THE HIGHLAND COUNCIL	Agenda Item	6.3
NORTH AREA PLANNING APPLICATIONS COMMITTEE 17 September 2013	Report No	PLN/084/13

12/01575/FUL: Mr Ian Butler Land 40M East Of 1 Coille Dhorch, Badachro

## **Report by Area Planning Manager**

## SUMMARY

**Description :** Erection of house and garage

**Recommendation - GRANT** 

Ward : 06 - Wester Ross, Strathpeffer And Lochalsh

**Development category :** Local Development

Pre-determination hearing : Hearing not required

**Reason referred to Committee:** Objections received from more than 5 separate addresses.

## 1. **PROPOSED DEVELOPMENT**

- 1.1 Planning permission is sought for the erection of a traditionally designed one and half storey house with slated roof and wet dash render walls. The property will be served from the existing, upgraded, driveway of the neighbouring house 1 Coille Dhorch. The proposed house will be sited in the middle of the plot. The land immediately surrounding the house will be landscaped as domestic garden. A strip of land 17m wide which runs the full length of the southern, back boundary is to be planted with native trees.
- 1.2 The application was accompanied by a statutory design statement which highlighted the traditional style of house design.
- 1.3 **Variations**: Plan submitted in March 2013 revising the access proposals for the site following the initial comments offered by TEC Services (Roads). Plan submitted in August 2013 indicating position of Scottish Water pipe.

## 2. SITE DESCRIPTION

2.1 The site extends to 0.22 (hectares) or thereby. It consists of an area of vacant moorland which is enclosed by post and wire fencing. There are a number of scrub bushes and trees on the site. It is situated at the entrance to the residential area known as Collie Dhorch. The public road, known as Collie Dhorch, curves round

the site on the northern and eastern boundaries. To the west is the existing house 1 Collie Dhorch. To the south, the lower moorland slopes of Bad-na h Achlaise. On the opposite side of the public road, is a small cluster of 6 houses.

# 3. PLANNING HISTORY

- 3.1 RC/1995/469 Residential development Planning permission in principle-Approved- 19-03-1997
- 3.2 RC/1998/237 Access Road and Services for residential development Approved- 08.06.1998
- 3.3 01/00382/FULRC Erection of House Approved- 03.08.2001 Site is 40m west of the current application site .

# 4. PUBLIC PARTICIPATION

4.1 Advertised : Unknown Neighbour Representation deadline : 01.08.2012

Timeous representations : six

Late representations : one

- 4.2 Material considerations raised are summarised as follows:
  - Main water supply pipe for Badachro crosses the site.
  - Flooding may occur to other houses through surface water run off from site.
  - Previous planning permissions reserved this area of ground for a woodland landscaping scheme and restricted the number of houses in the Coille Dhorch development to 16 in total.
  - Approval of the application would set a precedent for other areas reserved for landscaping to be developed.
  - Additional house will put pressure on the public foul drainage system.
  - The house will have an adverse visual impact on the landscape.
  - Previous application in 1993 for the sub-division of a plot in this part of Badachro was refused and Appeal dismissed.
- 4.3 Other considerations raised are summarised as follows:
  - House to be used for holiday letting purposes
  - No need for further houses in the Badachro/Gairloch area given the number of houses for sale and sites with permission.
  - Foul drainage of existing house not installed correctly.
  - Title deeds for 1 Coille Dhorch restrict development of this area of ground.
- 4.4 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet <u>www.wam.highland.gov.uk/wam</u>. Access to computers can be made available via Planning and Development Service offices.

# 5. CONSULTATIONS

- 5.1 TEC Services (Roads): No objection. Revised access arrangements are acceptable. Conditions required to ensure that existing access is improved in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines.
- 5.2 Scottish Water: No objection.

Badachro Water Treatment Works, Septic Tank and Wastewater Network have limited capacity to serve this new development. The Developer should discuss their development directly with Scottish Water and maybe required to carry out works on the local network to ensure there is no loss of service to existing customers.

Water Network – Initial investigations have highlighted there may be a requirement for the Developer to carry out works on the local network to ensure there is no loss of service to existing customers. The Developer should discuss the implications directly with Scottish Water.

# 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

## 6.1 Highland Wide Local Development Plan 2012

Policy 28	Sustainable Design
Policy 34	Settlement Development Areas
Policy 57	Natural, Built & Cultural Heritage

# 6.2 Wester Ross Local Plan ( as remains in force) 2007

Policy 1 Settlement Development Area of Aird and Badachro

# 7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

# 7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

# 7.3 Scottish Government Planning Policy and Guidance

SPP (Feb 2010) Paragraphs 66-85- Housing and paragraphs 92-96- Rural Development.

# 8. PLANNING APPRAISAL

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

# 8.3 **Development Plan Policy Assessment**

- 8.4 Policy 28 (sustainable development) of the HwLDP aims to ensure that development is sustainable and lists the criterion against which proposals shall be assessed. The parts of the policy of particular relevance to this proposal state that proposals should be assessed on the extent to which they "are compatible with pubic service provision, impact on individual and community residential amenity" and "demonstrate sensitive siting and high quality design in keeping with local character and historic and natural environment and in making use of appropriate materials."
- 8.5 Policy 34 (Settlement Development Area) states that we will support proposals within SDA's if they meet the requirements of Policy 28 and all other relevant polices of the plans and we will judge proposals in terms of how compatible they are with the existing pattern of development and landscape character, how they conform with existing and approved adjacent land uses, and the effect on any natural, built and cultural heritage feature.
- 8.6 Policy 57 (Natural, built and Cultural Heritage) states that for nationally important features (namely the National Scenic Area) "we will allow development that can be shown not to compromise the natural environment resource"

# 8.7 Material Considerations

- 8.8 The key considerations which relate to the proposed development are the principle of development, the siting and design of the house and the servicing of the site.
- 8.9 With respect to the principle of development, the site lies within the Settlement Development Area of Badachro as defined by the Wester Ross Local Plan which remains in force with the adoption of the Highland wide Local Development Plan. There is therefore a presumption in favour of development provided that the siting, scale and design of the house and the servicing of the development is considered to be acceptable and in accordance with the requirements and aims of policy 28 and 57 of the Highland wide Local Development Plan.
- 8.10 The representations lodged comment that any development on the site is restricted by virtue of the original planning permission (RC/1995/469) granted in 1997 for the residential development, known as phase 2 (Coille Dhorch) and also the conditions attached to the planning permission for the development of the adjacent plot known as 1 Coille Dhorch. The comments lodged indicate that the proposals for the phase 2 housing development included a layout plan which identified this area of land as an area of landscaping. The landscaping proposed was to take the form of

woodland planting, as part of a forestry grant scheme for the entire development site. To limit the extent of development a planning obligation was signed between the developers and the Planning Authority which restricted the number of houses in phase 2 to 16 in total.

- 8.11 Consideration of the planning history of the residential development of Coille Dhorch confirms that the original planning permission was granted in principle only, following the conclusion of a planning obligation (Section 50 Agreement) which restricted the number of houses within the site to 16.
- 8.12 Although it was not uncommon for legal agreements to be worded in this manner in the past, the use of a planning obligation to restrict the manner in which a site can be developed in the future is no longer pursued by Planning Authorities. This follows a direction made by the Scottish Government and the publication of Circular 3/2012 Planning Obligations and Good Neighbour Agreements which details Scottish Government policy on the use of planning obligations.
- 8.13 The Planning Service has been advised by legal services that a request to discharge the agreement would be unopposed as the terms of the obligation fail to meet the tests set out in Circular 3/2012 in that the planning application process allows for applications for future development to be considered on their own merits. It is considered therefore that no weight can be given in the assessment of the current application to the presence of the Section 50 Agreement (Planning Obligation) which may need to be modified or discharged if the current application is approved.
- 8.14 With respect to the area of land being maintained as a landscaped area, although details of a landscaping scheme were submitted in association with the original planning permission granted in 1997, this planning permission in principle lapsed in 2000. No applications for reserved matters (now termed matters specified in conditions) were received which secured the landscaping details as part of the development of each plot. The conditions attached to the planning permission for 1 Coille Dhorch which received permission in August 2001 did not require planting to be undertaken and provided the opportunity for a future change of use of the area of ground which is now the subject of this application for planning permission.
- 8.15 It is acknowledged that at the time the original application for phase 2 Coille Dhorch was considered there was a clear desire to secure this area of land as part of the overall landscaping scheme of the whole of the housing development. The site was to be landscaped with trees. However the planting has not been carried out and given the passage of time there is no mechanism under the previous planning permissions or the enforcement process which would allow the Planning Authority to pursue this planting now.
- 8.16 Reference by the third parties to clauses on the title deeds, which restricted development on the site, are noted. However title restrictions are not material considerations in the determination of a planning application and are a matter for the legal process.
- 8.17 It therefore follows that the current application requires to be assessed on its own merits against the current development plan.

- 8.18 As set out in paragraph 8.9 above it is considered that there is a presumption in favour of development as the site lies within the defined settlement development area. As regards the siting of the house, given the location of the site, at the entrance to Coille Dhorch the house will be prominent. However it will not be seen in isolation in the landscape as the existing houses 1 and 2 Coille Dhorch are clearly visible from the public road and sit on higher ground than this site. With the implementation of the landscaping scheme, which forms part of the application, the house will become less visually prominent. The houses which are located on the opposite side of the road from the site, and which formed the original phase of development and are now well screened by existing vegetation demonstrate that with the passage of time and the implementation of landscaping proposals houses can be absorbed into the natural environment successfully.
- 8.19 The use of a traditional design for a house in this location is considered acceptable. It is in keeping with the style and design of the house at 1 Coille Dhorch and makes good use of traditional materials. The layout of the site will have no impact on the residential amenity of this house or the houses on the opposite side of the road with adequate separation between the properties being available to avoid a significant loss of privacy.
- 8.20 The development of the site is considered to be compatible with public service provision. With respect to road safety, the original proposal to access the site independently of the existing house has been revised following concerns expressed by Tec Services (Roads) regarding visibility splays, the proximity of the new junction to the existing access and also the curve in the road east of the site. The revised proposals which provide for a shared access overcome these issues. Conditions will be required to ensure that the visibility splays are maintained in perpetuity and that the access is upgraded to current guideline requirements.
- 8.21 Comment has been made through the third party representations that the development of the site will affect the pipe which provides water to the village. The applicant has made enquiries with Scottish Water who have provided a plan indicating the position of the pipe. This information has been shown on the site layout plan and indicates that the proposed position of the house is unlikely to affect the pipe. It is the responsibility of the developer of the site to ensure that they take account of the public water supply. Any minor alteration to the position of the house or garage due to the exact position of the pipe can be dealt by way of a condition on the planning permission.
- 8.22 Third party representations have also been made regarding the adequacy of the public foul drainage system to accommodate this additional development. Scottish Water has confirmed in their consultation response that there is limited capacity within the existing system however they have not lodged an objection to the proposals. It will be the responsibility of the developer to ensure that they have the approval of Scottish Water to connect to the public system.
- 8.23 It will also be the responsibility of the developer to ensure that surface water from the site is dealt with in accordance with current Building Standards requirements. Comments are made by the third parties that water from the hillside above flows across the site and development of the plot will force this water into the drainage

ditches of the road and subsequently into the nearby water courses which flow down through the gardens of the houses below. The development of the plot will not generate a greater volume of water running off the hill. The requirements of the building standards regulations will provide for the surface water from the development being dealt with on the site.

8.24 Reference is made by third parties to a previous appeal decision. It is considered that this appeal decision is not material to the determination of the current application. The planning application, for the site which formed the garden ground of one of the houses on the opposite side of the road, was determined under a development plan which preceded both the Wester Ross Local Plan and the Highland wide Local Development Plan.

## 8.25 **Other Considerations – not material**

A number of concerns have been raised through the third party representations which are not material in the determination of the planning application. As referred to in paragraph 8.16 above there appears to be a restriction on the title deeds of 1 Coille Dhorch which prevents any development taking place on this site. Restrictions on title deeds are not a matter for consideration in the determination of the planning application. It will be the responsibility of the developer to ensure that any legal restriction is adequately addressed before undertaking any development.

- 8.26 Comments have also been lodged about the manner in which the house will be occupied and the number of houses in the area that are for sale. Many of the existing houses in the area are used for holiday letting purposes. There is concern, amongst those parties that commented, that this new house will also be used as tourist accommodation. The occupancy of a house in this location is not a material consideration in the determination of the application. However, the provision of holiday letting accommodation is supported through the Highland wide Local Development Plan policies which recognise the importance of the tourist industry for the economic well being of the Highlands. The number of houses that are currently on the market is not a material consideration.
- 8.27 The parties that lodged representations highlight a previous problem with the foul drainage systems of 1 and 3 Coille Dhorch. These concerns appear to relate to private systems that were installed. It is unreasonable not to support a development due to a problem associated with the installation and workmanship of a previous drainage system. The current application proposes that the house will connect to the public system. The developer will require to meet the statutory requirements of Scottish Water and secure their approval.

# 9. CONCLUSION

9.1 It is clear from studying the planning history for phase 2 Coille Dhorch that there was a desire to develop a low density housing development within a woodland setting. It is recognised that given the manner in which the development has taken place, each plot has been sold off individually and the open spaces which were originally proposed have also been sold to individual plot owners, that the aspirations of the original scheme have not been achieved. This is clearly regrettable. The submission of this application for planning permission provides an

opportunity to secure, through the use of a suspensive condition, tree planting along the southern boundary of the site thereby introducing part of the landscaping that was originally intended. It is acknowledged that the landscaping will not be of the scale previously sought, as the site will be developed, however securing some new landscaping will be beneficial to the area as a whole.

9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## 10. **RECOMMENDATION**

## Action required before decision issued N

**Subject to the above,** it is recommended the application be GRANT subject to the following conditions and reasons / notes to applicant:

1. No development shall commence on the construction of the house or garage hereby approved until the planting of trees, and their protection from damage using a spiral guard has taken place, on the land defined by the hatched area to the south of the site coloured green on drawing No 12/24 -10 - PP and in accordance with the details shown on this plan. Any trees which within a period of five years from the commencement of the development die, or are for whatever reason removed or damaged, shall be replaced in the next planting season with others of the same size and species. The trees shall thereafter be maintained in perpetuity.

**Reason** : In order to ensure that the approved tree planting scheme is timeously undertaken on site to achieve a high standard of landscaping appropriate to the location of the site.

- 2. No development shall commence on the construction of the house or garage hereby approved until the existing access to 1 Coille Dhorch has been upgraded in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule (dated May 2011), with:
  - i the junction formed to comply with drawing ref. SBD 2; and

ii a visibility splay of 2.4m m x 90m in an easterly direction and a visibility splay of 2.4m X 30m in a westerly direction are formed from the centre line of the junction.

Within the stated visibility splays, at no time shall anything obscure visibility between a driver's eye height of 1.05m positioned at the X dimension and an object height of 0.60m anywhere along the Y dimension

**Reason** : To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

3. Prior to the first occupation of the dwellinghouse, parking spaces for a minimum of two cars shall be provided as detailed on the approved plans and shall thereafter be maintained for this use in perpetuity.

**Reason** : In order to ensure that the level of off-street parking is adequate.

4. The landscaping scheme for the site contained within the red boundary of the application site shall be carried out in accordance with the scheme and plans approved as part of this permission (Drawing No 12/24 -10-PP). All planting, seeding or turfing as may be comprised in the approved scheme and plans shall be carried out, and protected from damage using a spiral guard, in the first planting and seeding seasons following the commencement of the development, unless otherwise stated in the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, for whatever reason, or are removed or damaged shall be replaced in the next planting season with others of the same size and species.

**Reason** : To achieve a high standard of landscaping appropriate to the location of the site.

5. The roof shall be finished in natural slate and the external walls shall be completed with an off white wet dash render, the exact colour of which shall be agreed in writing with the Planning Authority prior to the application of the render. Only the agreed render mix shall thereafter be applied.

**Reason** : To ensure clarity regarding the external materials to be used in the development, in the interest of visual amenity, as the specifications on Drawing No 12/24 -04 indicates that the roof and wall finish shall match the house on plot one.

6. The position of the house and garage shall be as shown on plan No 12/24 10 B or as otherwise agreed in writing with the Planning Authority.

**Reason :** To ensure that the Planning Authority retains effective control over the manner of development in the event that the position of the public water pipe affects the location of the development.

# REASON FOR DECISION

The proposals accord with the provisions of the Development Plan and there are no material considerations which would warrant refusal of the application.

## TIME LIMITS

## LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended), the development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

## FOOTNOTE TO APPLICANT

#### Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

- 1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
- 2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

#### Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

#### Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (p.198), planning permission does not remove the liability position of developers or owners in relation to flood risk.

#### Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

#### Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may

require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <u>http://www.highland.gov.uk/yourenvironment/roadsandtransport</u>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/yourenvironment/roadsandtransport/roads/Applicationfo rmsforroadoccupation.htm

#### Mud & Debris on Road

Please note that it an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

#### **Construction Hours and Noise-Generating Activities**

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

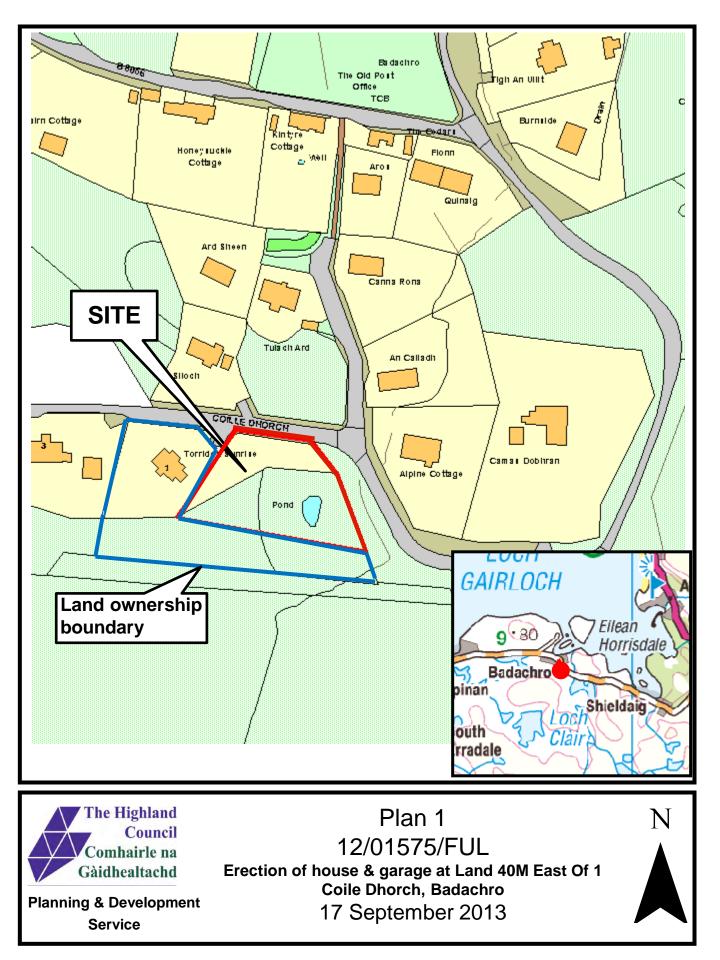
Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

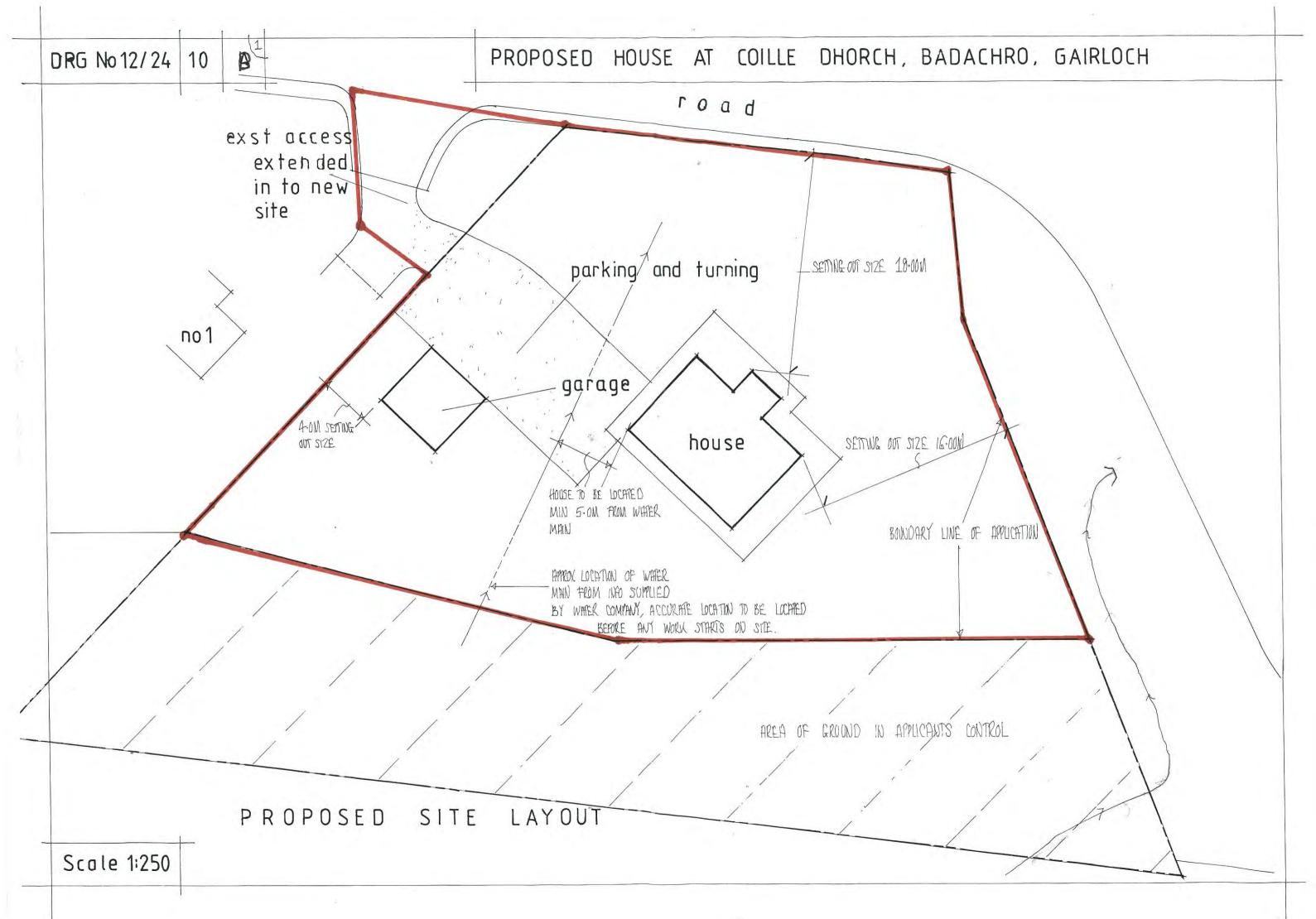
If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk or more information.

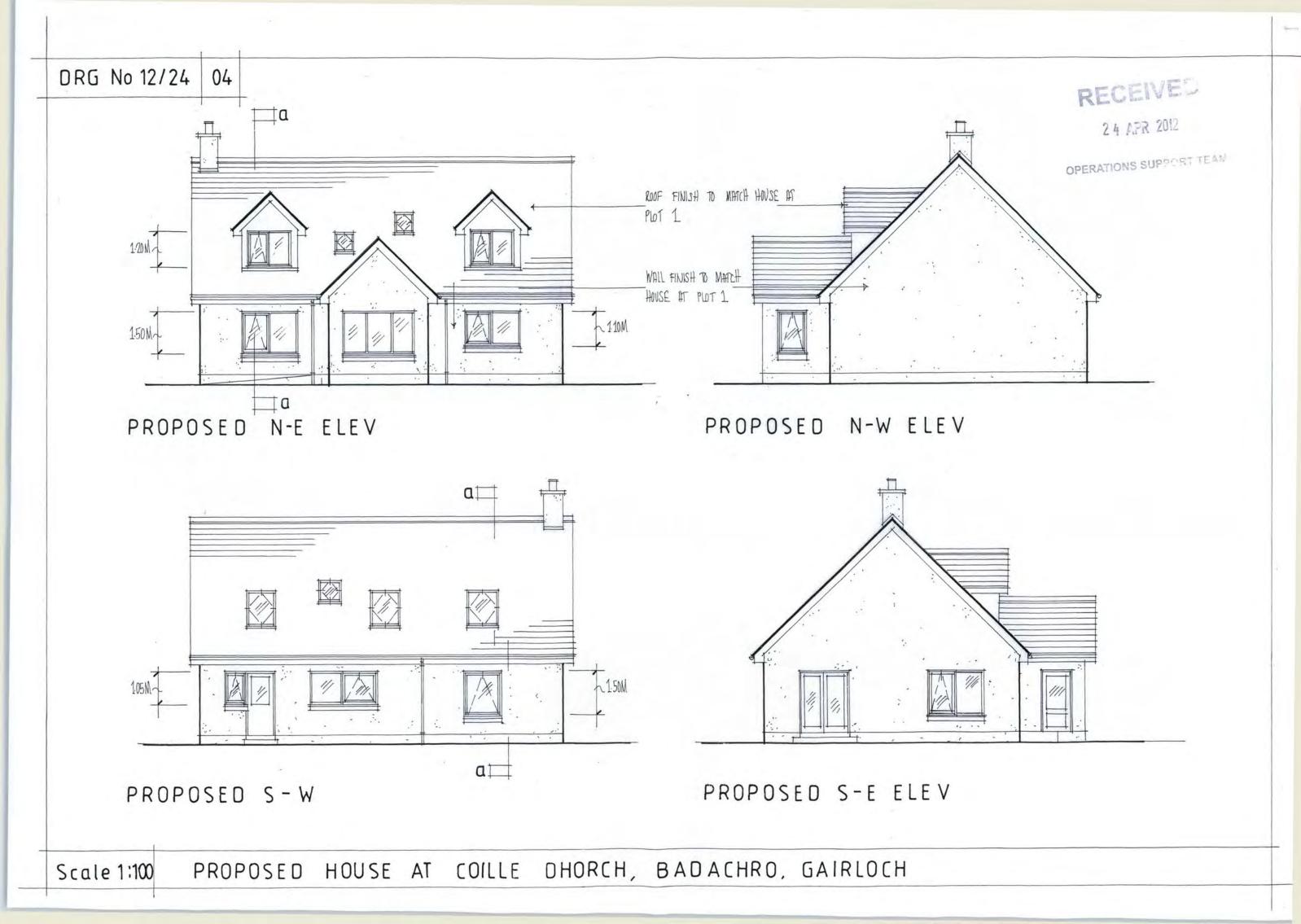
Signature:	Dafydd Jones
Designation:	Area Planning Manager North
Author:	Erica McArthur
Background Papers:	Documents referred to in report and in case file.
Relevant Plans:	Plan 1 –Location Plan
	Plan 2 – Site Plan
	Plan 3 –Elevation – House
	Plan 4 – Elevation – Garage
	Plan 5– Landscaping Plan
	Plan 6 – Landscaping plan from RC/1995/469 and 98/00237/FULRC

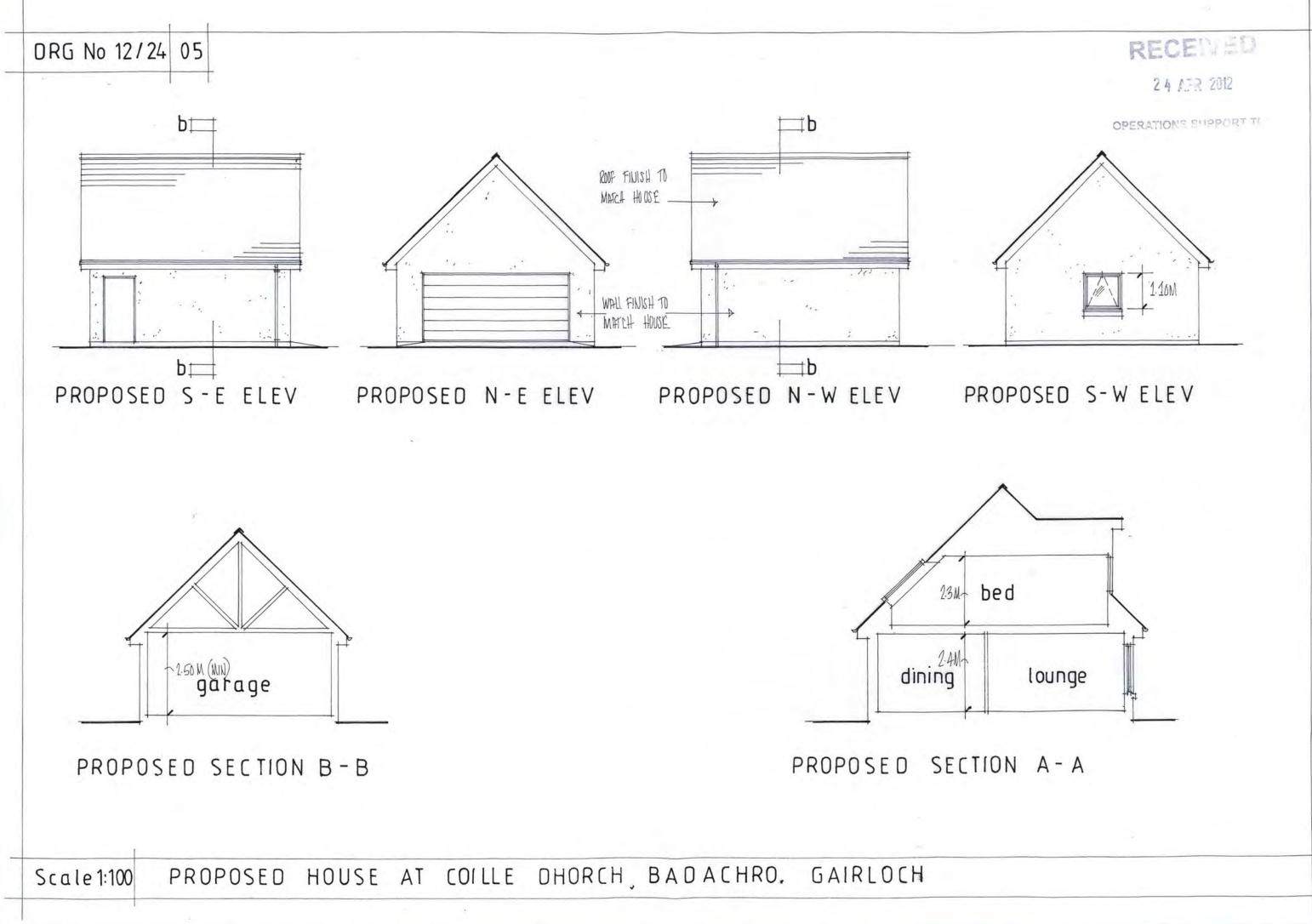
# Appendix – Letters of Representation

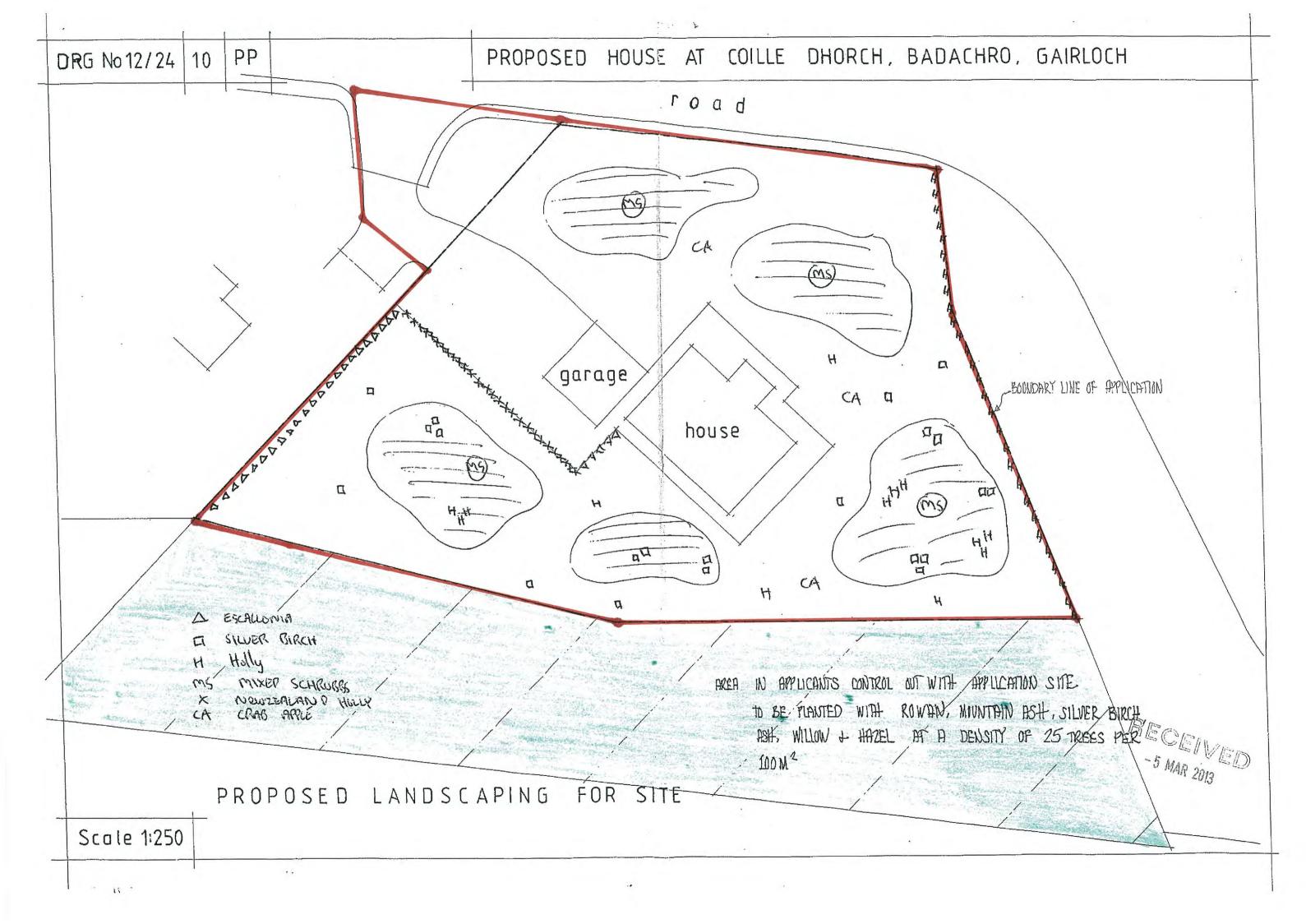
Name	Address	Date Received	For/Against
Mr and Mrs Sherlock,	Alpine Cottage,Badachro,Gairloch,IV21	22/05/2012	Against
Mr Alexander Lees	Slioch,Badachro,Gairloch,IV21 2AA	07/06/2012	Against
Mr and Mrs Henderson	The Knowes,Badachro,Gairloch,IV21 2AA,	23/05/2012	Against
Mr and Mrs Searl	Tulach Ard, Badachro,Gairloch,Ross- Shire,IV21 2AA	30/05/2012	Against
Mr Alexander H Irving	Calladh,Badachro,Gairloch,IV21 2AA	30/05/2012	Against
John & M M Keene	Craig Aird, Badachro Nr Gairloch, Wester Ross,IV21 2AB	01/06/2012	Against
A D W Hamilton	Camas Dobhran, Badachro, Gairloch, Wester Ross,IV21 2AA	28/05/2012	Against



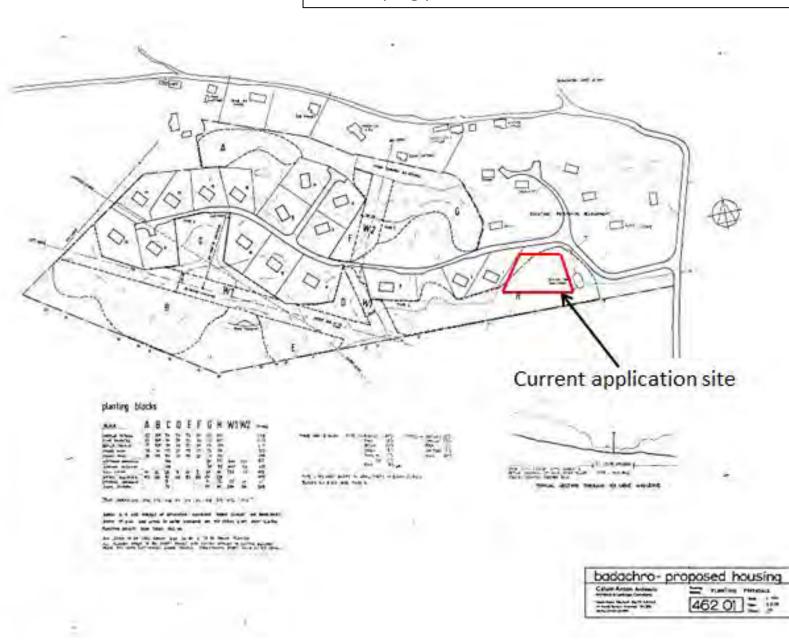








# Landscaping plan from RC/1995/469 and 98/00237/FULRC



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