

**THE HIGHLAND COUNCIL**

**NORTH PLANNING APPLICATIONS COMMITTEE  
4 August 2015**

Agenda Item	<b>5.7</b>
Report No	<b>PLN/044/15</b>

**15/00435/S75D : Mr Ian MacDonald  
Land 50m East of Woodside, West Park, Strathpeffer**

**Report by Area Planning Manager**

**SUMMARY**

**Description** : Application to discharge planning obligation of planning permission 12/01782/FUL – Erection of house with garage.

**Recommendation - REFUSE**

**Ward** : 06, Wester Ross, Strathpeffer and Lochalsh

**Development category** : Local Development

**Pre-determination hearing** : Not required

**Reason referred to Committee** : Member Referral.

**1. PROPOSED DEVELOPMENT**

- 1.1 There is an existing permission for an agricultural worker's dwelling (12/01782/FUL) which was granted following the conclusion of a S75 legal agreement to tie the house to the agricultural unit.
- 1.2 The applicant has been struggling to secure a mortgage due to the S75 legal agreement, so has applied for the S75 to be discharged.
- 1.3 A copy of the S75 legal agreement has been supplied with the application for ease of reference.
- 1.4 **Variations:** There have been no variations made to the application since lodging.

**2. SITE DESCRIPTION**

- 2.1 The site lies on the edge of the West Park area of Strathpeffer. It has been levelled and the applicants are currently living in a static caravan on the site pending the erection of the house permitted by 12/01782/FUL. The original farmhouse and a cluster of agricultural buildings lie to the south west of the site. Blackmuir Wood lies to the south of the site.

### **3. PLANNING HISTORY**

- 3.1 12/01782/FUL – Erection of house with garage. Approved with S75 agreement 12/02/14

### **4. PUBLIC PARTICIPATION**

- 4.1 Advertised : n/a  
Representation deadline : 02/03/15  
Representations : None received

### **5. CONSULTATIONS**

- 5.1 None required

### **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

6.1 **Highland Wide Local Development Plan 2012**

35 Housing in the Countryside (Hinterland)

6.2 **Ross and Cromarty East Local Plan 2007 (as continued in force)**

Outwith settlement development area; within Hinterland

### **7. OTHER MATERIAL CONSIDERATIONS**

7.1 **Inner Moray Firth Local Development Plan (25/06/2015 full council minded to adopt)**

Outwith settlement development area; within Hinterland

7.2 **Highland Council Supplementary Planning Policy Guidance**

Housing in the Countryside and Siting and Design

7.3 **Scottish Government Planning Policy and Guidance**

SPP

### **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**

Within the Hinterland, Policy 35 presumes against new houses unless they comply with one of the stipulated exceptions. One such exception applies to the erection of a house where it is essential for land management purposes. Application 12/01782/FUL was accordingly accompanied by an operational needs assessment, which outlined a case for a house based on family succession purposes since the applicant has taken over the day to day running of the enterprise from his father, who still wishes to reside on the farm. This has led to a requirement for an additional house for the applicant (who now runs the farm). The proposed house was approved following the conclusion of a S75 legal agreement to tie the house to the agricultural unit.

- 8.3.1 New houses for land management purposes can be necessary for the proper functioning of an agricultural unit. However, without a S75 Agreement there is no assurance that the house would remain available for the running of the unit in perpetuity. There would be nothing to prevent it from being separated from the agricultural unit, which could lead to the requirement for another house for managing the agricultural unit. The erection of an unrestricted house in this hinterland location is therefore contrary to Policy.

### **8.4 Material Considerations**

A S75 agreement can have implications for obtaining a mortgage. In this instance, the applicant says that the S75 is preventing them from obtaining a mortgage to build their house. This problem was recognised by the Scottish Government, who has been developing a pilot scheme designed to overcome this issue. This has been conveyed to the applicant, who has now advised that they do not want to wait any longer for the pilot scheme, but instead wishes to have the S75 removed.

- 8.4.1 The Council has taken a consistent approach to occupancy restrictions by requiring s75 agreements since the Supplementary Guidance was first introduced in 2009. No issues were reported until last year when two cases were brought to the Council's attention. Since then the Planning Service has contacted the Council of Mortgage Lenders to try to establish the reasons for the shift in availability of funding from the banks and other lending agencies which appears to relate mainly to self build mortgages, clarify the reasons for and extent of the problem and to seek solutions that are acceptable both to the planning authorities and the lenders. This work is on-going. Discussion has also taken place with Argyll and Bute and other large rural planning authorities to establish how they have addressed these difficulties. During these discussions the Scottish Government indicated that they were developing a pilot scheme which appeared to provide an option to address this funding difficulty. The scheme went out for procurement in February and it was anticipated that this would be launched by April. Determination of the application was deferred to await the launch of the scheme. However it has taken longer than anticipated for the scheme to actually come into effect.

8.4.2 We are seeking to secure a proportionate and fair approach that supports genuine occupational needs in the countryside. The outcome of the discussions with the Council of Mortgage Lenders may have implications for the Council's policy on housing within the hinterland. In particular, if the use of s 75 agreements is no longer considered appropriate then much more rigorous scrutiny of the justification for a house may be required where exceptional circumstances are being cited. The review will take some time to complete and if there are implications for development plan policy then the matter may require to be considered by the Planning, Development and Infrastructure Committee.

8.4.3 However, it is hoped that the launch of the pilot scheme is imminent, and should provide an option which enables the applicants to obtain a mortgage with the S75 Agreement remaining in place and the permitted house to be built without further undue delay.

#### 8.5 **Matters to be secured by Section 75 Agreement**

Not applicable

### 9. **CONCLUSION**

9.1 Although the problems which the applicant is experiencing in obtaining a mortgage are understood, an option which will enable the S75 to remain in place and the house to be built is imminent. It is therefore considered appropriate to await the launch of the pilot scheme and not to discharge the S75 Agreement.

9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is unacceptable in terms of applicable material considerations.

9.3 It is recommended that permission be refused.

### 10. **RECOMMENDATION**

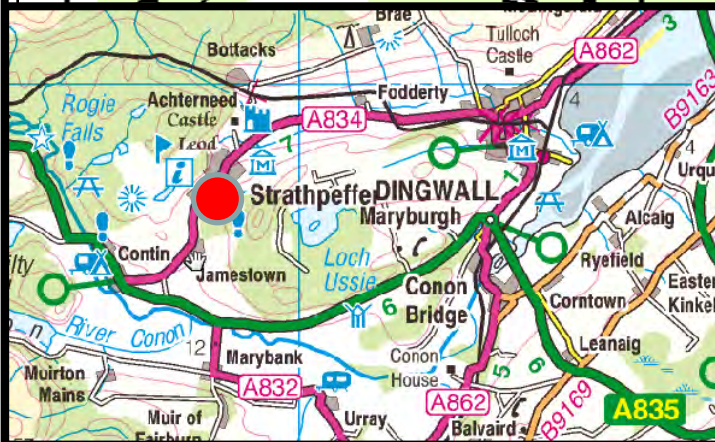
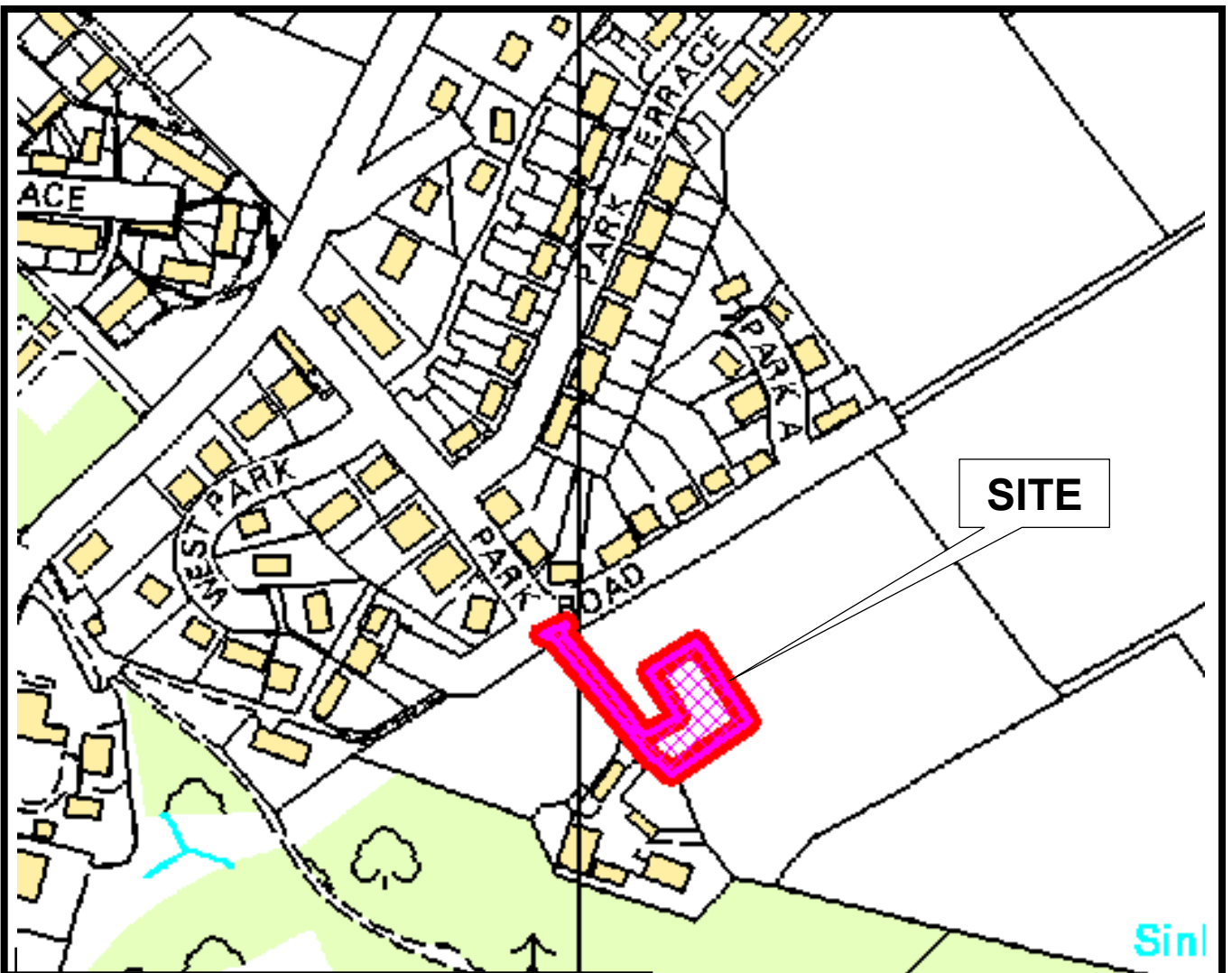
**Action required before decision issued** N

**Subject to the above**, it is recommended the application be **REFUSED** for the following reasons:

1. Policy 35 of the Highland-wide Local Development Plan presumes against housing in the hinterland unless it complies with at least one of the recognised policy exceptions (as detailed in the Council's adopted Supplementary Planning Guidance Housing in the Countryside and Siting and Design). The house and garage the subject of 12/01782/FUL were permitted in recognition the special circumstances demonstrated in relation to land management requirements.

The erection of a house and garage which are not tied to the agricultural unit by means of a Section 75 Legal Agreement is contrary to Policy 35 which presumes against new houses within the hinterland.

Signature: Dafydd Jones  
Designation: Area Planning Manager North  
Author: Susan Hadfield  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – location plan  
Plan 2 – site layout plan



**The Highland Council**  
**Comhairle na Gàidhealtachd**

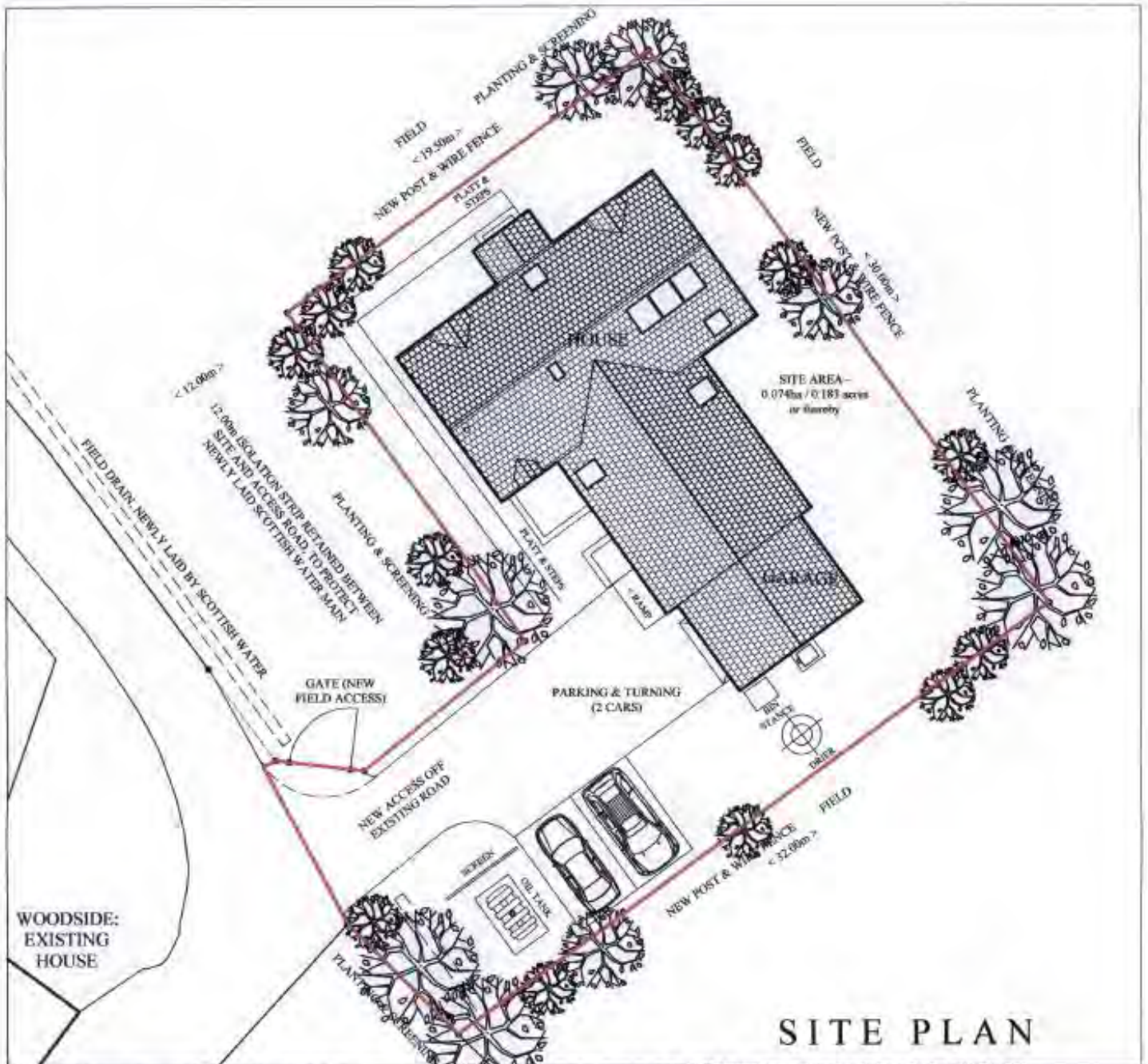
**Planning & Development Service**

**15/00435/S75D**

**Application to discharge planning obligation of Planning Permission 12/01782/FUL –  
 Erection of house with garage**

**04 August 2015**





## SITE PLAN



## LOCATION PLAN

Rev. D - Red line extended around access road, blue line vis. spray added - May 12  
 Rev. C - Site area reduced and shape revised - April 12  
 Rev. B - Site moved 10.00m from fence, due to new water main - April 12  
 Rev. A - Clients amendments - March 12

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client Mr. Ian MacDonald  
 project Proposed House,  
 Woodside Croft, Strathpeffer,  
 Ross - shire IV14 9BU  
 drawing Sketch Drawing No. 2  
 SITE & LOCATION PLANS

scale 1:50,100,250,2500

job no. 11-024

date February 2012

drw. no.

102

rev.

D

drawn David Blanchard