



MORAY LOCAL REVIEW BODY

DECISION NOTICE

Decision by the Moray Local Review Body (MLRB)

- Request for Review reference: Case LR255
 - Application for review by Morlich Homes Ltd, c/o Mr K Shand, GH Johnston Building Consultants Ltd against the decision of an Appointed Officer of Moray Council
 - Planning Application 20/00544/APP – Erect 7 detached dwellinghouses on Site Adjacent To 1-5 Station Road Portessie
 - Date of decision notice: 25 November 2021
-

Decision

The MLRB agreed to uphold the request for review and grant planning permission/planning permission in principle, subject to the conditions appended to this decision notice. Attention is also drawn to the informative notes which follow the conditions.

1. Preliminary

- 1.1 This Notice constitutes the formal decision of the MLRB as required by the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 1.2 The above application for planning permission was considered by the MLRB at the meeting held on 25 March 2021.
- 1.3 The MLRB was attended by Councillors Taylor, Bremner, Cowie, Coy, Gatt, R McLean, Powell and Ross.

2. MLRB Consideration of Request for Review

- 2.1 A request was submitted by the Applicant, seeking a review of the decision of the Appointed Officer, in terms of the Scheme of Delegation, to refuse planning permission on the grounds that:

The proposal would be contrary to the Buckie ENV5 designation and associated policies PP1, DP1, DP2, EP2, EP5 and EP7 of the Moray Local Development Plan (MLDP) 2020, in that the development would result in the loss of land within an ENV designation where these policies aim to protect and

preserve the characteristics of ENV areas and where policy EP5 specifically excludes residential development within ENV designations.

- 2.2 A Summary of Information Report set out the reasons for refusal, together with the documents considered or prepared by the Appointed Officer in respect of the planning application, in addition to the Notice of Review, Grounds for Review and supporting documents submitted by the Applicant.
- 2.3 In response to a question from the Chair as to whether the Legal or Planning Advisers had any preliminary matters to raise, the Legal Adviser advised that he had nothing to raise at this time. The Planning Adviser advised that financial implications are not a material consideration in the determination of this appeal and that NPF4 has no legal status and should be given limited weight as a material consideration as it is an emerging framework and sets out the direction of travel for future policy but at this moment it has not been approved by the Scottish Government.
- 2.4 The Chair then asked the Moray Local Review Body (MLRB) if it had sufficient information to determine the request for review. In response, the MLRB unanimously agreed that it had sufficient information to determine the case.
- 2.5 Councillor Cowie, being familiar with the site, queried why it was given an ENV designation as it had previously been a railway station and a development site.
- 2.6 In response, the Planning Adviser advised that the Report of Handling stated that the Reporter had stated that the established vegetation on the site effectively screens the built edge of Portessie from the open countryside and provides a valuable landscape setting to the settlement and that the development of the site would breach the natural limit of the village therefore recommended that it is reinstated as ENV5 as "Green Corridor" and that the recommendation from the Reporter was subsequently accepted by the Council and the MLDP 2020 modified accordingly. Therefore the ENV status of the site was beyond doubt.
- 2.7 Councillor Cowie disagreed with the findings of the Reporter and was of the view that the Applicant's proposals to retain the core path and cycle route, planting of trees, need for housing in the area and the possible increase to the school roll would benefit the Community.
- 2.8 Ms Webster, Principal Planning Officer (Strategic Planning and Development) advised that, based on projections calculated using the pupil product ratio, the proposed development would only increase the primary school roll by 3 pupils.
- 2.9 Councillor Coy, having considered the case in detail was of the view that the MLRB should determine the case based on the policies within MLDP 2020 which has been formally adopted by the Council and which has designated the site as ENV therefore moved that the MLRB dismiss the appeal and uphold the original decision of the Appointed Officer to refuse Planning Application 20/00544/APP as the proposal is contrary to the Buckie ENV5 designation and associated policies PP1 (Placemaking), DP1 (Development Principles), DP2 (Housing), EP2 (Biodiversity), EP5 (Open Space) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020. This was seconded by Councillor Bremner.

2.10 Councillor R McLean, having considered the case in detail and listened to the debate was of the view that the proposal was an acceptable departure from Policies PP1 (Placemaking), DP1 (Development Principles), DP2 (Housing), EP2 (Biodiversity), EP5 (Open Space) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020 based on community benefit in terms of housing and the school roll and moved that the MLRB uphold the appeal and grant planning permission in respect of Planning Application 20/00544/APP. This was seconded by Councillor Gatt.

2.11 On a division there voted:

For the Motion (3): Councillors Coy, Bremner and Taylor

For the Amendment (5): Councillors R McLean, Gatt, Cowie, Powell and Ross

Abstentions (0): Nil

2.12 Accordingly, the Amendment became the finding of the Meeting and the MLRB agreed to uphold the appeal and grant planning permission in respect of Planning Application 20/00544/APP subject to standard conditions and informatives and following the payment of developer obligations, as the application is considered to be an acceptable departure from policies PP1 (Placemaking), DP1 (Development Principles), DP2 (Housing), EP2 (Biodiversity), EP5 (Open Space) and EP7 (Forestry, Woodlands and Trees) of the MLDP 2020 based on community benefit in terms of housing and the school roll.

Mr S Hoath
Senior Solicitor
Legal Adviser to the MLRB

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to Applicant on determination by the Planning Authority of an application following a review conducted under Section 43A(8)

Notice Under Regulation 22 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

1. If the Applicant is aggrieved by the decision of the Planning Authority to refuse permission or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the Applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. 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 V of the Town and Country Planning (Scotland) Act 1997.

IMPORTANT NOTE

YOU ARE OBLIGED TO COMPLY WITH THESE CONDITIONS AND NOTES

SCHEDULE OF CONDITIONS

By this Notice, Moray Council has **GRANTED PLANNING PERMISSION** for this proposal subject to conditions as appropriate to ensure implementation of the proposal under the Town & Country Planning (Scotland) Act 1997, as amended. **It is important that these conditions are adhered to and failure to comply may result in enforcement action being taken.**

CONDITION(S)

Permission is granted subject to the following conditions: -

1. Notwithstanding the details submitted on the site layout and location plans (Drawings 20-40-PL-01 and 20-40-PL-02) for the changes required to Station Road (which are not acceptable), no development shall commence until detailed proposals for the reconfigured road footway and crossings at the existing PU79 (Station Road)/U66L (Station Road) junction have been submitted for approval in writing by the Planning Authority in consultation with the Roads Authority.

Reason: To ensure acceptable infrastructure is provided for all road users and the provision of suitable access to existing properties, in the interests of road safety and the submission of information currently lacking.

2. No development shall commence until evidence has been submitted to confirm that the statutory process to stop up PU79 (Station Road) to vehicular traffic (except cycles) at its junction with the U66L (Station Road), has been completed.

Thereafter no dwelling house shall be completed until the works required to modify the existing road layout at the junction of PU79 (Station Road) with U66L (Station Road) have been completed in accordance with the approved details.

Reason: To ensure acceptable infrastructure is provided for road users in the interests of road safety.

3. Notwithstanding the details submitted on the site layout and location plans (Drawings 20-40-PL-01 and 20-40-PL-02) for the Plot 1 boundary (which is not acceptable). No development shall commence until revised plans have been submitted to show the site layout and Plot 1 boundary modified to ensure the plot 1 boundary is behind the 4.5m x 115m visibility splay as shown on Drawing 911 (Visibility Splay).

Reason: To ensure the proposals are consistent and the provision of an acceptable site layout and visibility splays at the access to the development in the interest of road safety.

4. No development shall commence until a detailed drawing (scale 1:200) has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority showing the provision of a minimum of one parking space per plot which can be served by an Electric Vehicle (EV)

charger unit (minimum specification 7kw and with parking space accessible to, and located within 5 metres of the EV charger unit) and the location/specification of the EV charger unit. Thereafter the car parking spaces and EV charger unit shall be provided within the site in accordance with the approved drawing and be fully operational prior to the first occupation of the dwelling house and thereafter be retained and maintained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety and the provision of infrastructure to support the use of low carbon transport, through the provision of details currently lacking.

5. A visibility splay of 4.5 metres by 43 metres to the north and 4.5 metres by 90 metres to the south shall be provided and maintained at the access from the development onto Station Road (U66L). A schedule of maintenance for the splay area shall be submitted to and approved by the Council, as Planning Authority in consultation with the Roads Authority; and
- i) the visibility splay shall be provided in accordance with the approved drawing prior to any works commencing (except for those works associated with the provision of the visibility splay); and
 - ii) thereafter, the visibility splay shall be maintained at all times free from any obstruction exceeding 0.6 metres above the level of the carriageway in accordance with the agreed schedule of maintenance.

Reason: To enable drivers of vehicles entering or exiting the site to have a clear view so that they can undertake the manoeuvre safely and with the minimum interference to the safety and free flow of traffic on the public road.

6. No boundary fences, hedges, walls or any other obstruction whatsoever over 1.0 metre in height and fronting onto the public road shall be within 2.4 metres of the edge of the carriageway, measured from the level of the public carriageway, unless otherwise agreed in writing by the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To enable drivers of vehicles leaving driveways to have a clear view over a length of road sufficient to allow safe exit, in the interests of road safety for the proposed development and other road users.

7. Parking provision shall be provided and made available for use at all times at the following level(s) of provision:

Dwellinghouses:

- up to 3 bedrooms - 2 spaces; and
- 4 or more bedrooms - 3 spaces.

Thereafter, no dwellinghouse shall be occupied until parking has been provided and made available for use by that house and the parking arrangements shall be retained and maintained in perpetuity as parking spaces for use in conjunction with that house hereby approved.

Reason: To ensure the permanent availability of the level of parking necessary for residents/visitors/others in the interests of an acceptable development and road safety.

8. Driveways over service verges shall be constructed to accommodate vehicles and shall be surfaced with bituminous macadam unless otherwise agreed with the Council, as Planning Authority in consultation with the Roads Authority.

Reason: To ensure acceptable infrastructure is provided at the property accesses.

9. No works shall commence on site until a Construction Traffic Management Plan has been submitted to and approved in writing by the Council, as Planning Authority in consultation with the Roads Authority. The Construction Traffic Management Plan shall include the following information:

- duration of works;
- construction programme;
- full details of any temporary construction access;
- measures to be put in place to prevent material being deposited on the public road;
- measures to be put in place to safeguard the movements of pedestrians;
- traffic management measures to be put in place during works including any specific instructions to drivers; and
- parking provision, loading and unloading areas for construction traffic.

Thereafter, the development shall be implemented in accordance with the approved details.

Reason: To ensure an acceptable form of development in terms of the arrangements to manage traffic during construction works at the site.

10. Unless otherwise agreed in writing, no development shall commence until a strategy to assess and then, where subsequently appropriate, a strategy to deal with potential contamination on the site have been submitted to, and accepted in writing by, the Council as Planning Authority. The strategies shall be devised and overseen by an appropriately qualified person in accordance with relevant up-to-date authoritative technical guidance, e.g. BS10175 'The Investigation of Potentially Contaminated Sites - Code of Practice', and shall include:

- i) an appropriate level of characterisation of the type, nature and extent of contamination on the site and accompanying risk assessment as described in Planning Advice Note 33 Development of Contaminated Land (Revised 2000);
- ii) how any identified contamination will be dealt with during construction works;
- iii) details of remedial measures required to treat, remove or otherwise mitigate contamination to ensure that the site is suitable for the proposed use, and that it does not represent a risk to health or of pollution in the wider environment; and
- iv) a means of verifying the condition of the site on completion of the remedial measures.

Thereafter, no development shall commence (other than those works required to investigate and remediate contamination on the site) until written

confirmation has been issued by the Council as Planning Authority that the works have been implemented and completed in accordance with the agreed details.

Reason: To ensure that the site is suitable for the proposed use, and that risks to the wider environment and to users of neighbouring land from on-site contamination are appropriately assessed and managed.

11. No works in connection with the development hereby approved shall commence unless an archaeological written scheme of investigation (WSI) has been submitted to and approved in writing by the planning authority and a programme of archaeological works has been carried out in accordance with the approved WSI. The WSI shall include details of how the recording and recovery of archaeological resources found within the application site shall be undertaken, and how any updates, if required, to the written scheme of investigation will be provided throughout the implementation of the programme of archaeological works. Should the archaeological works reveal the need for post excavation analysis the development hereby approved shall not be occupied unless a post-excavation research design (PERD) for the analysis, publication and dissemination of results and archive deposition has been submitted to and approved in writing by the planning authority. The PERD shall be carried out in complete accordance with the approved details.

Reason: To safeguard and record the archaeological potential of the area.

12. Notwithstanding the landscaping details shown on the approved landscaping plan and prior to development commencing, details of a scheme of hard and soft landscaping works shall be submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:
- i) All earthworks and existing and finished ground levels in relation to an identified fixed datum point;
 - ii) A plan showing existing landscaping features and vegetation to be retained;
 - iii) The location and design, including materials, of any existing or proposed walls, fences and gates and
 - iv) All soft landscaping and planting works, including plans and schedules showing the location, species and size of each individual tree and/or shrub and planting densities.

Landscaping works shall be carried out in accordance with the approved scheme. All planting, seeding or turfing as may be comprised in the approved details shall be carried out in the first planting and seeding seasons following the completion/occupation of development.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure an acceptable level of planting in the interests of the amenity and appearance of the development and surrounding area.

13. Unless otherwise agreed in writing with the Planning Authority, throughout the lifetime of the development, boundary enclosures along the southern boundary of the development hereby approved, shall comprise post and wire fencing

and/or native species of hedging only. No other forms of boundary enclosure shall be permitted.

Reason: To maintain the green/soft edge between the development and the adjacent countryside.

14. The 6m wide maintenance strip, with tree planting along the south of the site, as shown on the approved site plan, shall be retained throughout the lifetime of the development. This area is excluded from the domestic curtilage for the dwellinghouses hereby approved and no permitted development rights shall be exercised within this area.

Reason: In order to ensure the planting and watercourse maintenance strip is retained throughout the lifetime of the development

15. A construction phase surface water management plan shall be submitted a minimum of two months prior to the commencement of the development and shall be agreed in writing prior to work commencing with the Planning Authority in consultation with Moray Flood Risk Management. The plan shall include measures to prevent increased flood risk to neighbouring properties. Thereafter the development shall be carried out in accordance with the agreed details.

Reason - To prevent surface water flooding during the course of the construction of the development.

16. All surface water drainage infrastructure within the development shall be implemented in accordance with the details contained in the Drainage Assessment submitted in support of the planning application.

Unless otherwise agreed in writing with the planning authority, this drainage infrastructure will be completed prior to the first occupation of any housing unit in the development and thereafter maintained for the lifetime of the development.

Reason - To ensure an acceptable form of development is provided in accordance with intentions stated in the submitted Drainage Assessment, and to provide for adequate protection of the water environment from surface water runoff during the lifetime of the development.

17. Unless otherwise agreed in writing with the Planning Authority, pedestrian and cycle access shall be maintained through the site throughout the course of the construction of the development.

Reason: To ensure the footpath/cycleway is not obstructed throughout the course of the construction of the development, unless temporary closure is required for health and safety purposes or short term construction reasons.

INFORMATIVES

THE DEVELOPMENT MANAGEMENT & BUILDING STANDARDS MANAGER has commented that:-

Any removal of scrub, i.e. the Willow and Gorse, should take place outwith the bird breeding season (March-September) as all British nesting birds are protected by law under the 'Wildlife & Countryside Act 1981 (WCA) (amended by the Countryside & Rights of Way Act 2000)'(Appendix 2).

ABERDEENSHIRE ARCHAEOLOGICAL SERVICE has commented that:-

A full specification for archaeological works can be provided by ourselves, but we would expect works to comprise photographic recording of the remnants of the railway after all trees/vegetation have been removed, along with targeted archaeological investigations at the locations of the two buildings visible on early OS maps (a signal box and second building of unknown function) in the form of excavated trenches. All works to be undertaken by a suitably qualified archaeological contractor.

THE TRANSPORTATION MANAGER, DIRECT SERVICES has commented that:-

The current proposals do not provide sufficient detail for the reconfiguration of the existing Station Road junction. Details required to show the provision for retaining vehicular access to Number 5 Station Road, the extension of the footway across the existing junction and provision of a continuous two metre wide path within the road verge in the east side of the U66L (Station Road) linking the proposed development access to the south side of the junction at Craigview. Provision of drop kerbing at locations to be agreed with Transportation and provision for the crossing of the NCN1 route and associate signage and bollards. Details for the path construction, kerbing etc all to be agreed as part of the Roads Construction Consent.

The formation of the proposed access will require resurfacing of the full width of the U66L (Station Road) over the width of the new access. Details for this to be agreed as part of the Roads Construction Consent.

EV Charging Unit and parking provision shall be provided in accordance with Moray Council EV Charging Provision guidance (DRAFT) (a copy of which can be provided on request.)

Where required, EV Charging Units shall be provided prior to the first occupation of the dwelling house and thereafter be retained and maintained throughout the lifetime of the development, unless otherwise agreed in writing with the Council as Planning Authority.

Before commencing development, the applicant is obliged to apply for Construction Consent in accordance with Section 21 of the Roads (Scotland) Act 1984 for new roads. The applicant will be required to provide technical information, including drawings and drainage calculations, and provide a Road Bond to cover the full value of the works in accordance with the Security for Private Road Works (Scotland) 1985 Regulations. Advice on this matter can be obtained from the Moray Council web site or by emailing transport.develop@moray.gov.uk

Construction Consent shall include a CCTV survey of all existing roads drainage to be adopted and core samples to determine the construction depths and materials of

the existing road. A Road Safety Audit for the modifications to the existing public road (including X Road improvements and proposed site for a Stage 3 or 4 Road Safety Audit will be determined through the Roads Construction Consent process or subsequent to the road construction prior to any road adoption.

Requirement for any traffic calming, road construction materials and specifications and any SUDs related to the drainage of the public road must be submitted and approved through the formal Roads Construction Consent process.

Planning consent does not carry with it the right to carry out works within the public road boundary and the applicant is obliged to contact the Transportation Manager for road opening permit in accordance with the Roads (Scotland) Act 1984. This includes any temporary access joining with the public road.

For garage parking to be included within the parking provision the applicant must demonstrate the garage car parking spaces have minimum clear internal dimensions not less than of 3 metres by 7 metres.

Any street furniture which requires to be removed or replaced and any existing roadside ditch which require a pipe or culvert will be at the developers expense Advice on these matters can be obtained by e-mailing transport.develop@moray.gov.uk

Street lighting will be required as part of the development proposal.

No building materials/scaffolding/builder's skip shall obstruct the public road (including footpaths) without permission from the Roads Authority.

The applicant shall be responsible for ensuring that surface/ground water does not run from the public road into his property.

The applicant shall ensure that their operations do not adversely affect any Public Utilities, which should be contacted prior to commencement of operations.

The applicants shall free and relieve the Roads Authority from any claims arising out of his operations on the road or extension to the road.

The Transportation Manager must always be contacted before any works commence. This includes any temporary access, which should be agreed with the Roads Authority prior to work commencing on it.

No retaining structures or embankments shall be constructed along the edge of the road, whether retaining the public road or ground adjoining the public road without prior consultation and agreement of the Roads Authority.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

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

| Reference | Version | Title |
|-----------|---------|-------|
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IMPORTANT NOTES ABOUT THIS DECISION

DURATION OF THIS PERMISSION

In accordance with Section 58 (i) of the Town and Country Planning (Scotland) Act 1997 as amended, the development to which this permission relates must be begun not later than the expiration of 3 years beginning with the date on which this permission is granted.

If the development has not commenced within this period then this permission shall lapse unless there is a specific condition attached to this permission which varies the stated timescale.

COMMENCEMENT AND COMPLETION OF THE DEVELOPMENT

The following are statutory requirements of the Town & Country Planning (Scotland) Act 1997, as amended. Failure to meet their respective terms represents a breach of planning control and may result in formal enforcement action. Copies of the notices referred to below are attached to this permission for your use.

NOTIFICATION OF INITIATION OF DEVELOPMENT

S.27A of the 1997 Act, as amended requires that any person who has been granted planning permission (including planning permission in principle) and intends to start development must, as soon as practicable after deciding the date they will start work on the development, give notice to the planning authority of that date. This ensures that the planning authority is aware that the development is underway and can follow up on any suspensive conditions attached to the permission. Therefore, prior to any work commencing on site, the applicant/developer must complete and submit to Moray Council, as planning authority, the attached Notification of Initiation of Development.

NOTIFICATION OF COMPLETION OF DEVELOPMENT

S.27B of the 1997 Act, as amended requires that any person who completes a development for which planning permission (including planning permission in principle) has been given must, as soon as practicable after doing so, give notice of completion to the planning authority. This will ensure that the planning authority is aware that the development is complete and can follow up any planning conditions. Therefore, on completion of the development or as soon as practicable after doing so, the applicant/developer must complete and submit to Moray Council, as planning authority the attached Notification of Completion of Development.

NOTIFICATION OF COMPLETION OF PHASED DEVELOPMENT

Under S.27B(2) of the 1997 Act, as amended where permission is granted for phased development, the permission is subject to a condition (see Schedule of Conditions above) requiring the applicant/developer as soon as practicable after each phase to give notice of that completion to the planning authority. This will allow the planning authority to be aware that particular phase(s) of the development is/are complete.

When the last phase is completed the applicant/developer must also complete and submit a Notification of Completion of Development.



THE MORAY COUNCIL

NOTIFICATION OF INITIATION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued

Location and Description of
Development

**Please note that all suspensive conditions must be discharged prior to
commencement of development**

| | |
|---------------------------------------|--|
| Date works are to Commence | |
|---------------------------------------|--|

Name, Address and contact details of developer

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**The Full name and Address and contact details of the landowner, if a
different person**

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

**The Moray Council, Development Management Manager, Council Offices, High
Street, Elgin, Moray IV30 6UG**

OR

E-mail: development.control@moray.gov.uk



THE MORAY COUNCIL

NOTIFICATION OF COMPLETION OF DEVELOPMENT

Section 27A Town and Country Planning (Scotland) Act 1997

Application Number

Date Decision Issued
Location and Description of
Development

| | |
|------------------------------------|--|
| Date of completion of works | |
|------------------------------------|--|

Name, Address and contact details of developer

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The Full name and Address and contact details of the landowner, if a different person

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Where an agent is appointed, their full name and contact details

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Signed

Name (Print)

Date

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Please complete and return this form to:

The Moray Council, Development Management Manager, Council Offices, High Street, Elgin, Moray IV30 6UG

E-mail: development.control@moray.gov.uk