

The Highland Council

**North Planning Applications Committee
29 November 2016**

Agenda Item	6.1
Report No	PLN/062/16

**15/01184/FUL: Mr and Mrs I Mackay
Land east of Dun Fionn, Bog of Findon, Culbokie**

Report by Area Planning Manager - North

Summary

Description : Erection of house and garage

Recommendation - GRANT

Ward : 10, Black Isle

Development category : Local Development

Pre-determination hearing : Not required

Reason referred to Committee : Representations received.

1. PROPOSED DEVELOPMENT

- 1.1 The proposal is to erect one detached house with a separate single garage in the southeast corner of the garden of Dun Fionn. The house will be 1 ½ storey, have a rectangular footprint measuring approx. 12.5m x 8m, with velux windows in the roofspace.
- 1.2 It is proposed to create a new access road approximately 680m in length and 3.7m wide, running along the boundary of the fields to the north east of the proposed house site until it joins the Kinbeachie public road adjacent to No 6 Kinbeachie.
- 1.3 The existing house, Dun Fionn, is accessed via a private track off the Crask public road.
- 1.4 The applicant has submitted a supporting statement, copy of feu disposition and plans.
- 1.5 **Variations:** None

2. SITE DESCRIPTION

- 2.1 The site is currently the side garden grounds of Dun Fionn, a detached house off the south side of a private access road serving several existing houses. This part of the garden is largely grass with planted tree belts. The surrounding area is agricultural in nature, comprising mainly arable fields.

3. PLANNING HISTORY

- 3.1 12/02896/FUL Erection of house and garage. Withdrawn.

4. PUBLIC PARTICIPATION

- 4.1 Advertised : unknown neighbour and land ownership
Representation deadline : 2 June 2015 and 21 October 2016

Representations : Responses from 7 different households received.

- 4.2 Material considerations raised are summarised as follows:

- No right of access exists from Kinbeachie to Bog of Findon
- Tractor to run the grain dryer blocks the alleged access over a period of many months
- The proposed private access is not existing, not shown on historic maps, and local residents have not witnessed it being used.
- Part of the proposed access will be on top of the water main.
- Future residents would use the nearer and more convenient Crask road with a record of accidents (including fatalities) at its junction with the B9163
- Kinbeachie access is unsuitable for additional traffic, since it is narrow, poor quality, no passing places, blind corner, and used by residents, farmers, dog walkers, horse riders, and parents with children.
- Verge widths are insufficient to enable provision of passing places
- There is not a passing place outside 3 Kinbeachie, this is the entrance to the house and used for parking of vehicles.
- Road used by farm vehicles similar in size to HGV's; insufficient width exists to enable 2 HGV's to pass so only one HGV can use the road at a time.
- The Kinbeachie public road has no drainage.
- Where would bins be left for waste collection?
- Crask road junction should be improved instead of using Kinbeachie access.
- Presumption against new houses in the Hinterland. No land management need; not rounding off housing group; applicants have existing house which is fit for purpose.

- 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 **Flood Management Team:** No objection. The ponding is local surface water; emergency access would be possible via an alternative route in the event of a flood restricting usage of the proposed access.
- 5.2 **Transport Planning:** No objection. The proposed access route is long and circuitous and via a poor standard public road. An additional passing place would be required. The private track between the site and the public road would need to be suitable for a larger emergency vehicle. There must be no direct access between the site and the U2522 Crask road.
- 5.3 **Ferintosh Community Council :** there is an ongoing investigation into the safety of Crask Junction, which has been the location of 2 fatal accidents.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 Highland Wide Local Development Plan 2012

- | | |
|----|---|
| 28 | Sustainable design |
| 29 | Design quality and place-making |
| 35 | Housing in the countryside (Hinterland) |
| 65 | Waste water treatment |
| 66 | Surface water drainage |

6.2 Inner Moray Firth Local Development Plan 2015

Within Hinterland, outwith settlement development area. No site specific policies apply.

7. OTHER MATERIAL CONSIDERATIONS

7.1 Draft Development Plan

Not applicable

7.2 Highland Council Supplementary Planning Policy Guidance

Access to single houses and small housing developments (May 2011)

Housing in the countryside and siting and design (March 2013)

7.3 Scottish Government Planning Policy and Guidance

Scottish Planning Policy

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

Housing in the Countryside – Policy 35

8.3.1 The site lies within the Hinterland where policy 35 Housing in the Countryside (Hinterland) applies. This presumes against a new house unless it complies with one of the exceptions detailed in the adopted Supplementary Guidance - Housing in the Countryside and Siting and Design. One such exception is the subdivision of garden grounds to provide an additional house plot. The proposed site is clearly used as garden grounds for Dun Fionn, and is suitably proportioned to accommodate the proposed house whilst reflecting and continuing to preserve the spacious setting of the existing house. This complies with policy requirements.

Design and Siting

8.3.2 Policy 28 and 29 of the Highland-wide Local Development Plan requires new development, amongst other factors, to demonstrate sensitive siting and high quality design in keeping with the local character and the distinctiveness of the landscape. The house and garage design are simple and unobtrusive and will sit comfortably within the site.

Access

8.3.3 Policy 28 also requires new development to be compatible with public service provision (including drainage and roads).

8.3.4 The Crask public road, off which the existing houses are served, has a severely substandard junction where it joins the B9163, and a record of fatal accidents. It is not considered suitable to serve any additional development without significant improvements. Therefore, the applicant proposes to create a new access road approximately 680m in length, running along the boundary of the fields to the north east until it joins the Kinbeachie public road (U2521) adjacent to No 6 Kinbeachie. This route is rather long and convoluted, with several right angle bends since it follows the perimeter of fields. This would need to be 3.7m wide to accommodate emergency vehicles. The applicants assert that they have access rights over this route. Approximately 12.6m at the eastern end appears to be outwith their ownership.

8.3.5 Local residents have expressed concern over the proposed access road from the site along the field boundaries and whether a right of access along this route exists for its entire length, whether the Kinbeachie public road is suitable to

accommodate additional traffic, and whether the use of the more direct and convenient Crask public road by future residents can be prevented. Photos have also been submitted showing a section of this road under water.

- 8.3.6 Transport Planning has been consulted and concur that the Crask road junction with the B9163 is unsuitable to accommodate additional housing development. In relation to the proposed new access to the Kinbeachie public road, they express concern that this route is rather long and circuitous, and utilises the U2521 public road which is of poor standard in terms of geometry and construction, and of low priority for maintenance. They recommend improvements/passing place within the confines of the existing road boundaries, and that the new private access road to the application site is constructed to a standard suitable to accommodate a larger emergency vehicle (3.7m). The applicant has also agreed to repair the pot holes in the road to improve its standard. Waste and recyclable material collection should be agreed with the Council's Waste Management Team.
- 8.3.7 The existing road verge is of insufficient width to accommodate an HGV passing place. Transport Planning are aware of this, but are satisfied that there is sufficient width to provide an adequate passing place to serve the proposed additional house.
- 8.3.8 The proposed house is located towards the south east site boundary, whereas the existing private access track which links to the U2522 Crask public road runs along the north boundary. There is an intervening tree belt which it is proposed to retain. Therefore the site layout does not lend itself to the formation of an access onto the existing access to the Crask road. It is possible that a new access could be formed along the field boundary to the Crask road. This, however, does not form part of this application, and would require planning permission since it lies outwith the residential curtilage, or prior notification if it was provided for agricultural purposes. It therefore can be controlled by the Planning Authority. As stated above any access onto the Crask road would not be supported due to the seriously substandard nature of the junction with the main road (B9169) where there is a record of fatal road accidents.

Flooding

- 8.3.9 The Council's Flood Management Team have commented that the photograph submitted by a local resident showing the proposed Kinbeachie access road under water relates to ponding, which would normally arise due to poor field/road drainage or a dip in the road which naturally collects surface water. Given that emergency vehicles could use the Crask road *in the exceptional case* where there were a flooding event which rendered the Kinbeachie road inaccessible, there is no objection from a flooding perspective.
- 8.3.10 The applicant has provided information to say that they have a legal right of access across the proposed access route. A neighbour refutes this and considers that there are no access rights at the eastern end of the proposed new access road to Bog of Findon, that he owns a ransom strip and is not prepared to grant any rights of access over this (a length of approx. 12.6m at the eastern end of the

route). The applicant is aware of this and still contends that he can legally use this access route. This is a civil legal matter. This does not preclude the Planning Authority from being able to make a determination on the application. The applicant will need to ensure that he can legally provide and use the proposed access route before any development commences. The applicant will also need to agree the proposed bin storage and refuse collection with the Council.

- 8.3.11 The proposed route of the access road, will entail the construction of a new road for a length of approximately 680m to serve one additional house. This would appear to be the only safe alternative access to the site given the unsuitability of the Crask junction on road safety grounds. It is the responsibility of the applicant to ensure that he has a legal right to use this proposed access; it is not for the Planning Authority to resolve this dispute and ultimately would be an issue for the Courts to resolve. The proposal therefore complies with Policy 28. Given the significant and understandable road safety concerns over access to the property it is considered appropriate that a condition is imposed to ensure that the new access road is formed prior to the commencement of any works on site and for the construction of the house.

8.4 **Other Considerations – not material**

It appears that a water main runs along part of the route of the proposed access. This again is a private matter for the applicant to resolve with Scottish Water.

8.5 **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 None

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

1. Prior to the commencement of development, full details of the proposed passing places/upgrading works to the existing public road and private track shall be submitted to and approved in writing by the Planning Authority, in consultation with the Roads Authority. Thereafter, these works shall be completed in full before works commence on the house hereby approved.

Reason : To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity

2. No other development shall commence until the proposed access road between the site and the U2521 Kinbeachie public road as detailed in drawing no's 15/165/02 and 15/165/03 has been provided in its entirety. For the avoidance of doubt, it shall be constructed to a standard suitable for use by larger emergency vehicles and shall be hard surfaced. It shall thereafter be maintained and retained available for use in perpetuity.

Reason : To ensure that an adequate level of access is timeously provided for the development; in the interests of road safety and amenity.

3. No vehicular or pedestrian access shall be formed between the application site and the U2522 Crask public road

Reason : In the interests of road safety, in view of the substandard nature of the junction of the U2522 Crask public road with the B9163.

4. Prior to the first occupation of the dwellinghouse, parking spaces (excluding garages) for a minimum of 3 cars shall be provided within its curtilage in accordance with The Highland Council's Access to Single Houses and Small Developments, and shall thereafter be maintained for this use in perpetuity.

Reason : In order to ensure that the level of off-street parking is adequate

5. The roof of the development shall be finished in natural slate or slate substitute, and the external walls shall be finished in white or off white harl.

Reason : To ensure that the development is sensitive to, and compatible with, its context and local architectural styles

6. No development shall commence until details of existing and proposed ground and finished floor levels have been submitted to and approved in writing by the Planning Authority. Thereafter, the development shall be completed in accordance with these details.

Reason : In order to ensure that underbuilding is kept to a minimum and that the development integrates into the site and its surroundings in a satisfactory manner.

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

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

Access Rights

You are advised to ensure that you have the necessary legal right to use the proposed access route before any development commences.

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.

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.

Water Main

A water main runs along part of the route of your proposed access. You are advised to contact Scottish Water to ascertain their requirements.

Septic Tanks and 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).

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

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.

Damage to the Public Road

Please note that the Council, under Section 96 of the Roads (Scotland) Act 1984, reserves the right to recover all costs for repairing any damage to the public road (and/or pavement) which can be attributed to construction works for this development.

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).

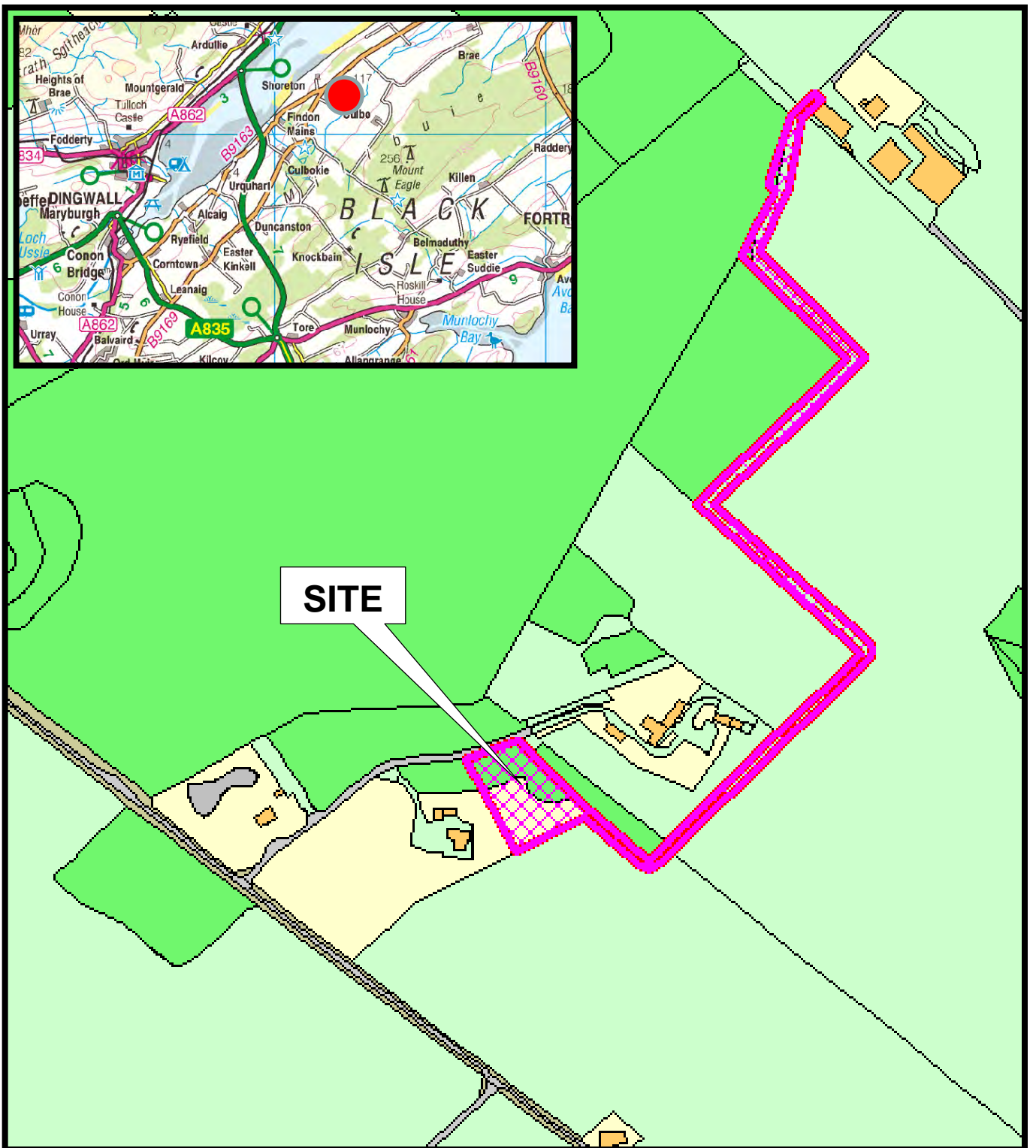
Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

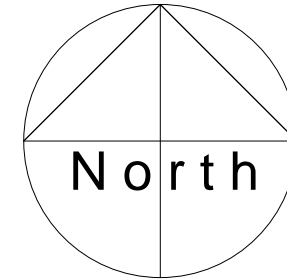
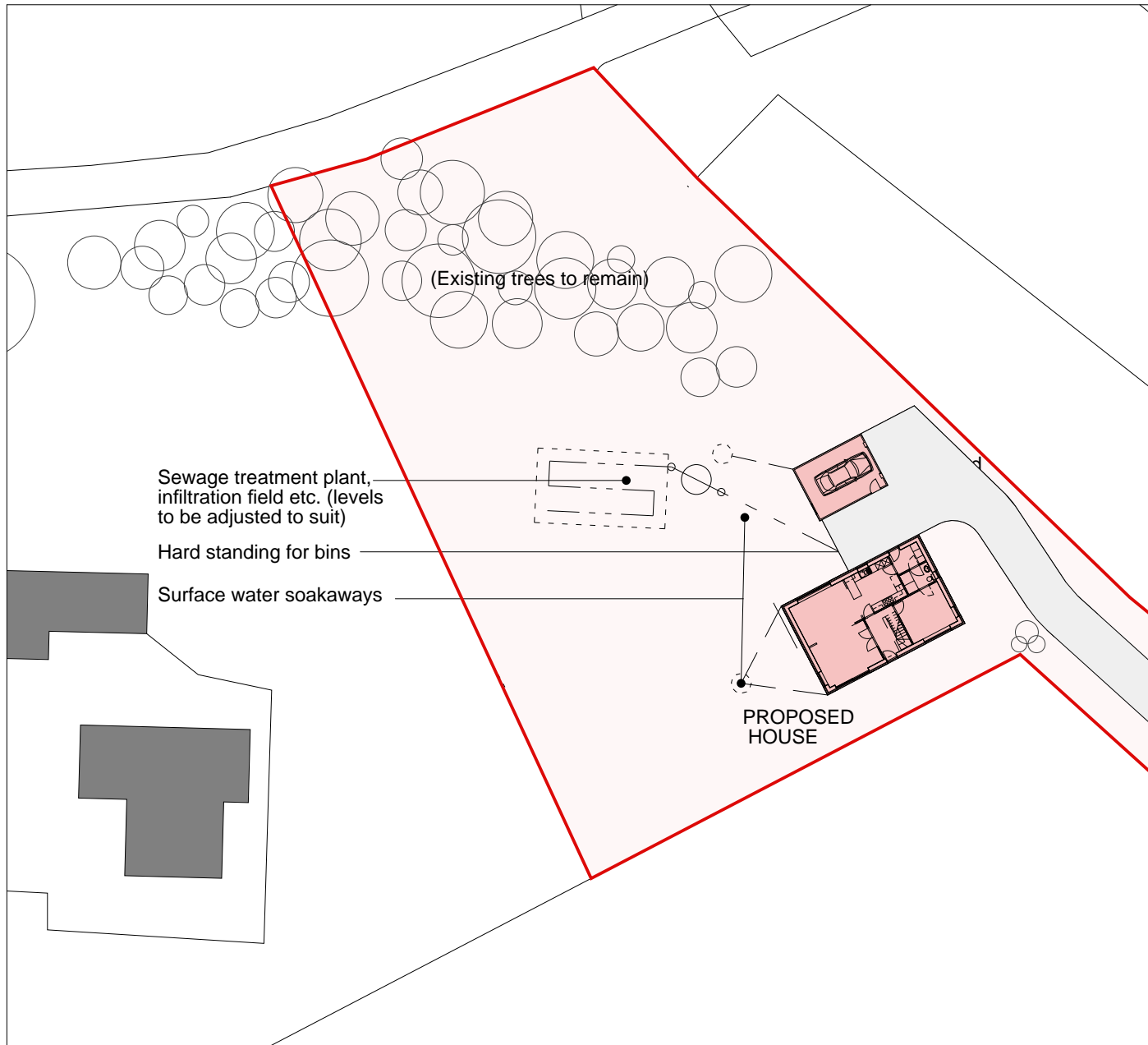
If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. 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 for more information.

Protected Species - Halting of Work

You are advised that work on site must stop immediately, and Scottish Natural Heritage 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 SNH: www.snh.gov.uk/protecting-scotlands-nature/protected-species

Signature: Dafydd Jones
Designation: Area Planning Manager –North
Author: Susan Hadfield
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – location plan
Plan 2 – site layout plan
Plan 3 – floor plan / elevation plan
Plan 4 – garage plan
Plan 5 – site access plan





Grid Ref
E262450
N861250

Drawing No 15/165/04

Site Plan
Scale 1 : 500

April 2015

Client

Iain + Marion Mackay

Project

Proposed House

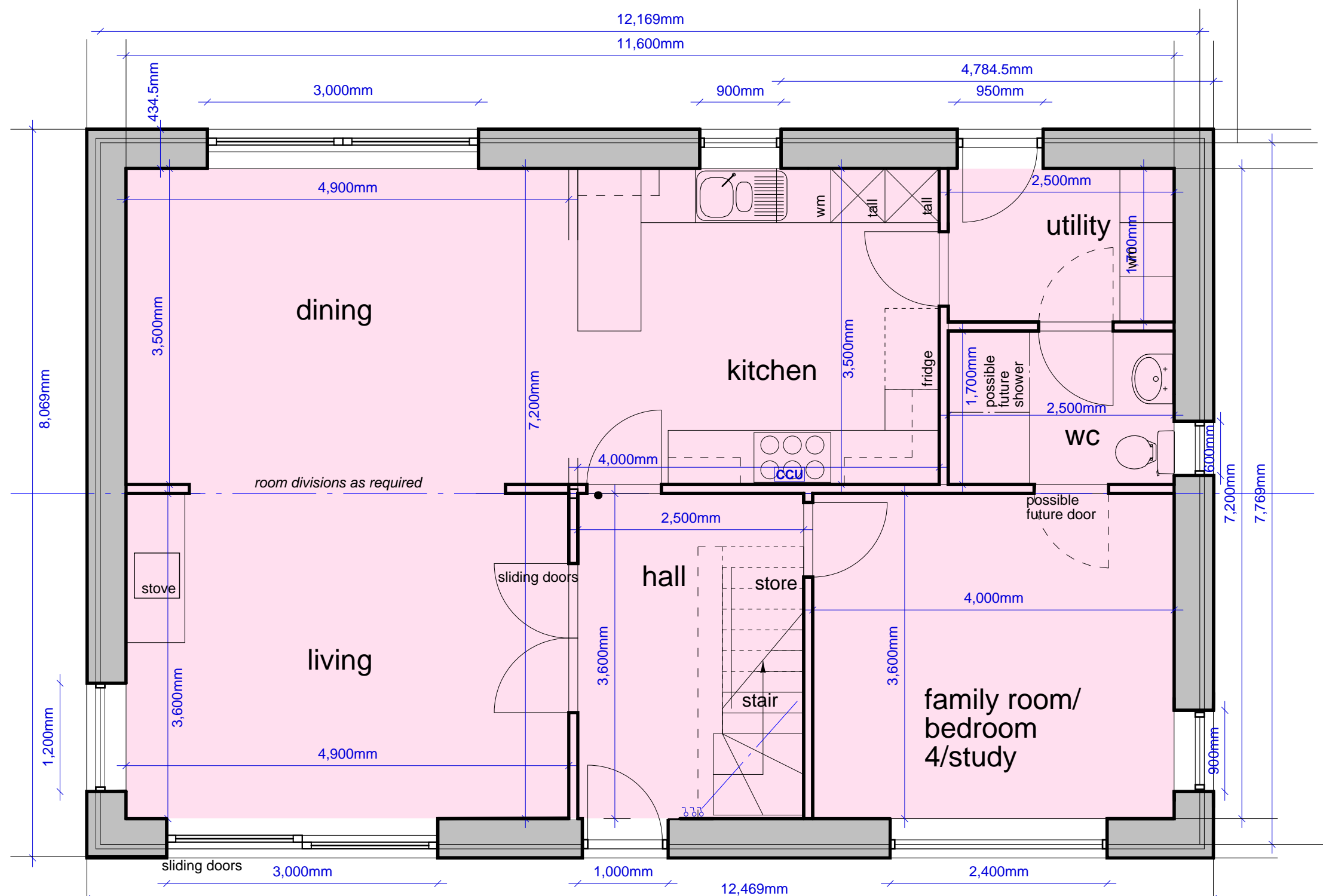
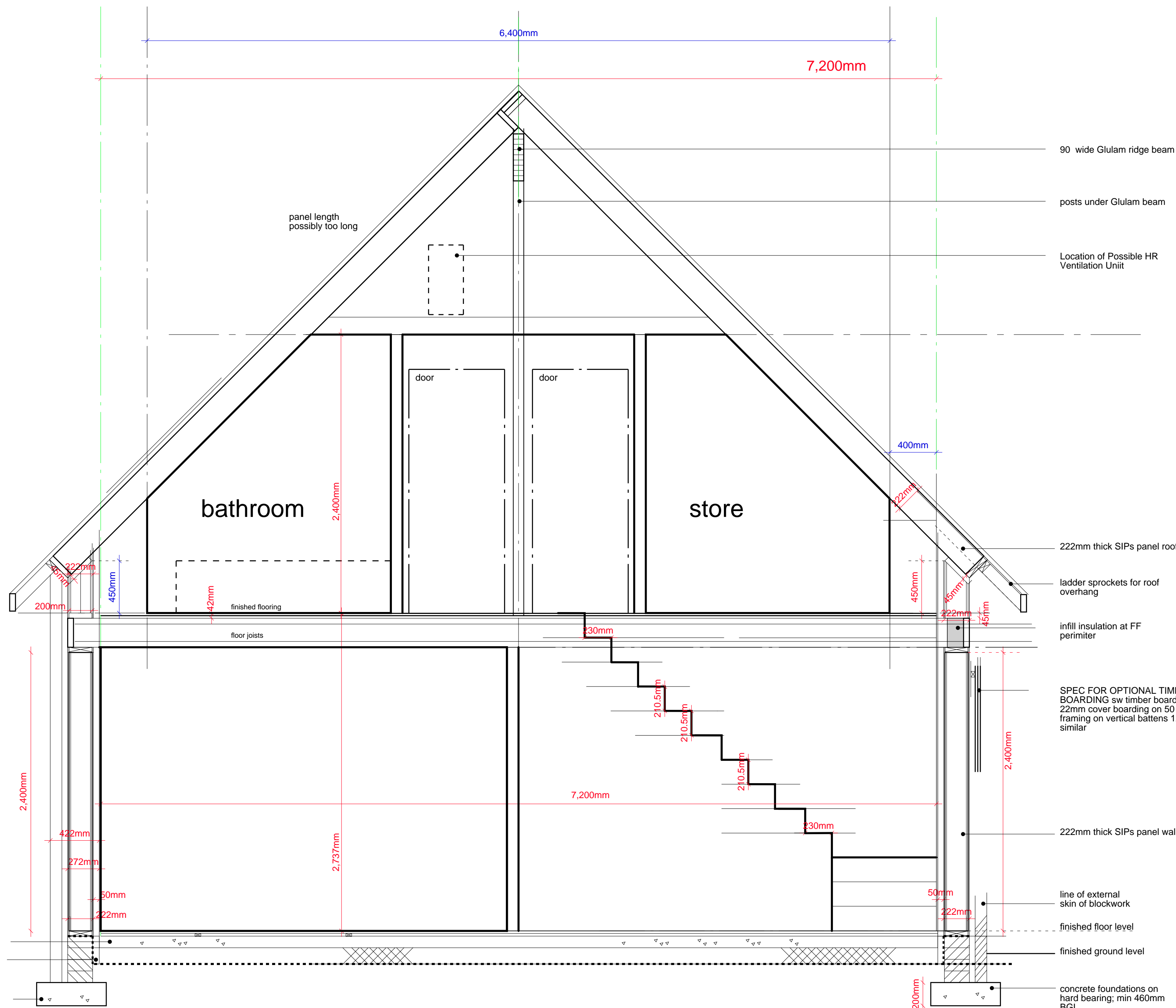
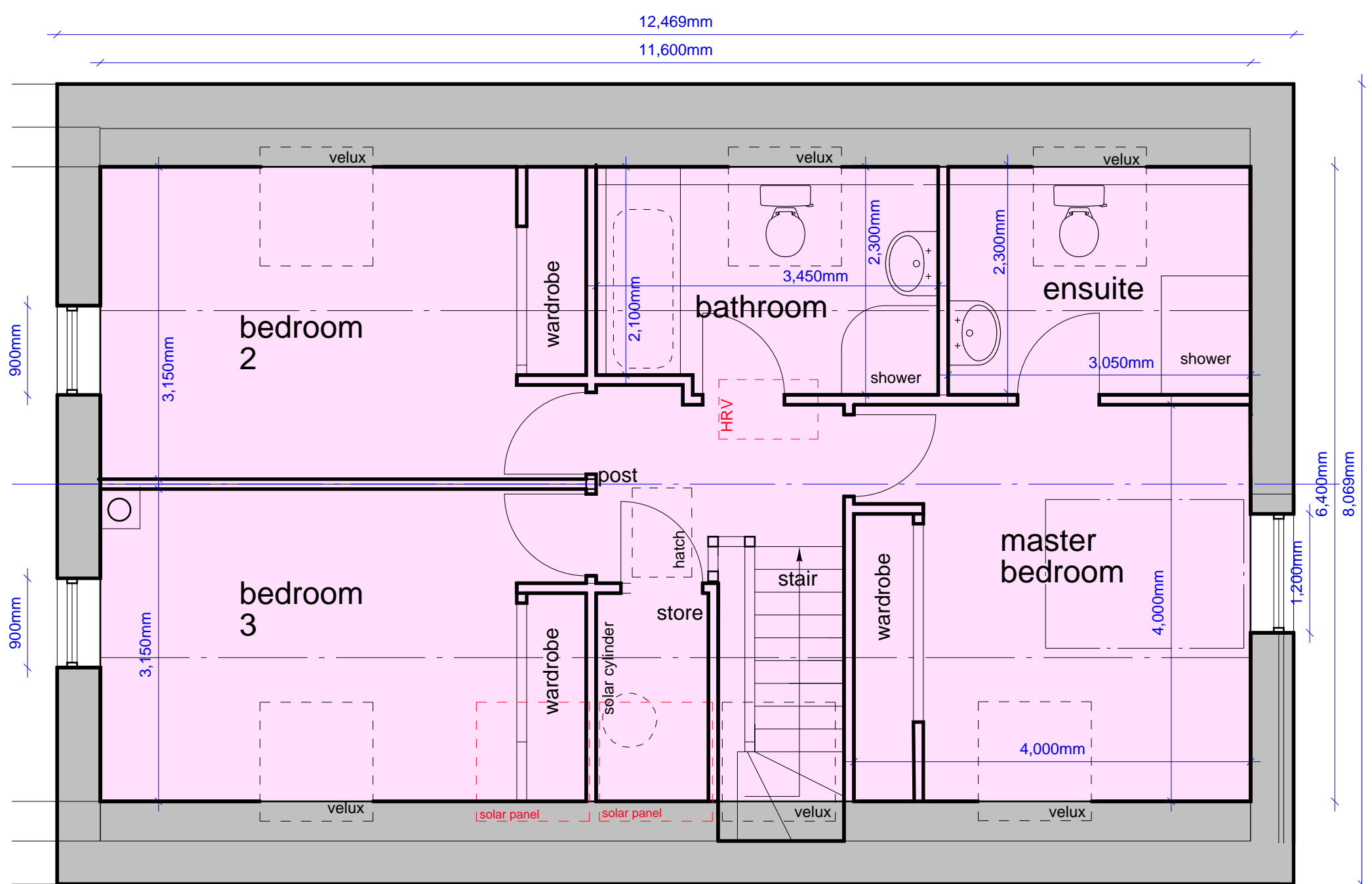
MACBEATH ARCHITECTS

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T/F 01349 854590 im@kindeace.plus.com



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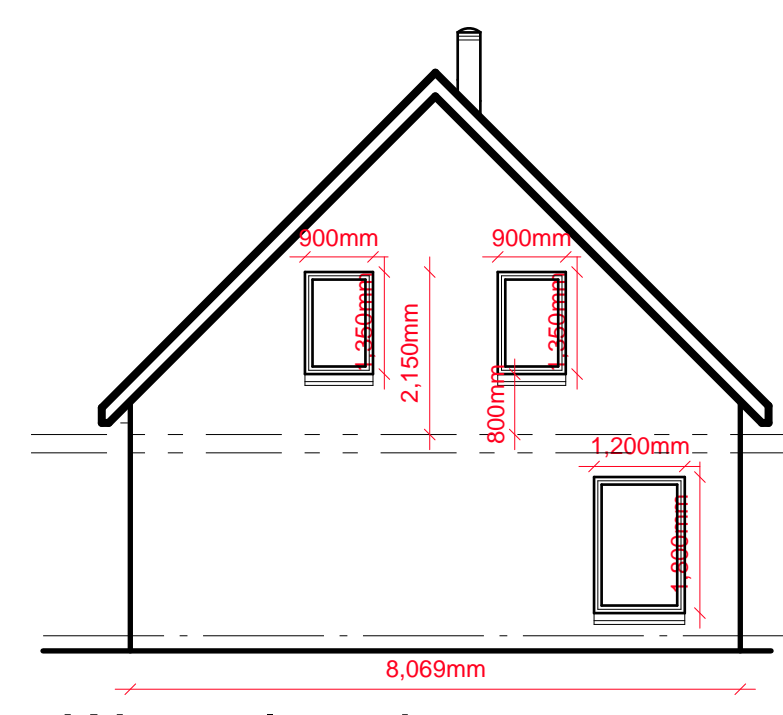
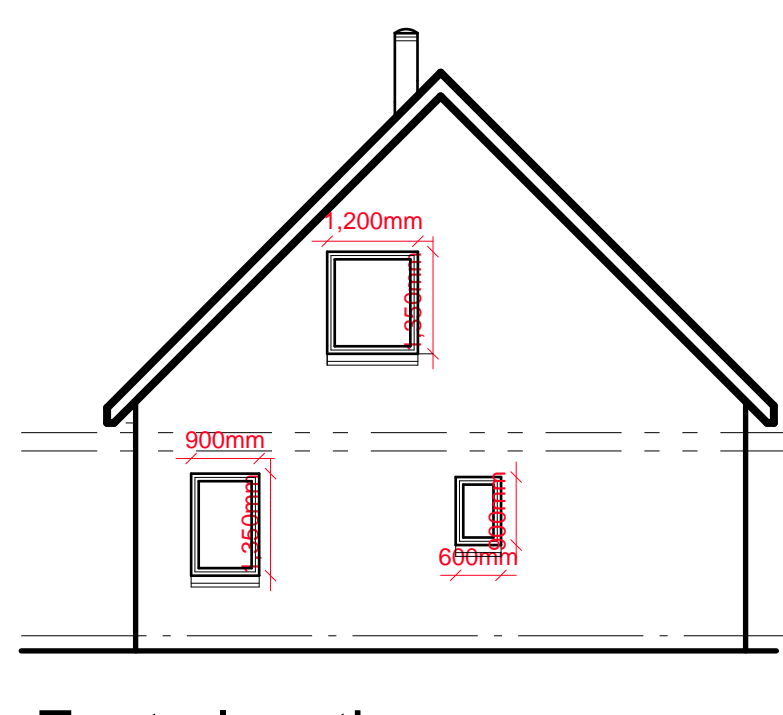
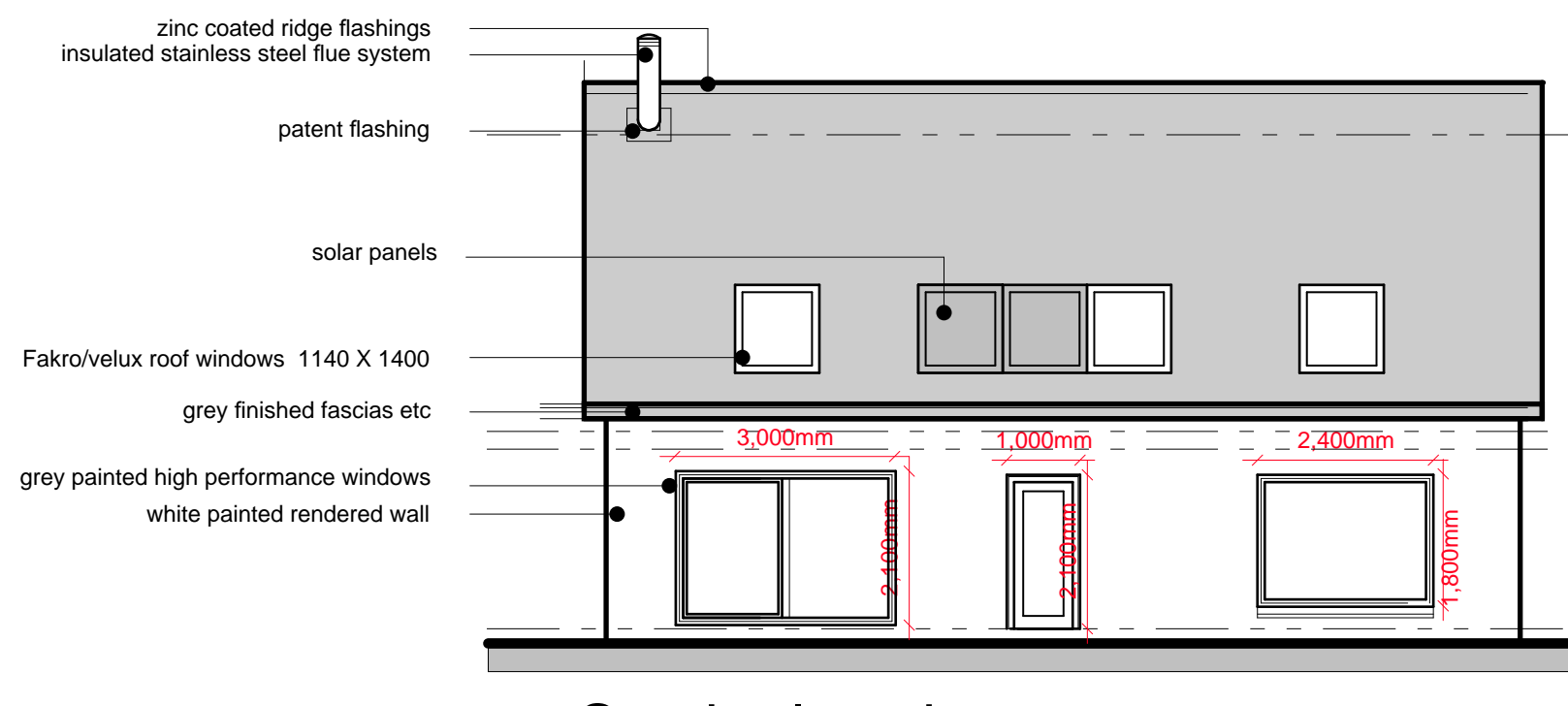
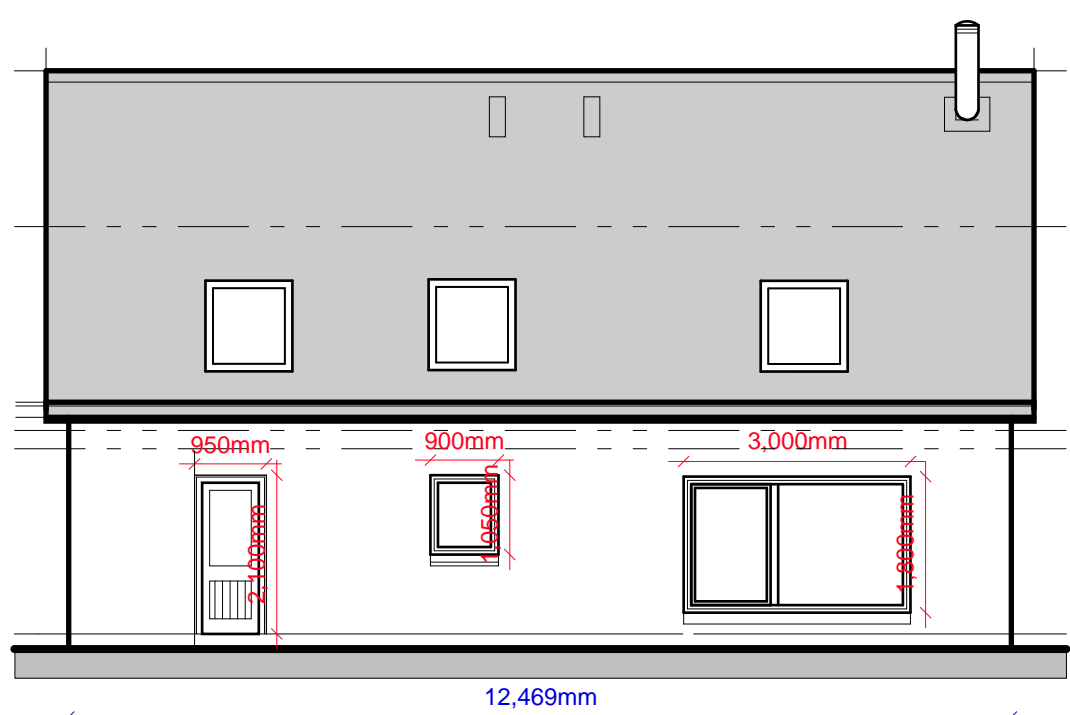


Cross-section Structural
1:25

Cross-section Structural
1:25

South elevation
North elevation
East elevation
West elevation
1:100

General Floor Layout Plans
Scale 1:50



Electrical Legend

- 13A socket outlet
- 13A socket outlet (above worktop)
- 13A socket outlet (below worktop plus remote switch and pilot light above)
- Extract fan
- Cooker Control Unit
- Smoke detector on protected circuit
- Heat detector on protected circuit
- Light fitting outlet
- Light switch
- Light switch- two way
- Wall mounted internal light
- Wall mounted external light
- Strip light
- Telephone socket
- TV aerial socket
- Consumer unit (mcb's)
- Hot water cylinder
- Heater control unit
- Room stat

- Preliminary feasibility
- Application drawings
- Working Drawings
- Draft Work in Progress

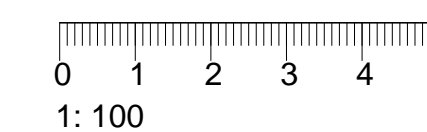
April 2015

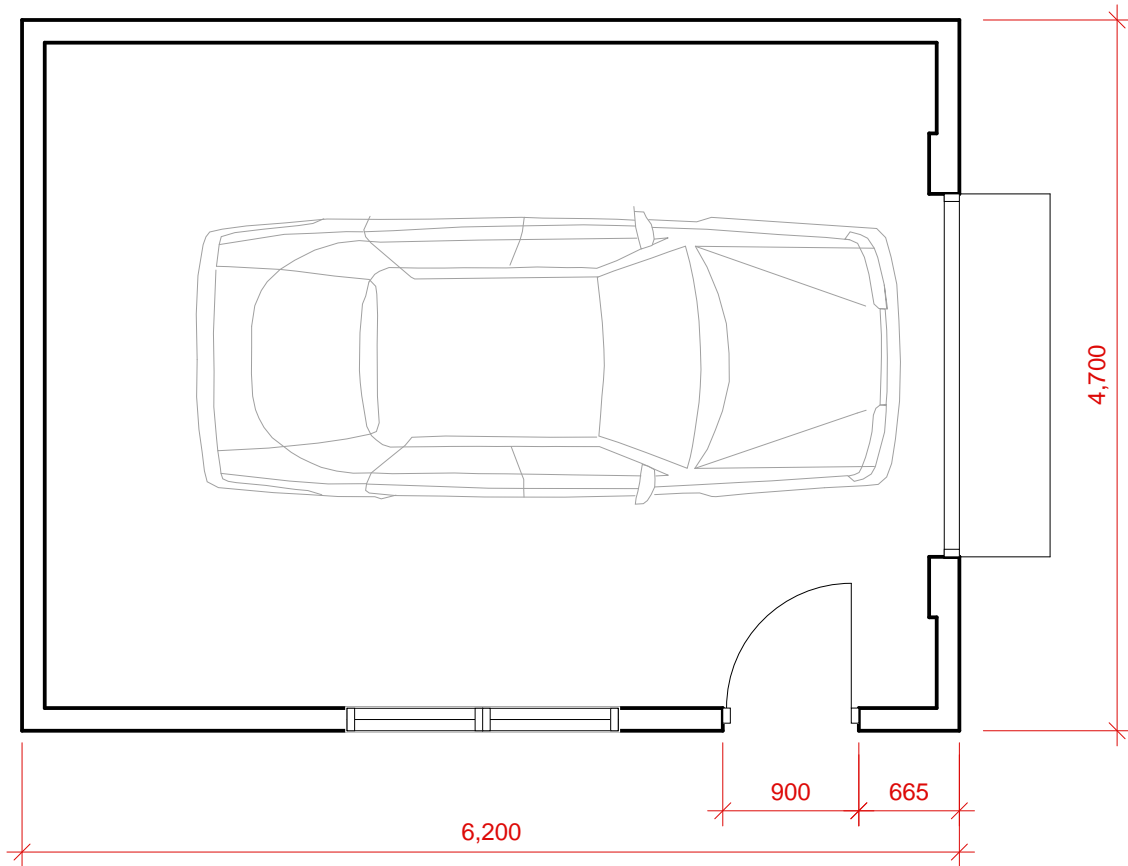
Drawing No: 15/165/01

Client
Iain + Marion Mackay

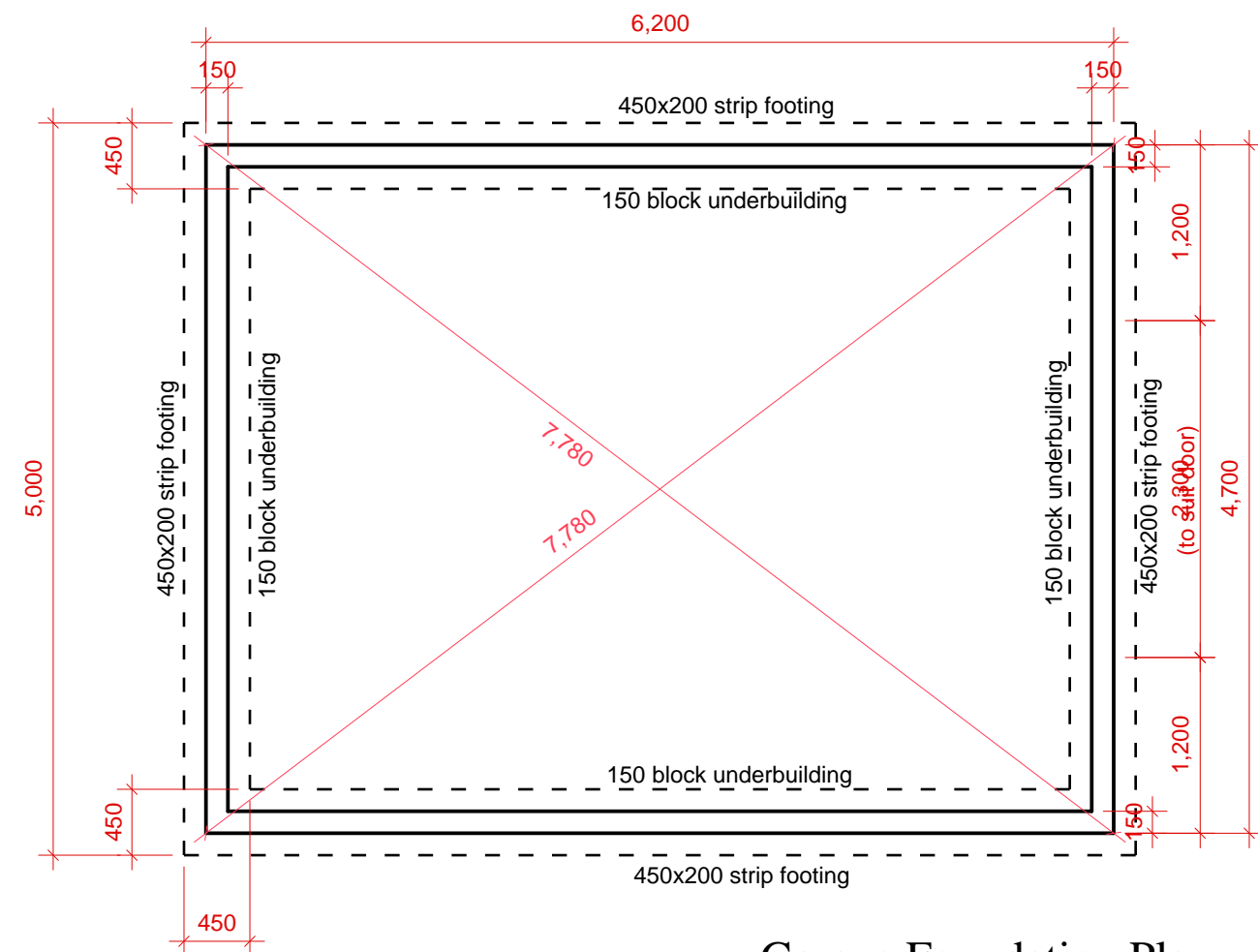
Project
Proposed House

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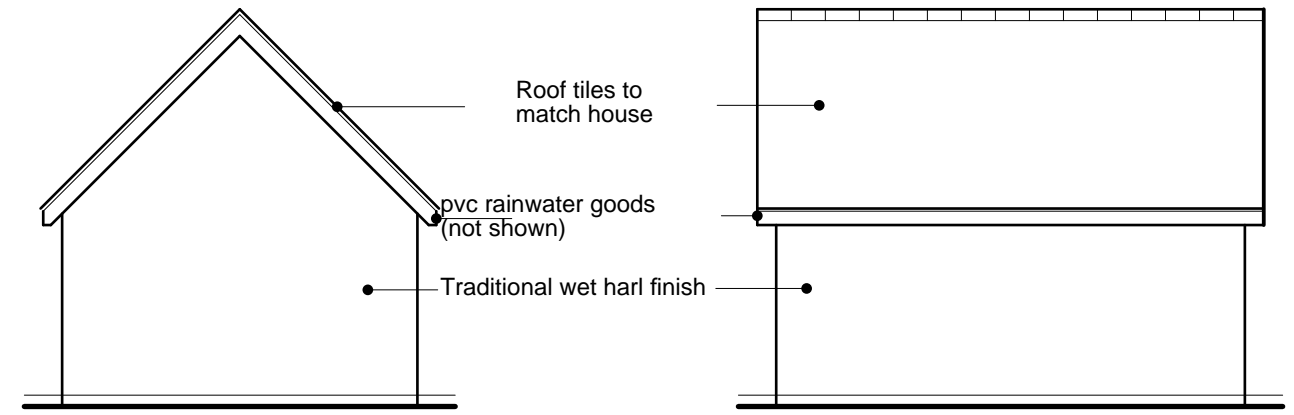




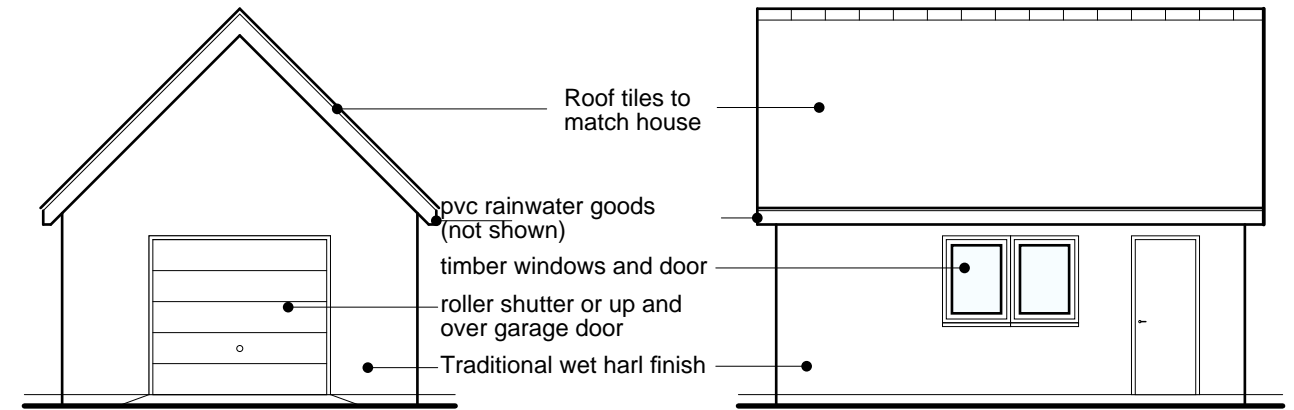
Garage Floor Plan
Scale 1:50



Garage Foundation Plan
Scale 1:50



Garage Side Elevation
scale 1:100



Garage Side Elevation
scale 1:100

April 2015

Garage Plans & Elevations

Scales 1:50 1:100

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Project

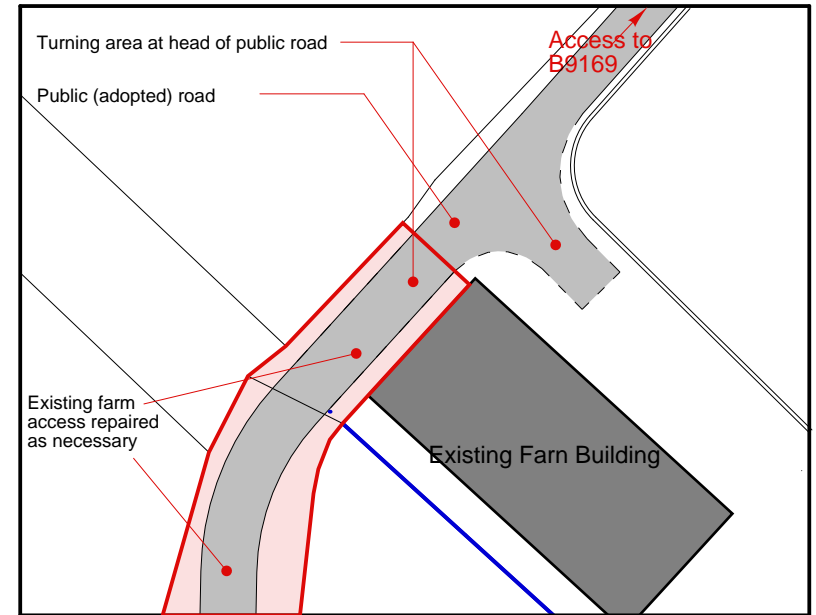
Proposed House

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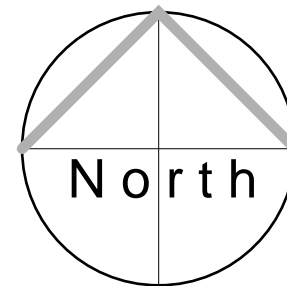
Site Aerial View



Site Access Plan

Scale 1 : 500

15/165/03



Site Aerial View Site Access Plan

Scale 1 : 500

April 2015

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Proposed House

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