



Community Council of the Royal Burgh of Peebles & District

10 September 2025

Mrs Nuala McKinlay
Director Corporate Governance
Scottish Borders Council
By email

Cc: Councillor Marshall Douglas
Opposition portfolio holder for Corporate Governance
Scottish Borders Council
By email

Dear Mrs McKinlay,

Request for explanation as to SBC's legal authority to modify completed planning permissions

We refer to our [planning consultation response 2](#) in respect of [25/00974/FUL](#) copied to you on 7 August 2025, in which we set out our concerns that SBC might be acting outwith its powers under the Town and Country Planning (Scotland) Act by granting section 42 applications (or modifying previous planning permissions) where development authorised by previously approved permissions has already been completed.

We attempted to clarify these issues¹ with bodies such as Planning Advice Service (PAS) and Citizen's Advice Bureau but were unable to do so without budget for legal advice. We await the clarification from SBC Legal promised to us by Mr Carlos Clarke in his [email dated 14 Aug 2025](#).

Officers indicate it might be normal practice for SBC to modify permissions where development had completed (despite officers apparently lacking the power to do so):

"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."

[23 Oct 2020 officer's report recommending [20/00691/FUL](#) for approval].

In order to determine whether the approach outlined by the officer in 20/00691/FUL re: Ballantyne Place Play Area of modifying an existing, completed permission is normal practice for SBC, PCC made an [FOI request](#) on 25 Aug 2025.

Following the procedure set out in SBC's FOI response 27 Aug 2025, extending the search to cover all of the Borders, at any time in any status, 31 results are returned (see appendix).

¹ FYI, our [planning consultation response 4 dated 22 August 2025](#) also contains a number of legal concerns.

Results indicate that it does indeed appear to be a regular practice for SBC to modify existing, completed permission (despite officers apparently lacking the power to do so).

Further, of the 31 results, the 10 marked in the appendix in red appear to breach the Town and Country Planning Act by virtue of one or more of the following (we await SBC Legal's clarification):

- Section 33 – permission for development already carried out can only be granted where that development was carried out: without permission; granted for a limited period; or developed in breach of conditions (none of which appear to apply)
- Section 42 – failure to issue a new, independent permission identical in all respects to the underlying permission except for altered conditions
- Section 42 – (purporting not to) leave the original permission in place, whereas the conditions in the underlying permission continue to apply
- Section 65 (3) – (purporting to) modify a completed permission
- Section 65 (4) – (purporting to) modify permissions relating to works which have previously been carried out
- Section 66 – failing to obtain the confirmation of the secretary of state (SBC is not the final decision maker for section 65 powers)
- Section 66/67 – failing to invite, or advertise for, representations be made to the secretary of state to appear before and be heard by the secretary of state

To remind you of the context, the current application is the [seventh application](#) to build on this play area since its protection was mandated by condition, which is a concern to local residents and more broadly.

We would very much appreciate the opportunity of meeting to discuss these issues with you before you finalise SBC Legal's response as to whether this abides by the Town and Country Planning Act.

Yours faithfully
Peebles & District Community Council

Michael Marshall, PhD
Planning Convener

Appendix – FOI Search Results

- 1.1 [25/01029/FUL](#) 7 Aug 2025 – Section 42 application to modify condition 3 of planning permission 15/00361/FUL pertaining to opening hours – Gymnasium Spylaw Road Kelso Scottish Borders TD5 8DN – Registered.
- 1.2 [25/00974/FUL](#) 25 Jul 2025 – Erection of dwellinghouse and Section 42 application to remove condition no.4 of planning permission 02/01783/FUL pertaining to include adequate provision for childrens play area – Land West Of 8 Ballantyne Place Peebles Scottish Borders – Registered
- 1.3 [25/00819/FUL](#) 1 Jul 2025 – **Section 42 application to vary condition 25 of planning permission [08/01915/FUL](#) to allow sub-letting to a third-party cafe operator – Sainsburys Lee Forbes Way Pinnaclehill Industrial Estate Kelso Scottish Borders TD5 8DW** – Approved subject to conditions.
- 1.4 [25/00791/FUL](#) 19 Jun 2025 – Section 42 application to vary condition 11 of planning permission 23/00857/FUL to enable use of pod 1 as Managers Accommodation all year round – Wigwams Cove Farm Cockburnspath Scottish Borders TD13 5YP – Registered.
- 1.5 [25/00391/FUL](#) 1 Apr 2025 – **Section 42 application to discharge condition 5 of planning permission 22/00019/AMC pertaining to hedging – 6 Mill Lade Ettrickhaugh Road Selkirk Scottish Borders TD7 5EL** – Approved - conditions and informatives.
- 1.6 [25/00385/FUL](#) 27 Mar 2025 – Section 42 application to vary Conditions 1 and 11 of planning permission 14/01186/FUL – Glenfinn Quarry Neuk Cockburnspath Scottish Borders TD13 5YU – Registered.
- 1.7 [25/00371/FUL](#) 26 Mar 2025 – Section 42 application to vary condition 7 of planning permission 17/00138/FUL pertaining to external alterations to dwellinghouse – Archies Way Tweed Terrace Galashiels Scottish Borders TD1 3EF – Refused.
- 1.8 [25/00330/FUL](#) 14 Mar 2025 – **Section 42 application to vary of conditions 4 and 7 of planning permission 18/00758/FUL to increase the maximum number of weddings per year and to continue usage as a wedding venue –** Netherbyres House Eyemouth Scottish Borders TD14 5SE – Approved subject to conditions.
- 1.9 [25/00161/FUL](#) 18 Feb 2025 – **Section 42 application to vary condition 1 of planning permission 23/00953/FUL to retain concrete plant in current location for a further 6 months** – Craighouse Quarry Melrose Scottish Borders TD6 9DU – Approved - conditions and informatives.
- 1.10 [25/00104/FUL](#) 30 Jan 2024 – Section 42 application to modify Condition 2 of Planning Permission 24/00556/FUL pertaining to the occupation of dwellinghouse – Land At Field No 0009 Caerleebank Wood Innerleithen Scottish Borders – Refused.
- 1.11 [24/01490/FUL](#) 3 Jan 2025 – **Section 42 Application to remove condition 2 of planning permission 17/01633/FUL pertaining to installation of main entrance barrier** – Kittlegairy Hill Land North Of Linnburn Farmhouse Peebles Scottish Borders – Approved - conditions and informatives.
- 1.12 [24/01358/FUL](#) 18 Nov 2024 – Section 42 application to vary Condition 5 of planning permission 09/00125/MIN for proposed importations of inert soils to

- carry out restoration improvement works – Fulfordlees Farm Cockburnspath Scottish Borders – Registered.
- 1.13 [24/01294/FUL](#) 4 Nov 2024 – Section 42 application to modify condition 1 of planning permission 16/00529/FUL pertaining to use of ancillary accommodation – The Hermitage Hermitage Lane Kelso Scottish Borders TD5 7AN – Approved subject to conditions.
 - 1.14 [24/01235/FUL](#) 26 Oct 2025 – Application under Section 42 to remove planning condition 7 of planning permission 22/01349/FUL pertaining to access – Land East of Teviotdale Lodge Hawick Scottish Borders – Approved - conditions and informatives.
 - 1.15 [24/01165/FUL](#) 1 Oct 2024 – Section 42 application to vary Condition 28 of planning permission 14/01186/MIN to include pop blasting to take place within the quarry – Glenfinn Quarry Neuk Cockburnspath Scottish Borders TD13 5YU – Registered.
 - 1.16 [24/01164/FUL](#) 15 Nov 2024 – Section 42 application to remove condition 3 of planning permission 19/01028/FUL to form holiday let accommodation from annex accommodation – 1 Dolphinston Farm Cottage Jedburgh Scottish Borders TD8 6RL – Approved subject to conditions.
 - 1.17 [24/01102/FUL](#) 17 Sep 2024– Application under section 42 to vary planning condition 2 of planning permission 21/00851/FUL (Erection of a grain distillery, storage warehouse, associated tank farms, car parking, landscaping and wastewater treatment) pertaining to materials to be used. – Land North East Of G A White Motors Charlesfield Industrial Estate St Boswells Scottish Borders – Approved - conditions and informatives.
 - 1.18 [24/01084/FUL](#) 12 Sep 2024 – Application under section 42 to vary planning condition 2b and 2e of planning permission 21/01131/FUL (Change of use of existing retail premises at ground floor level to form tap room retail, visitor experience with on site micro-brewery) – 4 Traquair Road Innerleithen Scottish Borders EH44 6PD – Refused.
 - 1.19 [24/01007/FUL](#) 28 Aug 2024 – Section 42 application to modify condition 7 of planning permission 23/01208/FUL pertaining to surface water drainage – Land West Of Former Carrs Billington Warehouse Dunsdale Haugh Selkirk Scottish Borders – Approved - conditions and informatives.
 - 1.20 [24/00931/FUL](#) 2 Aug 2024 – Application under section 42 to vary planning condition 3 and 4 of planning permission [22/01199/FUL](#) (Erection of temporary large scale scaffolding and roof covering) to allow an extension of time for the scaffolding to remain on site – Brothers Of Charity St Aidans House Gattonside Melrose Scottish Borders TD6 9NN – Approved - conditions and informatives.
 - 1.21 [24/00731/FUL](#) 21 Jun 2024 – Application under Section 42 to vary conditions 3 and 4 of planning permission 10/00265/MIN allowing a review of the quarry development plan and associated timescale – Hazelbank Quarry Stow Galashiels Scottish Borders TD1 2SA – Approved - conditions and informatives.
 - 1.22 [24/00713/FUL](#) 9 Jul 2024 – Application under Section 42 to remove condition 3 of planning permission 16/00185/FUL pertaining to PFS Kiosk – Co Op Food Group Ltd Rhymers Tower Melrose Road Earlston Scottish Borders TD4 6DL – Approved.

- 1.23 [24/00571/FUL](#) 15 May 2024 – Application under Section 42 to vary Condition 2 of Planning Permission 00/00371/FUL to extend the operational period Wind Farm by 5 years to 14th August 2030. – Bowbeat Windfarm Innerleithen Scottish Borders – Approved - conditions and informatives.
- 1.24 [24/00543/FUL](#) 15 May 2024 – **Application under Section 42 to remove condition 3 of planning permission 06/00590/OUT (erection of dwellinghouse and stables) relating to agricultural occupancy restriction** – Land North Of High Fodderlie Hawick Scottish Borders – Approved.
- 1.25 [24/00445/FUL](#) 29 Apr 2024 – Application under Section 42 to remove condition 15 from planning permission 18/00438/FUL (erection of dwellinghouse) to ensure the development is carried out wholly in accordance with the approved elevation drawings and site plan – Plot 2 Land North East Of Rossleigh Cottage Horndean Scottish Borders – Approved subject to conditions.
- 1.26 [24/00390/FUL](#) 3 Apr 2024 – Application under Section 42 to vary condition 3 of planning permission 21/00152/FUL (New quarry for Sand and Gravel Extraction), to change the development phasing – Land West Of Slipperfield House Slipperfield Loch West Linton Scottish Borders – Approved subject to conditions.
- 1.27 [24/00352/FUL](#) 9 May 2024 – Application under Section 42 to remove planning condition 1 of Planning Permission 17/01144/FUL to permit unrestricted residential occupancy – Garden Ground Of St Ronans Hotel High Street Innerleithen Scottish Borders – Refused.
- 1.28 [24/00247/FUL](#) 4 Mar 2024 – Application under Section 42 to vary planning conditions 2 and 7 of planning permission 19/00182/PPP (erection of residential apartments) to vary wording of conditions – Site In Grounds Of Kingsmeadows House Kingsmeadows Road Peebles Scottish Borders – Registered.
- 1.29 [24/00031/FUL](#) 5 Jan 2024 – Application under section 42 to vary planning condition 7 of planning permission 19/00182/PPP (erection of residential apartments) to vary wording of condition – Site In Grounds Of Kingsmeadows House Kingsmeadows Road Peebles Scottish Borders – Registered.
- 1.30 [24/00030/FUL](#) 5 Jan 2024 – Application under section 42 to vary planning condition 2 of planning permission 19/00182/PPP (erection of residential apartments) to vary wording of condition – Site In Grounds Of Kingsmeadows House Kingsmeadows Road Peebles Scottish Borders – Refused.
- 1.31 [23/01500/FUL](#) 10 Oct 2023 – Variation of Condition 4 of planning permission 17/00457/MIN under section 42 of the Town and Country Planning (Scotland) Act 1997 as amended, to increase the maximum floor depth of the quarry from 150 metres Above Ordnance Datum to 138 metres Above Ordnance Datum – Blinkbonny Quarry Kelso Scottish Borders TD5 7SA – Awaiting decision.