

# NOTICE OF REVIEW

Under Section 43A(8) Of the Town and Country Planning (SCOTLAND) ACT 1997 (As amended) In Respect of Decisions on Local Developments

The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (SCOTLAND) Regulations 2013

The Town and Country Planning (Appeals) (SCOTLAND) Regulations 2013

**IMPORTANT: Please read and follow the guidance notes provided when completing this form. Failure to supply all the relevant information could invalidate your notice of review.**

**PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://www.eplanning.scot>**

1. Applicant's Details		2. Agent's Details (if any)	
Title	MR.	Ref No.	18/02.
Forename	IAN	Forename	COLIN
Surname	JENKINS	Surname	KEIR.
Company Name	—	Company Name	PLANS PLUS
Building No./Name	KIMBERLEE	Building No./Name	MAIN STREET
Address Line 1	ROTHES	Address Line 1	OFFICES
Address Line 2	ABOLLOUR	Address Line 2	ORDHARZI EGIN
Town/City	MORAY.	Town/City	MORAY
Postcode	AB38 7AW.	Postcode	IV30 8LG.
Telephone	[REDACTED]	Telephone	01343 842635.
Mobile	—	Mobile	07766 315501.
Fax	—	Fax	—
Email	—	Email	cekplans@aol.com
<b>3. Application Details</b>			
Planning authority	MORAY		
Planning authority's application reference number	18/01323/APP.		
Site address	KIMBERLEE, ROTHES, MORAY AB38 7AW.		
Description of proposed development	ERECT NEW GARAGE.		

Date of application

9/10/18

Date of decision (if any)

3/12/18

Note. This notice must be served on the planning authority within three months of the date of decision notice or from the date of expiry of the period allowed for determining the application.

4. Nature of Application

Application for planning permission (including householder application)

Application for planning permission in principle

Further application (including development that has not yet commenced and where a time limit has been imposed; renewal of planning permission and/or modification, variation or removal of a planning condition)

Application for approval of matters specified in conditions

5. Reasons for seeking review

Refusal of application by appointed officer

Failure by appointed officer to determine the application within the period allowed for determination of the application

Conditions imposed on consent by appointed officer

6. Review procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may tick more than one box if you wish the review to be conducted by a combination of procedures.

Further written submissions

One or more hearing sessions

Site inspection

Assessment of review documents only, with no further procedure

If you have marked either of the first 2 options, please explain here which of the matters (as set out in your statement below) you believe ought to be subject of that procedure, and why you consider further submissions or a hearing necessary.

[Empty box with a handwritten checkmark]

7. Site inspection

In the event that the Local Review Body decides to inspect the review site, in your opinion:

Can the site be viewed entirely from public land?

YES  
YES

Is it possible for the site to be accessed safely, and without barriers to entry?

If there are reasons why you think the Local Review Body would be unable to undertake an unaccompanied site inspection, please explain here:

/

### 8. Statement

You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. Note: you may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

If the Local Review Body issues a notice requesting further information from any other person or body, you will have a period of 14 days in which to comment on any additional matter which has been raised by that person or body.

State here the reasons for your notice of review and all matters you wish to raise. If necessary, this can be continued or provided in full in a separate document. You may also submit additional documentation with this form.

SEE SEPARATE SHEET .

Have you raised any matters which were not before the appointed officer at the time your application was determined?

Yes  No

If yes, please explain below a) why your are raising new material b) why it was not raised with the appointed officer before your application was determined and c) why you believe it should now be considered with your review.

CLIENT HAS OFFERED TO ENTER INTO A SECTION 75 AGREEMENT WITH LEGALAD TO EQUITY HOUSE TO TRY AND REACH A COMPROMISE .

**9. List of Documents and Evidence**

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review

DECISION NOTICE  
PLANS USED FOR APPLICATION.  
SEPA LETTER  
SUPPORTING STATEMENT  
REVIEW APPLICATION.

Note. The planning authority will make a copy of the notice of review, the review documents and any notice of the procedure of the review available for inspection at an office of the planning authority until such time as the review is determined. It may also be available on the planning authority website.

**10. Checklist**

Please mark the appropriate boxes to confirm that you have provided all supporting documents and evidence relevant to your review:

- Full completion of all parts of this form
- Statement of your reasons for requesting a review
- All documents, materials and evidence which you intend to rely on (e.g. plans and drawings or other documents) which are now the subject of this review.

Note. Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice from that earlier consent.

**DECLARATION**

I, the applicant/agent hereby serve notice on the planning authority to review the application as set out on this form and in the supporting documents. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

Signature:  Name:  Date:

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.

# LAND OWNERSHIP CERTIFICATES

Town and Country Planning (Scotland) Act 1997  
Regulation 15 of the Town and Country Planning (Development Management Procedure) (Scotland)  
Regulations 2013

## CERTIFICATE A, B, C, D OR CERTIFICATE E MUST BE COMPLETED BY ALL APPLICANTS

### CERTIFICATE A

Certificate A is for use where the applicant is the only owner of the land to which the application relates and none of the land is agricultural land.

I hereby certify that -

- (1) No person other than ~~myself~~ **APPLICANT** was owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the application.
- (2) None of the land to which the application relates constitutes or forms part of agricultural land.

Signed:

[Redacted signature box]

On behalf of:

**MR IAN JENKINS.**

Date:

**28/1/19.**

### CERTIFICATE B

Certificate B is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where all owners/agricultural tenants have been identified.

I hereby certify that -

- (1) I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates. These persons are:

Name	Address	Date of Service of Notice

- (2) None of the land to which the application relates constitutes or forms part of agricultural land

or

- (3) The land or part of the land to which the application relates constitutes or forms part of agricultural land and I have served notice on every person other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are:

Name	Address	Date of Service of Notice

Signed:

On behalf of:

Date:

**CERTIFICATE C**

Certificate C is for use where the applicant is not the owner or sole owner of the land to which the application relates and/or where the land is agricultural land and where it has not been possible to identify ALL or ANY owners/agricultural tenants.

(1) I have been unable to serve notice on **every** person other than myself who, at the beginning of the period of 21 days ending with the date of the application was owner of any part of the land to which the application relates.

or

(2) I have been unable to serve notice on **any** person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was owner of any part of the land to which the application relates.

(3) None of the land to which the application relates constitutes or forms part of an agricultural holding.

or

(4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have been unable to serve notice on any person other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application was an agricultural tenant.

or

(5) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding I have served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the application was an agricultural tenant. These persons are:

Name	Address	Date of Service of Notice

(6) I have taken reasonable steps, as listed below, to ascertain the names and addresses of all other owners or agricultural tenants and have been unable to do so.

Steps taken:

--	--

Signed:

--	--

On behalf of:

--	--

Date:

--	--

**CERTIFICATE D**

Certificate D is for use where the application is for mineral development.

(1) No person other than myself was an owner of any part of the land to which the application relates at the beginning of the period of 21 days ending with the date of the accompanying application.

or

(2) I have served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the accompanying application, was to the applicant's knowledge, the owner, of any part of the land to which the application relates. These persons are:

Name	Address	Date of Service of Notice

(3) None of the land to which the application relates constitutes or forms part of an agricultural holding.

or

(4) The land or part of the land to which the application relates constitutes or forms part of an agricultural holding and I have served notice on each of the following persons other than myself who, at the beginning of the period of 21 days ending with the date of the application, was an agricultural tenant.

(5) Notice of the application as set out below has been published and displayed by public notice

Signed:

--	--

On behalf of:

--	--

Date:

--	--

### CERTIFICATE E

Certificate E is required where the applicant is the sole owner of all the land and the land to which the application relates is agricultural land and there are or are not agricultural tenants.

**I hereby certify that -**

(1) No person other than myself was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) The land to which the application relates constitutes or forms part of an agricultural holding and there are no agricultural tenants.

**or**

(1) No person other than myself was the owner of any part of the land to which the application relates at the beginning of the period 21 days ending with the date of the application.

(2) The land to which the application relates constitutes or forms part of an agricultural holding and there are agricultural tenants. These people are:

Name	Address	Date of Service of Notice

(3) I have taken reasonable steps, as listed below, to ascertain the names and addresses of the other agricultural tenants and have been unable to do so.

Steps taken:

Signed:

On behalf of:

Date:

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act





# design consultants

Phone: 01343 842635  
Fax: 01343 842785  
Mobile: 07766 315501  
Email: [ctkplans@aol.com](mailto:ctkplans@aol.com)  
Web: <http://members.aol.com/ctkplans>

Main Street, Urquhart, Elgin, Moray, IV30 8LG

## REVIEW.

### ERECT NEW GARAGE AT KIMBERLEE, ROTHES.

CLIENT :- MR IAN JENKINS.

PLANNING REFERENCE NUMBER 18/01323/APP

## HISTORY.

Consent for 4 houses was granted by Moray Council on this land which previously had 2 old steading buildings. Over the years since the houses have been constructed, there has never been any flooding on this site. 3 of the houses have been completed with the consent to the North of Kimberlee still live. An application was made to Moray Council on the 9<sup>th</sup> of October 2018 for consent for a garage to shelter the applicants motor home. During the deliberations of the application, SEPA were asked to comment on the proposal. SEPA responded by saying that they were not normally consulted on "small scale extensions, garages or garden sheds".

## PROPOSAL.

During the course of the application it was suggested that the garage be located on the site just to the North of Kimberlee. This was unacceptable to our client as this would have meant the loss of the fourth plot for a dwelling. The design of the garage is such that in the event of a flood ever occurring, water would simply pass through the garage due to the number of floor ventilators included in the design. Careful consideration was given to the possibility of flooding and there would be no displacement elsewhere in the location if water simply passed through the garage. The garage is 10.35m x 8.6m in size with 15 No 225 x 150mm ventilators positioned at floor level. Any flood water would simply flow through.

## SUPPORT

In support of our review we would ask you to consider the following. Moray Council have intimated that if the garage was relocated just to the North of



the applicants house, Kimberlee, they could support this proposal and the issue of flooding would not be considered. However, this could prejudice the fourth house plot which has been considered "live" and still valid.

**The applicant is prepared to enter into a Section 75 agreement to confirm that the fourth house would never be built in his life time thus transferring the potential floor area of the house over to the garage.**

It is strange that this very same garage is acceptable on the site in terms of flooding near to Kimberlee yet in a different part of the garden it is unacceptable. Surely any displacement would be identical?

The real concern should this site ever flood would be for the town of Rothes where parts of the town lies 5 meters lower than the ground at Kimberlee. From the attached map you can see that a track to where the garage is proposed is already there and if the garage were to be moved to the North of Kimberlee, the fourth house would be compromised or at the very least squeezed in.

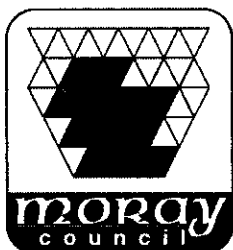
**The garage floor level is 2.23 meters higher than the ground immediately to the North of where the garage is proposed.**

### **CONCLUSIONS.**

A common sense approach is required in this instance. Planners are happy to approve the garage next to the house with no flooding issues. Planners refuse the garage in the location preferred by the applicant and use flooding issues as reasons to refuse. In essence, flooding is perhaps not the issue here and that it is the siting of the garage giving issue. The displacement, if any, will be the same whichever position the garage is located but unlike the planners preferred location, my client's suggested location will not compromise the fourth site.

My client's offer of a compromise stands as stated above with the garage offsetting the house in terms of displacement. The fourth house might never be built but again as stated my client is prepared to confirm legally that through his lifetime, he would not build a fourth house on the site to allow a trade off to occur between the 2 buildings.

We hope the above will allow you to consider this application and review and provide our client with a positive outcome.



**MORAY COUNCIL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,  
as amended**

**REFUSAL OF PLANNING PERMISSION**

**[Speyside Glenlivet]  
Application for Planning Permission**

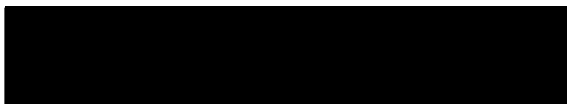
TO Mr Ian Jenkins  
c/o Plans Plus  
Main Street  
URQUHART  
By Elgin  
Moray  
IV30 8LG

With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

**Erect garage at Kimberlee Rothies Aberlour Moray**

and for the reason(s) set out in the attached schedule.

Date of Notice: **3 December 2018**



**HEAD OF DEVELOPMENT SERVICES**  
Environmental Services Department  
Moray Council  
Council Office  
High Street  
ELGIN  
Moray  
IV30 1BX

**IMPORTANT**  
**YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW**

**SCHEDULE OF REASON(S) FOR REFUSAL**

By this Notice, Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposal is contrary to the adopted Moray Local Development Plan 2015 policies EP7 and IMP1 on flood risk grounds where the proposal would lie entirely within the medium likelihood (0.5% annual probability or 1 in 200 years) flood extent of the SEPA Flood Maps. The proposed garage would therefore be at medium to high risk of flooding and in a location that would contribute toward increased flood risk to surrounding properties via displacement of flood plain capacity.

**LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT**

The following plans and drawings form part of the decision:-

Reference	Version	Title
17~67	A	Elevations floor plan site and location plan
		Levels for garage

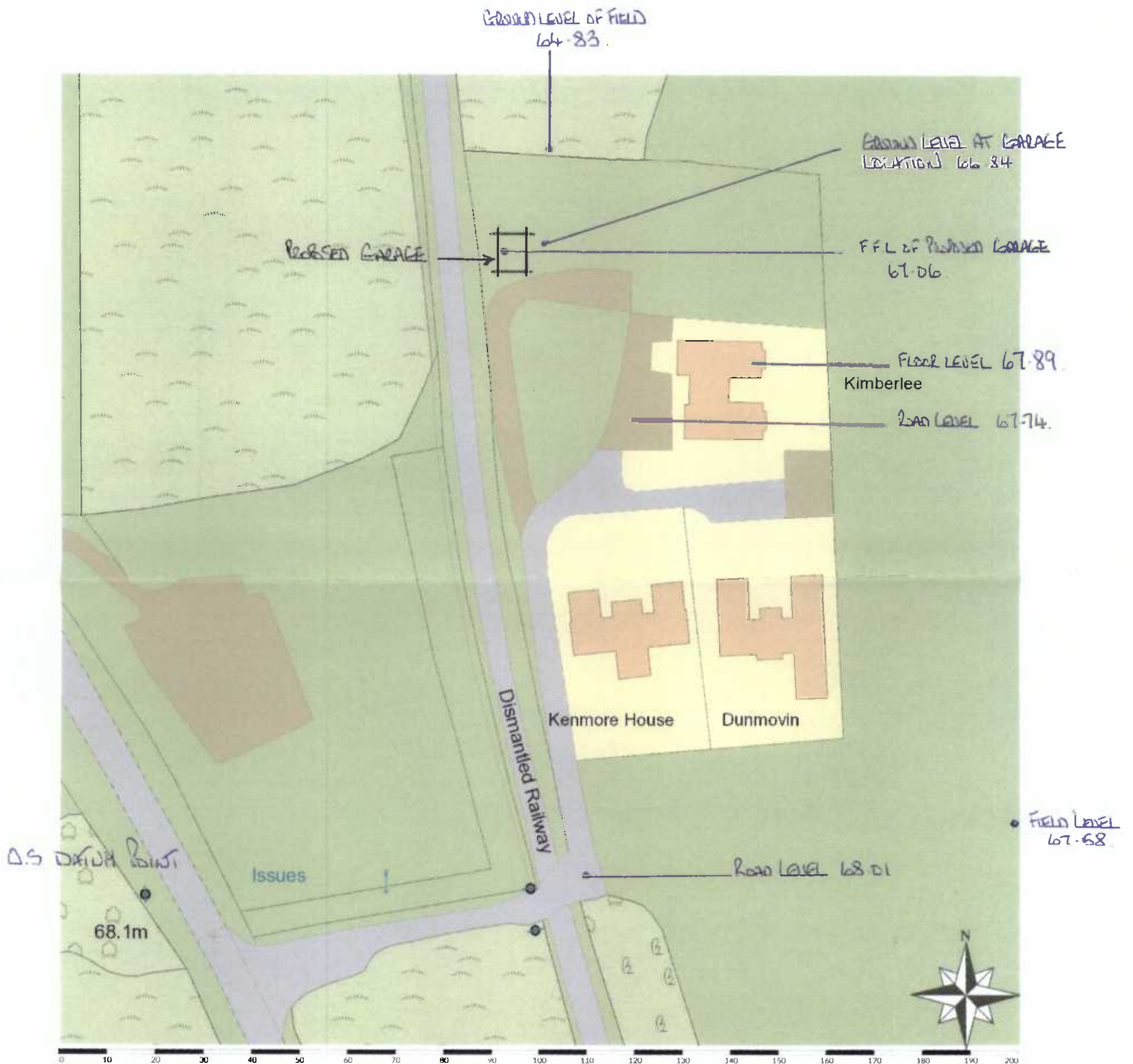
**NOTICE OF APPEAL**  
**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse 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 require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months from the date of this notice. The notice of review should be addressed to The Clerk, Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from [www.eplanning.scotland.gov.uk](http://www.eplanning.scotland.gov.uk)

If permission to develop land is refused or granted subject to conditions 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 of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

02/10/2018

KIMBERLEE, A941 FROM B9102 AT DANDALEITH TO HIGH STREET IN ROTHES, ROTHES, AB38 7AW



Scale: 1:1250 | Area 4Ha | Grid Reference: 327916,847822 | Paper Size: A4

Town & Country Planning  
(Scotland) Act, 1997  
as amended

**REFUSED**

03.12.2018

Development Management  
Environmental Services  
The Moray Council



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100035207



18/01323/APP  
08 NOV 2018

Our ref: PCS/161771  
Your ref: 18/01323/APP

If telephoning ask for:  
Jim Mackay

20 November 2018

Cathy Archibald  
The Moray Council  
Development Services  
Environmental Services Dept.  
Council Office, High Street  
Elgin  
IV30 1BX

By email only to: [consultation.planning@moray.gov.uk](mailto:consultation.planning@moray.gov.uk)

Dear Ms Archibald

**Town and Country Planning (Scotland) Acts**  
**Planning application: 18/01323/APP**  
**Erect garage**  
**Kimberlee Rothes Aberlour Moray**

Thank you for your consultation on this planning application specifically requesting our advice on flood risk, which SEPA received on 15 October 2018. Further information was also submitted from the agent on 5 November 2018. We note this consultation follows the advice provided on related application 18/00685/APP (our ref: PCS/160129 (27 July 2018)).

Please note that SEPA does not usually provide site-specific flood risk advice on "Small scale extensions, domestic garages or garden sheds". The position with this application is a little different in that the garage proposed is a separate building in the floodplain, but nevertheless we refer you to our "[SEPA standing advice for planning authorities and developers on development management consultations](#)" (LUPS-GU8) and advise you follow the advice of your flood colleagues.

We provide the following brief information to assist your consideration of the application with your colleagues:

The information provided confirms the proposed location of the garage/workshop is entirely within the functional floodplain of the River Spey, at medium to high risk of flooding from the River Spey and will reduce the capacity of the floodplain. A 1 in 200 year flood level of 67.73m AOD has previously been established for the area. The ground levels in the vicinity of the proposed building are 66.84m AOD. The proposed finished floor level for the garage is 67.06m AOD which is higher than the ground level but still less than the flood level. While this reduces flood risk to the new building, land raising in the functional floodplain is generally not considered acceptable as it reduces the storage capacity of the functional floodplain which has a long term impact elsewhere. Given the size of the proposed development, the impact on the floodplain from this alone is not significant, but it does not serve to avoid the piecemeal reduction of the floodplain. Further



Chairman  
Bob Downes

Chief Executive  
Terry A'Hearn

SEPA Aberdeen Office  
Inverdee House, Baxter Street  
Torry, Aberdeen AB11 9QA  
tel 01224 266600 fax 01224 896657

[www.sepa.org.uk](http://www.sepa.org.uk) • customer enquiries 03000 99 66 99



mitigation has been suggested using low level vents to ensure the garage still floods. These measures may offset some of the negative effects of building in the floodplain but only if implemented and maintained.

If you have any queries relating to this letter, please contact me by telephone on 01349 860315 or e-mail at [planning.aberdeen@sepa.org.uk](mailto:planning.aberdeen@sepa.org.uk).

Yours sincerely

Jim Mackay  
Planning Unit Manager North  
Planning Service

ECopy to: [ctkplans@aol.com](mailto:ctkplans@aol.com) and [cathy.archibald@moray.gov.uk](mailto:cathy.archibald@moray.gov.uk)

**Disclaimer**

*This advice is given without prejudice to any decision made on elements of the proposal regulated by us, as such a decision may take into account factors not considered at this time. We prefer all the technical information required for any SEPA consents to be submitted at the same time as the planning or similar application. However, we consider it to be at the applicant's commercial risk if any significant changes required during the regulatory stage necessitate a further planning application or similar application and/or neighbour notification or advertising. We have relied on the accuracy and completeness of the information supplied to us in providing the above advice and can take no responsibility for incorrect data or interpretation, or omissions, in such information. If we have not referred to a particular issue in our response, it should not be assumed that there is no impact associated with that issue. For planning applications, if you did not specifically request advice on flood risk, then advice will not have been provided on this issue. Further information on our consultation arrangements generally can be found on our [website planning pages](#).*