

THE HIGHLAND COUNCIL

**NORTH PLANNING APPLICATIONS COMMITTEE
9 JUNE 2015**

Agenda Item	6.2
Report No	PLN/030/15

**14/03218/FUL: Mr and Mrs M MacLennan
Land 445m NE of 5 Kinbeachie, Culbokie**

Supplementary Report No 1 by Area Planning Manager

SUMMARY

Description : Erection of House and Garage

Recommendation - REFUSE

Ward : 10 - Black Isle

Development category: Local Development

Pre-determination hearing: Hearing not required.

Reason referred to Committee: Failure to conclude Section 75 Agreement.

1. BACKGROUND INFORMATION

- 1.1 Members will recall that this application was considered by the North Area Planning Applications Committee on 16 December 2014, following Local Member referral. Committee agreed to grant planning permission subject to the prior conclusion of a Section 75 Agreement. The Section 75 Agreement was sought in line with Policy 35 of the Highland wide Local Development Plan and the adopted supplementary guidance Housing in the Countryside Siting and Design to tie the operational land holding to the house.
- 1.2 This supplementary report should be read in conjunction with the parent report considered by Committee on 16 December 2014 which is appended.

2.0 SUBMISSION BY APPLICANTS

- 2.1 The applicants have indicated that they do not wish to sign the Section 75 Agreement. Their building society advise that they would not offer a loan due to the Section 75 and a letter from an accountancy firm indicates that they would not be eligible to claim a refund of the VAT incurred under the self-build scheme. Mr and Mrs MacLennan indicate that they are unable to afford to build without securing borrowing and that they consider an additional financial penalty will be incurred due to the ineligibility to reclaim VAT.

- 2.2 They also refer to correspondence from the Crofting Commission addressed to and received by the Planning Service in February 2015 after the Planning Committee had considered the application. A copy of the correspondence was also submitted to the Planning Service by the applicants.
- 2.3 The Crofting Commission advise the land was formerly one large croft. Mr and Mrs MacKenzie, parents of Mrs MacLennan, applied in 2012 to the Crofters Commission sub divide this into four new crofts. (See attached plan 1). The Crofting Commission have indicated all four croft tenancies could be tenanted by 4 individual croft tenants and each would have a statutory right under crofting legislation to a dwelling house. They also suggest that the Section 75 Agreement relate only to the two crofts to be tenanted by the applicants, Mr and Mrs MacLennan. The correspondence also reconfirms the Crofting Commissions' position with respect to crofting residency duty which requires a crofter to reside within 32km of the croft and vacant crofts.
- 2.4 It is the view of the applicants that the burden of a Section 75 Agreement would have serious implications for Mr & Mrs MacKenzie, as landlords, in relation to maintaining compliance with the Crofting Reform (Scotland) Act 2010 – Duties.

3.0 PLANNING APPRAISAL

- 3.1 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. 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.
- 3.2 The matters raised by the applicant in their further submission are outwith the remit of the Planning Authority when determining an application for planning permission. It is acknowledged that there is currently pressure on developers to secure lending and finance for developments, particularly where planning obligations are in place or sought. It is also acknowledged that there are challenging situations arising between the requirements of the crofting legislation and the policies of the Planning Authority in areas subject to high demand. However, in the preparation of the Highland wide Local Development Plan, a balance was sought to recognise the importance and benefits of the promotion of crofting across the Highlands and the need to adopt a more managed approach to housing development within the hinterland to prevent the suburbanisation of the countryside.
- 3.3 As set out in the parent report at paragraph 8.14 to 8.22, appended, it is not considered that it is essential that a house is required on site to manage the land holding described in the Operational Needs Assessment (ONA) as 7 Kinbeachie. The ONA was based on the management of the entire landholding comprising the four crofts. This land is not a single croft as described in the ONA; it is made up of the four crofts as described in the Crofting Commission letter and shown on the attached plan ref Plan 1.
- 3.4 No further operational needs assessment has been submitted on the basis of the two crofts to be tenanted by the applicants Mr. and Mrs MacLennan. The committee had been minded to support the proposal on the basis that the entire land holding which formed the basis of the ONA be tied to a section 75 agreement.

The applicant has advised they are not prepared to enter into a Section 75 agreement for the reasons stated. On this basis it is not considered there is sufficient justification for a house for operational need purposes on a partial landholding composing some half of the worked area. As such the recommendation, contained within the parent report, appended, to refuse planning permission remains unaltered.

3.5 Members may wish to note that the Scottish Government intends to roll out a funded pilot scheme for the provision of self build mortgages across the Highlands in the near future. It is anticipated that this will assist in tackling the funding issue. The applicants have been provided with the relevant contact details. It will not address the issue with respect to VAT.

4.0 CONCLUSION

4.1 It is recommended that Planning permission be refused for the reason set out in the parent report, appended.

Signature: Dafydd Jones

Designation: Area Planning Manager North

Author: Erica McArthur

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

Relevant Plans: Plan 1 – Boundaries of 4 individual crofts

Plan 2 – Boundaries of land to be tenanted to Mr. and Mrs MacLennan

Plan 3 –Crofting Commission Statement received 04-02-2015



Rural Payments and Inspections Directorate

Location Code 747/0139

Map 1 of 1



Land Parcel System Version Date : 16 March 2011

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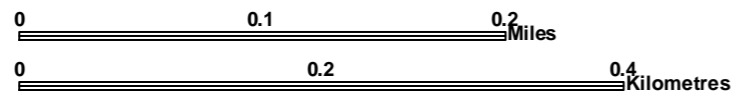
Counter	Land Parcel Identifier	Area(Ha)
1	NH/63207/62081	3.17
2	NH/63329/62124	3.76
3	NH/63369/62317	3.19
4	NH/63468/62190	3.36

Total Area: 13.48 Ha

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Scale 1:5,000

1 cm equals 50 Metres
 1 cm equals 55 Yards
 1 inch equals 139 Yards



Yellow Land Parcel Boundary

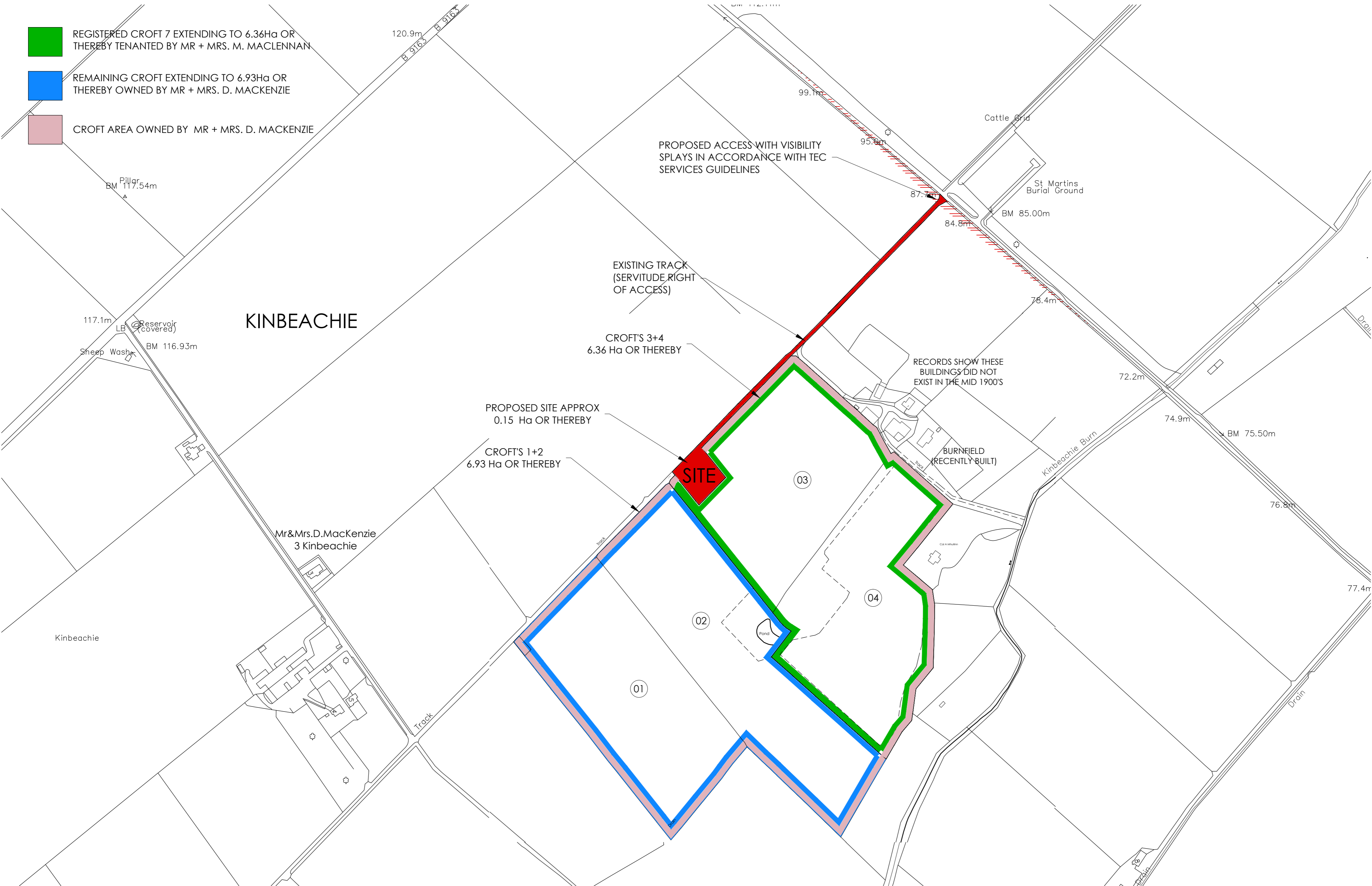
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- REGISTERED CROFT 7 EXTENDING TO 6.36Ha OR THEREBY TENANTED BY MR + MRS. M. MACLENNAN
- REMAINING CROFT EXTENDING TO 6.93Ha OR THEREBY OWNED BY MR + MRS. D. MACKENZIE
- CROFT AREA OWNED BY MR + MRS. D. MACKENZIE

KINBEACHIE



Client Mr & Mrs. M. Macleannan	Drawing title LOCATION PLAN			PLANNING
Project Proposed Private Dwelling House Kinbeachie, Culbokie IV7 8LS.	Scale 1:2500@A3	Date AUG'14	Revision D	
	Drwg No. 001	Job No. MM-02	Drawn .	

REV A: REMOVAL OF BLUE BOUNDARY : 09.09.14
 REV B: CROFT BOUNDARIES ADDED : 02.12.14
 REV C: MINOR TEXT ALTS TO CROFT AREAS : 04.03.15
 REV D: PINK AREA OWNED BY MR+MRS.D.MACKENZIE : 08.04.15

