

From: Michael Marshall
Subject: Re: [OFFICIAL] EIR 20251122 - Normal practice of reissuing revised and updated decision notices - Additional Information
Date: 28 September 2025 at 16:13:00 BST
To: "Hayward, John"
Cc: "Fotheringham, Barry"

Dear Mr Hayward,

Thank you for your reply.

Unfortunately, we remain concerned that planning officers appear not to have the legal power to change conditions on completed developments and that consideration of whether to allow development on play areas and green spaces such as in 20/00691/FUL and 25/00974/FUL may not comply with powers under the planning act.

Would you please make time to discuss this with us? We feel that a face to face discussion would be much more conducive to understanding than a sequence of written exchanges. The following gives a brief flavour of our concerns.

Officers accept that condition 4 of 02/01783/FUL prevents building on the play area in Ballantyne Place. Even if further section 42 requests were granted, they do not have any legal effect to modify the underlying permission. That is, condition 4 of 02/01783/FUL remains in place, unmodified and continues to prevent building on the play area in Ballantyne Place. We are concerned therefore that any recommendation by officers to grant permission to build on the play area would be illegal by virtue of contravention of condition 4 of 02/01783/FUL.

As pointed out in your response of 26 Sep, there are two developments being applied for. The section 42 request applies to a development which was completed close to two decades ago. But planning permission for development already carried out can only be granted in the specific cases listed in section 33 (2) – and none of these cases apply. We are concerned that the confusion caused by officers' failure to distinguish between the two developments leads to non-compliance with section 33 of the act.

You assert that it is entirely proper for the two developments to be applied for in the same application. But consideration of whether to grant the other development appears to directly contravene the section 42 (2) injunction "On such an application the planning authority shall consider only the question of the conditions subject to which planning permission should be granted".

SBC records appear to show two other legal problems involved with consideration of these two requests at the same time.

1. Consideration of this application without the correct fee [Development Management Procedure Regulation 9 (3) (i)] owing to failure to charge for a section 42 application in addition to the full application
2. Apparent breach of section 35 (4) of the Act "A planning authority shall not entertain any application for planning permission unless any requirements imposed by virtue of this section have been satisfied" when the section 35 (2) requirements for land certification seemingly not complied with in respect of the development consisting of 28 houses.

We look forward to discussing the apparent absence of powers under the planning act to change conditions on completed developments and the implications for preventing building on play areas in cases such as at Ballantyne Place.

Kind regards,

Michael

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On 26 Sep 2025, at 16:33, Hayward, John wrote:

Dear Dr Marshall,

I am writing in response to your recent communication with our Information Officer following your recent Freedom of Information request. As it is no longer seeking recorded information, it has been passed to me to respond directly on your most recent query.

I do not share your view that the statement you have quoted is "false", insofar as my reading of the emphasis and purpose of the sentence in question is that a revised decision notice would need to be issued, owing to the fact that a variation to that first permission was being explicitly sought. That is a matter of fact. I accept that it could arguably have been more clearly expressed given this level

of scrutiny, but I do not think it makes any substantive difference, particularly given that the application was refused and subsequently dismissed at appeal.

What was being sought in the 2020 application was a revision to the 2002 permission but also two new houses. That may be where the confusion lies here: for the purposes of planning law, there are two “developments” being applied for – one for the new houses and one to vary the earlier permission which would have prevented them being built on the site in question. It’s entirely appropriate for both to be applied for in the same application and, procedurally, everything I have said in my previous response stands.

It does undoubtedly make unpicking the two aspects complicated given the effect on the original permission but I do think that we would have issued a new (or, if you will, revised) permission under the new application referring back to the original, as I will explain:

By definition, the new permission has to relate back to the 2002 permission, if for no other reason, because that first application is the one that contains all the approved drawings for the wider development. Indeed, the description of the 2020 application itself explicitly mentions the 2002 permission and that was reiterated in the refusal notice. For the avoidance of doubt, there would always be a new decision notice as I have already explained but because the new permission has to stand in its own right, it has also to contain all of the remaining conditions contained on the original permission.

Whether that is a “reissue” is evidently open to debate, but given that the dictionary definition of that word is “to produce

something again”, I’d argue that it likely meets that definition because we would have to produce a document that reproduces the original permission, save for Condition 4.

Both permissions would then exist as I have previously explained, with separate application numbers on each decision notice, albeit that the second has explicitly to reference the first. However it was described, this is what would have happened, as is evidenced by the decision notice *refusing* permission for the 2020 application.

Nevertheless, whether it was referred to as a reissue or a new decision is, for all intents and purposes, academic in the context of the process I have previously described but, most of all, because permission was refused.

I hope that helps clarify the situation.

Regards,

John Hayward

Chief Planning & Housing Officer

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From: Michael Marshall
Subject: Re: [OFFICIAL] EIR 20251122 - Normal practice of reissuing revised and updated decision notices - Additional Information
Date: 15 September 2025 at 16:04:05 BST
To: Freedom of Information <FOI@scotborders.gov.uk>

Dear Nicola / FOI / Chief Planning Officer,

We thank the Chief Planning Officer for confirming that SBC does not reissue modified planning permissions and we are grateful for the narrative explaining how the department's use of sections 42, 64 and 65 does not result in reissue of modified planning permissions:

' if the question is, do we "reissue" (i.e. replace) a permission, then, subject to the narrative set out above, the answer is "no". '

We are content that the Chief Planning Officer's response addresses our FOI request.

It does follow then that the comments as to normal practice in the officer's report re 20/00691/FUL dated 23 Oct 2020 are false:

"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."

We would welcome any clarification.

Kind regards,

Michael

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On 15 Sep 2025, at 13:43, Freedom of Information <FOI@scotborders.gov.uk> wrote:

Good Afternoon Michael,

The officer who has been dealing with your enquiry is now on leave; therefore, I posed your final question to the Chief Planning Officer the response he provided is below:

The answer that has been given in response to the original enquiry is correct. Normally, a formal reappraisal of a permission would come about as a result of an entirely new application or one submitted under Section 42 of the Act; it would normally only be through these processes that another decision notice would be issued. However, as has already been noted, this means that there are then two permissions, either of which could legitimately be implemented as the “new” permission” does not revoke the original. In that sense, it’s not a “reissue”.

Section 64 and Section 65 of the Act are doing different things:

Section 64 allows the person has been granted permission to seek a non-material variation to their permission. By definition, those changes should not be significant and should be permissible within the context of the existing permission. If we agree to it, it does not result in the reissuing of a permission, as the revisions are generally inconsequential relative to its terms. They are normally agreed by letter confirming that we consider the changes being proposed to be “non-material”, and the permission would remain as originally granted. These are common practice but do not result in the reissue of a permission. If the proposed revision is deemed to be “material”, another full application would be required if the developer wanted to proceed so, in essence, another decision might be issued, but – as above – the original would still stand. These non-material variations are recorded on the file of the original

application, along with the original permission.

Section 65 deals specifically with revocation – in other words, the removal of the permission altogether. This is rarely used and, in the examples I can recall in the Borders, have come at the request of an applicant. The most recent case was considered by the Planning & Building Standards Committee at their meeting in April 2025.

So, in short, I can't say that we don't use these sections of the Act because, self-evidently, we do. However, if the question is, do we "reissue" (i.e. replace) a permission, then, subject to the narrative set out above, the answer is "no".

The department advise that they cannot rule this out, however the act has been in force in 1947 so without checking every permission granted we cannot categorically say that permissions have been issued, however can I say with absolute certainty that this has always been the case? Without checking every permission ever issued, no, but current practice is not to "reissue" permissions under these sections of the Act.

I trust this answers your query, if you have any further questions the Council shall consider a formal review of the response provided to your initial request and shall respond within the legislation. I hope this is a satisfactory course of action for you.

Many Thanks

Nicola Driver

Nicola Driver

Information Officer
Scottish Borders Council
FOI@scotborders.gov.uk
Tel – 0300-100-1800

From: Freedom of Information <FOI@scotborders.gov.uk>
Sent: 15 September 2025 09:42
To: Michael Marshall; Freedom of Information
<FOI@scotborders.gov.uk>
Subject: RE: [OFFICIAL] EIR 20251122 - Normal practice of
reissuing revised and updated decision notices -
RESPONSE

Morning Micheal,

I shall ask the department for confirmation either way.

Many Thanks

Nicola Driver

Nicola Driver
Information Officer
Scottish Borders Council
FOI@scotborders.gov.uk
Tel – 0300-100-1800

From: Michael Marshall
Sent: 11 September 2025 17:05

To: Freedom of Information <FOI@scotborders.gov.uk>
Subject: Re: [OFFICIAL] EIR 20251122 - Normal practice of reissuing revised and updated decision notices -
RESPONSE

CAUTION: External Email

Hi Nicola,

Thanks for your reply. I hope you had a good holiday.

The answer below is not quite what I need – but perhaps just one more sentence would be all I need.

To explain, the answer below describes planners' use of section 42 to vary planning permission. I can see many examples of this on the public access portal. By implication then, SBC does not use sections 64 or 65 to vary or modify planning permission (though rather unhelpfully, this was not stated). Do you think you could ask the planners to confirm that in writing? A single sentence such as the below would suffice:

"No, SBC has never used section 64 or 65 to re-issue a varied or modified planning permission – we use section 42 instead."

That should be easy, I suspect it's true and it would be very helpful to have it confirmed.

Kind regards,

Michael

Michael Marshall, PhD

On 11 Sep 2025, at 16:30, Freedom of Information
<FOI@scotborders.gov.uk> wrote:

Good Afternoon Dr Marshall,

Thank you for your email and please accept my apologies for the delay in responding. By way of an explanation, I was on leave when your review request was received, and my colleague has since gone on leave since my return. That notwithstanding, I received your request for a review of the above information request, and to expedite the response I forwarded your request to the responding department to see if they could provide some context and response before I set the review meeting up. The department has advised the following:

Section 42 of the Town and Country Planning (Scotland) Act (1997) allows for a new planning permission to be granted without complying with a condition of a previous permission for the same development, rather than applying to vary the existing permission. An approved Section 42 application creates a new, standalone permission that coexists with the original, leaving the prior permission unchanged. The Council does not 'reissue' an earlier permission following approval of a Section 42 application. Where a S42 application is approved, a new, standalone consent is issued. We have directed the applicant to the Portal where they can find the requested information, and it should be clear from the decision notices we've issued, and that are available on Public Access, that a new consent is issued for S42 applications.

Does the above explanation provide the desired response to your review request, or do you wish the Council to undertake a formal review meeting and for you to be issued with the response above formally? Please advise if this is suitable or if you wish the Council to undertake a formal review.

Thank you for your attention to this matter.

Many Thanks

Nicola Driver

Nicola Driver
Information Officer
Scottish Borders Council
FOI@scotborders.gov.uk
Tel – 0300-100-1800

From: Michael Marshall
Sent: 01 September 2025 16:33
To: Freedom of Information <FOI@scotborders.gov.uk>
Subject: Re: [OFFICIAL] EIR 20251122 - Normal practice of reissuing revised and updated decision notices - RESPONSE

CAUTION: External Email

Dear FOI / Gillian,

Thank you for your reply.

Can I please ask SBC to review this decision.

I did carry out the search recommended by SBC on 27 Aug 2025, however as I explained in my email of 27 Aug 2025, that search returns very few results, with only 6 section 42

requests ever having been recorded in the Peebles & District Community Council area – none of which resulted in the reissue (variance or modification) of previously issued permissions.

Further (and as explained in my 27 Aug 2025 email), information about section 42 applications does not exhaustively address my query, which is in respect of permissions reissued in response to applications with a different application number. The text of my 27 Aug 2025 email (which asked to be treated as a review request) sets this out in more detail.

The public registers which the authority keeps [in respect of the Town and Country Planning (Scotland) 1997 S.36(1) and corresponding Development Management Procedures (Scotland) Regulations 2013 S.16 and Schedule 2] do not contain the information requested. Those registers contain information on applications and their outcomes. However the registers are neither required to contain, nor do they contain, any information about permissions which have been reissued in response to an application with a different application number.

Kind regards,

Michael

Royal Burgh of Peebles & District Community Council (PCC)
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<https://ccrbpeebles.co.uk/>

On 1 Sep 2025, at 15:37, Freedom of Information
<FOI@scotborders.gov.uk> wrote:

Good afternoon Michael

Thank you for your email.

The Department who issued the original response have confirmed that they have understood your request and have advised that where applications have been determined by the Council as Planning Authority, all decisions will be publicly available for the CC to search online.

I trust this now answers your request.

Regards

Gillian

Gillian Laing
Information Officer
Information Management Team
Legal & Licensing
Scottish Borders Council

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How are you playing [#yourpart](#) to help us keep the Borders thriving?

From: Freedom of Information <FOI@scotborders.gov.uk>
Sent: 27 August 2025 16:27
To: Michael Marshall; Freedom of Information
<FOI@scotborders.gov.uk>
Subject: RE: EIR 20251122 - Normal practice of reissuing
revised and updated decision notices - RESPONSE

Good Afternoon Michael,

Thank you for providing clarification on the information you are requesting. I have passed the detail below to the department to request a full response. As you request as only received this week I have reopened your original request and the department shall respond within the original 20 day timescale.

Many Thanks

Nicola Driver

Nicola Driver
Information Officer
Scottish Borders Council
FOI@scotborders.gov.uk
Tel – 0300-100-1800

From: Michael Marshall
Sent: 27 August 2025 15:08
To: Freedom of Information <FOI@scotborders.gov.uk>
Subject: Re: EIR 20251122 - Normal practice of reissuing
revised and updated decision notices - RESPONSE

CAUTION: External Email

Dear SBC FOI team,

Thank you for your prompt response.

Unfortunately you did not provide the information we requested and appear not to understand our request.

We asked you to provide information about planning permissions which had been reissued (with either varied or modified terms) and the powers under the Town and Country Planning (Scotland) Act 1997 which were used to do so (presumably either sections 64 or 65). This information is not available via SBC's planning portal.

Your answer refers to section 42 applications, which by definition result in the issue of a new permission, but (crucially to this FOI request) do not modify the original permission. We do not seek information on section 42 requests – other than incidentally in the event SBC did reissue an underlying permission in response to a section 42 – which would (appear to) be unlawful.

We did perform the search you recommended, but this returned only 2 results: 24/00030/FUL and 24/01490/FUL. Widening the search to include any decision status, a further 3 results were returned: 24/00031/FUL, 24/00247/FUL and 25/00974/FUL. We are already intimately familiar with these 5 cases – which bear no relationship to the officer's comments about the reissue of permissions referenced in, and the subject of, our original request.

You will further note that 20/00691/FUL was not returned in

these search results – despite this being the application referring to the (potentially unlawful) practice of SBC reissuing modified planning permissions as “normal”.

We hope this clarifies our request.

We would be very grateful if you would provide the information we requested in our original email below (information on varied or modified permissions and the powers used to do so), treating this as a request for review if necessary.

Kind regards,

Michael

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On 27 Aug 2025, at 11:21, Freedom of Information
<FOI@scotborders.gov.uk> wrote:

Dear Michael Marshall

The above request is exempt under S39(2) Environmental Information of FOISA therefore we respond under the Environmental Information (Scotland) Regulations 2004.

The following response was prepared and provided on behalf of Corporate Governance

The requested information (full planning applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 as amended, submitted and determined in the Peebles CC area since 1 Jan 2020) will be publicly available for the CC to search through the Council's Public Access Portal (where that information is held by the Planning Authority). Where the requested information is not held, the information will not be publicly available. The CC should click on the link below and search for Section 42 applications submitted in the Peebles CC area.

Applications Search

The CC should tailor their search using the various drop-down menus, description key words and date range as below:

Application Type: Full Application

Community Council: Peebles and District Community Council

Status: Decided

Development Type: All

Key Words: Section 42

Date Range: Date Received: 1 Jan 2020 to Today

I should advise that you have a right to request a review within 40 working days from the date we respond to your request. You should either e-mail FOI@scotborders.gov.uk or write to the Information Manager, Scottish Borders Council, Council HQ, Newtown St. Boswells TD6 0SA.

If after the Council's FOI Advice Group have considered your review and you are still not happy with the decision you then have a right to appeal to the Office of the Scottish Information Commissioner, you do this either by visiting <http://www.foi.scot/Appeal> or by post to: Kinburn Castle, Doubledykes Road, St. Andrews, Fife KY16 9DS.

Yours sincerely

Nicola Driver
for the
Information Management Team
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From: Michael Marshall
Subject: FOI request varied or modified planning permission
Date: 25 August 2025 at 10:58:40 BST

To: FOI@scotborders.gov.uk

Dear SBC FOI team,

Background

In the officer's report from 23 Oct 2020 recommending application 20/00691/FUL for approval, the officer makes the following statement:

"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."

However a local authority's powers to vary or modify a planning permission are limited under the Town and Country Planning (Scotland) Act 1997 (the Act) to either immaterial variations (under section 64) or situations where permitted works have not been completed (section 65).

In the case the officer refers to, neither section 64 nor section 65 would appear to apply.

Request

This FOI requests seeks to understand whether there is a normal practice of reissuing revised and updated decision notices, how common that practice is and whether that practice complies with the Act.

Could we please have a list of:

- Planning application reference numbers where planning permissions have been reissued (after the initial grant of

permission)

- The reason for that reissue, i.e.
 - The planning application reference number triggering the reissue; and
 - Copies of request correspondence not available on the planning portal.
- A statement of which power SBC used to reissue the permission, by reference to the section number of the Act, e.g. section 64 or section 65

Can we please limit the scope to:

- Applications within the Peebles & District Community Council area
- Applications triggering the reissue made on or after 1 Jan 2020 (regardless of when the reissued permission was originally issued)

Thank you in advance.

Kind regards,

Michael

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Dr Michael Marshall, Planning Convenor

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