

Agenda Item	<b>5.5</b>
Report No	<b>PLN/016/21</b>

## HIGHLAND COUNCIL

**Committee:** North Planning Applications Committee

**Date:** 2 March 2021

**Report Title:** 20/04158/FUL: Mrs S Brown  
Land 70M NW of House of Shannon, Wester Templands, Fortrose

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

### 1. Purpose/Executive Summary

1.1 **Description:** Formation of access (Amendment to planning permission 18/02562/PIP - Formation of house site)

**Ward:** 09 - Black Isle

1.2 **Development category:** Local

**Reason referred to Committee:** Manager's Discretion - Representation from Avoch and Killen Community Council raising an 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. Recommendations

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

### **3. PROPOSED DEVELOPMENT**

3.1 This application proposes the formation of a new, alternative access point, including a service bay, to serve a house site already approved in principle on 20<sup>th</sup> December 2018 (18/02562/PIP). The alternative success is sought due to land ownership issues. The original proposal was to share the existing access to the south east which serves two existing properties and which provides an agricultural access into the land. The access now proposed is located 30m to the north west of the centre line of the existing private access.

3.2 Pre-Application Consultation: None with the Planning Authority. The applicant met a Community Services Roads Inspector on site to discuss the alternative before lodging the application.

3.3 Supporting Information: Private access checklist – states visibility splays of 2.4m x 120m are available over land either within the applicant's ownership or the road verge and that a 250mm culvert will be installed to accommodate the roadside ditch under the access.

Application form states applicant met Roads Inspector on site who confirmed that proposed access was adequately spaced from existing junction with good visibility splays.

3.4 Variations: None

### **4. SITE DESCRIPTION**

4.1 The site is located within a small rural settlement known as Wester Templands to the north west of Fortrose. It comprises part of a sloping agricultural field to the south west of the single-track public road. A drainage ditch runs alongside the public road. The proposed access is opposite a house and some 30m to the west of the small crossroads serving Wester Templands.

### **5. PLANNING HISTORY**

5.1	18/01300/PIP - Formation of three serviced house plots, access and services	Application withdrawn	15 May 2018
5.2	18/02562/PIP - Formation of house site	Permission granted	20 December 2018

### **6. PUBLIC PARTICIPATION**

6.1 Advertised: No

Date Advertised: N/A

Representation deadline: 21.11.2020

Timeous representations: Two including Avoch and Killen Community Council.

Late representations: One

6.2 Material considerations raised are summarised as follows:

- a) Access checklist inaccurate - states speed limit 40mph and traffic speeds assessed as 30mph. Speed limit is 60mph. Given access is at the bottom of a hill on a bend we have concerns around road safety implications.
- b) Traffic speeds are closer to 40 – 50mph.
- c) Councils Supplementary Guidance requires visibility splays of 2.4m x 215m for 60mph not 120m
- d) Do not believe visibility will be available due to bend in road to south east
- e) Currently vehicles have to reverse to the Wester Templands Junction to allow an approaching car to pass. Cars have also gone into the ditch as had to avoid vehicle coming down the hill
- f) Guidelines (4.3.2) say if there is a disagreement regarding speeds there can be a professional traffic survey – this would be essential if proposal is to be approved
- g) Guidelines (4.1.4) say use of shared accesses to be encouraged – report of handling for the house site states application does not restrict access to the remainder of the field or necessitate the need to create a new field entrance off the public road. Also states use of the private access track to serve the house is a civil legal matter – no attempt has been made to resolve this – applicant has not contacted owners of road for right of access.
- h) If Council grant this, creating dangerous precedent in that any planning permission could be changed on basis applicant changes their mind. Nothing has changed since planning permission was granted in 2018 using shared access.
- i) Regarding pre-application discussions when it was stated that good visibility splays were available, this was because the large hedge was recently trimmed, and grass mown. This will change as both regrow.
- j) Road safety should be the priority.

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).

## 7. CONSULTATIONS

### 7.1 Transport Planning: No Objection

Our guidance encourages use of shared accesses where possible in interests of road safety. However, where such arrangements cannot be established, as appears to be the case in this situation, we review requests for new accesses against the guidelines. Our findings from that review are as follows

This section of the C1035 appears to be a single track road with occasional passing places, located mostly at existing private accesses. The road is covered by a derestricted speed limit (60mph), not the 40mph suggested in the submitted Private Access Checklist. However, the form of the road in this location suggests that general traffic speeds would be significantly less than that. The proposed 30mph speeds suggested in the submitted Private Access Checklist may be at the lower end of the likely range experienced on this stretch of road. However, the 120m

visibility splay distances proposed in each direction from a 2.4m setback at the proposed access would be sufficient for general traffic speeds closer to 40mph. This is likely to be more realistic along this stretch of road. It appears that such visibility splays were proposed and accepted with the previous permission (Ref 18/02562/PIP) from the exiting shared access. Given this and that there do not appear to have been any reportable injury incidents along this stretch of the C1035 in the last 5 years of available data (2015-2019), we accept that visibility splays of 120m in each direction along the C10.35 from a 2.4m setback at the proposed new access should be sufficient. Any permission granted should require such visibility splays to be maintained.

With regards to the location of the proposed access, Section 4 of the Guidelines also says any new access should not normally be situated within 30m of an existing private access. This is again a road safety issue so that other drivers following a vehicle indicating to turn off the public road into a private access are clear which access the driver is intending to turn into. We note that the submitted Site Access Drawing No. 0075 06 dated October 2020 proposes that the new access will be 30m from the existing private access that was proposed in the original permission (Ref: 18/02562/PIP). Given this and provided that the proposed 120m visibility splays in each direction can be achieved we have no objection to the proposed location of the new access.

The design of the new access accords with the guidelines and the provision of a service bay will generate a new opportunity for general traffic using the C1035 to pass each other, which is welcomed and would provide benefits to wider user of the road. Given this we have no objection to the type of access proposed. The first 6m into the access will require to be surfaced and any gate must be a minimum of 8m from the edge of the road.

The culvert over the road side ditch will require to be 300mm rather than 250mm as set out in the submitted private access check list. This matter can be dealt with by condition.

## **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  
66 - Surface Water Drainage

### **8.2 Inner Moray Firth Local Development Plan 2015**

Policies : No specific policies apply.

### **8.5 Highland Council Supplementary Planning Policy Guidance**

Access to Single Houses and Small Housing Developments (May 2011)  
Highland's Statutorily Protected Species (March 2013)

## **9. OTHER MATERIAL POLICY CONSIDERATIONS**

### **9.1 Scottish Government Planning Policy and Guidance**

Scottish Planning Policy (The Scottish Government, June 2014)

## **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.

### **Determining Issues**

- 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.

### **Planning Considerations**

- 10.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
  - b) the standard of visibility achievable from the proposed access.
  - c) any other material considerations.

### **Development plan/other planning policy**

- 10.4 Policy 28 (Sustainable Design) of the Highland wide Local Development Plan sets out a number of considerations against which development should be assessed. Although policy 28 does not address road safety explicitly; all developments are expected to be compatible with roads provision. The key matter is whether the location of the access meets the objectives of safety, drainage and construction to comply with the Council's desire to promote consistent standards for the construction of private accesses where they connect to the public road network. This policy is supported by adopted Supplementary Guidance - Access to Single Houses and Small Housing Developments (May 2011).
- 10.5 The submission of this planning application follows on from pre application discussions between the applicant and the local Community Services Road Section regarding the feasibility of creating a new access to serve the single house development which benefits from planning permission ref 18/02562/PIP. The proposal to form a separate access to the site has been initiated by the applicant as they have been unable to reach agreement with the landowner of the shared access which formed part of the planning permission in principle. The irreconcilable issues between the applicant and the landowner are not material planning considerations and relate to civil law.
- 10.6 The proposals for the new access onto the public road follow on from the discussion that formed the pre application engagement with Community Services. The details of the proposed new access junction have been reviewed by the Transport Planning Team, and subject to the construction of the junction and the culvert complying with current standards there are no objections from a road safety point of view. The Transport Planning Team have offered detailed comments which are set out in Section 7.1 above.

10.7 Representations have been received from third parties including the Community Council which highlight the national speed limit on the public road is 60mph and that there are inaccuracies within the supporting access checklist provided by the applicant. Comment is made in relation to the geometry of the public road on either side of the point of access, which caused cars to have to reverse to allow oncoming traffic to pass, as well as the council guideline standards for single houses which promote the use of shared accesses. In addition, it is highlighted that the visibility splays available do not comply with guidelines standards required for the national speed limit.

10.8 It is regrettable that the approved means of access to the house site appears to be no longer achievable as this continues to be the preferred means of accessing the site from a road safety point of view. However, based on the detailed comments provided by the Transport Planning Team it is clear that they are content in this instance to set aside the preference for the shared access to be used. The current proposals will provide a new access designed to guidelines standards located more than 30m from the closest neighbouring access point and in a location where the visibility splays are commensurate with traffic speeds of 40mph, the assessed speed of traffic on the public road. An additional passing place will also become available for public use addressing some of the concerns expressed in the representations. The Planning Service concurs with the comments submitted by the Transport Planning Team and considers there are insufficient grounds on which the application could be refused.

#### **Other material considerations**

10.9 There are no other material considerations relevant to the determination of this application. Matters relating to the formation of a house site, which will be served by the proposed access have been assessed through the consideration and determination of the planning permission in principle 18/02562/PIP.

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

10.10 None

### **11. CONCLUSION**

11.1 Policy 28 requires all development to be sustainable and compatible with service provision. The proposed access arrangements are considered acceptable in terms of the location. The detailed construction can be controlled by condition to ensure that the design of the junction and drainage complies with guidelines standards. It is acknowledged that the visibility splays available; 2.4m x 120m are below that set out in council guideline standards for the 60mph national speed limit. However, given the geometry of the road the assessed speed of traffic is 40mph and therefore in this instance the reduced visibility splays are considered acceptable. The visibility splays will ensure users of the access can see and be seen by other road users for a distance of 120m in both directions.

11.2 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.

## **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 Significant
- 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 that planning permission be

**Granted**, subject to the following:

### **Conditions and Reasons**

1. The development shall be constructed in accordance with The Highland Council's Access to Single Houses and Small Housing Developments guidelines and the attached Access Schedule (dated 02.03.2021), with:
  - i. the junction formed to comply with drawing ref. SDB1; and
  - ii. visibility splays of 2.4m x 120m (the X dimension and Y dimension respectively) in each direction 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:** In the interests of road safety

### **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.

### **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\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_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 NatureScot 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 NatureScot: <https://www.nature.scot/professional-advice/planning-and-development/planning-and-development-advice/planning-and-development-protected-species>

Designation: Acting Head of Development Management – Highland

Author: Julie Ferguson/ Erica McArthur

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - HC Location Plan  
Plan 2 - ROS12220 – Location Plan  
Plan 3 - 0075 06 – Access Plan





LAND REGISTER  
OF SCOTLAND

Officer's ID / Date

5197  
16/6/2011

TITLE NUMBER

**ROS12220**



ORDNANCE SURVEY  
NATIONAL GRID REFERENCE

Scale

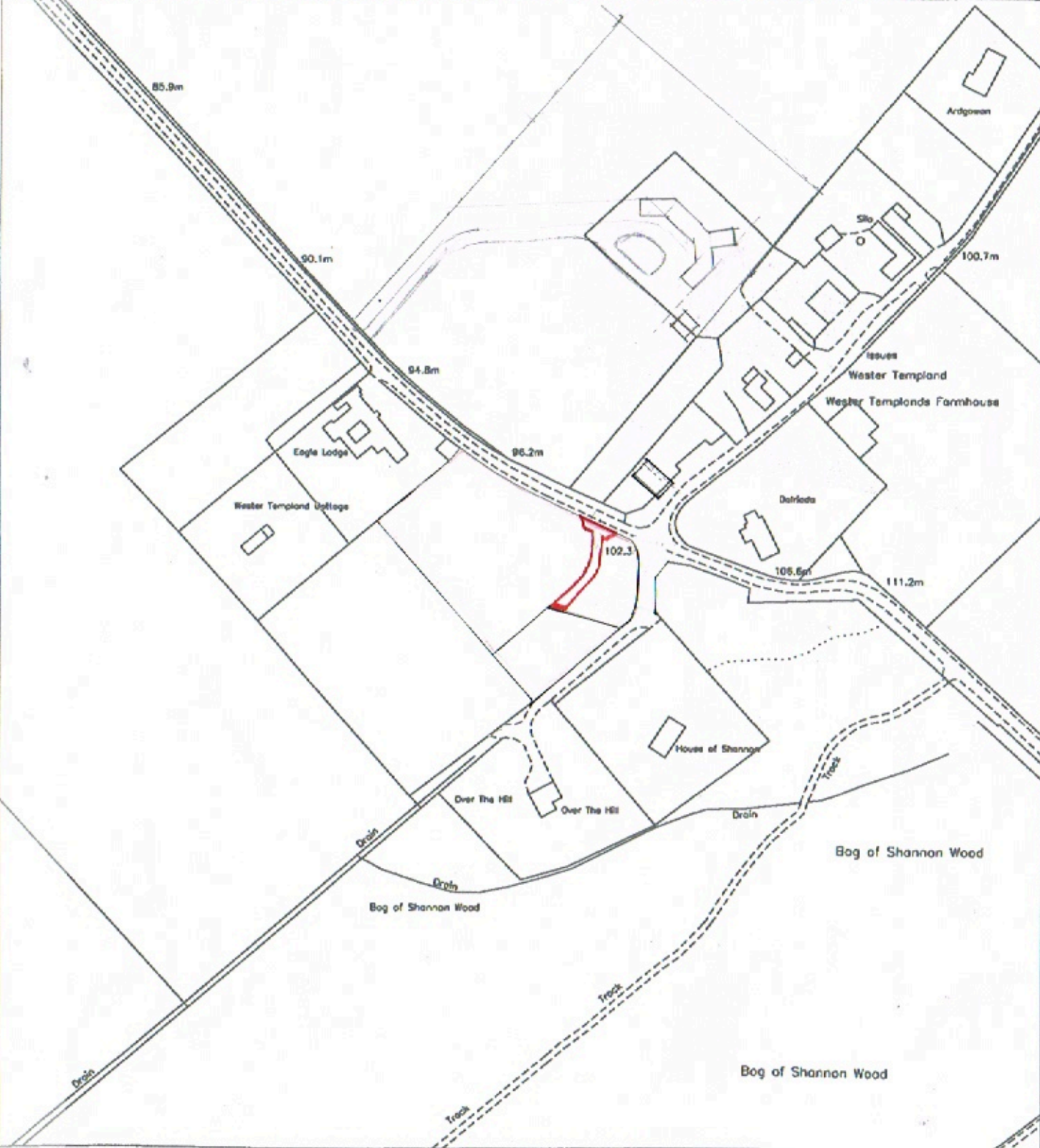
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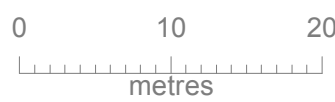
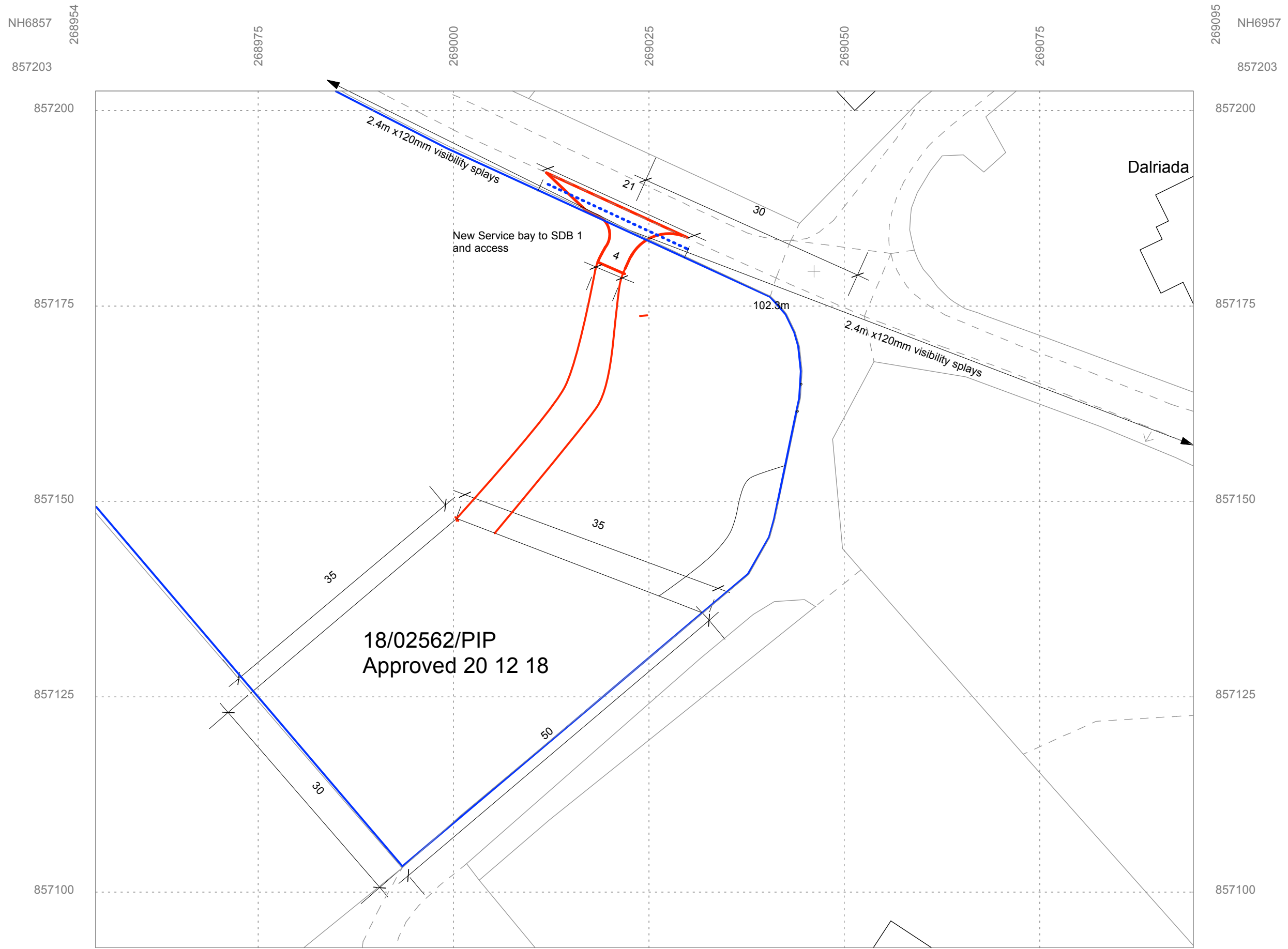
Survey Scale

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<p>New site access &amp; service layby to plot at Wester Templands IV10 8RA</p>	<p>Drawing No. 0075 06</p>	<p>Date: Oct' 20 Scale 1.500 @A3</p>	<p>Fraser Stewart Architect Reg Arch RIBA RIAS Brae of Kinkell Dingwall IV7 8HZ</p>
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