

**THE HIGHLAND COUNCIL**

**CAITHNESS, SUTHERLAND AND EASTER ROSS  
PLANNING APPLICATIONS COMMITTEE  
02 August 2011**

Agenda Item	3.3
Report No	PLC/036/11

**11/01828/FUL : Mr Roger Chisholm  
Land Opposite Ken's Garage, Kildary, Ross-shire**

**Report by Area Planning and Building Standards Manager**

**SUMMARY**

**Description :** Removal of Planning Conditions 1, 5, 6 and 9 from Planning Permission 03/00390/FULRC

**Recommendation - GRANT**

**Ward :** 08. Tain and Easter Ross

**Development category :** Local Development

**Pre-determination hearing :** Not required.

**Reason referred to Committee :** Community Council Objection.

**1. PROPOSED DEVELOPMENT**

1.1 The application seeks permission under Section 42 of the Town and Country Planning (Scotland) Act 1997 (As Amended) for removal of the following Planning Conditions from Planning Permission 03/00390/FULRC – Formation of Parking Area:

**Condition 1.** The developer shall encircle the site with a post and wire fence on the Eastern side this shall be suitably rabbit wired. A beech hedge shall be planted filling the gaps of the existing hedge and shall completely enclose the site. It shall be kept at a height of 1.0 metres or thereby by continuous maintenance by the applicant at his expense. Failures shall be replaced to the satisfaction of the Planning Authority.

**Reason:** In the interests of amenity

**Condition 5.** Adequate screening comprising a solid fence at least 2 metres in height shall be provided between the trunk road, the junction and the development to the satisfaction of the Planning Authority after consultation with the Roads Authority. This screening shall be agreed and erected prior to the parking area being brought into use by the Applicant.

**Reason:** To ensure that there will be no distraction or dazzle to drivers on the trunk road and that the safety on the trunk road will not be diminished.

**Condition 6.** An un-climbable fence of a type approved by the Planning Authority, after consultation with the Roads Authority, shall be provided and maintained by the developer or subsequent owner of the land along the boundary of the site with the trunk road.

**Reason:** To minimise the risk to pedestrians and animals gaining uncontrolled access to the trunk road with consequential risks of accidents.

**Condition 9.** That notwithstanding the Control of Advertisement Regulations 1995, there shall be constructed no ramps, mounds, hoists or any other device to lift vehicles above the level agreed for the car park for the purposes of advertising. There shall be no signage, flags, bunting, balloons or any other means of advertising placed within the car parking area or on the road verge surrounding this site, or on other land in the ownership of the applicant outwith the application site without the prior formal approval of the Planning Authority.

**Reason:** In the interests of amenity and road safety.

1.2 Informal pre-application advice was sought from the Area Planning Office.

1.3 All infrastructure required for this use has been constructed and been in place since the parking area became operational.

1.4 The developer has submitted written details setting out why the conditions should be removed. In summary this set out the following reasons:

- difficulty of maintenance of the hedge; and
- visibility of business.

1.5 No variations have been made to the application since lodging.

## **2. SITE DESCRIPTION**

2.1 The site comprises of a car parking area used for the display of cars for sale at the adjacent Ken's Garage. The site is bounded by the A9(T) to the East, a grassed area to the North, the B817 to the south, and a road and Ken's Garage building to the west. Boundary treatment of a post and wire fence and beech hedge run along the east and south of the site, with a post and wire fence along the western boundary.

## **3. PLANNING HISTORY**

3.1 Planning Permission 03/00390/FULRC – Formation of Car Parking Area – Approved subject to conditions by the Area Planning Committee, Ross and Cromarty 09/09/2003.

## **4. PUBLIC PARTICIPATION**

4.1 Advertised : Application did not require to be advertised.

Representation deadline : 29/06/2011

Timeous representations : 1 representation from 1 household.

Late representations : 0

4.2 Material considerations raised are summarised as follows:

- Road safety.

4.3 All letters of representation can be viewed online [www.highland.gov.uk](http://www.highland.gov.uk), at the Area Planning Office and for Councillors, will be available for inspection immediately prior to the Committee Meeting.

## 5. CONSULTATIONS

5.1 **Kilmuir and Logie Easter Community Council** : Object on the following grounds:

- Road safety
- Residential amenity

5.2 **Transport Scotland** : Transport Scotland do not object.

## 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

### 6.1 Highland Structure Plan 2001

Policy G1          Conformity with Strategy

### 6.2 Ross and Cromarty East Local Plan 2007

General Policy    Business  
B

Chapter 23, B3    Business

## 7. OTHER MATERIAL CONSIDERATIONS

### 7.1 Highland wide Local Development Plan

Policy 42 – Business and Industrial Land

### 7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

### 7.3 Scottish Government Planning Policy and Guidance

Scottish Planning Policy

Designing Places

Circular 4/1998 – The Use of Conditions in Planning Permissions

## 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 site is allocated for business use in the Ross and Cromarty East Local Plan. This is specifically identified as land for a parking area ancillary to the adjacent garage use. This application is in accordance with the development plan.

### 8.4 **Material Considerations**

#### **Assessment of existing conditions**

Circular 4/1998 – The Use of Conditions in Planning Permissions contains a series of tests which all conditions on Planning Permissions must meet. The conditions as currently worded do not meet these tests. Below is the reason why each condition does not meet these tests:

- Condition 1 – This condition does not include a timescale and therefore fails to meet the “Ability to Enforce” test.
- Condition 5 – This condition is open for interpretation for where the fence shall be placed. Therefore this condition fails to meet the “Precision” test.
- Condition 6 – This condition does not include a timescale and therefore fails to meet the “Ability to Enforce” test.
- Condition 9 – Elements of this condition replicates the powers of the Town and Country Planning (Control of Advertisements) Regulations 1984 (As Amended) and also relates to land out with the development site which is not related to this application. Therefore this condition fails to meet the “Reasonableness” test.

Under Section 42 of the Town and Country Planning (Scotland) Act 1997 (As Amended) this application presents the Planning Authority with the opportunity to apply conditions which do meet the tests of Circular 4/1998. The original planning permission will continue to subsist whatever the outcome of the application under Section 42, however if planning permission is granted the conditions on the original consent will be substituted with the recommended conditions.

#### **Conditions 1, 5 and 6**

These conditions all relate to boundary treatment of the site and are considered to be excessive. By applying all three of the attached conditions it may lead to three layers of boundary treatment in any one location.

These conditions were added for a number of reasons related to amenity and road safety. The current boundary treatments on the site ensure that amenity is not adversely effected however it is recognised that a boundary treatment along the northern boundary of the car parking area would be beneficial to enhance amenity. In terms of the boundary treatments which were put in place in the interests of road safety it is considered that those in place at present adequately screen the development from the trunk road to avoid distracting drivers, however it is again recognised that a fence along the northern boundary would be beneficial to stop people walking from the car park onto the trunk road.

Given the above it is recommended that these conditions are removed from the existing permission and substituted with conditions based on the following broad principles:

- The existing beech hedge and post and wire fence along the south and east boundaries of the site are maintained in perpetuity by the developer;
- The existing post and wire fence along the western boundary is maintained in perpetuity by the developer; and
- A new post and wire fence is erected along the northern boundary of the site along the edge of the car park for a distance of 43 metres from the fence which runs along the eastern edge of the site within 9 months of any decision on this application.

The purpose of the fence along the northern boundary would be to delineate the edge of the parking area and to avoid members of the public walking from the site on to the trunk road. The distance of 43m has been chosen as this will still leave an access to the grassed area adjacent to the site which would allow for the machinery used to maintain this area to access the site. Without this access point it would be difficult to maintain this grassed area and may have a detrimental affect on the amenity of the site. By inserting a timescale this would ensure the condition is enforceable.

This approach has been negotiated and agreed in principle with the applicant and the site owner.

#### **Condition 9**

The condition as currently worded is considered unreasonable and (in part) not related to the application as it restricts advertising on land owned by the applicant out with the site of application. The Control of Advertisement Regulations are sufficient to control the advertisement both within and outwith the site. However it would be appropriate to continue to limit the construction of any mounds, hoists or any other device to lift vehicles above the level of the car park in the interests of road safety as these may be above the height of any boundary treatment and therefore it may have an effect on road safety through distracting drivers on the A9(T).

Given the above it is recommended that Condition 9 is removed and substituted with a condition limiting the construction of mounds, hoists or any other device to lift vehicles above the level of car parking. An informative should be added to remind the applicant of the provisions of the Control of Advertisement (Scotland) Regulations 1984 (As Amended).

#### **Road Safety**

This has been raised as a concern given the proximity of the development to the A9(T). Transport Scotland were consulted given the proximity to the Trunk Road and they have not objected to this application on the grounds of road safety. The car parking area sits some distance back from the Trunk Road and while the cars can be seen from the road it is considered that having complete screening of the site in the form of a 2m high fence would be visually intrusive. The level of screening currently provided from both the B817 and the A9(T) is considered appropriate.

The use of advertising on the site is subject to The Town and Country Planning

(Control of Advertisements) (Scotland) Regulations 1984 (As Amended) and a consideration in whether to grant advertisement consent is road safety. At present the only permission for advertising which exists within the site is for the display of vehicles for sale – this has deemed consent. Depending on the type and scale of any advertisement on the site Advertisement Consent may be required.

It is not considered appropriate to have the display of cars or other vehicles for sale on mounds, hoists or by any other device above the level agreed for the car park for the purposes of advertising.

#### 8.5 **Other Considerations – not material**

- Lack of action by the Planning Authority to enforce planning conditions.

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

Not Applicable.

### 9. **CONCLUSION**

- 9.1 The proposal to remove Conditions 1, 5, 6 and 9 from Planning Permission 03/00390/FULRC has provided an opportunity for the Planning Authority to go back to the applicant and the site owner and re-negotiate the conditions which were either unenforceable, unreasonable or in combination excessive in the interest of both the community and the site owner/operator. By substituting the conditions as recommended it is considered that this would facilitate an improvement to the development in the interests of road safety and amenity, while not placing a significantly adverse burden on the developer.

### 10. **RECOMMENDATION**

<b>Action required before decision issued</b>	N
Notification to Scottish Ministers	N
Notification to Historic Scotland	N
Conclusion of Section 75 Agreement	N
Revocation of previous permission	N

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

#### **A Conditions**

1. The existing boundary treatment of a beech hedge and post and wire fence along the south and east boundaries of the site shall be maintained in perpetuity by the developer to the satisfaction of the Planning Authority. Any failures in the boundary treatments shall be replaced as soon as practical within the next planting season to the satisfaction of the Planning Authority.

**Reason** : In the interests of amenity.

2. The existing boundary treatment of a post and wire fence along the western boundary shall be maintained in perpetuity by the developer to the satisfaction of the Planning Authority.

**Reason** : In the interests of amenity

3. Within 9 months from the date of this Planning Permission, a post and wire fence of 1.0m in height shall be erected along the Northern boundary of the car parking area for a distance of 43 metres from eastern corner of the site as marked on the approved plan (Drawing Number 000004). This fence shall be maintained in perpetuity by the developer to the satisfaction of the Planning Authority.

**Reason** : In the interests of amenity.

4. Notwithstanding the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (As Amended) no mounds, hoists or any other device to lift vehicles above the level agreed for the car park shall be used by the developer for the purposes of advertising.

**Reason** : In the interests of road safety, amenity and for the avoidance of doubt.

## **B Informatives**

**The Town and Country Planning (Control of Advertisement) (Scotland) Regulation 1984 (As Amended)** - You are advised that under these Regulations certain types of advertisement have deemed consent. For all other types of advertisement, Advertisement Consent is required. If you wish to erect signage which falls within these regulations please consult the Area Planning Office for advice prior to submitting an application.

**Conditions:** Please note that only Conditions 1, 5, 6 and 9 have been deleted from the original Planning Permission 03/00390/FULRC to be replaced by Conditions 1-4 above. All other conditions attached to the original permission remain in place. Your attention is drawn to all conditions attached to both permissions. Failure to meet these conditions may invalidate your permission or result in formal enforcement action.

Signature:

Designation: Area Planning & Building Standards Manager North

Author: Simon Hindson

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

Relevant Plans: Plan 1 – Location Plan

Plan 2 – Approved Site Layout (000002)

Plan 3 – Proposed Site Boundaries (000004)

## Appendix – Letters of Representation

Name	Address	Date Received	For/Against
Mr J MacKellaich	39 Edgemoor Park, Balloch, Inverness, IV2 7RA	10/06/2011	Against





11/01828/FUL  
 Removal of planning conditions : ( 1 ), ( 5 ), ( 6 ), ( 9 ) at  
 Land 70M East Of Kens Garage, Kildary

Rodger Chisholm  
 28 Knockbreck Avenue  
 Tain  
 IV19 1LY

THE HIGHLAND COUNCIL  
PLAN 1 OF 1 OF APPLICATION REFERENCE  
03/00390/FULRC APPROVED BY THE HIGHLAND COUNCIL  
AS PLANNING AUTHORITY  
DATE: 24TH SEPTEMBER 2003  
Area Planning and Building Control Manager

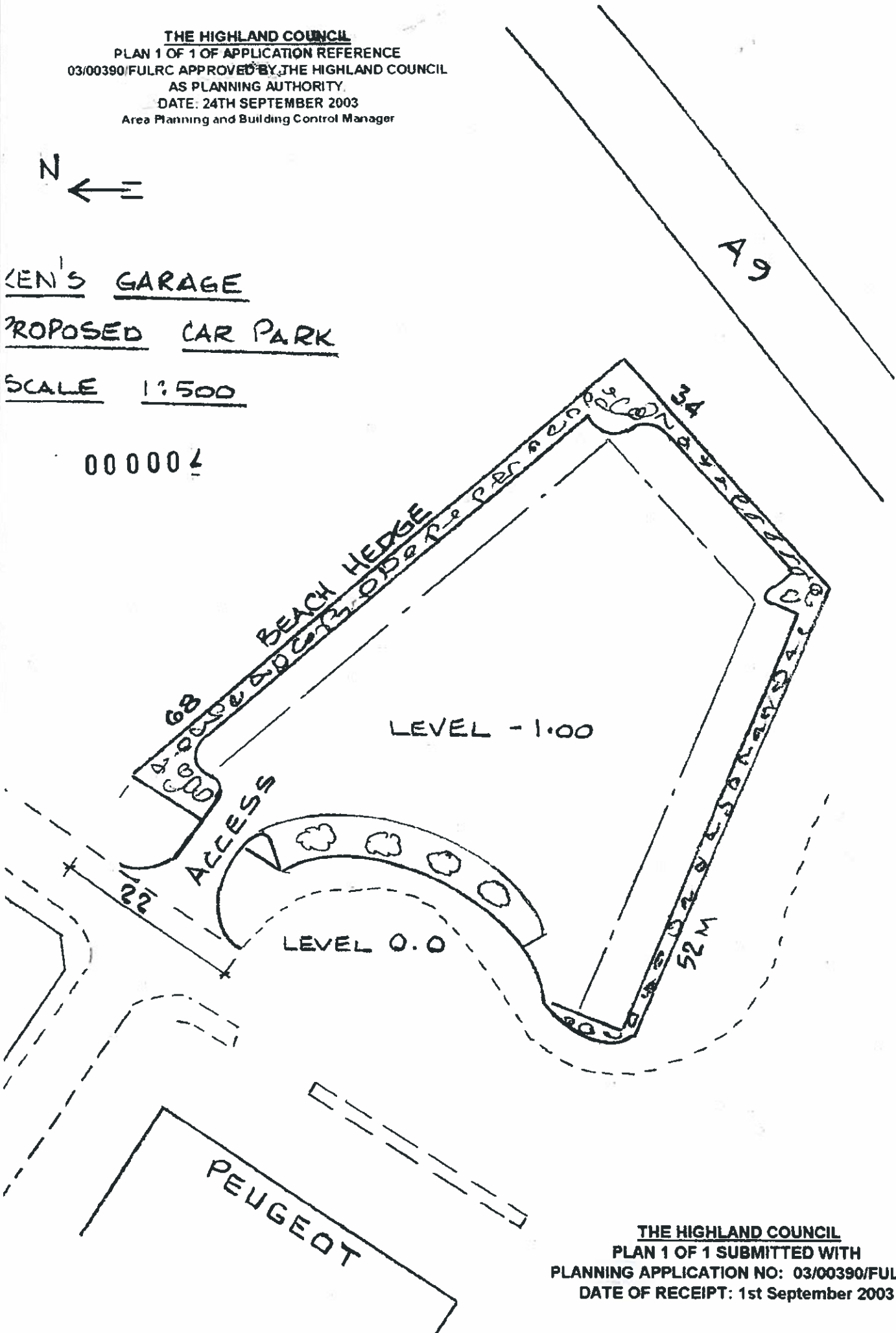


KEN'S GARAGE

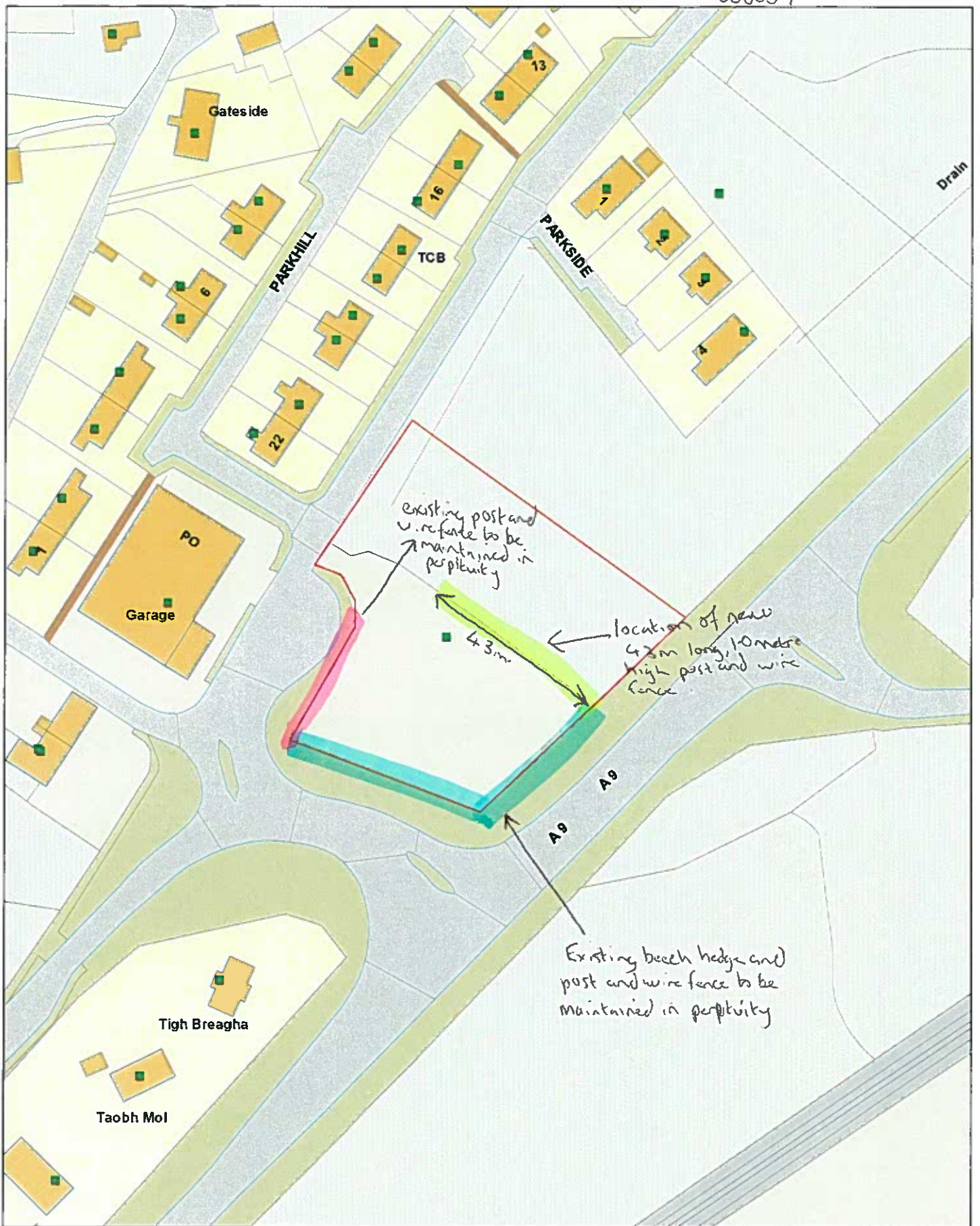
PROPOSED CAR PARK

SCALE 1:500

000004



THE HIGHLAND COUNCIL  
PLAN 1 OF 1 SUBMITTED WITH  
PLANNING APPLICATION NO: 03/00390/FULRC  
DATE OF RECEIPT: 1st September 2003



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. The Highland Council 100023369.



Site layout - Boundary Treatments

Not Set

Scale : 1:1250

Date : 21/07/2011