

25/00974/FUL Planning Committee 3 Nov 2025

Mr Chairman, committee members,

Displayed is the latest site layout from the '02 permission, clearly showing the play area – required by condition 4 of that permission – where it remains today, on the applicant's proposed site.



Condition 10 in the proposed permission says:

“Condition 4 of planning consent 02/01783/FUL has been removed.
Reason: To allow the development to proceed”

This clearly acknowledges that condition 4 of the '02 planning permission must be removed before permission to build on this play area can be granted.

However, there appears to be no legal power under the Planning Act to remove this condition.

Section 65

Modifying the '02 permission requires use of section 65. But section 65 can only be used before the building authorised in the permission has been completed.

The building of these 28 houses was completed twenty years ago, so the '02 permission which authorised that build can no longer be modified.

Section 42

Section 42 can't be used to circumvent condition 4 either:

- Section 42 requests new permission – it doesn't modify the '02 permission.
- New permission for the 28 houses already built would be retrospective.
- But section 33 limits retrospective permission, which can only be granted if that development was carried out 1) without permission 2) for a limited period 3) or if build of the 28 houses breached one of their conditions. But none of that applies, so a section 42 cannot be granted now the 28 houses are built.

Condition 10 incompetent

No matter which way you look at it – condition 4 of the '02 permission can't be changed now those 28 homes have been built.

Condition 10 doesn't resolve this either. Condition 10 is just another invalid condition – because it doesn't relate to the development being permitted for 1 house, but rather to a different permission entirely, the '02 permission for 28 houses.

Section 75

There's also the section 75 agreement (Officers please show the section 75) permanently restricting this land to 28 houses.

SBC has a duty to enforce the section 75. And under section 76 to pay compensation to the residents who now own the land if those conditions are changed.

Ms Keddie bought her home in Ballantyne Place in part because the play area would help keep her sight-impaired son safe and get him out into the community.

Why would officers step so far outside their legal powers to grant this new permission, rather than protecting the rights of our community?

- Do we care about working class families?
- Or sight impaired children?
- The right to play?
- Or enforcing obligations to our community?

Granting this permission would set a precedent for building on any play area and green space in the borders – regardless of whether that would be legal.

If you value the community's trust, please ensure today's decision is legally sound and reject this application.

End.

Previous ending

Section 42

...

- The statement in the report that “The original permission is not amended or varied but remains in place and unaltered” is simply confused, directly contradicting condition 10 which says that condition 4 of the '02 permission has been removed.
- ~~The applicant appears not to have even paid the section 42 fee.~~

Response promised

Planning officers acknowledged that these legal issues “are important to the Council’s proper handling of the application”, and they were “liaising with the Council’s Legal Services team”. PCC was promised “A response ... will, therefore, be provided with the benefit of such legal advice.”

The promised response did not happen. No legal advice or explanation has been made available – Why? The officers’ report does not even mention the legal issues raised by PCC.

We ask the committee today to fully apprise itself of the legal issues raised and to publicly provide the answers promised but not delivered by planning officers.

Further implications of S.65

Modifying the '02 permission using section 65 has two further implications:

1. Compensation. (Officers please show the section 75 agreement.) The land covered by the '02 permission is now predominantly owned by the residents. Modification of that permission raises the question of the correct amount of compensation to be paid to the current owners by SBC under section 76.
2. Further, SBC is not the decision maker. Opposed uses of section 65 powers must be confirmed by the Secretary of State (S.66), with residents and PCC given a chance to put our case directly to ministers that such rarely used powers should not be used to deprive the children of this community of their play area – and certainly not when that use is *ultra vires* (outside) SBC’s powers.

References

25/00974/FUL <https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SZU7FMNTFHM00>

02/01783/FUL <https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=0201783FUL>

Town and Country Planning (Scotland) Act 1997 as amended

33 Planning permission for development already carried out.

- (1) On an application made to a planning authority, the planning permission which may be granted includes planning permission for development carried out before the date of the application.
- (2) Subsection (1) applies to development carried out—
 - a. without planning permission,
 - b. in accordance with planning permission granted for a limited period, or
 - c. without complying with some condition subject to which planning permission was granted.
- (3) Planning permission for such development may be granted so as to have effect from—
 - a. the date on which the development was carried out, or
 - b. if it was carried out in accordance with planning permission granted for a limited period, the end of that period.
- (4) But subsection (3) does not apply if, before the date of the application, an enforcement notice was issued in respect of the development.

42 Determination of applications to develop land without compliance with conditions previously attached.

- (2) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
- (3) On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—
 - a. if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly;
 - b. if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
- (4) The Scottish Ministers may by regulations or a development order make special provision as regards the procedure to be followed in connection with such applications.
- (5) This section does not apply if the previous permission was granted subject to a condition as to the time within which the development to which it related was to be begun, and that time has expired without the development having been begun.

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 [F304 or 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;
 - b. where the permission relates to a change of the use of any land, at any time before the change has taken place
- (4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has previously been carried out.
- (5) Part II of Schedule 3 shall have effect for the purpose of making special provision with respect to the conditions which may be imposed by an order under this section revoking or modifying permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials.

66 Procedure for section 65 orders: opposed cases.

- (1) Except as provided in section 67, an order under section 65 shall not take effect unless it is confirmed by the Secretary of State.
- (2) Where a planning authority submit such an order to the Secretary of State for confirmation, they shall serve notice on—
 - a. the owner of the land affected,
 - b. the lessee and the occupier of the land affected, and
 - c. any other person who in their opinion will be affected by the order.
- (3) The notice shall specify the period within which any person on whom it is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (4) If within that period such a person so requires, the Secretary of State shall, before he confirms the order, give such an opportunity both to that person and to the planning authority.
- (5) The period referred to in subsection (3) must not be less than 28 days from the service of the notice.
- (6) The Secretary of State may confirm an order submitted to him under this section without modification or subject to such modifications as he considers expedient.

75 Planning obligations

- (5) A relevant instrument to which the owner of the land is party may be recorded in the Register of Sasines or, as the case may be, registered in the Land Register of Scotland; and if the instrument is so recorded or registered then the planning obligation is (unless the instrument provides that only the person entering into that obligation is to be bound by it) enforceable at the instance of the planning authority—
 - a. against the owner of the land in so far as the obligation comprises a requirement mentioned in subsection (1A)(b) or (2), and
 - b. against—
 - i. the owner or tenant of the land, or

- ii. any other person having the use of the land,
in so far as the obligation comprises any other requirement.
- (6) But no such obligation is enforceable against a third party who has acquired right to the land (whether or not that person has completed title) prior to the relevant instrument being so recorded or registered.

76 Compensation where planning permission revoked or modified.

- (1) Where planning permission is revoked or modified by an order under section 65, then if, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land—
 - a. has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification, or
 - b. has otherwise sustained loss or damage which is directly attributable to the revocation or modification,the planning authority shall pay that person compensation in respect of that expenditure, loss or damage.



LAND REGISTER OF SCOTLAND



SUBSTITUTE LAND CERTIFICATE LAND REGISTRATION RULES 1980 RULE 19

TITLE NUMBER PBL921

D 9

D. BURDENS SECTION

ENTRY
NO

SPECIFICATION

of access for all purposes over the mutual access area off Dovecot Road and the lane, all tinted blue on the Title plan, declaring that the cost of maintaining the said mutual access area and lane shall be shared between our said disponees, us and our successors and others using the same on the basis of user or on such other equitable basis as may be agreed, but that we and our successors shall not be bound except by express agreement to contribute towards the cost of any upgrading of the said mutual access area and path

(Sixth) if the south-west boundary wall and the south-east boundary wall (so far as not mutual) of the main building are demolished by our said disponees or their foresaids, then they will be obliged to erect in their stead a wall or fence to a specification to be agreed with us or our successors, which wall or fence will not be removed without the consent of us and our successors; Failing agreement as to the specification, a two metre wooden fence will be erected at the joint expense of our said disponees and their foresaids and us and our successors, and maintained on that basis thereafter, which fence will not be removed without the consent of us and our successors.

- 8 Agreement (under section 75 of the Town and Country Planning (Scotland) Act 1997), registered 20 October 2005, between Scottish Borders Council the Planning Authority and Synergy Property Development Company Limited (hereinafter referred to as "heritable proprietors") and with the consent of The Royal Bank of Scotland:

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) but the heritable proprietors hereby agree that:

- (a) the whole of the land is to house a development comprising twenty eight houses comprising two and three storey houses to be erected as aforesaid and it is provided that the sale price of three of the two bedroom houses is to be restricted (as hereinafter specified) to NINETY EIGHT THOUSAND POUNDS (£98,000) Sterling the said sale prices