



***Community Council
of the
Royal Burgh of Peebles & District***

7 August 2025

Ranald Dods
Planning and Regulatory Services
Scottish Borders Council
By email: DC Consultees

Nuala McKinlay
Chief Legal Officer
Scottish Borders Council
By email

Dear Ranald Dods and Nuala McKinlay,

[25/00974/FUL](#) Application to build on Ballantyne Place Play Area

Request for explanation as to SBC's legal authority to modify [02/01783/FUL](#), compliance with planning regulations and validity of ownership certification

Thank you for your email dated 4 Aug 2025 replying to our [29 Jul 2025 letter](#). Unfortunately, despite our best efforts to understand your short reply, our concerns as to whether SBC's handling of this case abides by the planning Actⁱ and Regulationsⁱⁱ remain.

PCC understand the public is opposed to planning applications on play areas and that it is in the public interest for SBC to provide justification of how this case aligns with the Act and Regulations and your authority to alter the original permission.

Responding to each of your paragraphs in turn:

"Michael,

Thank you for your email which was forwarded to me by DC Consultees.

[1] There is no reason why we cannot consider the two aspects together. This is the approach taken by the Reporter in his consideration of the dismissed appeal (PPA-140-2087, 20/00691/FUL) for the site.

[2] Ownership is outwith the realms of planning and is a civil matter. It is for the applicant to certify that they own all the land which is the subject of the application. They have done so. The application was assessed by the Registration team as valid. It was validated on 25th July 2025.

[3] Before you asked, per your email, I had intended to ask the agent why they considered the correspondence from the solicitor should be considered confidential. That I have now done and you will see from the online file that they have responded.

[4] We do not consider there is a need to extend the consultation period in this instance.

Ranald”

[email dated 4 Aug 2025, paragraph numbering added]

Our understanding is:

1. Reasons to question the authority’s approach include:
 - a. The Act does not give the local authority the power to make non-trivial modifications to 02/01783/FUL now that building is complete.
 - b. You appear not to be considering this application in line with section 42.
2. The Act requires the planning authority not to entertain planning applications where ownership certification requirements have not been satisfied, as appears to be the case here.
3. With reference to the two items requested:
 - a. Thank you for making the solicitor’s letter public.
 - b. We take your omission to confirm that there is no later version of the site layout for 02/01783/FUL showing the Play Area coinciding with the site for the proposed new dwellinghouse in 25/00974/FUL.
4. Resolving the above should make it clear whether extended consultation is needed.

Peebles & District Community Council is a volunteer body with a statutory role to help the community and a specific role as a consultee in planning. Our extremely limited budget does not allow us to engage solicitors. In complicated planning matters such as this we make best efforts to understand relevant Acts and Regulations taking free advice from bodies such as Planning Advice Service (PAS). In this case, we attempted to clarify the legal position with PAS, but they were unable to answer until after the deadline.

We ask these procedural questions at the request of residents, because the complicated legal issues together with the short and inflexible timeline for objections puts individuals unfamiliar with the planning system at a disadvantage. PCC intends to object on the merits of the application once we understand the approach being taken. We leave it to objections from individuals – who bought their properties in good faith and believe their play area is (or should be) protected both by planning conditions and their title deeds – to set out the emotional impact of repeated threats to their play area.

We have set out our understanding in more detail below. We would be very grateful if you would please clarify your approach, with reference to relevant sections of the Act or Regulations relevant for this decision.

1. SBC’s intended approach

1a) 02/01783/FUL cannot be varied

In the absence of clarification, we assume you intend to follow the approach outlined in the previous application you referenced, 20/00691/FUL:

“In the event that Condition 4 of 02/01783/FUL is removed, it would be normal practice for the planning authority to issue a revised and updated decision notice under the 2002 reference number.” [20/00691/FUL officer’s report]

However, according to a plain English reading of sections 64–68 of the Act (setting out powers to vary, revoke and modify planning permission), the authority does not appear to have the power to modify 02/01783/FUL:

- Section 65 (3) does not apply where building is complete, as is the case here.
- Section 64 does not apply to material variations, and condition 4 is clearly material:

“... without the removal of the condition it would not be possible to progress the current application.” [20/00691/FUL officer’s report]

In any event, powers to revoke or modify permission under section 65 do not take effect until confirmed by the Secretary of State (sections 66–67) and those affected by the order (the residents of Ballantyne Place in this case) must be given the chance to be heard by the Secretary of State or his representative. To the best of our knowledge, residents have not received corresponding notice.

We are not aware of any other powers to vary or modify permission under the Act. If you believe our analysis is incorrect, it would be helpful to understand why.

We checked your reference to appeal PPA-140-2087 for 20/00691/FUL, but the reporter did not address the question of lawfulness (or otherwise) of using section 65 powers on a development completed almost two decades ago.

1b) Section 42 applications do not modify the underlying permission

In this case – unlike 20/00691/FUL – the applicant makes it clear that 25/00974/FUL is a section 42 application.

As we set out in our previous letter, the application meets all three requirements of Regulation 11 (3), i.e. it:

- Is in writing.
- Clearly identifies the previous grant of planning permission (02/01783/FUL).
- Contains a statement that it is made under section 42.

We believe this application should therefore be treated as a request under section 42 of the Act, i.e. a request for a new permission identical in all respects to 02/01783/FUL other than the removal of condition 4.

Regardless of the outcome of 25/00974/FUL, 02/01783/FUL would remain in force, unmodified and implemented. Condition 4 of 02/01783/FUL would therefore continue to require provision of the Play Area and thus prohibit building, (per the 20/00691/FUL officer’s report cited above).

Again, if you believe this analysis is incorrect, it would be helpful to understand why.

2. Applications shall not be entertained without correct ownership certification

While it is for the applicant to issue the ownership certificate, section 35 imposes a duty on SBC not to entertain a planning application unless the ownership certificate is correct:

“35(4) A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied.” [Act]

The application clearly identifies itself as a section 42 application in respect of 02/01783/FUL. As a section 42, the requirement to identify the land (Regulations 9 (2) a & b and 9 (3) a & b) do not apply. Instead, the land to which this application refers is the site of 02/01783/FUL, i.e. the site of all 28 houses. Residents own individual homes within that land (not the applicant), and it follows that the ownership certificate is not correct.

It further follows then, that section 35 (4) of the Act appears to prohibit the local authority from considering this application.

Again, if you believe this analysis is incorrect, it would be helpful to understand why.

Yours faithfully
Peebles & District Community Council

Michael Marshall, PhD
Planning Convener

ⁱ [Town and Country Planning \(Scotland\) Act 1997](#) (the Act)

ⁱⁱ [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013](#) (the Regulations)