

Agenda item	<b>6.14</b>
Report no	<b>PLN/044/18</b>

## THE HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 5 June 2018

**Report Title:** 18/01263/FUL - Land 16M North West Of The Pier House, Elgol, Isle Of Skye

**Report By:** Area Planning Manager – North

### **1. Purpose/Executive Summary**

#### **1.1 Mr Drew Sim**

Siting of portable building for use as hot food takeaway and siting of LPG cylinders

Ward 10 - Eilean A' Cheò

Local Development

Referred to Committee due to number of objections, including Community Council objection

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.

### **2. Recommendation**

#### **2.2 Members are asked to agree the recommendation to grant as set out in section 13 of this report**

### **3. PROPOSED DEVELOPMENT**

- 3.1 This application seeks full planning permission for the siting of a single storey, flat roofed, modular building which measures 9.75m long by 3.1m wide and 2.73m high for use as hot food takeaway. The proposal includes the infilling of the open gully referred to above by extending an existing 0.9m diameter culvert to create an area of level ground for the eastern end of the building to sit on. It also includes the formation of a slabbed area and a gravelled parking space between the building and the existing car park, the siting of 4 gas cylinders, two water butts and a wheelie bin on a slabbed area to the immediate west of the building behind a 1.8m high timber screen. The same type of screen would be erected on the eastern side of the building's frontage, with a 1.1m high timber fence erected to the rear of the structure's eastern end to prevent unauthorised access to the extended culvert. It is now proposed to make a connection to the public water supply.
- 3.2 No formal pre-application submission was submitted.
- 3.3 The site is adjacent to an existing public car park. An electricity supply is nearby, to which the building would be connected, but there would be no connection to the public water supply. The site is already enclosed on the eastern, southern and western sides by a 1.1m high timber post and rail/square mesh wire fence.
- 3.4 Supporting information has been submitted in the form of a brief document which sets out the key difference between this proposal and a previously approved scheme (application 15/01063/FUL, as listed below), and which sets out details of the potable and waste water arrangements, as well as the extract/ventilation scheme.
- 3.5 **Variations:** The floor plan of the building has been amended to include a chemical toilet for staff use - drawing no. 3 Rev. B, received 21.05.2018.

### **4. SITE DESCRIPTION**

- 4.1 The site comprises an area of land which includes an open gully on the south eastern side of Elgol Pier's upper car park. The land slopes steeply away from the site uphill in a south easterly direction for a few metres then becomes flatter where it becomes the curtilage of an existing dwelling known as "Pier House". A self-catering unit known as Shore Cottage is situated within the garden ground of this dwelling.

### **5. PLANNING HISTORY**

- 5.1 15/01063/FUL - Siting of portable building for use as a Hot Food Takeaway and siting of 4 No 47 Kg LPG Cylinders. Application Permitted 06.07.2015. The applicant sought advice via email whether the infilling of the culvert, enlarging the building and altering the opening hours could be considered as a non-material variation of this consent, and was advised that those changes would require the submission of a new planning application.

5.2 17/05468/FUL - Siting of portable building for use as hot food takeaway and siting of LPG cylinders. This application was submitted to address the changes to the permitted scheme described above. Following advice from Building Standards that the position of this type of structure within 3m of the eastern boundary would require a Building Warrant this application was withdrawn on 24.02.2018.

## 6. PUBLIC PARTICIPATION

6.1 Advertised : Schedule 3 Development and Unknown Neighbour, expiry 13.04.2018

Representation deadline : 13.04.2018

Timeous representations : 5, from 5 different households

Late representations : 2, from the International Otter Survival Fund, and from one householder

6.2 Material considerations raised are summarised as follows:

- Adverse effect on existing residential amenity
- Increased pressure on already overstretched public car park
- Inadequate arrangements for water supply and waste disposal
- Adverse impact on views into National Scenic Area
- Opening hours should be reduced to at least the same as those permitted by application 15/01063/FUL to protect existing residential amenity
- Applicant has excavated site without discharging condition on application 15/01063/FUL regarding details of extract/ventilation system
- Adverse visual impact
- Existing culvert conveys large amounts of water during heavy rainfall
- Increased litter issues
- Otters use the existing culvert, and the proposal would damage or obstruct access to an otter's place of shelter, contrary to the Wildlife and Countryside Act.

6.3 All letters of representation are available for inspection via the Council's eplanning portal which can be accessed through the internet [www.wam.highland.gov.uk/wam](http://www.wam.highland.gov.uk/wam). Access to computers can be made available via Planning and Development Service offices.

## 7. CONSULTATIONS

7.1 **Transport Planning** : No objection

7.2 **Flood Risk Management Team** : No objection

7.3 **Environmental Health** : Objection withdrawn

7.4 **SEPA** : Objection withdrawn

- 7.5 **Skye and Lochalsh Access Panel** : Concerns over design of ramped access, the lack of an accessible parking space, accessible toilet provision, anti-slip measures, assistive listening system, as well as insufficient entrance door width, counter height being possibly too high, and possible obstructions to wheelchair users from any outside furniture.
- 7.6 **Scottish Natural Heritage** : No objection
- 7.7 **Broadford and Strath Community Council** : Raise concerns in respect of impact on access and parking at Elgol Pier, and the implications of developing over an extended culvert in terms of otter usage and flood risk.

**8. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

**8.1 Highland Wide Local Development Plan 2012**

- 28 Sustainable Design
- 34 Settlement Development Areas
- 43 Tourism
- 58 Protected Species
- 64 Flood Risk

**8.2 West Highlands and Islands Local Plan 2010 (as continued in force 2012)**

Elgol Settlement Development Area

**9. OTHER MATERIAL CONSIDERATIONS**

**9.1 Draft West Highlands and Islands Local Development Plan 2017**

No relevant policies

**9.2 Highland Council Supplementary Planning Policy Guidance**

- Highland's Statutorily Protected Species (March 2013)
- Sustainable Design Guide (Jan 2013)
- Flood Risk and Drainage Impact Assessment (Jan 2013)
- Roads and Transport Guidelines for New Developments (May 2013)

**9.3 Scottish Government Planning Policy and Guidance**

Not applicable

## **10. PLANNING APPRAISAL**

10.1 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.

10.2 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.

### **10.3 Development Plan Policy**

10.3.1 In this case the Development Plan is comprised solely of the Highland-wide Local Development Plan, the relevant policies of which are considered below.

10.3.2 The application site falls within the Elgol Settlement Development Area (SDA), so Policy 34 applies. This policy supports development proposals within SDA's if they meet the Design for Sustainability requirements of Policy 28 which seeks sensitive siting and high quality design in keeping with local character and historic and natural environments, and the use of appropriate materials. This Policy also requires proposed developments to be assessed on the extent to which they are compatible with service provision, as well as their impact on individual and community residential amenity.

10.3.3 Policy 43 states that proposals for tourist facilities will be assessed as to whether the scale is appropriate to the local settlement/location, whether the site is within a settlement boundary, its likely contribution to increasing visitor stay/spending/spread, and its effect on natural, built and cultural heritage features.

10.3.4 Policy 58 states that where there is good reason to believe that a protected species may be affected by a proposed development, a survey must be carried out to establish any such presence, with a mitigation plan prepared if necessary, before any planning application can be determined.

10.3.5 Policy 64 requires the submission of a Flood Risk Assessment or other suitable information if a site is deemed to be at risk of flooding.

### **10.4 Policy and Material Considerations**

#### **Siting, Design and Visual Impact**

10.4.1 In terms of siting the proposal would conform with the local pattern of dispersed development in proximity to the local road network.

10.4.2 While this type of portable building is not a style of design which is representative of the local vernacular, it is recognised that the area around Elgol Pier already accommodates other similar functional structures, as well as various fishing and boating related paraphernalia. The area around Elgol Pier is typical of a working harbour, where utilitarian building types and various structures, installations and

equipment associated with activity around a busy pier are commonly found. As such, it is not considered that the design of the proposed building would look out of place within the local context.

- 10.4.3 The nearest boundary of the Cuillin Hills National Scenic Area is some 5km distant from the application site, on the opposite shore of Loch Scavaig. Given this distance, there is no basis to consider that the proposal would adversely impact upon the special qualities of the National Scenic Area.

#### **Neighbour and Public Amenity**

- 10.4.4 The proposed building would be situated some 25m north west of the nearest dwelling house, namely the “Pier House” as referred to above. However, the topography is such that the building would be largely hidden from the view of the Pier House within the existing gulley – which sits at a lower elevation (some 4m lower down) than this dwelling. The garden ground of the Pier House sits above the existing upper car park area at Elgol Pier. This ground does look onto this car park and only the roof and rear elevation of the portable building would be visible from that part of the garden closest to it. The additional visual and noise impacts of the proposal on the privacy and amenity of the garden over and above the impacts arising from this busy car park are not considered so significant as to warrant refusal of the application.

- 10.4.5 Environmental Health had lodged an objection seeking further information in respect of extract/ventilation arrangements, staff toilet provision, potable and grey water arrangements and noise emission. Following the submission of further information on these matters a confirmation a connection will be made to the public water supply Environmental Health have withdrawn their objection, but recommend conditions to control the noise output from the extract/ventilation equipment and to secure the detail of any external elements of this system.

#### **Access and Parking**

- 10.4.6 Transport Planning acknowledge that there is significant pressure on the existing public car park at Elgol Pier. However, they do not consider it proportionate to object to this proposal on the basis that:
- it is not judged to create significant additional demand relative to consent 15/01063/FUL;
  - that the development is judged to cater to existing visitors rather than acting as a significant traffic generator in its own right;
  - the takeaway is not to be placed directly on the carpark and the frontage can therefore still be used for parking and it is not expected spaces will be lost, and that it can therefore operate without customers congregating within the car park;
  - the extension of the delivery times will allow delivery outside of the peak parking times and should therefore help to reduce pressure.

## **Tourism Policy**

- 10.4.7 The proposal would make a modest contribution towards increasing visitor stay and spending, which is an aim of HwLDP Policy 43.

## **Flood Risk**

- 10.4.8 SEPA had originally objected to the proposal on the basis that they considered it to be contrary to their policy which presumes against land gain from culverting. However, they did acknowledge that the Council's Flood Team were the primary authority in respect of potential flood risk from surface water. The Flood Team's consultation response was received subsequent to SEPA's objection, and raised no concern with the proposal, provided that the extended pipe is sized to match the existing culvert. Given this response from the Flood Team, SEPA then withdrew their objection given the specifics of the site, which involve a minor scale of culvert and surface water drain.

## **Otters**

- 10.4.9 SNH advise that on the evidence of a site visit there was no evidence that otters are currently using, or have recently used, the culvert as a resting site. Otters are present in the general vicinity, and they may visit the culvert on occasion. However it seems unlikely that they would use this culvert for an extended period of time, or on a regular basis, due to its design and drainage function and the existing high levels of visitor disturbance (including dogs) at the car park and adjacent beach where the culvert discharges. There was no evidence that they are using the culvert as a route to access the hill ground behind the car park. In addition the works are to extend the culvert on the landward side so would not be likely damage or obstruct the existing culvert. It is the view of SNH that the proposals will have minimal impact on otters, and it is unnecessary to carry out a full otter survey.

## **All Abilities Access**

- 10.4.10 The applicant is encouraged to liaise with the Skye and Lochalsh Access Panel.

## **Opening Hours**

- 10.4.11 Consent 15/01063/FUL limited opening hours from 10am until 6pm, and restricted delivery hours to between 10am and 5pm in order to safeguard the amenity of neighbouring properties and occupants. This application seeks to extend opening times from 9am until 8pm, with deliveries also permitted between these hours. The rationale for these additional hours is to match the potential customer base generated by boat trips from Elgol Pier. According to the websites of the various boat trips operating from this harbour, the first departure is at 9am - with the last boat returning at 7pm. It is acknowledged that, given the car park would be generating noise and activity from around 9am until around 7.30pm, the operation of the proposed takeaway building during these times, and deliveries to it, would not significantly impact on the amenity of neighbouring properties and occupants. Accordingly, the proposed extension of the opening and delivery hours is considered acceptable.

## 10.5 **Other Considerations – not material**

The following matters have been raised by objectors, but are not material planning considerations:

- Approval might establish a precedent
- Impact on existing businesses
- A purely regulatory planning system does not encourage community involvement
- Insufficient public toilet provision locally
- The development may encroach onto a Highland Council Asset
- The site does not appear to correspond with the Apportionment boundaries

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

Not applicable

## 11. **CONCLUSION**

11.1 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.

## 12. **IMPLICATIONS**

12.1 Resource – Not applicable

12.2 Legal –Not applicable

12.3 Community (Equality, Poverty and Rural) –Not applicable

12.4 Climate Change/Carbon Clever –Not applicable

12.5 Risk – Not applicable

12.6 Gaelic – Not applicable

## 13. **RECOMMENDATION**

**Action required before decision N issued**

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

1. The development hereby approved shall not be open to customers, and no customer shall be allowed on the premises, outwith the hours of 09:00 to 20:00 Monday to Sunday.

**Reason :** In order to safeguard the amenity of neighbouring properties and occupants.

2. There shall be no vehicle deliveries to, or the unloading or loading of delivery vehicles adjacent to the application site outwith the hours of 09:00 to 20:00 Monday to Sunday inclusive, unless otherwise approved in writing by the Planning Authority as an exceptional instance for operating beyond these hours.

**Reason :** In order to safeguard the amenity of neighbouring properties and occupants.

3. The pipe used to extend the existing culvert shall be sized so as to match that of the existing culvert.

**Reason :** To minimise the risk of pluvial flooding

4. The building hereby permitted shall be finished in a light grey colour.

**Reason :** To make the building appear recessive within the local landscape setting.

5. All plant, machinery and equipment associated with ventilation, air-conditioning, heating and refrigeration services or similar and including fans, ducting and external openings shall be so installed, maintained and operated such that any associated operating noise does not exceed NR 20 when measured or calculated within any noise-sensitive premises with windows open for ventilation purposes. For the purposes of this condition, "noise-sensitive premises" includes, but is not necessarily limited to, any building, structure or other development the lawful use of which a) falls within Classes 7 (Hotels and Hostels), 8 (Residential Institutions) or 9 (Houses) of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended), or b) is as a flat or static residential caravan.

**Reason :** In order to safeguard the amenity of neighbouring properties and occupants.

6. No development shall commence until full details of all external ducting and other elements of the proposed ventilation system have been submitted to, and approved in writing by, the Planning Authority. Thereafter, development shall progress in accordance with these approved details.

**Reason :** In order to safeguard the amenity of neighbouring properties and occupants.

## **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**

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 and 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.

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area 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: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

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

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_or\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_or_working_on_public_roads/2)

### **Mud and Debris on Road**

Please note that it is 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).

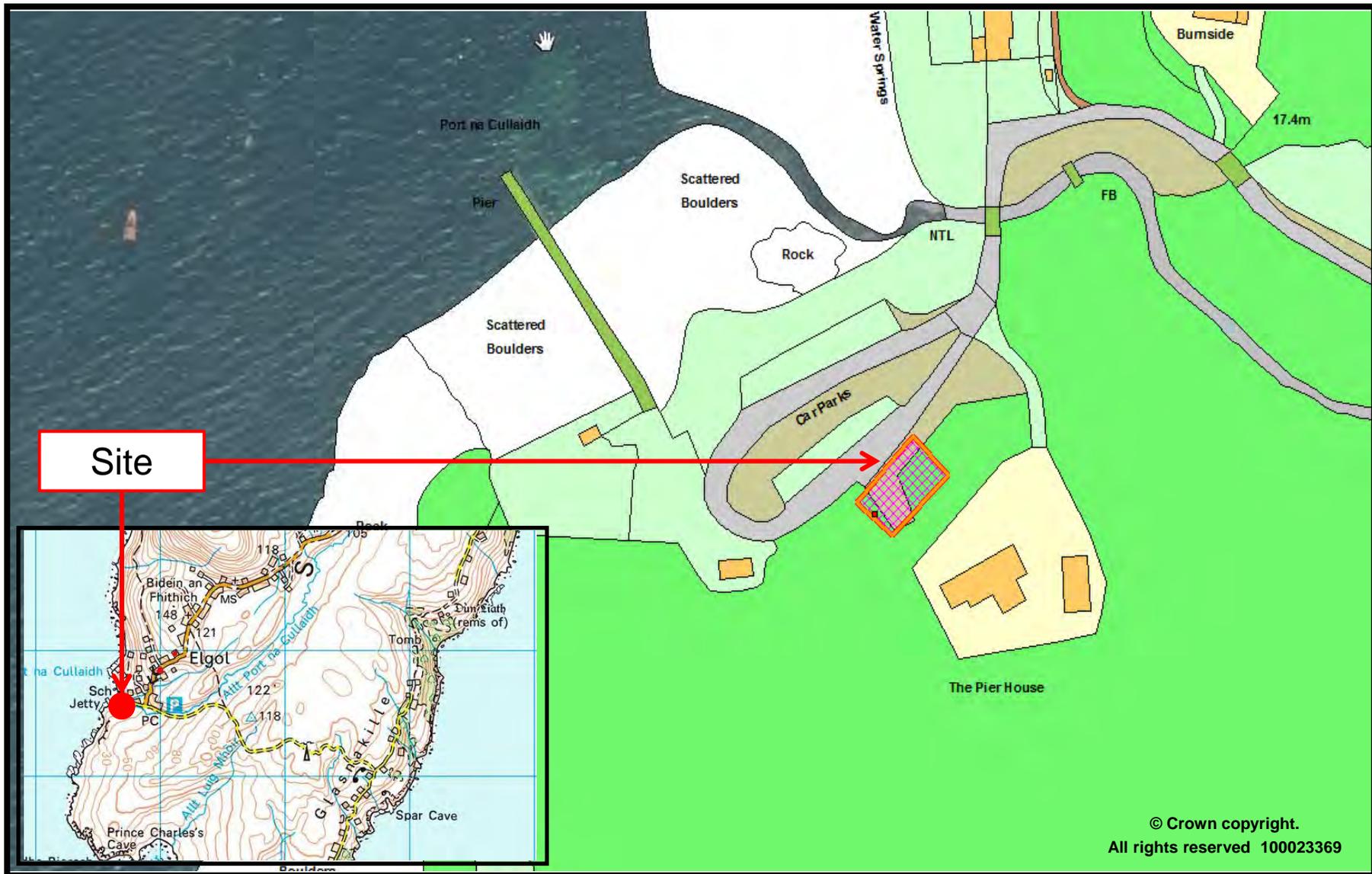
Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to 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](mailto:env.health@highland.gov.uk) for more information.

### **Protected Species - Halting of Work**

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species)

Designation: Area Planning Manager - North  
Author: Graham Sharp  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – Committee Location Plan  
Plan 2 – Drawing No. 1, Rev. A Location Plan  
Plan 3 – Drawing No. 2, Rev. A Block Plan  
Plan 4 – Drawing No. 3, Rev. B Block Plan  
Plan 5 – Drawing No. 4, Rev. A Elevations  
Plan 6 – Drawing No. 5, Rev. A Elevations

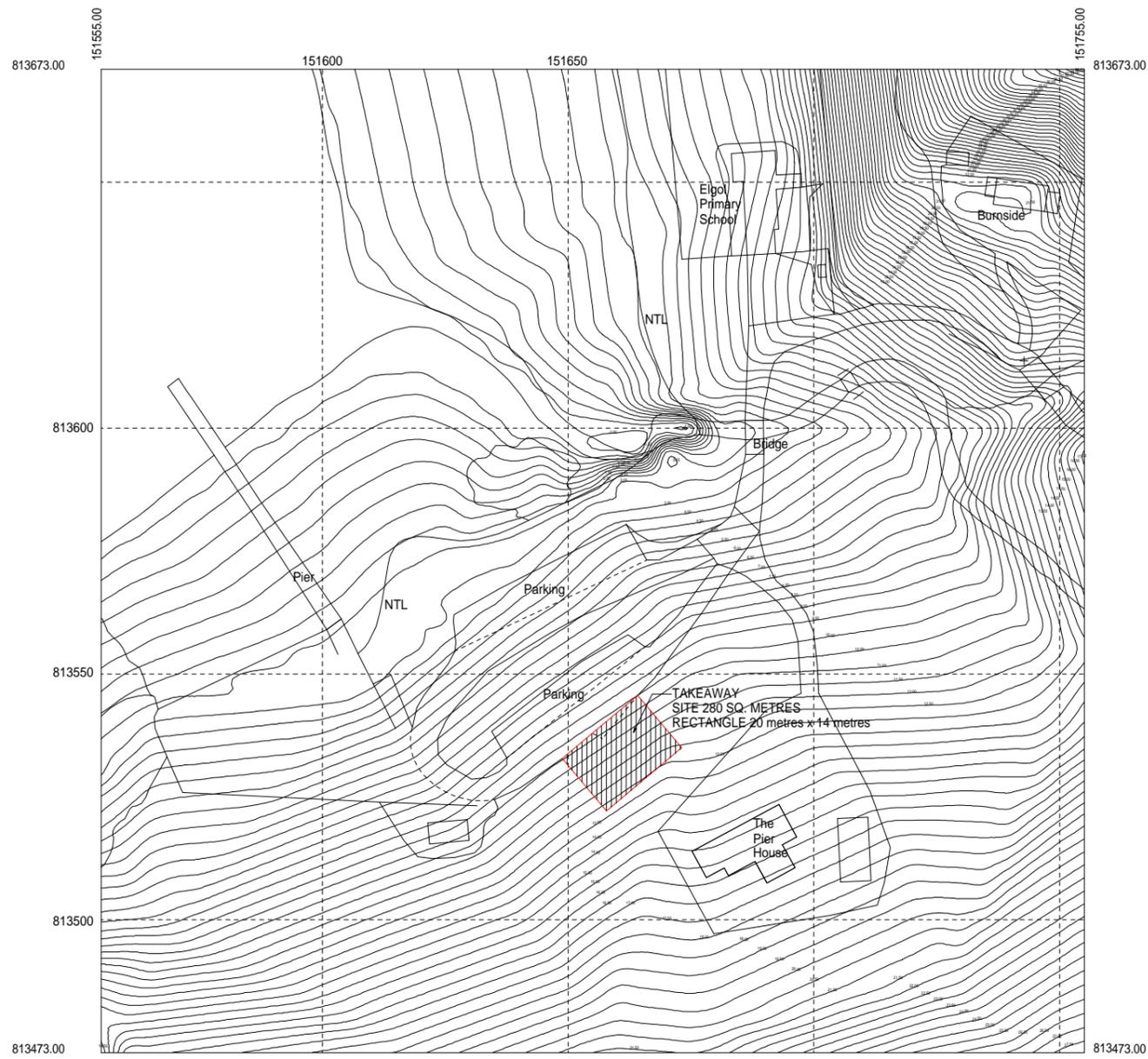


Planning and  
Development Service

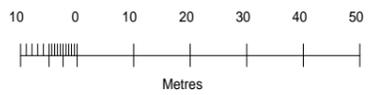
Location Plan  
18/01263/FUL  
**Siting of portable building for use as hot food takeaway and siting of LPG cylinders**

June 2018

Scale:



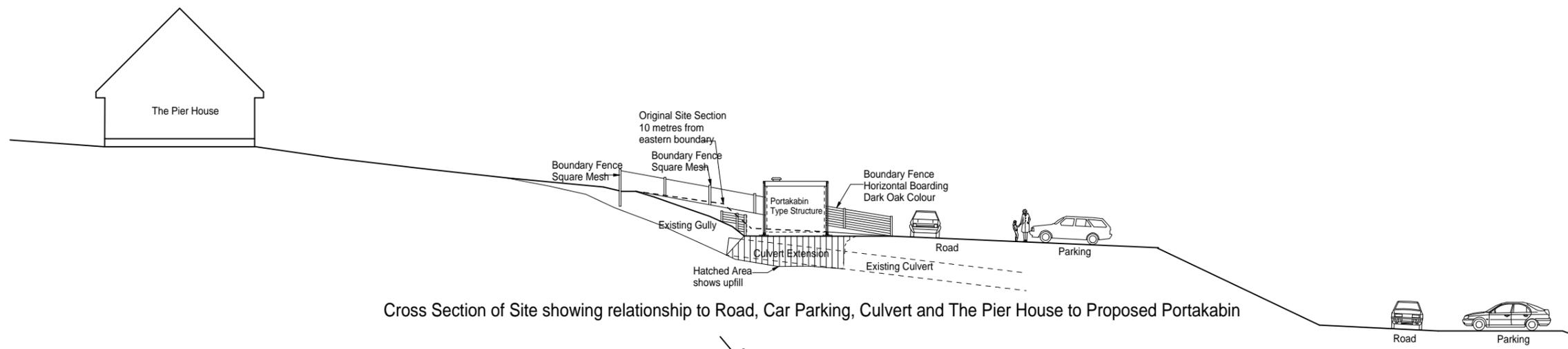
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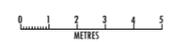
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### LOCATION

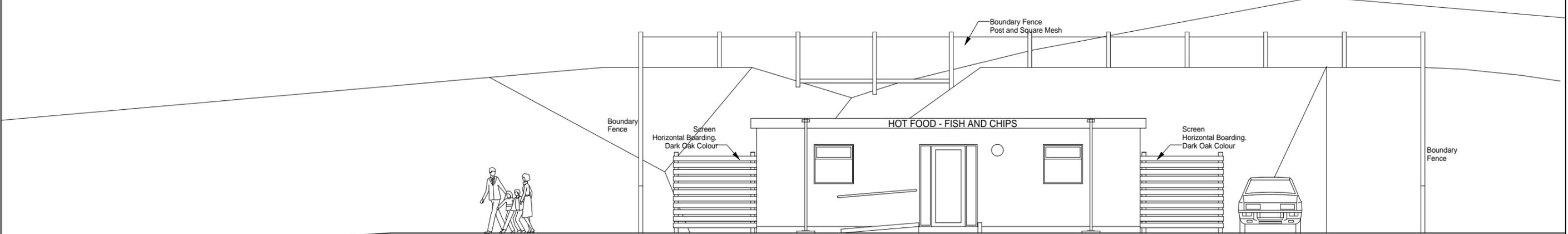
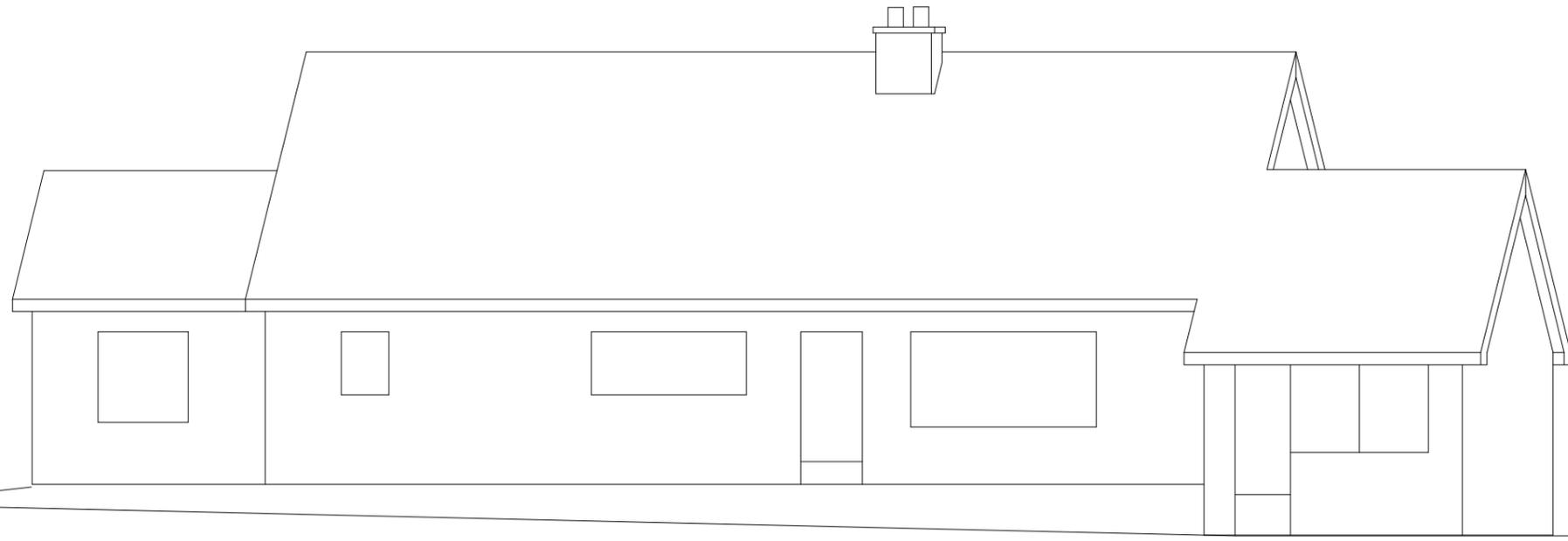
<b>CLIENT</b> Drew Sim, 26 Elgol. IV49	<b>PROJECT</b> Proposed Hot Food Takeaway, Elgol, Isle of Skye	<b>DRAWING</b> Location Plan	<b>SCALE(S)</b> 1:1250 @ A3	<b>GRID REF.</b> 151661E, 813542N	<b>REVISION</b> A
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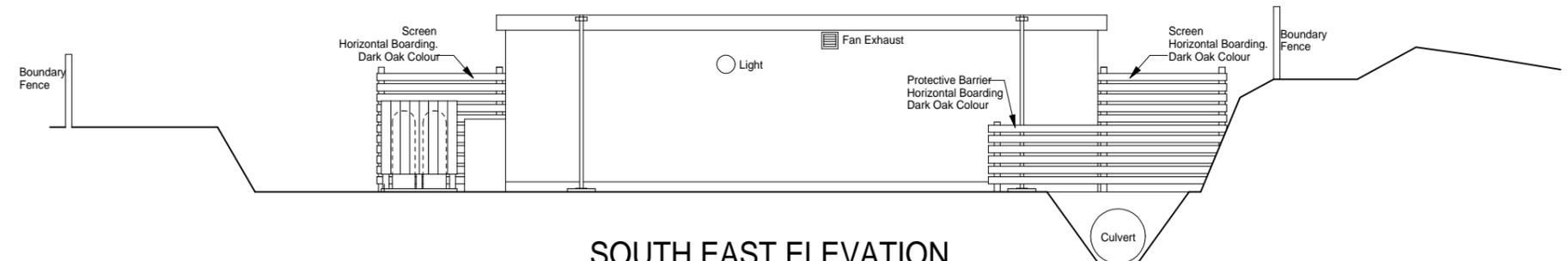
Cross Section of Site showing relationship to Road, Car Parking, Culvert and The Pier House to Proposed Portakabin



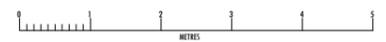




NORTH WEST ELEVATION

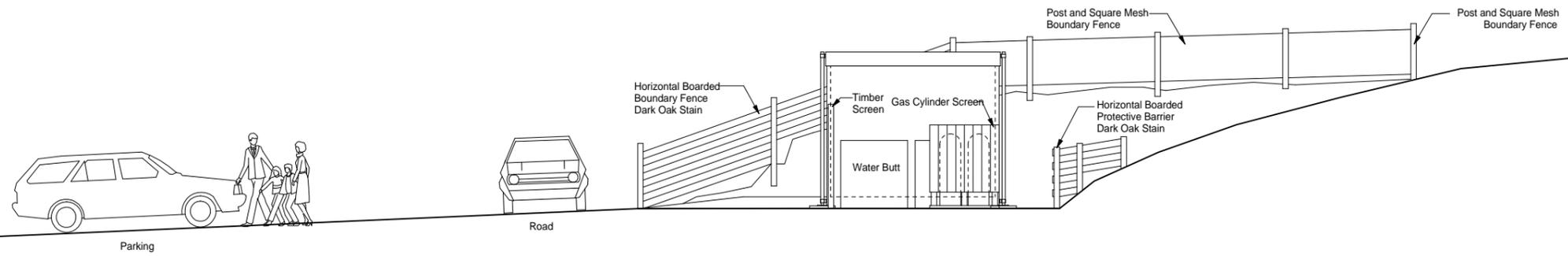


SOUTH EAST ELEVATION

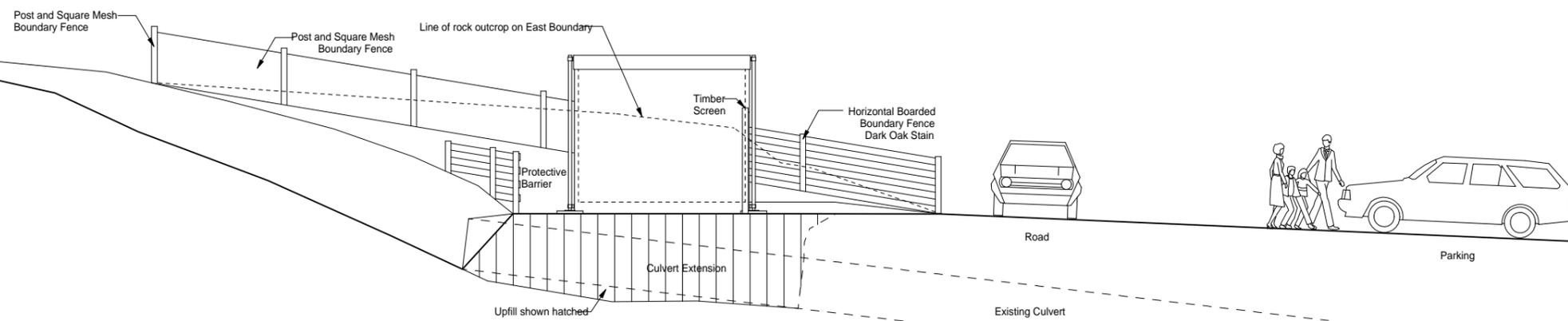


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NGW Limited, 18 Victoria Park Gardens North, Glasgow G11 7EL, Tel/Fax 0141 357 1401



SOUTH WEST ELEVATION



NORTH EAST ELEVATION



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