



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

22 August 2025

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

Dear Carlos Clarke,

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

4th consultation response: Objection

Thank you for your email dated 19 Aug 2025 replying to our [18 Aug 2025 objection](#)

“Dr Marshall,

I acknowledge your further response.

The Council will provide a response to the legal and procedural matters you have raised in due course, with the benefit of input from our legal services, as previously advised. My previous request for the Community Council to comment on the planning merits remains notwithstanding.

Regards,

Carlos Clarke
Team Leader
Development Management
Regulatory Services
Scottish Borders Council”

We believe it would be in the public interest for you to pause this consultation until clarification has been provided by SBC Legal and any changes to the application have been made, without which we are unable to properly consult on this application.

Legal Issues

We refer officers to our prior consultation responses of 29 Jul and 7 Aug 2025 which provided our reasons for concluding that:

- To the extent the application is for full permission, it is prohibited by condition 4 of 02/01783/FUL (as the applicant and officers appear to accept) so should be rejected.
- To the extent the application is a section 42, condition 4 of 02/01783/FUL will remain in force regardless of outcome, so again the new permission should be rejected.

- To the extent officers intend to use section 65 powers, these cannot be exercised where the build has been completed, leaving condition 4 of 02/01783/FUL intact and again the application for new permission should be rejected.

In addition to the legal issues already raised, we believe the current application may have the following legal issues. This understanding represents the best efforts of this Community Council to understand the Planning Actⁱ and Regulationsⁱⁱ. We believe it would be in the public interest for you to provide clarification prior to continuing with this consultation.

Invalid application – Correct fee not paid

The fee paid for 25/00974/FUL appears to be the fee under The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022 as amended (the ‘Fees Regulations’) 3 (2) (a) (i) for a (full) planning permission. But the application does not include the Regulation 3 (3) fee for a section 42 application (to remove a planning condition on the previous consent, which the officers’ reply of 14 Aug says is evident).

Application 25/00974/FUL thus appears not to meet the Regulation 9 (3) (i) requirement

“by **any** fee payable under the Fees Regulations.” [emphasis added]

The application therefore appears not to have been validly made and should not have been validated.

Planning permission may not be granted without valid application

If the application is invalid – as it appears to be – approval of this application is outwith the powers of the planning authority, those powers being restricted under section 29 (1) (b) of the Act to the granting of permission

“by the planning authority ... **on application to the authority in accordance with regulations or a development order**” [emphasis added]

Is it legal for planners to vary condition 4 of 02/01783/FUL?

Section 64 of the Act gives local authorities the power to make non-material variations. But since the applicant and planners accept that condition 4 of 02/01783/FUL prevents building on the Ballantyne Place Play Area as proposed, varying condition 4 would be a material change and hence section 64 cannot be used.

Section 65 (3) prevents local authorities from varying completed planning permissions, and permission 02/01783/FUL has been completed for nearly two decades (including setting aside the Play Area in compliance with condition 4) with 28 families currently making Ballantyne Place their home:

“65 Power to revoke or modify planning permission.

(1) If it appears to the planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part

- [F304or section 242A], the authority may by order revoke or modify the permission to such extent as they consider expedient.
- (2) In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.
- (3) The power conferred by this section may be exercised—
- a. where the permission relates to the carrying out of building or other operations, **at any time before those operations have been completed;**
- [emphasis added]

The Act thus makes it clear that completed permissions are intended to be permanent and thus cannot be altered.

Relevant guidance

[“Planning Circular 4/1998: the use of conditions in planning permissions”](#) further supports the notion that conditions on implemented permissions are intended to be permanent:

“Regulation after development

84. Conditions which will remain in force after the development has been carried out always need particular care. **They can place onerous and permanent restrictions on what can be done with the premises affected** and they should, therefore, not be imposed without scrupulous weighing of where the balance of advantage lies.”
[emphasis added].

Similarly, it is clear from the section 75 agreement recorded in the title that the conditions in permission 02/01783/FUL are intended to be permanent

“1. This agreement is entered into in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 for the purpose of **permanently restricting and regulating the development and use of ALL and WHOLE that area of ground being part of March Street Mills, Peebles being the subjects in this Title ('the land')**.

2. The Planning Authority has resolved to **grant planning permission upon certain conditions** for the development of the land by the erection thereon of twenty eight houses (**planning reference 02/01783/FUL**)”

[emphasis added]

It is the use of the land – including the Play Area – that is permanently restricted by conditions in 02/01783/FUL.

The current owner of the land is fully aware of the conditions permanently preventing building on this Play Area, as evidenced by his solicitor’s letter, submitted as part of the application.

Relevant planning history

The current application is the seventh application to build on this site. 20/00691/FUL was denied by the SBC's Planning and Building Standards Committee and an appeal against that denial was dismissed by the Scottish Government Reporter.

In rejecting 20/00691/FUL, SBC's Planning and Building Standards Committee interpreted the Statutory Development Plan and any material considerations as it applies to this case. As it is the Committee which delegates its power to officers for decision making, now that the Committee has spoken, we believe officers are obliged to follow the direction set by the Committee. We therefore ask that the Planning Committee's reasons for refusal of 20/00691/FUL (attached) be read into this objection at this point.

We note also that the terms of the Local Development Plan as they impact this development have not significantly varied between the 2016 LDP and the current LDP, with the provisions of NPF4 adding additional weight to previous policy arguments based on the LDP. (The precedence of the LDP need not be referenced as both arms of the Statutory Development Plan are compatible.)

The reasoning contained within the Scottish Government Reporter's dismissal dated 10 June 2021 of appeal reference PPA-140-2087 in respect of 20/00691/FUL (attached) applies equally to this application and we ask it be read into this objection at this point.

Relevant objections

To avoid repetition, this Community Council supports and endorses objections made by:

- (1) Mr Peter Maudsley in his objection dated 6 Aug 2025
- (2) Mr Navtej Ghaleigh in his objection dated 14 Aug 2025
(with the knowledge and contribution of 22 households in Ballantyne Place)
- (3) Peebles Civic Society dated 15 Aug 2025.

Corrections to Cullen Kilshaw's letter dated 17 April 2025

We do not agree with Mr Riddell's opinion as to his client's deeds, common ground and the Play Area.

Mr Riddell did not include the definition of "Developer"

"Developer" means us the said SYNERGY PROPERTY DEVELOPMENT COMPANY LIMITED."

Synergy clearly identified the location of the Equipped Play Area on the site diagrams on the planning portal for 02/01783/FUL



When Synergy disposed stage 3 of the development (which included the applicants land) they made sure that the actual [building] "Plots" had a share of the common land – though failed to do that in respect of the applicant's land.

Contrary to Mr Riddell's opinion then, it seems clear that Synergy never intended the applicant's land should be anything other than a play area.

Corrections to design statement policy assessment

NPF4 Policy 16

Applicant misquotes policy 16f by:

- Leaving out the qualifier "**will only be supported in limited circumstances**"
- Leaving out the main thrust of this policy, that proposals should in general be on land allocated for housing in the LDP (which this land is not).

NPF4 Policy 14

We fundamentally disagree that building on this play area supports any of the six qualities of successful places – other than that this would be quite distinctive (to the detriment of the community). We think these arguments are more material than the spurious arguments about SPG reductions (especially in light of the reporter's appeal dismissal).

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

ⁱ Town and Country Planning (Scotland) Act 1997

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

APPLICATION REFERENCE : 20/00691/FUL

Schedule of Plans and Drawings Refused:

Plan Ref	Plan Type	Plan Status
PAPP 200	Existing Plans & Elevations	Refused
1 of 6	Location Plan	Refused
PAPP 204	Proposed Site Plan	Refused
PAPP 201 a	Proposed Plans	Refused
PAPP 202 a	Proposed Elevations	Refused
PAPP 203 a	Proposed Elevations	Refused

REASON FOR REFUSAL

- 1 The development would be contrary to Policy EP11 - Protection of Greenspace of the Scottish Borders Local Development Plan 2016 in that the erection of two houses on this site would result in the permanent loss of green space to the detriment of the amenity and character of the surrounding area. The loss of the green space would be contrary to Condition 4 of planning consent 02/01783/FUL which requires the layout of the wider development site to make adequate provision for a play area(s), and it has not been adequately demonstrated that the development would outweigh the need to retain this open space.
- 2 The development would be contrary to Policy PMD5 - Infill Development of the Scottish Borders Local Development Plan 2016 in that the erection of two houses would result in over development of the site. The development would result in the permanent loss of an area of green space to the detriment of the character and amenity of the surrounding area.
- 3 The development would be contrary to Policy PMD2 - Quality Standards of the Scottish Borders Local Development Plan 2016 in that the erection of two houses on this site would not respect the character of the surrounding area. The development of this site would result in the permanent loss of meaningful green space.

FOR THE INFORMATION OF THE APPLICANT

If the applicant is aggrieved by the decision of the Planning Authority to refuse planning 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 appeal to the Scottish Ministers under Section 47 of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. The notice of the appeal should be addressed to The Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk FK1 1XR. A copy of the notice of the appeal must, at the same time, be sent to the Legal Services Section, Scottish Borders Council, Council Headquarters, Newtown St. Boswells, Melrose TD6 0SA.

If permission to develop land is refused or granted subject to conditions, whether by the Planning Authority or by the Scottish Ministers, 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 may serve on the Planning Authority a purchase notice requiring the purchase of his interest in the land in accordance with the provisions of Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).



Decision by David Buylla, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-140-2087
- Site address: land west of 8 Ballantyne Place, Peebles
- Appeal by Mr Rob Begg against the decision by Scottish Borders Council
- Application for planning permission 20/00691/FUL dated 29 June 2020 refused by notice dated 2 November 2020
- The development proposed: erection of two dwellinghouses and provision of two additional car parking spaces and removal of condition 4 of original planning permission 02/01783/FUL
- Date of site visit by Reporter: 9 April 2021

Date of appeal decision: 10 June 2021

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Special attention must also be paid to the desirability of preserving or enhancing the character or appearance of the Peebles conservation area.
2. The development plan comprises the Edinburgh and South East Scotland Strategic Development Plan 2013 (SESplan) and the Scottish Borders Local Development Plan 2016 (the LDP). I agree with the parties that this proposal does not raise strategic issues so I have concentrated on the LDP in my assessment of the proposal.
3. A proposed replacement for the LDP has been published but has yet to be submitted for examination. No party has asked me to take this into account and there is no reason to believe it would alter the planning policy position to a degree that would affect the assessment of this proposal.
4. Having regard to the provisions of the development plan, the main issue in this appeal is the effect that developing the appeal site would have on the character, appearance and amenity of Ballantyne Place and the wider conservation area.
5. Ballantyne Place is a cul de sac of three blocks of houses of between two and two and a half storeys, each with a small rear garden. Parking is within the road boundary, perpendicular to the flow of traffic. The proposed development would take the form of a two



house extension to one of the blocks. This would extend the development from 28 to 30 units.

6. On the date of my inspection, the appeal site was laid out as a small but attractive area of amenity space, comprising seating, a paved area, shrub planting and raised planting beds. It would seem that these works (which appeared incomplete at that time) have been carried out by local residents within recent months.

7. The appeal site provides the only visual break in the otherwise dominating presence of built development (both the Ballantyne Place blocks and the tall boundary wall that separates the housing from adjacent industrial premises. It also offers an opportunity for residents to interact socially, which the accounts of such residents in response to this proposal suggest has been welcomed in recent times. Given the high density nature of the development and the visual dominance of the edge of carriageway parking, I find the appeal site's undeveloped status and the opportunities it affords for passive recreation, to be of great importance to the character, appearance and amenity standards of the development.

8. LDP Policy PMD5 is supportive of proposals for infill development within settlements provided that six criteria are satisfied. The proposal would not conflict with the established land use of the area and, subject to appropriate conditions, could satisfy most of the other criteria, which relate to matters such as overlooking, car parking, and infrastructure provision. However, due to the harm that would be caused to the character and amenity of the surrounding area by the loss of this open amenity area, the proposal would conflict with the second criterion of Policy PMD5.

9. LDP Policy PMD2 expects all new development to be of high quality and sets out a long list of standards that will apply to all development. Of relevance to this proposal is the requirement for all development to provide "meaningful open space". I agree with the council that the loss of the only area of open space within this development would conflict with that expected standard.

10. LDP Policy HD3 aims to protect the amenity of both established residential areas and proposed housing developments. Development that would have an adverse amenity impact will not be permitted. When making an assessment of amenity effects, a number of factors are required to be taken into account. These include whether the loss of any open space should count against the principle of development. For the reasons already stated, I find the principle of developing this open space to be contrary to this policy due to the adverse impact it would have upon the amenity of the existing development.

11. The development of this open space would harm the character and appearance of the Ballantyne Place development. However, due to the small scale of the proposal and the inward-looking nature of Ballantyne Place, I would not expect the effect on the conservation area as a whole to be materially adverse. As such, I find no conflict with LDP Policy EP9, which requires development to preserve or enhance the character or appearance of a conservation area.

12. LDP Policy EP11 aims to prevent the unjustified piecemeal loss of open space within settlements (referred to in the LDP as "greenspaces"). The LDP identifies particularly important "Key Greenspaces", but this policy of protection also applies to other

greenspaces such as the appeal site, if justified by an assessment against three criteria. The LDP refers to non-statutory supplementary planning guidance (SPG) “Green Space”. The version I have been provided with dates from 2009 but is presumably still extant. This deals with both “functional green spaces” such as playing fields and play areas and “amenity green spaces” such as informal open space within developments.

13. The appeal site is an amenity green space under the terms of the SPG. I am satisfied that, due to the value of this small amenity area to the Ballantyne Place development in social and functional terms, it qualifies for protection under Policy EP11. I find that the proposal to redevelop it for housing is contrary to that policy because there is no demonstrable social, economic or community justification for its loss, or evidence that the need for an additional two homes outweighs the need to retain the only area of open space within the Ballantyne Place development.

14. In 2002, when planning permission was granted to develop Ballantyne Place, condition 4 required adequate provision for children’s play area(s) within the site. The current appeal site does not appear to have been identified specifically as a play area, but is the only land within the Ballantyne Place development where such a facility could be provided. As such, it could be argued that the site should also be regarded as a “functional green space” due to the role it could play in providing the play area that was expected to be provided when Ballantyne Place was developed.

15. The council’s report of handling states that play provision policy has changed since 2002, with the council now seeking to consolidate such provision in larger, more strategic locations rather than scattered across individual developments. Against that background, my view is that, had I been minded to allow this appeal, a developer contribution towards improved facilities within the grounds of Halyrude Primary School would have addressed the play space requirements of the Ballantyne Place development. Therefore, the absence of on-site play provision, in itself, need not count against this proposal.

16. Some local residents are concerned that the likely traffic increase from two additional houses could not be accommodated safely. However, this view is not shared by the roads authority and, although access to the development is perhaps less than ideal (reflecting its infill nature within a mixed residential and industrial area), there is no evidence to support a conclusion that a further two houses would cause a noticeable detriment to road or pedestrian safety.

17. An important factor in favour of this proposal is the provision of additional housing accommodation, at a relatively affordable price point, in a location that has good access to services. As with any construction project, the proposal would also deliver benefits to the local economy during the construction period and upon occupation.

18. Taking all factors into account, I find the proposal to be contrary to the development plan overall and I conclude that there are no considerations that would outweigh this development plan conflict.

David Buylla
Principal Reporter