

THE HIGHLAND COUNCIL

**NORTH PLANNING APPLICATIONS COMMITTEE
18 October 2016**

Agenda Item	5.6
Report No	PLN/055/16

**16/01757/S42 : Mr Malcolm Mackenzie
Land 250M NW Of Camus Fearn, Plockton**

Report by Area Planning Manager North

SUMMARY

Description : Section 42 application to remove Condition 1 of Planning Permission 13/04610/FUL - Erection of house and installation of foul drainage system

Recommendation - APPROVE

Ward : 06 - Wester Ross, Strathpeffer And Lochalsh

Development category : Local Development

Pre-determination hearing : n/a

Reason referred to Committee : Number of objections.

1. PROPOSED DEVELOPMENT

- 1.1 This is a planning application made under s.42 of the Planning Act seeking the grant of a further planning permission to one previously approved but without one of the imposed conditions.
- 1.2 The planning permission in question is 13/04610/FUL granted by the Planning Committee in May 2014 for a new house near Plockton airstrip in an isolated coastal location served by a long single township road access.
- 1.3 The condition in question is Condition 1 and states;
No development shall commence within the site until the existing gate at the junction of the private access track and the public road has been repositioned to maximise visibility splays and to allow vehicles to exit the public road to open the gate. The access shall be finished with cohesive material for a distance of at least 5m from the nearside edge of the public road. Detailed plans showing the repositioned gate visibility splays and surfacing shall first be submitted to and approved in writing by the Planning Authority. Thereafter the development shall be completed in accordance with the approved details and to the satisfaction of the Planning Authority and the Roads Authority.
It was imposed for the following reason;

Reason: In the interests of road safety to maximise visibility splays and to enable vehicles to exit the public road.

1.4 Informal pre-application has been held in respect of this application with the applicant being advised to comply with condition 2 of the permission (which provides for other road improvement) before submitting this application.

1.5 The applicant has submitted a formal quote and basic design from a contractor for the works required by condition 2 which states;

No development shall commence within the site until the existing informal passing place, located on the opposite side of the public road from the access to the site has been upgraded to include widening and surfacing. Detailed plans showing the upgrading of the passing place shall first be submitted to and approved in writing by the Planning Authority. Thereafter the development shall be completed in accordance with the approved details and to the satisfaction of the Planning Authority and the Roads Authority.

Imposed for the following reason;

Reason: In the interests of road safety.

2. SITE DESCRIPTION

2.1 The access to the house site is a single width track (Township road) serving several crofts and running down between croftland to the north and the garden of a property known as Dubhaird to the south. It gives access to an unclassified public road which comes to an end some 250m to the north and serves about half a dozen other properties. The track is also a public footpath to the coast.

2.2 The gate in question is positioned close to the end of the track. Although the track is stock-fenced on either side, there appears to be plenty of room for the gate and its posts to be repositioned further away from the road junction as required by condition 1. However, it is understood that the land in which the gateposts would need to be sunk actually belongs to other third parties.

3. PLANNING HISTORY

3.1 13/04610/FUL - Erection of house and installation of foul drainage system – Approved 7 May 2014

4. PUBLIC PARTICIPATION

4.1 Advertised : Unknown neighbour – 3 May 2016

Representation deadline : 20 May 2016

Timeous representations : 5 representations from 5 households

Late representations : 7 representations from 7 households

4.2 In total there have been 12 representations, six objecting and 6 supporting the application.

The material considerations raised in objection are summarised as follows:

- Visibility improvement is important as the 7 houses along this stretch of road generate a lot of traffic and much of it travels at 50mph

- Even if gate were moved the posts must stay because they are boundary markers
- The applicant does not have ownership of the land the gate posts are required to be moved to
- The gate to the township road is usually shut and should remain so to prevent livestock wandering
- Widening the informal passing place will impact on services
- The existing splays are sub standard
- If permitted the access to this property will not comply with the Council's standards as set out under Access to Single Houses and Small Housing Developments Guidance"
- Concern over access for construction and emergency vehicles as well as pedestrians as the track cannot be widened
- An affected landowner advises he has not ben approached about moving the gate as suggested
- An adjoining householder has intimated that in the future he intends to erect screens to provide privacy to his property from visitors going to the beach which would impact on the available sightlines.

The material considerations raised in support are summarised as follows:

- The house when built may generate less traffic as the applicants will be in situ on their croft
- Township road gates are usually left open except when animals are being moved – this was always the case with this gate historically
- If generally left open by the township then there is no need for condition 1
- In response to a written enquiry from the applicants to all the shareholders in the township the matter was considered by the Grazings Committee on 11 April 2016 but no decision was reached.
- the widening of the lay by opposite will improve turning into and out of the access to the crofts and the site

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 **Transport Planning Team** : No objection in respect of the gate but suggest that the condition be re-worded rather than deleted to ensure that the requirement to surface the first 5m of the access is retained.

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

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

7.2 Highland Council Supplementary Planning Policy Guidance

Not applicable

7.3 Scottish Government Planning Policy and Guidance

Not applicable

7.4 Other

Access to Single Houses and Small Housing Developments

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

Both Policies 28 and 36 reference the need for housing developments to be serviced by safe road accesses.

8.4 Material Considerations

The principle of the house within this location has been established as set out under section 3.1. Although observations have been made in relation to other aspects the single question posed by this application is whether the repositioning of the gate required by condition 1 is so critical to the safe use of the township road by the new house development that the removal of this requirement would lead to an unacceptable reduction in road safety.

Given this, a consultation response was sought from the Transport Planning Team. Their response recognised that the planning committee had approved this house development in the knowledge that the access had restricted visibility. The two reasons for the imposition of the condition were assessed as follows;

“1. To maximise visibility splays; although visibility is constrained setting back the gate will not make a significant improvement due to the lack of control of the land within the visibility splay and the location of the fencing.

2. *To enable vehicles to exit the public road when opening the gate. The access is already in use for crofting purposes. The construction of a formal layby opposite will improve accessibility and enable traffic to pass when the gate is being opened or closed....”*

Furthermore, in respect of the amount of traffic utilising the road – discussed by both third party objectors and supporters - they were able to state that;

“The public road is single track, shared use and will have relatively low traffic volumes. It is not a through route, is part of a settlement and is assessed as having relatively low average speeds. The access is existing and there are a number of nearby accesses with restricted visibility. This is judged to be a low risk location”

In conclusion the consultation response by the Senior Engineer states;

“...It is not judged that removal of the requirement to set back the gate will have a significant impact on road safety at this location therefore no objection is raised...”

However, the Senior Engineer still considered that the hardsurfacing of the first 5m of the access is required as this will avoid the erosion of the edge of the public road surface and also minimise the amount of loose material brought onto the public road by vehicles leaving the track.

Consequently a re-worded condition 1 is recommended in which these re-surfacing works are required to be completed prior to the first occupation of the dwelling.

In respect of the condition 2 requirement to create a passing bay/layby on the opposite side of the road, the applicant has submitted a quote and sketch plan from a road surfacing contractor for these works as a way of showing genuine intent to comply with this other conditional requirement. The applicant has stated that he does not want to commence these works however, until the matter of condition 1 is resolved. The obligation to fully construct the serviced bay opposite the junction remains.

It has not been stated by those making representations what the basis of their concern relative to the repositioning of the gate is founded on other than advising that the applicant does not control the necessary land to comply with the condition. For the purposes of planning, the applicant does not require to own the land, but does require the permission of those who do. Irrespective of whether the house was built, it was considered that the re-positioning of the gate would have offered wider road safety benefits and it is regrettable that this cannot be achieved.

The third party correspondence also revealed some uncertainty over whether the gate was normally kept shut or just occasionally when animals were being moved. It was suggested that gated township roads elsewhere in the locality are usually left open. It was also pointed out that if this was the practice in this case and was agreed by all users, then there would be no need for condition 1 because the scenario in which the gate needed to be opened by a motorist would be so rare. Although the matter was apparently discussed by the grazings committee on 11 April 2016 it does not appear that any material progress has been made to date.

In the light of the consultation response it is considered that whilst condition 1 is desirable in the context of the house permission it also partially duplicates the effect of condition 2 which the applicant has indicated he will comply with before the house build commences. On this basis the requirement for the removal of

condition 1 is not supported but that its wording is amended to allow for the requirement for the gate to be set back to be removed, and that there is a requirement to ensure surfacing up to the gate is undertaken.

8.5 **Other Considerations – not material**

The suitability of the township road to take traffic associated with the house has already been assessed by the planning committee and is not a material consideration for this application.

8.6 **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 **Approved** subject to the following condition, reasons and notes to applicant:

1 No occupation of the dwelling hereby approved shall take place until the access has been finished with cohesive material for a distance of at least 5m from the nearside edge of the public road. Detailed plans showing this surfacing shall first be submitted to and approved in writing by the Planning Authority. Thereafter the development shall be completed in accordance with the approved details and to the satisfaction of the Planning Authority and the Roads Authority.

Reason : In the interests of road safety to protect the public road surface from erosion and avoid loose material being deposited on the public road

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 LIMIT FOR THE IMPLEMENTATION OF THIS PLANNING PERMISSION

The Highland Council hereby makes the following Direction under Section 58(2) of the Town and Country Planning (Scotland) Act 1997 (as amended).

The development to which this planning permission relates must commence on or before 7 May 2017, failing which 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

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as dropped kerb consent, a road openings permit, occupation of the road permit etc.) from TECS Roads prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local TECS Roads office for further guidance at the earliest opportunity.

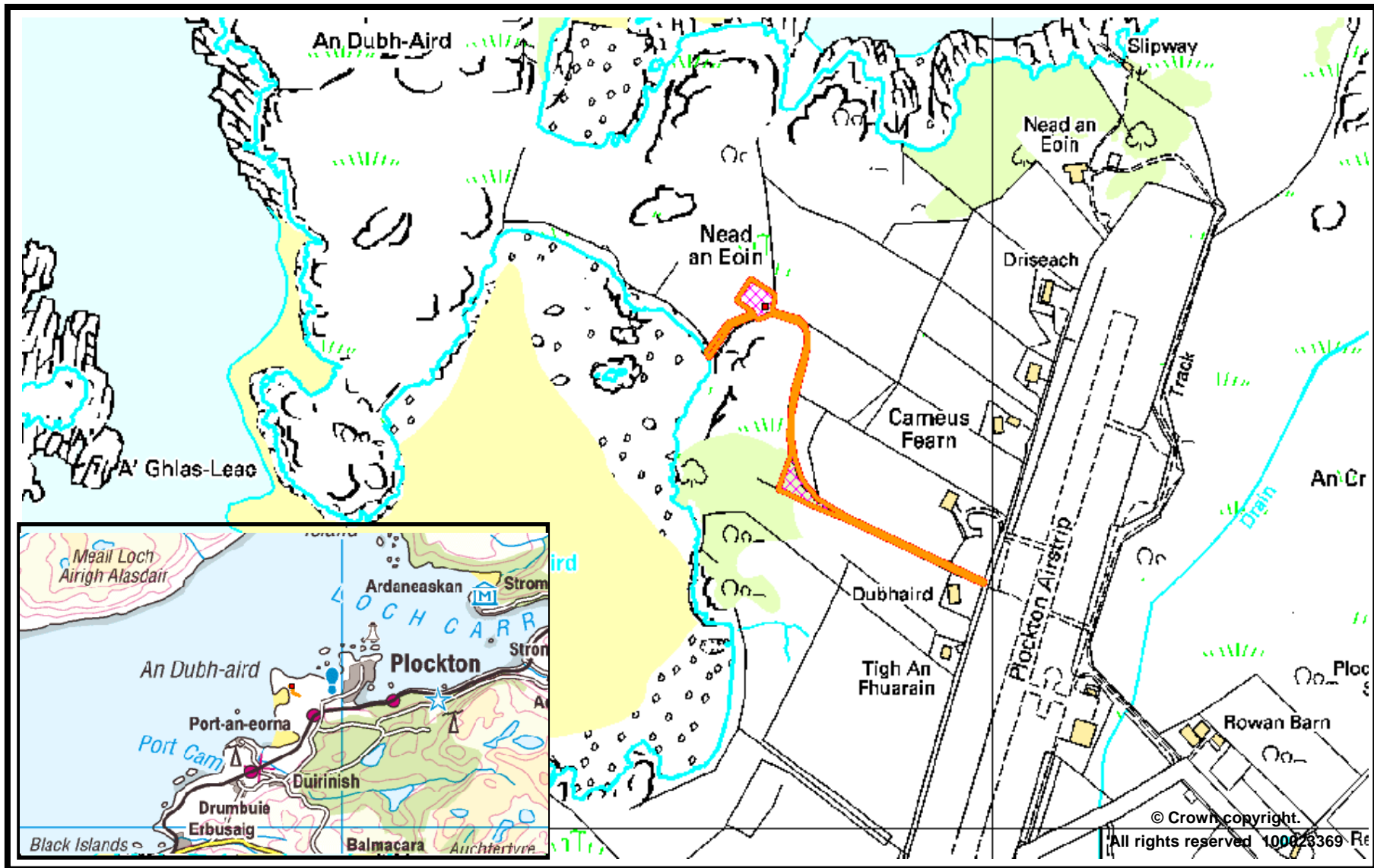
Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) 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/yourenvironment/roadsandtransport/roads/Applicationformsforroadoccupation.htm>

Signature:	Dafydd Jones
Designation:	Area Planning Manager North
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Background Papers:	Documents referred to in report and in case file.
Relevant Plans:	Plan 1 – Location Plan - 000001



The Highland Council
Comhairle na Gàidhealtachd

Planning and Development Service

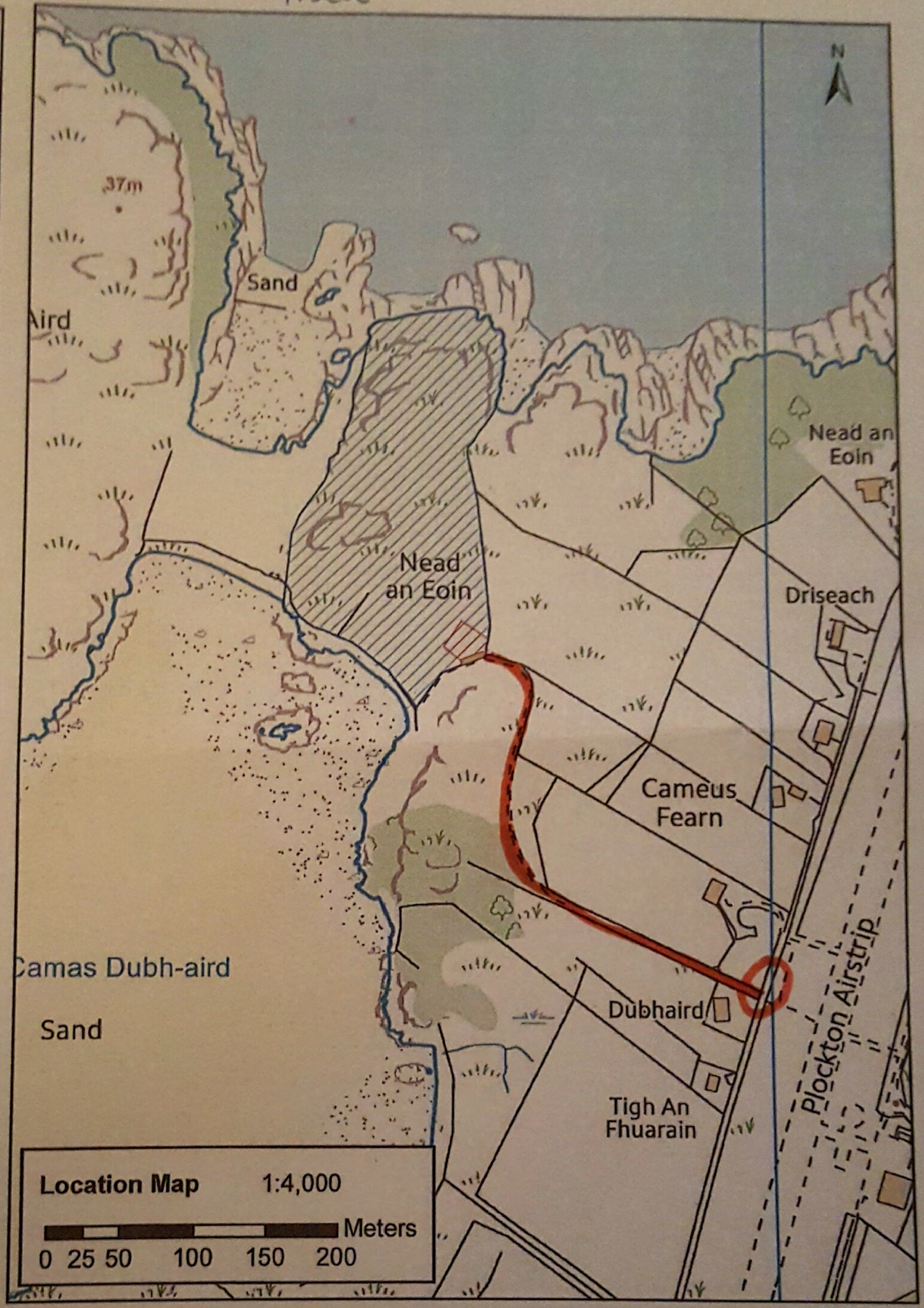
Location Plan
16/01757/S42



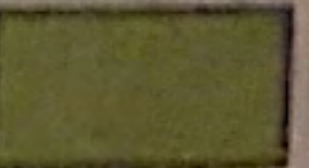
**Section 42 application to remove Condition 1 of Planning Permission 13/04610/FUL -
Erection of house and installation of foul drainage system**

Scale:

18th October 2016

① - GATE Referred to in condition 1 at top of access track



-  Proposed Decrofting
-  Croft Boundary
-  Access

DISCLAIMER: Locations, boundaries and associated information depicted on this map were compiled from the best available sources known to us. No liability is assumed for the accuracy or completeness of the information contained herein.

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