Agenda Item	6.6
Report No	PLN/037/19

# THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

**Date:** 9 April 2019

**Report Title:** 18/05757/FUL: Mr Gary Keith

Land 25M NE of Garlyle, 10 Ness Way, Fortrose

**Report By:** Acting Head of Development Management – Highland

# **Purpose/Executive Summary**

**Description:** Erection of House

Ward: 09 - Black Isle

Development category: Local Development

Reason referred to Committee: More than 5 objections.

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.

### Recommendation

Members are asked to agree the recommendation to Grant planning permission as set out in section 11 of the report.

## 1. PROPOSED DEVELOPMENT

- 1.1 The application seeks detailed consent for a house within garden ground to the north-east of 10 Ness Way, Fortrose. The house is single storey with a modest footprint of 72sqm, and will be finished in an off-white wet dash render with a natural slate roof.
- 1.5 Variations: Site layout and elevations amended 25.03.2019.

The purpose of the amendments was to show a layout and design more in keeping with the neighbouring properties. The amendments included a change to the footprint of the house to make it more rectangular in plan form, and the addition of a bay window to create a more interesting frontage to the road to the south-east and quoins to echo some of the detailing found on the neighbouring properties. Furthermore, the site layout was amended to show a solid boundary treatment between the proposed plot and the buffer zone.

#### 2. SITE DESCRIPTION

2.1 The site is a flat area of garden ground belonging to 10 Ness Way, a detached modern property which sits between 11 Ness Way to the north-east and 9 Ness Way to the south-west. The three properties are similar in style and set within generously sized plots. Fortrose and Rosemarkie golf course and Wester Greengates road lie to the east. To the west is the cul-de-sac Ness Way off which a variety of properties are located. The site itself is currently laid to lawn. A "buffer zone" strip is located between numbers 9 - 11 Ness Way and the golf course. This is covered by a section 75 agreement which prevents development within this area. to protect the occupants of the properties from stray golf balls.

### 3. PLANNING HISTORY

3.1	01.05.2018	18/00011/RBREF - Erection of new dwelling	Review Dismissed
3.2	04.12.2017	17/03318/FUL - Erection of new dwelling	Refused
3.3	04.06.2008	08/00408/FULRC – Erection of house (amended design) (9 Ness Way)	Approved
3.4	23.08.2007	07/00370/FULRC – Erection of house and formation of access (9 Ness Way)	Approved
3.5	24.05.2007	07/00239/FULRC – Erection of house with integral garage (10 Ness Way)	Approved
3.6	14.02.2007	06/00861/FULRC – Erection of house with integral garage.	Approved
		(This was the first house (No 11 Ness Way) of the existing 3 houses. A section 75 legal agreement was signed as part of this permission which secured a buffer	

strip adjacent to the golf course. The purpose of the section 75 legal agreement was to protect houses from stray golf balls.)

## 4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour 14 Days

Date Advertised: 24.12.2018

Representation deadline: 24.01.2019

Timeous representations: 15

Late representations:

4.2 Material considerations raised are summarised as follows:

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- a) This application, like the previous application 17/03318/FUL, should be refused.
- b) The land was originally zoned for only two houses in the local plan and this application would result in a 100% increase over the local plan limitation.
- c) The building is in contravention of the existing section 75 as it shows a "notional boundary".
- d) The size of house proposed and plot is not in keeping with surrounding properties and undermines existing character and settlement pattern of the area.
- e) The development will impinge upon the privacy of neighbouring properties.
- f) This application is a contradiction of the approach taken for housing land to the south west planning reference 06/01135/OUTRC.
- g) The allocation of a fourth house contradicts earlier assurances by the Council that it would not break a precedent with the remainder of the green belt in this area.
- h) The road adjacent to the buffer zone is inadequate for the level of traffic it currently carries and the land adjacent to it may be required for future road improvements.
- i) The proposal will impact negatively upon the visual amenity of the area.
- j) The proposal would interrupt views towards the firth.
- k) The issue of golf balls landing in the garden still applies.
- I) The development will result in the erosion of the settlement edge.
- m) The shared access is on a corner of Ness Way and crosses a footway.
- 4.3 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>.

# 5. CONSULTATIONS

5.1 Scottish Water – General advice for the applicant

### 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

## 6.1 Highland Wide Local Development Plan 2012

- 28 Sustainable Design
- 34 Settlement Development Areas

# 6.2 Inner Moray Firth Local Development Plan

Within SDA for Fortrose

# 6.3 Highland Council Supplementary Planning Policy Guidance

Developer Contributions (March 2013) Sustainable Design Guide (Jan 2013)

# 7. OTHER MATERIAL POLICY CONSIDERATIONS

# 7.1 Scottish Government Planning Policy and Guidance

## 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.

### **Determining Issues**

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.

### **Planning Considerations**

- 8.3 The key considerations in this case are:
  - a) The principal determining planning policies of the Highland-wide Local Development Plan (HwLDP)
  - b) Planning history
  - c) Compliance with settlement pattern and impact upon individual and community residential amenity

# The principal determining planning policies of the Highland-wide Local Development Plan (HwLDP)

- 8.4 The principal determining planning policies of the HwLDP are as follows;
  - Policy 28 (Sustainable Design)
  - Policy 34 (Settlement Development Areas)
- 8.5 Policy 28 (Sustainable Design) of the HwLDP aims to ensure that development is socially, economically and environmentally sustainable. The policy lists criterion against which development shall be assessed. Of particular relevance to this proposal, the policy states that developments will be assessed on the extent to

which they are compatible with public service provision, impact on individual and community residential amenity and demonstrate sensitive siting and high quality design.

- 8.6 Policy 34 (Settlement Development Areas) of the HwLDP highlights the importance of supporting existing communities and identifies SDA's as the preferred location for most types of development, as this makes the best use of infrastructure, services and protects the character of surrounding countryside. Policy 34 states that proposals within Settlement Development Areas will be supported if they meet the requirements of policy 28 (Sustainable Design), and are judged compatible with the existing pattern of development and landscape character, conform with existing and approved adjacent uses and have no negative effect on any heritage features.
- 8.7 The proposal is considered to accord with the principal determining Development Plan policy noted above for the reasons discussed in the paragraphs below.

## **Planning history**

- 8.8 An important part of the history of development at this site is the fact that a strip of land to the east located between numbers 9-10 Ness Way and the golf course, shown hatched on the location plan, is subject to a section 75 legal agreement preventing any development from taking place within this piece of land. The section 75 legal agreement was secured when number 11 Ness Way, the adjacent house to the north-east, was granted planning permission in 2006. This section 75 legal agreement has remained in place and is in force with regards to number 9-11 Ness Way, and this proposed development. The purpose of the buffer zone is to protect occupants from stray golf balls and provide an amenity strip between the golf course and Ness Way.
- A house was previously refused at this site (17/03318/FUL) and was then 8.9 dismissed at review (18/00011/RBREF). The previous application sought consent for a larger 1<sup>1</sup>/<sub>2</sub> storey 4 bedroom property with an integral garage. The footprint of this property was 128sqm in comparison to the current proposal which has a footprint of 72sqm (56% the size of the previous proposal). The proposed curtilage also included part of the buffer zone discussed above which is subject to a section 75 legal agreement to prevent development between numbers 9-11 Ness Way and Fortrose and Rosemarkie Golf Club to protect properties from stray golf balls. The previous planning application was refused as it was considered to fail to demonstrate sensitive siting and design in keeping with local character. In particular, its size and close proximity to 10 Ness Way was considered to result in a cramped appearance. Furthermore, the development encroached into the buffer zone and was considered unacceptable as it undermined the purpose of the buffer zone. A review (18/00011/RBREF) of this decision was subsequently dismissed at the Planning Review Body for the same reasons.
- 8.10 The current proposal seeks to address the previous reasons for refusal. Paragraph 8.3.6 The Report of Handling for application reference 17/03318/FUL stated that a very modest development within the garden ground may be acceptable, however, this would have to be at a much reduced scale, be consistent with the south-east orientation and avoid encroachment into the buffer zone.

# Compliance with settlement pattern and impact upon individual and community residential amenity

- 8.11 The site is located within the settlement development area for Fortrose as defined in the Inner Moray Firth Local Development Plan. Policy 34 - Settlement Development Areas (SDA's) - of the HwLDP states clearly that SDA's are the preferred areas for most types of development, including housing. This makes the best use of existing infrastructure and services and protects the character of the surrounding countryside. While there is a presumption in favour of infill development with SDA's policy 34 also stipulates that proposals will be judged in terms of how compatible they are with the existing pattern of development and existing land uses.
- Like most settlements Fortrose contains a variety of house types and plot sizes. 8.12 Ness Way consists of detached modern properties of mixed design within sizeable garden grounds arranged around a cul-de-sac. Number 10 and its neighbours 9 and 11 sit detached from the rest of the cul-de-sac within more generously sized garden grounds. The proposed plot is smaller than the existing plots within Ness Way. However, it is comparable with others found within the SDA in the vicinity, and offers a proportionate amount of garden ground relative to the footprint of the property. In this regard the proposal overcomes previous concerns regarding the development appearing as being "shoe-horned" into the site leading to a cramped appearance. The ridge line and position of the proposal now also echoes the neighbouring properties, which will allow the development to sit more comfortably in relation to these existing houses. A projecting bay window with a roof feature above have been added to the south-west elevation together with corner quoins in order to animate the frontage towards Wester Greengates and echo some the design traits of the neighbouring properties.
- When viewed from Ness Way and Wester Greengates the relationship between the 8.13 proposal as now amended and the existing neighbours will not appear as a significant deviation from the established settlement pattern. The introduction of built form into this area of garden ground will result in a closer cluster of two properties, however, the linear development pattern with east/west running ridge lines will be maintained. Numbers 11 and 9 will be separated from the proposal and number 10 by commensurate distances, which creates a balanced layout overall. Number 10 currently has a sizeable garden area, and whilst this will be reduced when built upon, the resulting density of development is not significantly out of keeping with the settlement context. Furthermore, the fact that two properties will be situated closer to each other comparative to the existing spacing of properties on this parcel of land does not create a significant discord in the established rhythm of development, which comprises a linear row of south-west orientated properties. It is acknowledged that a degree of outlook from Ness Way over the Firth will be lost through the infilling of this site. However, loss of view is not a material planning consideration and neighbours are sufficiently separated from the modest single storey house proposed so as to avoid any significant impact upon their amenity. There is no direct overlooking between the proposed single storey property and the closest neighbours numbers 11 and 10 due to these properties being off-set from

one another. Overall, the relationship between the existing neighbours and the proposal does not threaten the established development pattern or character of the area to a degree that would justify refusal of planning permission.

- 8.14 While the proposal will be visible from Wester Greengates road to the east, the modest development will not have a wider visual impact outwith the immediate locale. Furthermore, the infilling of this area of garden ground, while reducing some of the current "openness" of this area, will not significantly diminish the visual quality of the location. The buffer strip between this part of Ness Way will remain in situ and will continue to soften the transition between the built development at Ness Way and the golf course.
- 8.15 As noted above the curtilage of the proposal no longer encroaches into the buffer zone and a solid boundary is proposed between the garden ground and this area. A condition is recommended ensuring that this boundary is maintained in perpetuity. The surface water soakaways are located within the buffer zone, however, this is considered permissible given these are not structures. The current proposal is considered to address the previous reason for refusal at the site in that it no longer undermines the section 75 legal agreement.
- 8.16 The proposal makes use of a large area of garden ground within the Fortrose SDA to provide an additional house. It is considered that this house can be accommodated without any significant adverse impact upon the character of the area or neighbour amenity. Given the policy 34 (Settlement Development Areas) of the HwLDP presumption in favour of development within existing settlement boundaries, the development is considered is acceptable. The development is also considered compliant with policy 28 (Sustainable Design) of the HwLDP as it is considered to have overcome the poor siting and design proposed in the previous application and will have no significant impact upon community or residential amenity.

### Other material considerations

- 8.17 Representations raise the point that the site on which numbers 9-11 are located was allocated for 2 units within the former Ross and Cromarty East Local Plan. This plan was superseded by the Inner Moray Firth Local Development Plan in 2015 and the Highland-wide Local Development Plan 2012. Reference is also made to other permissions for housing developments within Fortrose. All development must be treated on its own merits and assessed against the adopted development plan policy. As discussed in the paragraphs above the proposal is considered to meet the tests of policies 28 and 34 of the Highland-wide Local Development Plan.
- 8.18 Representations make reference to the access arrangements causing road and pedestrian safety issues. The existing access point for numbers 11 and 10 is to be utilised, which is hard surfaced and includes a service lay-by. Road speeds on the cul-de-sac will be low as it is a short section of road and close to the junction with Ness Road. The access point is located on the outside of a bend in the road which

allows visibility in both directions towards the junction with Ness Road and towards the end of the cul-de-sac. The existing access is considered acceptable and its use presents no pedestrian or vehicular safety issues.

## **Developer Contributions**

8.19 All single house developments are now required to contribute towards education provision within their catchment area where capacity constraints exist. For all single house applications within the Avoch Primary School catchment area, a contribution of £409 is required towards a classroom extension.

The proposed house is the fourth plot to be developed on the original land holding and under the terms of the new Developer Contributions Guidance adopted in November 2018 this triggers the need for a contribution to be made towards affordable housing provision. In this instance the appropriate means of providing the contribution would be by means of a commuted sum payment which will be put towards affordable housing provision in the area. In this case the commuted sum will be in the order of £6,250 to £8,750.

The applicant has agreed to pay these contributions in one single up-front payment prior to the issuing of planning consent.

Developer contribution	Amount due
Primary Education – Avoch Primary classroom extension	£409
Affordable housing contribution	£6,259 - £8,750
Total	£6,668 - £9159

### 9. CONCLUSION

- 9.1 The proposal is considered to address the previous reasons for refusal, in particular, the application is now considered to demonstrate sensitive siting and design. Furthermore, the proposal is not judged to be a significant deviation from the settlement pattern or to represent a level of visual intrusion that would be a detriment to individual or community residential amenity.
- 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. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable

- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

## 11. **RECOMMENDATION**

#### Action required before decision issued Y

Payment of developer contributions Y

Subject to the above, it is recommended that planning permission be

**GRANTED**, subject to the following:

#### **Conditions and Reasons**

1. The external walls of the house shall be finished in an off-white wet dash render, and the roof shall be finished in natural slate. Prior to commencement of development, details of the type of stone to be used for the quoins shall be submitted to the Planning Authority for approval in writing. Notwithstanding the details shown on General Plan no 857-PL-02 Rev B, for the avoidance of doubt, the quoins shall be buff in colour and shall closely match those used on adjacent houses. The development shall thereafter be implemented in accordance with the approved detail.

**Reason**: To ensure that the development is sensitive to, and compatible with, its context and local architectural styles.

2. Prior to the first occupation of the development hereby approved, the car parking and access arrangements detailed on approved plan ref. 857-PL-04 B shall be completed in full and made available for use. Thereafter, all car parking spaces shall be maintained for this use in perpetuity.

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

3. No other development shall commence until a timber fence of 1m in height is erected along the boundary line between the buffer zone and the proposed house site as shown on Site Plan 857-PL-04 Rev B and the buffer zone and 10 Ness Way. The fence shall be maintained at this location in perpetuity.

**Reason**: To ensure that the buffer zone is not undermined and to ensure that the curtilage of the house hereby approved does not encroach onto the buffer zone, which is secured by a section 75 legal agreement to protect properties at Ness Way from stray golf balls.

4. No development shall commence until details of a scheme of hard and soft landscaping works have been submitted to, and approved in writing by, the Planning Authority. Details of the scheme shall include:

- i. The location and design, including materials, of any existing or proposed walls, fences and gates;
- ii. 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; and

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 commencement of 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 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 that a high standard of landscaping is achieved, appropriate to the location of the site.

5. Notwithstanding the provisions of Article 3 and Classes 1A, 1B, 1C, 1D, 2A, 2B, 3A, 3B, 3C, 3D and 3E of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or reenacted; with or without modification), no development of a type identified in the aforementioned classes shall take place within the curtilage of the dwelling house without planning permission being granted on application to the Planning Authority.

**Reason**: In order to enable the Planning Authority to retain effective control over future development within the application site so that it is carefully assessed and does not result in over-development or an adverse impact on the amenity of the area.

### REASON FOR DECISION

### TIME 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 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 (paragraph 259), 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.

### Mud and 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 <u>env.health@highland.gov.uk</u> 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

Designation:	Acting Head of Development Management – Highland	
Author:	Rebecca	a Hindson
Background Papers:	Docume	nts referred to in report and in case file.
Relevant Plans:	Plan 1	- Location Plan
	Plan 2	- Block Plan 857-PL-02 REV B
	Plan 3	- Site Layout Plan 857-PL-04 REV B
	Plan 4	- General Plan 857-PL-03 REV A



The Highland Council Comhairle na Gàidhealtachd

# Planning & Development Service

18/05757/FUL

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Erection of house at Land 25m NE of 10 Ness Way, Fortrose



grassed area	
BLOCK PAVING	
SHARED ACCESS	
ITE AREA IN OWNE E AREA CONTAINE	RSHIP OF 10 NESS WAY = 3326sq.m or thereby WITHIN ABOVE SITE AREA = 1516sq.m. or thereby
>	BLOCK PAVING SHARED ACCESS TTE AREA IN OWNE E AREA CONTAINED

	ITE AREAS AMENDED SINCE R ROM APPLICATION SITE AREA	LMOVING BOFFER ZONE
1. S	A – 18.12.18 HARED ACCESS NOW SHOWN OUNDARY – ADDITIONAL SYM	
	PLANNING DRAWING	
PROJECT	Erection of New Dwelling 10 Ness Way, Fortrose IV10 8SS	within Curtilage of
DRAWING	Block Plan Rainwater Soakaway Det	ail
CLIENT	Mr G. Keith, 10 Ness Way, Fortrose, IV10 8SS	
Drg. no.	857\PL\02	Revision B
Scale	as shown	<sup>Date</sup> March 2019



25m	30m	35m	40m	45m	50m
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uit pipe depth		150mm outside dia. upvc incoming solid pipe terminated
hative 80000		at start of attenuation trench
		1 layer terram membrane to top & sides of filter trench soakaway trench — length as drawings x 0.6m wide x 500mm deep below
		incoming pipe invert, backfilled with 20-40mm clean rounded gravel
600mr	rı	150mm dia. upvc outgoing solid pipe from end of attenuation trench to watercourse
Rainwater Soal	kaway Deta	il
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REV B - M		
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PROJECT	Erection Of New Dwelling 10 Ness Way, Fortrose IV10 8SS	within Curtilage of	
DRAWING	<sup>IG</sup> Proposed Floor Plan, Roof Plan, Sections & Elevations		
CLIENT	Mr G. Keith, 10 Ness Way, Fortrose, IV10 8SS		
Drg. no.	857/PL/03	Revision	
Scale	as shown	<sup>Date</sup> March 2019	