

THE HIGHLAND COUNCIL

**NORTH AREA PLANNING APPLICATIONS COMMITTEE
– 17 September 2013**

Agenda Item	6.5
Report No	PLN/086/13

**13/02244/FUL : Mr DJ Graham
6 Eyre, Kensaleyre, Portree IV51 9XB**

Report by Area Planning Manager

SUMMARY

Description : Change of use of building to holiday letting unit.

Recommendation - GRANT

Ward : 11 - Eilean A' Cheò

Development category : Local Development

Pre-determination hearing : not required

Reason referred to Committee : Number of objections received.

1. PROPOSED DEVELOPMENT

1.1 This application has been submitted as one seeking the change of use of an existing shed (erected under planning permission 12/00658/FUL) to a holiday letting unit.

In fact, as pointed out in several of the third party comments received for this application, the shed has been built some 9 metres to the west of where it was originally approved and features rooflights and other fenestration changes from the original.

In the light of this, the shed cannot be regarded as the building approved under 12/00658/FUL and is unauthorised. Consequently, this application is, in reality, seeking retrospective planning permission for the erection of the building as well as permission to use it as a holiday let in the future.

At present, the physical form of the building is as shown on the amended elevational drawings although the large first floor window and balcony on the western elevation have not been installed and internally, the building has no first floor and is fitted out as a garage and shed.

Other than that, the building is the 10m x 7m x 6.8m high one and a half storey building shown on the amended plans. The holiday letting will be facilitated by the insertion of a first floor and some internal wall divisions to create a sitting room and kitchen/diner at first floor with a bedroom and workshop/garage at ground floor.

The building is finished in a painted wet dash render under a slate roof.

- 1.2 The building has been subject of enforcement complaints and an enforcement investigation leading to the submission of this application.
- 1.3 The application proposes that this building shares the infrastructure of the applicant's house (6 Eyre) in respect of the existing access from the trunk road, parking and turning areas and foul drainage. The plans show that a small enlargement of the existing soakaway to the north of the site is planned to accommodate this with a new surface water soakaway installed to the east of the application building. Electricity and water supplies already exist.
- 1.4 **Variations:** Two variations have been submitted;
 - a) Amended elevations and floor plan received 1 July 2013
 - b) Amended location and site plans received 24 July 2013

Agent has also clarified that the site remains in the ownership of Scottish Ministers (applicant is in the process of purchasing it) and the required notification has been sent to SGRPID

2. SITE DESCRIPTION

- 2.1 The application building is positioned close to the southern boundary of the curtilage of the applicant's house – 6 Eyre – a modern/traditional one and a half storey dwelling.
- 2.2 It also stands adjacent, but set slightly back from, a very similar building erected close to the northern boundary of the neighbouring house known as Dun Eighre – a single storey modern bungalow some 30m to the south of the application building.

This very similar building sits some 7m to the south of the application structure and was originally built as a garage and carers' accommodation for the occupants of Dun Eighre (08/00008/FULSL). More recently, it has been granted planning permission (12/04836/FUL) to delete the relevant restrictive use condition. This property is known as Tigh na Cnoc.
- 2.3 All of these dwellings and buildings are positioned a little way back on a platform of land raised 2 or 3 metres above the level of the adjacent trunk road.
- 2.4 All four of these buildings use, or propose to use, the same access point onto the A.87 trunk road which is positioned broadly in line with the southern boundary of Dun Eighre – necessitating a long sloping access from the application site with a tight turn at the bottom to bring it perpendicular to the carriageway.
- 2.5 It is clear from the information submitted as part of the history of planning applications below that the access passes over land in the ownership of both Dun Eighre/Tigh na Cnoc and also No.6/Scottish Ministers.

It is also clear that planning applications 07/00163/FULSL, 08/00008/FULSL and 12/04836/FUL all share a conditional requirement for the access to be constructed in accordance with drawing no. JG0162 Ver.2 dated 7 June 2007.

3. PLANNING HISTORY

- 3.1 07/00163/FULSL - Erection of house – Approved – 12.09.2007 (applicant's house)
- 3.2 08/00008/FULSL – Erection of garage and carers accommodation – Approved – 31.03.2008 (adjacent neighbouring building)

- 3.3 12/00658/FUL – Proposed erection of shed – Approved – 18.04.2012
- 3.4 12/03944/FUL - Removal of planning condition No.3 (08/00008/FULSL) and erection of 1.8m high fence – Withdrawn – 03.12.2012
- 3.5 12/04836/FUL - Removal of planning condition No.3 (08/00008/FULSL) and erection of 1.8m high fence – Approved – 11.02.2013

4. PUBLIC PARTICIPATION

- 4.1 Advertised : Unknown neighbour (re-notified in respect amended elevations 4 July 2013)

Representation deadline : 2 August 2013

Timeous representations : 8 from 6 households

Late representations : 1 from 1 household

- 4.2 Material considerations raised are summarised as follows:

- Building has been built further to the west than approved by original shed permission
- Submitted plans do not show it in the as-built position – it is beside Tigh na Cnoc and not behind it and is more visible from the road than originally approved
- Building is too close to the neighbouring property and appears crammed in and not in keeping with the wider settlement pattern
- Ownership/right of way disputes exist in respect of the access to this property
- Rooflights in the southern elevation overlook the gardens of Tigh na Cnoc and Dun Eighre. The requirement suggested by the case officer for one roof light to be re-glazed in opaque glass and fixed shut is unenforceable. The rooflight should be removed to the other side of the building
- The two similar buildings next to each other have a poor visual impact from the road and look like the start of a holiday village
- Proximity of this building to Tigh na Cnoc could result in loss of amenity due to noise/disturbance
- Consideration should be given to revoking the previous planning permission

- 4.3 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. Access to computers can be made available via Planning and Development Service offices.

5. CONSULTATIONS

- 5.1 **Building Standards** : No objection

5.2 **Transport Scotland** : No objection but access still needs to be completed in accordance with the approved plans of the main house – 07/00163/FULSL – drawing number JG0162 version 2 dated 7 June 2007.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

Policy 28	Sustainable Design
Policy 29	Design Quality and Place-Making
Policy 36	Development in the Wider Countryside
Policy 44	Tourist Accommodation
Policy 61	Landscape
Policy 65	Waste Water Treatment
Policy 66	Surface Water Drainage

6.2 West Highland and Islands Local Plan 2010

Policy 2	Saved in respect of Land Allocations
----------	--------------------------------------

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

7.2 Highland Council Supplementary Planning Policy Guidance

Housing in the Countryside and Siting and Design (adopted by Committee, March 2013)

7.3 Scottish Government Planning Policy and Guidance

PAN 72 – Housing in the Countryside

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

The property falls outwith any Settlement Development Area and so Policy 36 of the Highland-wide Local Development Plan applies. Policy 36 supports development proposals which are not significantly detrimental in terms of their siting and design, sympathy to existing patterns of development, compatibility with landscape character, contribution to the existing mix of development types, avoidance of the loss of locally important croftland and which can be adequately serviced without undue public expense or incongruous development in a rural area.

Development proposals should also meet the Design for Sustainability requirements of Policy 28 and Policy 29 repeats this emphasis on good design in terms of compatibility with the local settlement pattern. Policy 61 further emphasises the need for development to respect the landscape character of their surroundings.

Policy 44 requires developments for tourist accommodation in areas such as this to demonstrate that they can be achieved without adversely affecting the landscape character or the Natural, Built and Cultural Heritage features of the area and to be consistent with the other guidance on siting and design set out in Policy 36: Wider Countryside. In these circumstances, the Council will generally attach a condition to permissions in order to control occupancy and use of the accommodation.

Policies 65 and 66 require foul and surface water drainage to meet standards that minimise the risk of pollution and flooding.

For the reasons laid out below, the proposal is considered to comply with these policy requirements and to be acceptable in principle.

8.4 Material Considerations

Design, Appearance and Landscape Impact – In terms of scale and general massing and design the authority has already approved a building of this type just 9 metres to the east of this one and so it is accepted that the general form of this building is suitable for the location.

The relocation of the building some 9m to the west does raise some fresh material considerations however. The building is now in a more prominent position relative to public views from the road and is seen in a much closer, almost parallel, association with the existing and visually very similar Tigh na Cnoc building.

In terms of its more prominent position, the building will certainly be seen more readily from the road but remains set back some 35m – 40m from it and so the public impact of its relocation is not considered to be very dramatic. The building certainly has a less subservient appearance than originally achieved in respect of the applicant's house at No.6 which detracts somewhat from the setting of both. However, the building remains 'gable-on' to the road and this helps it maintain the impression of a building of less status than the main house - which addresses the road with a traditional front porch and twin dormer front elevation.

The addition of a large first floor window and balcony in the western elevation overlooking Loch Snizort Beag is considered to give the application building more of an overt holiday 'chalet' appearance and this helps to differentiate it from the main house and restore the visual hierarchy.

At the same time, the window and balcony arrangement helps the building to find a close visual similarity with Tigh na Cnoc next door to the south. Some of the third party comments have taken a negative view of having two chalet-type buildings in such close proximity because it gives the impression of the beginnings of a 'holiday village'. However, it is considered, given neither of these two buildings make any design reference to the main houses either side of them, that it is better, in landscape and appearance terms, for them to sit in close proximity to each other so that they can be read as a 'pair' rather than as two neighbouring buildings of coincidentally similar appearances. This is reinforced by their scale, form and orientation and appear subservient to the parent properties. In this regard, the movement of the application building forwards in the site from its originally approved position is considered to be a positive in visual terms.

The use of the building for holiday letting purposes is not considered to raise any visual considerations and the building is considered suitable for such a use in general design terms. Given the lack of separate amenity garden land, the shared drainage system, shared parking areas and increased use of the access onto the trunk road, it is not considered acceptable to allow this building to be used as a separate dwellinghouse. A condition is recommended to restrict it to holiday letting only.

Access and Parking – in their consultation response Transport Scotland have raised no objection to the use of the existing access by the holiday let traffic subject to the imposition of two conditions. However, these proposed conditions raise a couple of material considerations.

The first recommended condition requires this permission to comply with the access layout and design included with the planning permission for the applicant's main dwelling – 07/00163/FULSL drawing no. JG0162 Ver 2 dated 7 June 2007. This indicates that there remain some incomplete aspects to the construction of this access in breach of the conditions of that planning permission. Transport Scotland have clarified that their primary concern is with the lack of surfacing and drainage although they have noted that the gradient may be in excess of the requirement. In terms of road safety gradient is considered less of an issue with an access of this design where there is a sharp turn at the foot of the slope to bring the access perpendicular with the main road.

It is recommended that these outstanding works are made the subject of a suspensive condition that requires their completion before any holiday letting use of the building commences.

The second recommended condition from Transport Scotland required the applicant to demonstrate that the access land is in his ownership or control. It is considered that the applicant has already done this through the normal application processes – land certificate, service of notice on other land owners and via the red and blue outlines on the location and site layout plans. Consequently, Transport Scotland have been asked to withdraw this recommended condition and have agreed to do so.

The submitted plans show that a small part of the access land falls within the ownership of the neighbour to the south. This shouldn't cause a problem because this neighbour is also under an identical outstanding conditional obligation in respect of the same access works to provide a driveway to the Tigh na Cnoc

property (08/00008/FULSL) and some of this access falls within the ownership of the applicant. Completion of the access in accordance with the approved drawing will clearly be to the mutual benefit of both parties and will avoid enforcement action being taken against them both.

The site layout plan is considered to show more than adequate parking and manoeuvring area for the holiday let use in conjunction with the requirements for the existing house.

Neighbour Amenity – during the enforcement investigation into this building it was identified that the easternmost rooflight on the southern roof-slope facing Tigh na Cnoc could result in overlooking of the rear of that neighbouring property and an unacceptable loss of privacy – Tigh na Cnoc sits at a lower land level. The applicant has responded to this by showing the rooflight re-glazed with obscure glass and permanently fixed shut. A condition is recommended to ensure that this is carried out before any use commences. It is envisaged that this will involve screwing or nailing the casement to the frame – not simply installing a standard locking mechanism.

The positioning of the holiday let in close proximity to the Tigh na Cnoc dwelling is not, in itself, considered likely to raise any particular noise or disturbance issues that could cause an unacceptable loss of neighbour amenity.

The extra vehicle movements created by the holiday let use will pass in front of the Tigh na Cnoc property but these are not considered likely to be so large in number as to make a material impact upon the amenity of the residents of the neighbouring property.

Drainage – a condition is recommended to ensure that the foul and surface drainage systems shown on the approved plans are fully operational before any holiday letting use commences.

Revocation of the 12/00658/FUL Permission – reference to the plans for this previous permission and the current planning application shows that these two proposals are coincident by about 1 metre – a 10 metre building relocated 9 metres to the west. Consequently, the previous permission could not now be lawfully built and there is no need or justification for the planning permission to be revoked.

8.5 **Other Considerations – not material**

- 8.6
- The Planning Act makes specific provision for retrospective planning permission to be granted and this is the most common outcome of an enforcement investigation and part of the standard procedures identified within the Council's Enforcement Charter.
 - Land ownership and other legal disputes are not a material consideration for any planning application and cannot be made a reason for refusal. In this case there is clear mutual benefit to be gained for both the applicant and neighbour to resolve any issues in respect of the access land.

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

None

9. CONCLUSION

- 9.1 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.

10. RECOMMENDATION

Action required before decision issued N

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

1. The development shall be used for holiday letting purposes only and shall not be used as a principal private residence or be occupied by any family, group or individual for more than three months (cumulative) in any one calendar year.

Reason : To ensure that the development does not become used for permanent residential occupation in the interest of the area's visual amenity, in recognition of the lack of private amenity space and in accordance with the use applied for.

2. No holiday letting use shall take place in the building hereby approved until the access from the A.87 has been formed and upgraded so that it complies in full with the layout detailed on drawing number (ref JG0162 Ver 2) dated 7 June 2007 as submitted for application 07/00163/FULSL (copy enclosed).

Reason : To ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road.

3. All foul and surface water drainage provision within the application site shall be implemented in accordance with the approved plans and no use of the building for holiday letting shall take place until these drainage systems are fully operational.

Reason : In order to ensure that private foul and surface water drainage infrastructure is suitably catered for, in the interests of public health and environmental protection.

4. Within one month of the date of this planning permission full details of the materials and method to be used to opaque glaze and permanently fix shut the eastern rooflight on the southern roof-slope as shown on the approved plans have been submitted to the Planning Authority for written approval. No holiday letting use of the building hereby approved shall take place until these approved details have been fully implemented. The window shall be maintained in compliance with these approved details in perpetuity.

Reason : In order to safeguard the privacy and amenity of occupants of the adjacent properties.

5. Notwithstanding the provisions of Article 3 and Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), no new windows or other openings shall be installed in the south facing elevations of the development hereby approved, without planning permission being granted on application to the Planning Authority.

Reason : In order to safeguard the privacy and amenity of occupants of the adjacent properties.

REASON FOR DECISION

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

TIME LIMITS

LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

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

FOOTNOTE TO APPLICANT

Initiation and Completion Notices

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

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

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

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building

Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action

Flood Risk

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

Scottish Water

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

Septic Tanks & Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Trunk Roads Authority Consent

You are informed that this consent does not carry with it the right to carry out works within the trunk road boundary and that permission must be granted by Transport Scotland. Please contact the Route Manager via 0141 272 7100 to obtain permission. The Operating Company have responsibility for co-ordination and supervision of works and after permission has been granted it is the developer's contractor's responsibility to liaise with the Operating Company during the construction period to ensure that all necessary permissions are obtained.

Mud & 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.

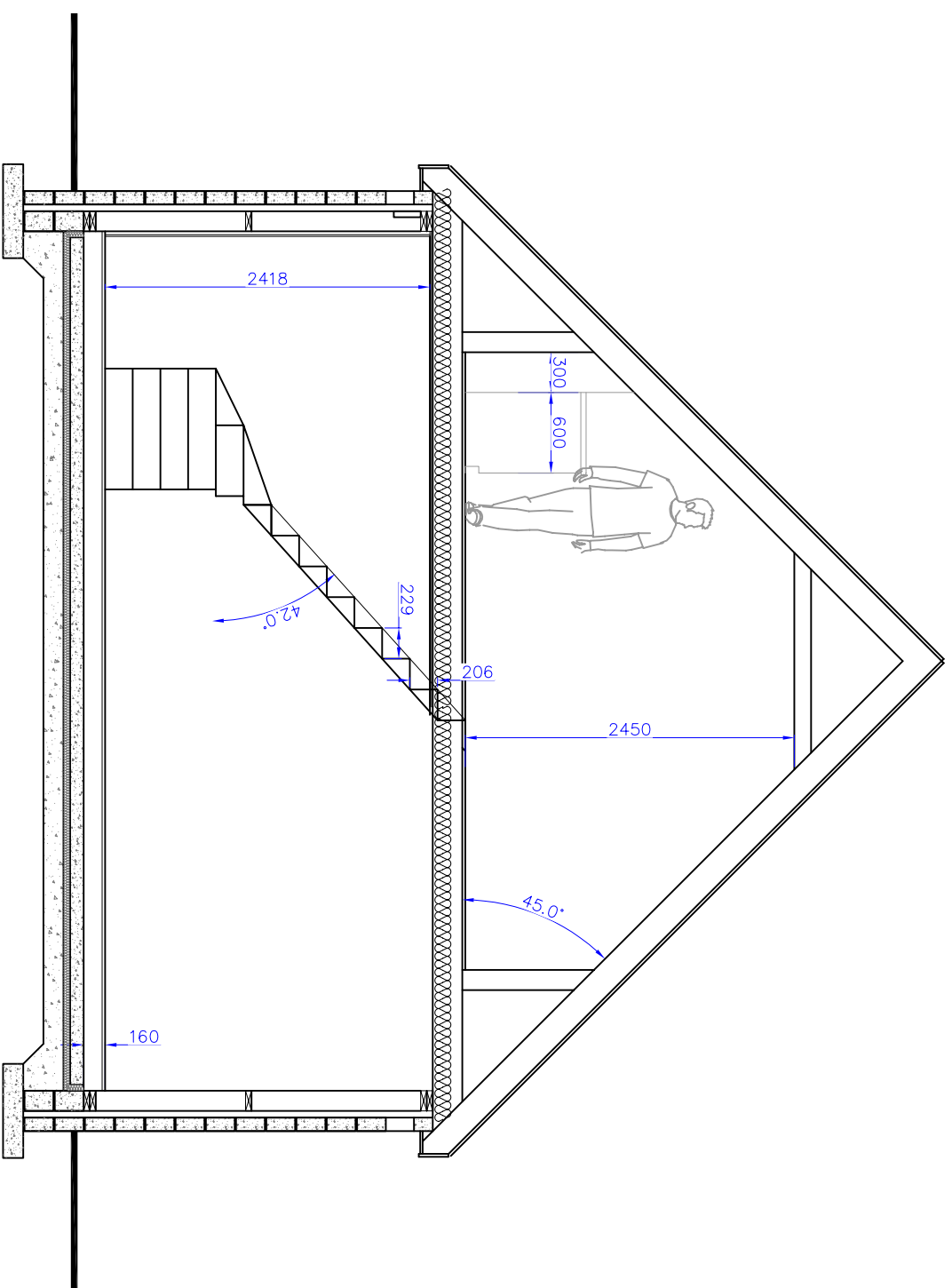
Permitted Development Rights

Please note that certain permitted development rights have been removed from the land covered by the permission, as explained in the conditions above. This means that certain developments, for which an application for planning permission is not ordinarily required, will now require planning permission. You are therefore advised to contact your local planning office prior to commencing any future developments.

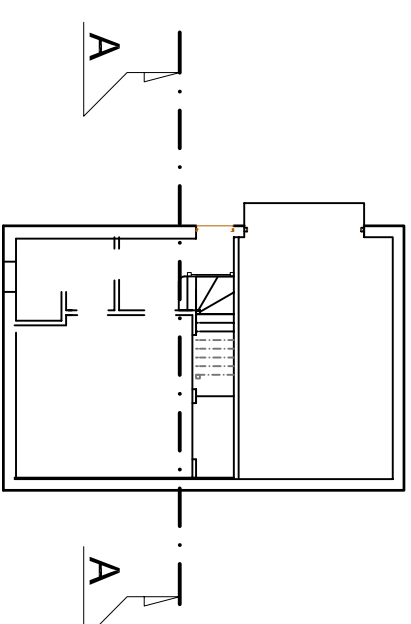
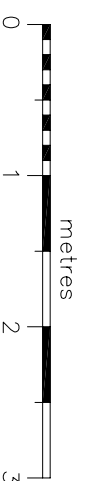
Signature: Dafydd Jones
Designation: Area Planning Manager - North
Author: Mark Harvey
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Section Plan JG2039 Rev 01
Plan 2 – Elevation Plan JG2038 Rev 02
Plan 3 – Floor Plan JG2042 Rev 02
Plan 4 – Site Layout Plan/ Location Plan JG2041 Rev 03

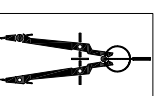
Appendix – Letters of Representation

Name	Address	Date Received	For/Against
Mr Carl Hibbert	Glenville, Kensaleyre IV51 9XE	11 July 2013	Against
Miss Margaret Mackay	Glenville, Kensaleyre	12 July 2013	Against
Mr Fraser Sloan	Glenville Lodge, Kensaleyre	12 July 2013	Against
Mr John Sowerby	Kilmuir, Portree	16 July 2013	Against
Mrs Heather Hill	Dun Eighre, Kensaleyre	17 July 2013	Against
Mr Scott MacLucas-Paton	Kirkton Cottage, Dunvegan	18 July 2013	Against
Mr Christopher Hill and Ms Louise Pearce	Tigh na Cnoc, Kensaleyre IV51 9XE	24 July 2013	Against
Mr James Lamont	Corran View, Eyre	1 Aug 2013	Against
Sqn Ldr Chris Hill	Tigh na Cnoc, Kensaleyre IV51 9XE	10 Aug 2013	Against

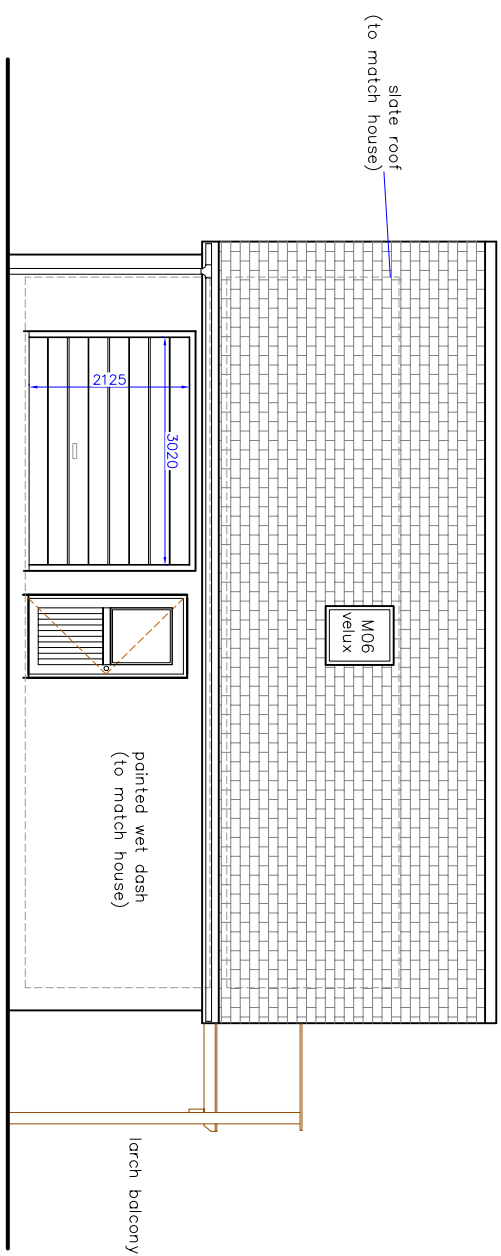


Section A--A

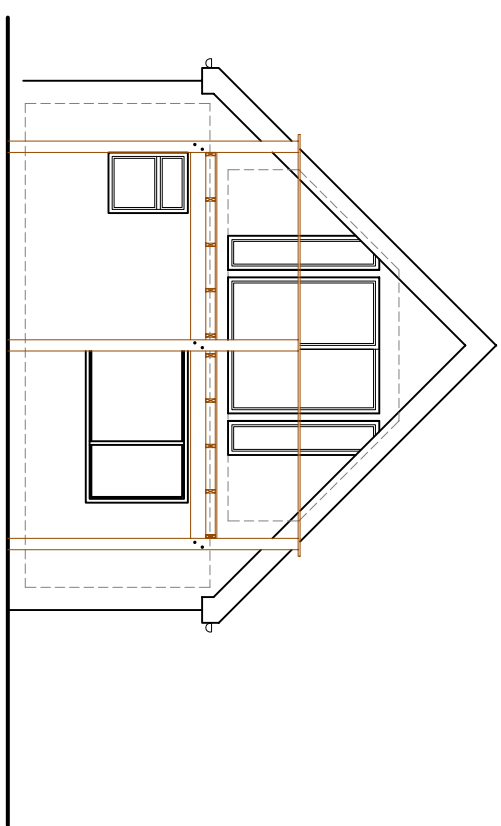



Jack Gordon BA (Hons)
Design & Planning
 30 Borneiskilg Kilnuir
 Isle of Skye IV51 9YS
 01470 552 392 07799 210 799
 jockgordon30@btinternet.com

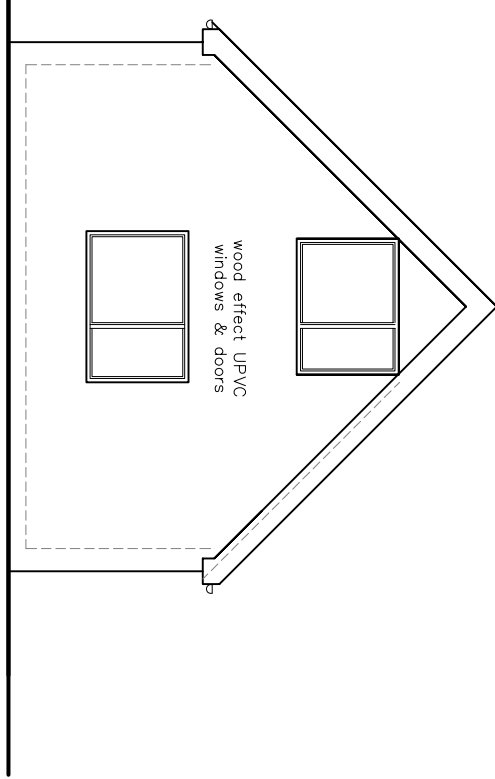
Drwg. No.:	JG2039	Rev:	01	Date:	12.6.2013	Drawn by:	JG	Chkd:	
Status:	Pre Planning permission do not use for construction								
Title:	Section								
Project:	Change of use at 6 Eyre, Snizort, Isle of Skye								
Client:	DJ & Elaine Graham								
Scale:	1:50 on A3								
	Planning ref:								



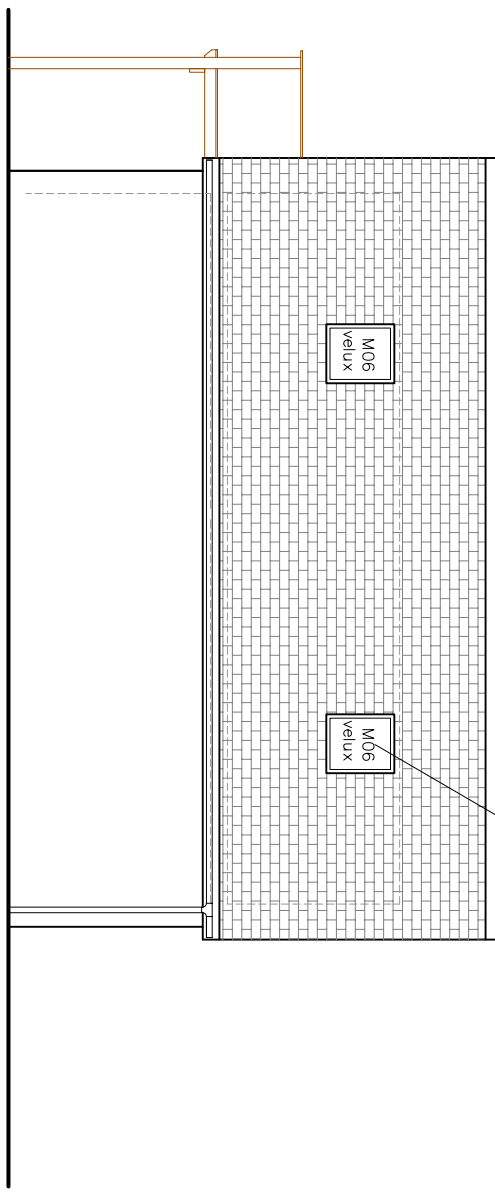
North Elevation



West Elevation



East Elevation

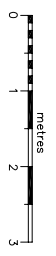


South Elevation

this velux to be obscure glass and fixed (i.e. locked in a permanent manner) but with ventilator still openble

Rev:02 amendments;
add note re. obscure velux

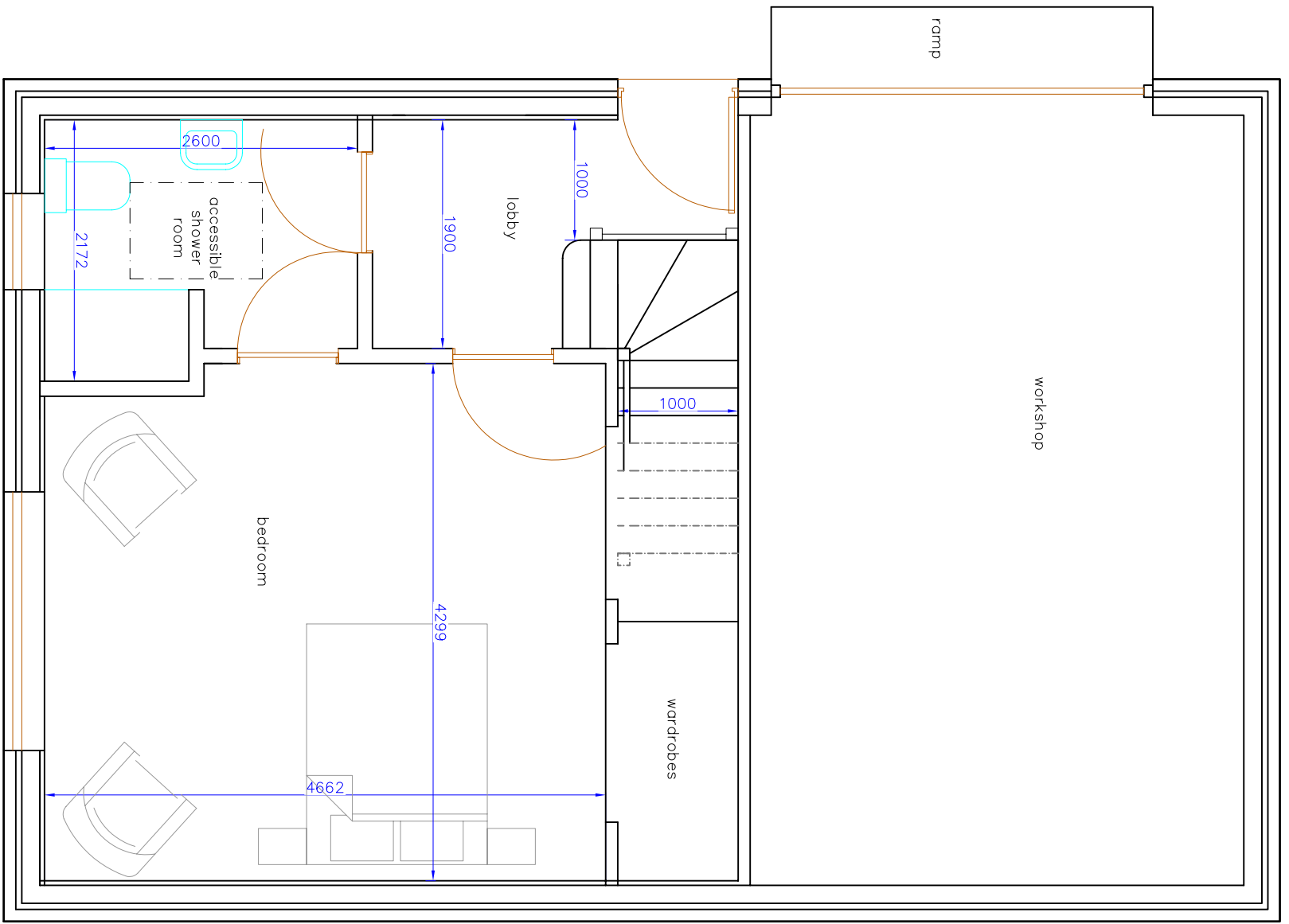
Elevations
1:100



The copyright of this drawing belongs to Jock Gordon Design & Planning.

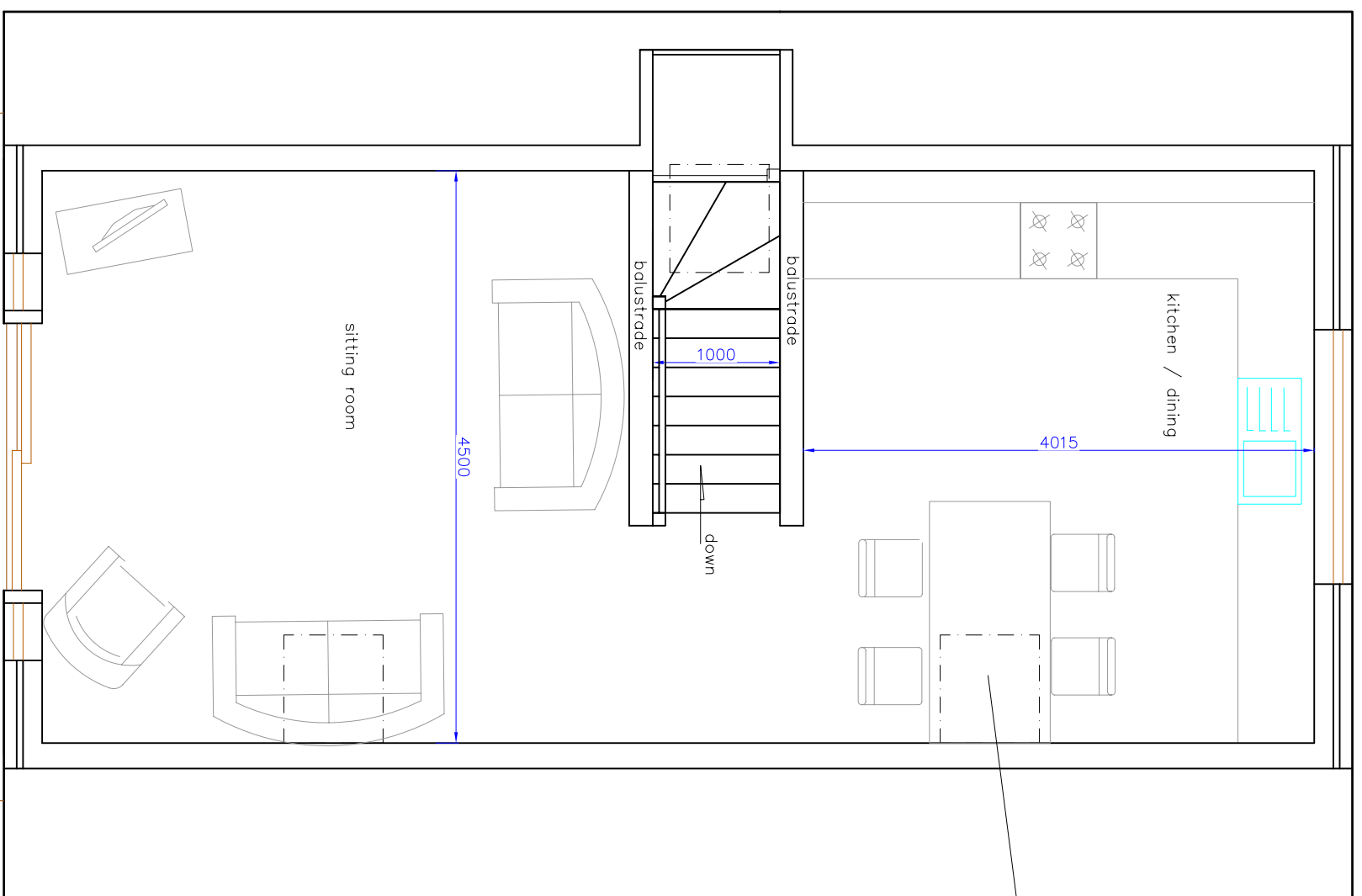
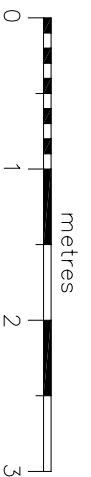
Jack Gordon BA (Hons)
Design & Planning
30 Borneaskilg Kilnuir
Isle of Skye IV51 9YS
01470 552 392 07799 210 799
jockgordon30@btinternet.com

Drwg. No.:	JG2038	Rev:02	Date: 1.7.2013	Drawn JG	Chkd
Rev:01	Date: 12.6.2013	Drawn JG	Chkd		
Status:	Pre Planning permission do not use for construction				
Title:	Elevations				
Project:	Change of use at 6 Eyre, Snizort, Isle of Skye				
Client:	DJ & Elaine Graham				
Scale:	1:100 on A3				
				Planning ref:	



balcony over

Ground Floor Plan



this velux to be
obscure glass and
fixed (ie. locked in a
permanent manner)
but with ventilator still
operable

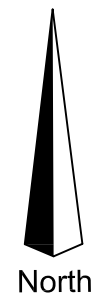
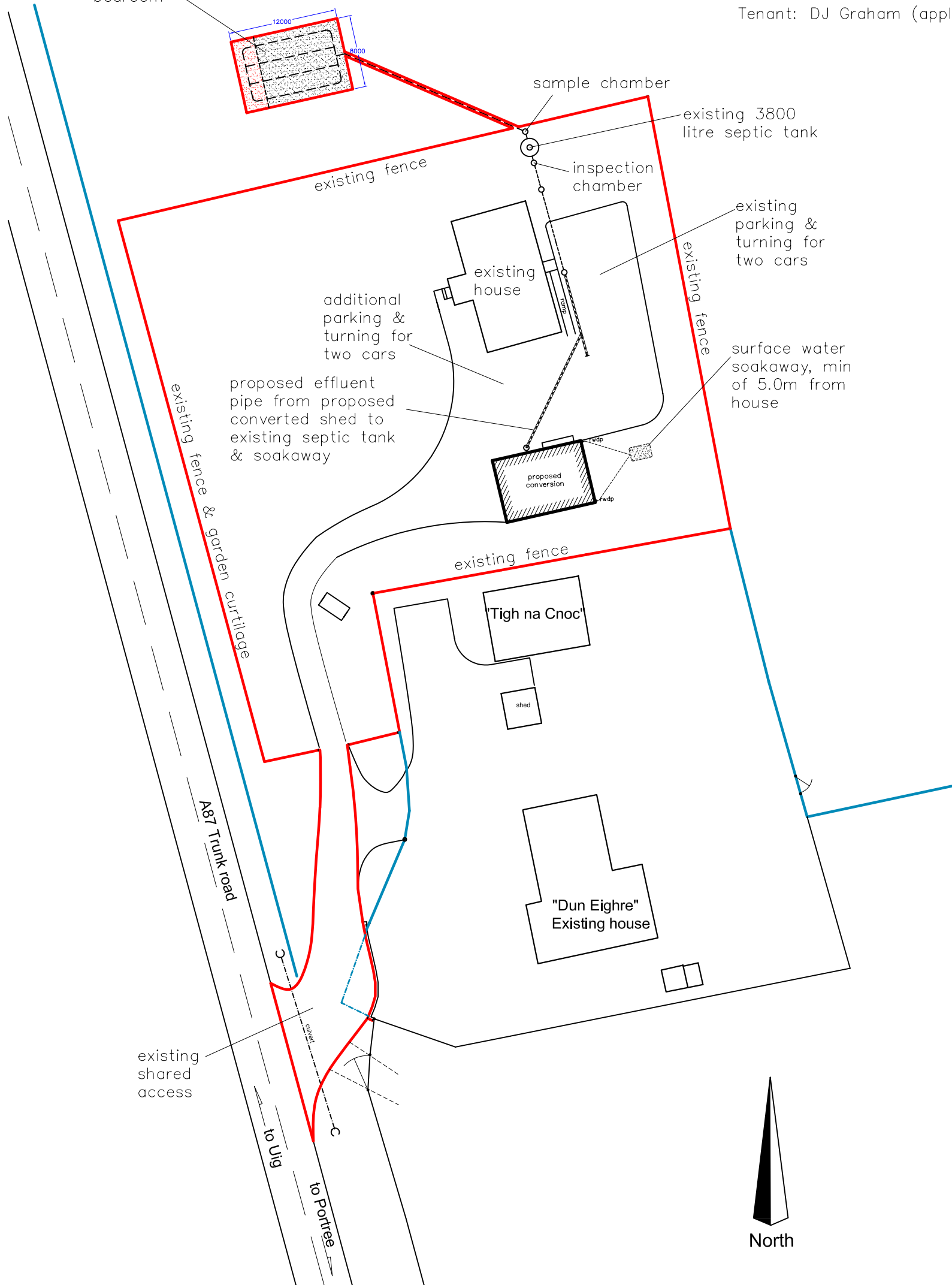
Rev:02 amendments;
add note re obscure velux

	Rev:02	Date: 1.7.2013	Drawn JG	Chk'd
Drg. No. JG2042	Rev:01	Date: 12.6.2013	Drawn JG	Chk'd
Status:	Pre Planning permission do not use for construction			
Title:	Floorplans			
Project:	Change of use at 6 Eyre, Snizort, Isle of Skye			
Client:	DJ & Elaine Graham			
Scale:	1:50 on A3	Planning ref:		


Jock Gordon BA (Hons)
Design & Planning
 30 Borneskitaig Kilmuir
 Isle of Skye IV51 9YS
 01470 552 392 07799 210 799
 jockgordon30@btinternet.com

existing soakaway
to be enlarged
(red shaded area)
to allow for extra
bedroom

croft No. 6 Eyre
Owner: SGRPID
Tenant: DJ Graham (applicant)

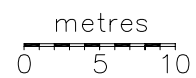


North

Site Plan 1:500

Red line indicates extent of Planning Development Area (3306 sq.m)

Blue line indicates extent of applicants croft



Rev:03	Date: 24.7.13	Drawn JG	Chk'd JG	
Rev:02	Date: 1.7.13	Drawn JG	Chk'd JG	
Drg. No. JG2041	Rev:01	Date: 12.6.13	Drawn JG	Chk'd JG

Status: Pre Planning – do not use for construction	
Title: Site Plan	
Project: Change of use from shed to holiday let at 6 Eyre	
Client: DJ & Elaine Graham	
Scale: 1:500 on A3	Planning ref:


Jock Gordon BA (Hons)
Design & Planning
 30 Bornaeskitag, Kilmuir
 Isle of Skye IV51 9YS
 01470 552 392 07799 210 799
 jockgordon30@btinternet.com

Rev:03 amendments;
 amend position of existing shed
 Rev:02 amendments;
 include access & soakaway in red line