

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision on Application for Review of the Tribunal's Decision under Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/PF/20/2159

Kingsmeadows, Peebles EH45 9HR  
("the Property")

The Parties:-

Mr Michael Marshall and Dr Catriona Mackay, The Lodge House,  
Kingsmeadows, Peebles EH45 9HR  
("the Homeowner")

James Gibb Residential Factors, 4 Atholl Place, Edinburgh EH3 8HT  
("the Factor")

Tribunal Members:

Graham Harding (Legal Member)  
Elaine Munroe (Ordinary Member)

### Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') having considered the Applicant's request for a review of its decision of 16 May 2021 refuses same as being wholly without merit.

The decision of the Tribunal is unanimous.

### Background

1. A hearing in respect of Homeowner's complaint was heard on 5 May 2021. The Tribunal issued its decision on 16 May 2021 and found that the Factor was in breach of Sections 1.1bA, B, C, D, E and F, 2.1, 2.4, 3.3 and 7.1 of the Code and had also failed to carry out its property factors duties. The Tribunal determined to issue a proposed Property Factor Enforcement Order ("PFEO").
2. By email dated 27 May 2021 the Homeowner requested a review of the Tribunal's decision. The Homeowner submitted that it was outwith the Tribunal's jurisdiction to comment on the validity of Rule 11.5 of the Development Management Scheme which provided for Granton the owners of

the ground having an overriding decision in matters affecting the development. The Homeowner pointed out that any application for a determination of the validity, applicability or enforcement of a rule of the DMS falls within the jurisdiction of the Land Tribunal for Scotland.

3. The Tribunal agrees with the Homeowner that it does not have jurisdiction to determine an application for the validity of a Rule of the DMS and was not asked to make such a determination. The Tribunal simply pointed out the Rules as they currently stand. It would be a matter for the Homeowner to take up with the Land Tribunal if he wished to challenge the validity of the Rules.

### **Reasons for Decision**

4. Taking everything into account the Tribunal has not been persuaded that there is any merit in the Applicant's request for a review and refuses same.

### **Decision**

5. The Applicant's request for a review of the Decision of 16 May 2021 is refused on the ground it is wholly without merit.

**Graham Harding**  
**Legal Member**

**12 June 2021**  
**Date**