be assessed and consented if considered acceptable or not. Alternatively, during this 6-week period the PA can notify the Landowner that they would not be placing a TPO on the subject tree(s). After the 6 weeks period, if no such correspondence or confirmation has been made by the PA, the Applicant can implement the proposed tree works. Members noted that the trees on the estate are not currently protected by a TPO.

Members also sought clarifications on whether there was an existing woodland/estate management plan for the Kingsmeadow's Estate which included the site. It was heard that condition 7 of the 19/00182/PPP consent for such a plan which the Section 42 (S42) sought to vary was not existing or in-effect, as the consent had yet to have been implemented. Whilst there are responsibilities of a landowner of a listed building to preserve and maintain the curtilage of a listed building, it is unclear whether there are currently any formal management plans in place for the estate's grounds and woodland. It was noted that the B-listed Kingsmeadow House was in a separate ownership to the site's red-line boundary and had been converted recently into residential apartments from holiday-let accommodation, whilst the Applicant's land ownership encompassed much of the remainder of the estate. Members noted that during the determination of the original consent (15/00822/PPP) which the 19/00182/PPP consent renewed, one of the reasons for engaging the condition for such a plan, was to address this uncertainty over woodland/estate management, which was raised as a concern by the Council's Heritage and Design Officer at the time.

Members were advised on Habitats Regulations Assessments (HRA) and how such an assessment would relate to this review by SBC's legal advisor, when considering the River Tweed Special Area of Conservation (SAC) site and whether there would be significant impacts to it from the proposed development. Members noted that as determining authority, if they were seeking to consent the application, they would need to consider whether a HRA was required. Members observed the consultation comments from NatureScot and the Council's Ecologist, with NatureScot considering that a HRA was not required specifically for the subject S42 application and its proposed variation to the wording of Condition 7 of the 19/00182/PPP consent for the proposed development. It was further noted that if a HRA was not completed under the subject S42 application and it was granted, the PPP consent would still be subject to an Approval of Matters Specified in Conditions (AMC) application, whereby the need for a HRA would be considered again by the determining authority, prior to any development commencing at the site for the proposed development.

Members noted that the site was within an area of flood risk. Nevertheless, matters relating to flood risk had already been considered in assessments of the previous consent at the site. Members were satisfied that development plan policies covering flooding relevant to the proposed development were not materially different, nor were there any material considerations which would lead to a different conclusion on flooding than that previously reached, as per the recent 24/00030/FUL application, which considered a

variation to the wording of condition 2 of the 19/00182/PPP consent. From the information available, the LRB were satisfied that the proposed variation did not necessitate any further flood risk considerations.

The Local Review Body considered the Scottish Minister's guidance on the use of conditions in planning permissions in Planning Circular 4/1998 and ascertained that they should consider only the conditions to which any new permission should be granted, in this case condition 7. 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. Despite the adoption of new development plan policy provision, Members were content that there had not been any material change in the development plan policies since the 19/00182/PPP consent was granted. This position was consistent with the position noted by the Appointed Officer within their assessment of the recent 24/00030/FUL, and nor were there any material considerations which would lead to a different conclusion than that previously reached, for the same proposed development.

Members considered the existing wording and proposed variation to the wording for condition 7. They noted that the wording for condition 7 was assumed to be lawful at the time it was originally applied to the consent in 2016 and in the renewal consent in 2021. Members observed that the condition was in place to maintain and protect the character and open character of the grounds within and surrounding the site, likewise the Conservation Area, and no challenge had been made on the condition's wording otherwise to date. Members also noted that whilst this latest proposal had not reached determination, within correspondence to the application, on the 22nd September 2025 the Appointed Officer advised the Applicant that the council would be unable to make a positive recommendation on the subject S42 application.

The Local Review Body considered condition 7 was applied to address the woodland and estate management of the site and wider Kingsmeadows site, which was largely in the Applicant's ownership, and was relevant to place on the proposed development to meet the intentions of maintaining the character and open nature of the grounds within and surrounding the site, and to protect the character and appearance of the Conservation Area. It was considered that the condition was enforceable, clear and precise, and was still appropriate by Members. They considered that the proposed varied wording would not achieve this, and would also have an adverse impact on the woodland setting of Kingsmeadows House and would, in turn, be detrimental to the character and appearance of the conservation area and the setting of the Category B listed building. It was considered by Members that the existing wording of Condition 7 remained necessary and fit-for-purpose to appropriately control the proposed development, and mitigate its impacts in a reasonable manner.

Members determined that the existing wording of condition 7 met the six tests for imposing planning conditions and that the proposed variation to condition 7 would not. Therefore, it was considered by the Local Review Body that condition 7 is;

1. Necessary;
2. Relevant to planning;
3. Relevant to the development to be permitted;
4. Enforceable;
5. Precise; and
6. Reasonable in all other respects

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the Section 42 application to vary the wording of condition 7 of planning permission 19/00182/PPP was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

As the Local Review Body refused the application, it was determined that a HRA was not necessary for the subject S42 application for the proposed development.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
 2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.
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Signed Councillor S Mountford
Chair of the Local Review Body

Date 2nd March 2026