

Agenda Item	7.1
Report No	PLS 044/17

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee  
**Date:** 8 August 2017  
**Report Title:** 16/05671/FUL: Mr H Jack  
Land 40m North of An Teallach, Nethy Bridge  
**Report By:** Area Planning Manager – South/Major Developments

### Purpose/Executive Summary

**Description:** Erection of house  
**Ward:** 20: Badenoch and Strathspey  
**Development category:** Local  
**Reason referred to Committee:** Community Council objection

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.

### Recommendation

Members are asked to agree the recommendation to **GRANT** as set out in section 11 of the report.

## **1. PROPOSED DEVELOPMENT**

- 1.1 Planning permission is sought for the erection of a house adjacent to an existing housing group on the western edge of the settlement of Nethy Bridge. The applicant has advised that it is intended that the house is to be used for holiday let purposes.
- 1.2 The house is single storey and of traditional design, featuring rendered walls, slate roof and windows with vertical emphasis. It has a rectangular footprint with a small pitched timber clad gable sun room extension to the side. Internally it will comprise an open plan kitchen/dining/lounge area and three bedrooms.
- 1.2 The applicant submitted an informal pre-application advice form that related in part to this application, however it also included a second holiday home within the vicinity of the application site, but located further to the south. The response advised the applicant that the proposal would have an adverse impact on a designated ancient woodland where there was a strong policy presumption against development. If the applicant wished to pursue the proposal any subsequent applications would have to be supported by an appropriate tree survey and mitigation plan, compensatory planting proposals and drainage information.
- 1.3 The site is accessed from the B851 public road via an existing private single track road that serves four of the adjacent cluster of houses as well as the property opposite the site and a further dwelling to the southwest. A public water supply is available in the public road but there is no mains drainage, with existing houses being serviced by septic tanks.
- 1.4 An ecology report, habitat assessment and arboricultural impact assessment is submitted in support of the application.
- 1.5 **Variations:** None.

## **2. SITE DESCRIPTION**

- 2.1 The site is within an area of designated ancient woodland and lies adjacent to an existing housing group consisting of five detached single storey dwellings and a further house directly opposite the site on the other side of the private access road.
- 2.2 It is contained within an area of Scots pine woodland with an open area in the centre with evidence of historical use for the dumping of spoil. The majority of tree coverage on the site is young to semi-mature pine which are very closely spaced in places.

## **3. PLANNING HISTORY**

02.09.1994 – Erection of house refused planning permission; subsequent appeal dismissed 06.02.2005. (BS/94/133);

02.09.1994 – Erection of house refused planning permission. (BS/94/134);

02.09.1994 – Erection of house refused planning permission. (BS/94/135);

03.05.1995 – Erection of a house refused planning permission. (BS/94/280);

13.11.1997 – Erection of house granted planning permission following conclusion of Section 75 Agreement requiring (with the exception of the site granted planning permission) the whole area shall be retained as natural woodland with no development taking place. (BS/95/183);

3.1 25.08.2000 – Planning application for the erection of a house in outline refused/granted planning permission withdrawn. (00/00187/OUTBS);

3.2 22.12.2000 – Erection of house refused planning permission. (00/00226/FULBS);

3.3 01.02.2002 – Erection of house refused planning permission. (01/00237/FULBS);

3.4 08.11.2002 – Erection of house refused planning permission. (02/00185/FULBS);

3.5 10.04.2012 – Application to discharge Section 75 relating to planning permission BS/95/183 refused. (12/00185/S75D);

3.6 15.07.2013 – Application to modify Section 75 to enable the construction of a further three dwellings refused. (13/02278/S75M).

#### **4. PUBLIC PARTICIPATION**

4.1 Advertised: Unknown Neighbour: 12.01.2017

Representation deadline: 26.01.2017

Timeous representations: 3 representations from 3 parties

Late representations: None

4.2 Material considerations raised are summarised as follows:

- Site is outwith the settlement boundary of Nethy Bridge;
- An existing Section 75 Agreement prohibits development;
- Adverse impact on ancient woodland, protected species and other ecology interests;
- Proposal is contrary to policy with the site having an extensive history of planning refusals;
- Existing drainage problems will be exacerbated;
- An additional house will require the access road to be upgraded.

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](http://www.wam.highland.gov.uk/wam). Access to computers can be made available via Planning and Development Service offices.

## **5. CONSULTATIONS**

- 5.1 **Nethy Bridge and Vicinity Community Council:** Object on the grounds that previous applications have been refused and a Section 75 precludes development. In addition, the proposal will have an adverse impact on trees and species habitat, would constitute overdevelopment and the access road is not to adoptable standards.
- 5.2 **Forestry Officer:** No objection. The level of felling is low enough that the integrity of the woodland will not be adversely affected by the development.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **6.1 Cairngorms National Park Local Development Plan 2015**

- Policy 1 - New Housing Development
- Policy 2 - Supporting Economic Growth
- Policy 3 - Sustainable Design
- Policy 4 - Natural Heritage
- Policy 5 - Landscape
- Policy 10 - Resources
- Policy 11 - Developer Contributions

## **7. OTHER MATERIAL CONSIDERATIONS**

### **7.1 Cairngorms National Park Planning Guidance**

- Policy 1 - New Housing Development
- Policy 2 - Supporting Economic Growth
- Policy 3 - Sustainable Design
- Policy 4 - Natural Heritage
- Policy 5 - Landscape
- Policy 10 - Resources
- Policy 11 - Developer Contributions

### **7.2 Highland Council Supplementary Planning Policy Guidance**

Access to Single Houses and Small Housing Developments (May 2011)

### **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.

### Determining Issues

- 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.

### Planning Considerations

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy;
  - b) siting and design of the house including impact on natural heritage interests;
  - c) status of legal agreement prohibiting any form of development;
  - d) any other material considerations.

### Development plan/other planning policy

- 8.4 The site lies just outwith the settlement boundary of Nethy Bridge. The proposal is for a house that the applicant intends to use for holiday let purposes.
- 8.5 Development Plan policy is supportive of proposals where new housing in the countryside adds to an existing housing group. In principle the development complies with the Development Plan.
- 8.6 Subject to the proposal having no significant detrimental impact on natural heritage interests the proposal would comply with the development plan.

### Siting, design and impact on natural heritage

- 8.7 The proposed house is single storey and of traditional design and would sit to the west of the existing cluster of five houses. In design terms it will make a positive contribution to the character of the existing group.
- 8.8 The site is within a larger area listed in the Ancient Woodland Inventory as Ancient semi-natural origin woodland and there is a presumption against development that would adversely affect it. The applicant has provided an arboricultural impact assessment that shows the extent of felling as well as tree protection measures to protect retained trees. The Council's Forestry Officer has confirmed that he is satisfied that the level of felling is low enough that the integrity of the woodland would not be adversely affected by the proposal and subject to the remaining woodland being protected and compensatory planting provided, would offer no objection to the development.
- 8.9 In response to concerns raised from third parties regarding the detrimental impact the proposal could have on other natural heritage interests, including protected species, the applicant commissioned reports on ecology and habitat. The ecology report presented the findings of two site visits carried out during April and May 2017 to check the site and surrounding area for the presence of birds and

mammals.

- 8.10 The report concluded that no Schedule 1, Red List or Cairngorms Nature Action Plan bird species were located and that there was no evidence of Capercaillie using the site. Dunnock (a singing bird identified within 50 metres of the proposed development on 21<sup>st</sup> April) is on the national Amber List but in Strathspey and the Highlands remains a common species and is classed as a "common breeder". The report advised that red squirrel is a UK Priority Species and is included in the Cairngorms Nature Action Plan. Evidence of recent feeding within 20 metres of the proposed development by Red Squirrel was found on 21<sup>st</sup> April.
- 8.11 The habitat assessment looked at the likely importance of the site for bees, wasps and ants of conservation interest. The report noted the presence of two ant nests in the vicinity of the site and some foraging ants on trees outwith the site boundary. No suitable nest areas for solitary bees or wasps were identified and there is no evidence of significant presence of forage for other specialist bees. The habitat assessment concluded that development may enhance the local habitat for some species as a result of the removal of shading trees, creation of edge habitat and appropriate planting around the house.

#### Section 75 Legal Agreement

- 8.12 The Agreement relates to an area of woodland on land that encompasses the application site and a small area to the north adjoining the public road and also a larger area of land lying to the south of the cluster of houses immediately to the east of the site, in total comprising some 3.6 hectares of woodland. The Agreement seeks to ensure that the whole area (with the exception of the site granted planning permission under reference BS/95/183) be retained in all time coming as natural woodland on which there will be no development as defined under Section 26 the Town and Country Planning (Scotland) Act 1997.
- 8.13 A committee report presented to the South Planning Applications Committee on 27 March 2012 in connection with application 12/00185/S75D which sought to discharge the Agreement states that it arose from concerns that followed development of the adjoining five houses and the fact that the applicant began in 1994 to submit a succession of applications for further housing development in the wooded area to the south of these houses. The 1994 applications that were refused attracted objections from Scottish Natural Heritage because of the damage that they would cause to the woodlands. The Agreement evidently gave SNH confidence that the important natural heritage interests would be adequately protected from development at a time when the development plan might have been seen to offer less than adequate protection to such interests.
- 8.14 The applicant has sought to discharge the agreement on a number of occasions over the years. The Council, when considering successive requests to set the Agreement aside, has consistently adopted the principle that a Planning decision – the grant of planning permission for housing development – must precede any change to the terms of the Agreement and has refused the requests accordingly. This was also the case in relation to the most recent application in 2013 which sought to modify the Agreement to enable three houses to be built.

### Other material considerations

8. The site access is via a private track from the B851 public road. The access bellmouth is surfaced and whilst it and the private track are not constructed to an adoptable standard, this is no longer a specific requirement for accesses serving four or more houses. It is also worth noting that the site access, whilst outwith the settlement boundary of Nethy Bridge, does lie within the 30mph speed limit zone.

There are no other material considerations.

### Non-material considerations

8. The applicant has stated that the intention is to use the proposed house for holiday let purposes. Due to the size of the proposed house, this can be carried out without requiring a separate planning permission. In terms of the Use Classes Order the property would still be classed as a house even if used permanently for short or long term holiday let purposes.

### Matters to be secured by Section 75 Agreement

8. Provided the applicant pays the required affordable housing contribution of £1,250 as required in terms of the development plan, there are no matters that require to be secured by Section 75 Agreement. However the applicant may wish to give consideration to applying to the Council to modify the existing Agreement in the event that members are minded to grant planning permission for the proposal.

## **9. CONCLUSION**

- 9.1 This development seeks planning permission for the erection of a house within woodland on the outskirts of Nethy Bridge and adjacent to a cluster of existing houses. The house design is in keeping with the character of the area and in policy terms it meets the requirements for the acceptable expansion of a rural buildings group.

9. Whilst located within an area listed in the Ancient Woodland Inventory as Ancient semi-natural origin woodland it is noted that the site itself contains predominately young self-seeded trees and it is considered that, subject to conditions appended to this report, development within this woodland can be carried out without having an adverse impact on the integrity of the woodland. In addition, it is not considered that the proposal will have an adverse impact on other natural heritage interests.

9. 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. IMPLICATIONS**

- 10.1 Resource: Not applicable

- 10.2 Legal: Not applicable

10.3 Community (Equality, Poverty and Rural): Not applicable

10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

## 11. RECOMMENDATION

**Action required before decision issued** N

Notification to Scottish Ministers N

Conclusion of Section 75 Agreement N

Revocation of previous permission N

**Subject to the above**, it is recommended that planning permission be **GRANTED** subject to the following conditions and reasons:

1. No development shall commence until a detailed specification for all proposed external materials and finishes (including trade names and samples where necessary) has been submitted to, and approved in writing by, the Planning Authority. Thereafter, development and work shall progress in accordance with these approved details.

**Reason:** In order to enable the planning authority to consider these matters in detail prior to the commencement of development, in the interests of amenity.

2. No development shall commence until full details of all surface water drainage provision within the application site (which should accord with the principles of Sustainable Urban Drainage Systems (SUDS) and be designed to the standards outlined in Sewers for Scotland Second Edition, or any superseding guidance prevailing at the time) have been submitted to, and approved in writing by, the Planning Authority. Thereafter, only the approved details shall be implemented and all surface water drainage provision shall be completed prior to the first occupation of the development

**Reason:** In order to ensure that the surface water drainage infrastructure is provided timeously, in the interests of public health and environmental protection.

3. No development shall commence until full details of the foul drainage infrastructure has been submitted, to, and approved in writing by, the Planning Authority. Thereafter, development shall progress in accordance with the approved details and shall be completed prior to the first occupation of the development.

**Reason:** In order to ensure that the foul drainage infrastructure is provided timeously, in the interests of public health and environmental protection.

4. No development shall commence until a compensatory Tree Planting Plan and maintenance programme has been submitted to, and approved in writing by, the



planning Authority. Thereafter, the approved Tree Planting Plan shall be implemented in full during the first planting season following commencement of development or as otherwise agreed in writing by the Planning Authority.

**Reason:** In the interests of amenity and to preserve the integrity of the existing woodland.

5. Prior to any site excavation or groundworks, all retained trees are to be protected against construction damage using protective barriers located as per Figure 6 of the Arboricultural Impact Assessment and in accordance with BS5837:2012 Trees in Relation to Design, Demolition & Construction. Barriers are to remain in place throughout the construction period and must not be moved or removed without the prior written approval of the Planning Authority.

**Reason:** To ensure the protection of retained trees throughout the construction period, in the interests of amenity.

6. The house shall not be occupied until the provision for the parking and turning of two cars within the curtilage of the house is made and shall be maintained at all times thereafter.

**Reason:** To ensure that an adequate level of off-street parking is provided timeously in the interests of road safety.

7. The house shall not be occupied until full details for the storage and collection of refuse and recycling bins has been submitted to, and approved in writing by, the Planning Authority. Thereafter, bin storage and collection shall be carried out in accordance with those approved details.

**Reason:** To ensure that suitable provision is made for the storage and collection of waste and recycling bins in the interests of amenity and environmental protection.

## **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**

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.

### **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).

### **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](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

### **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.

### **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.

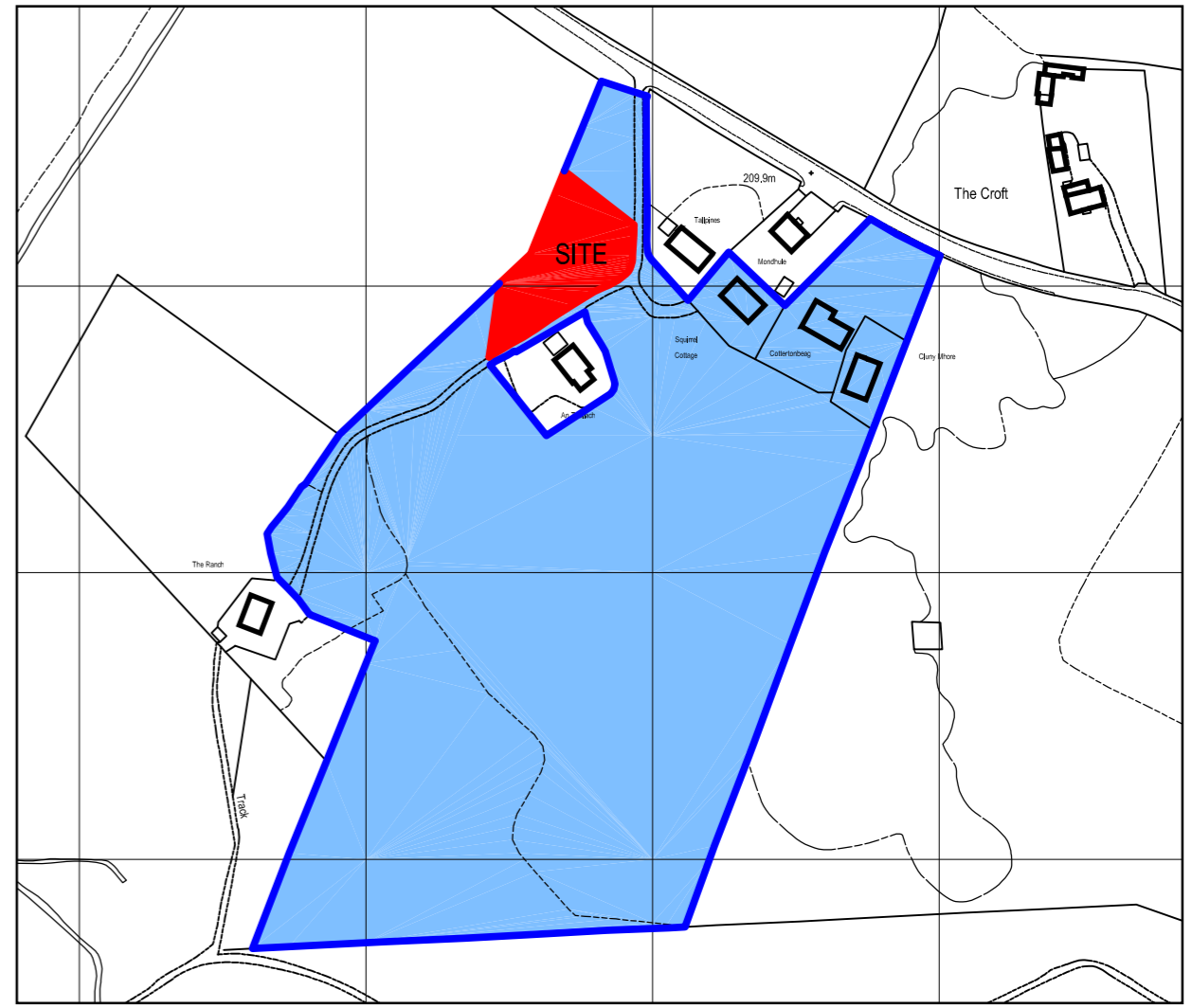
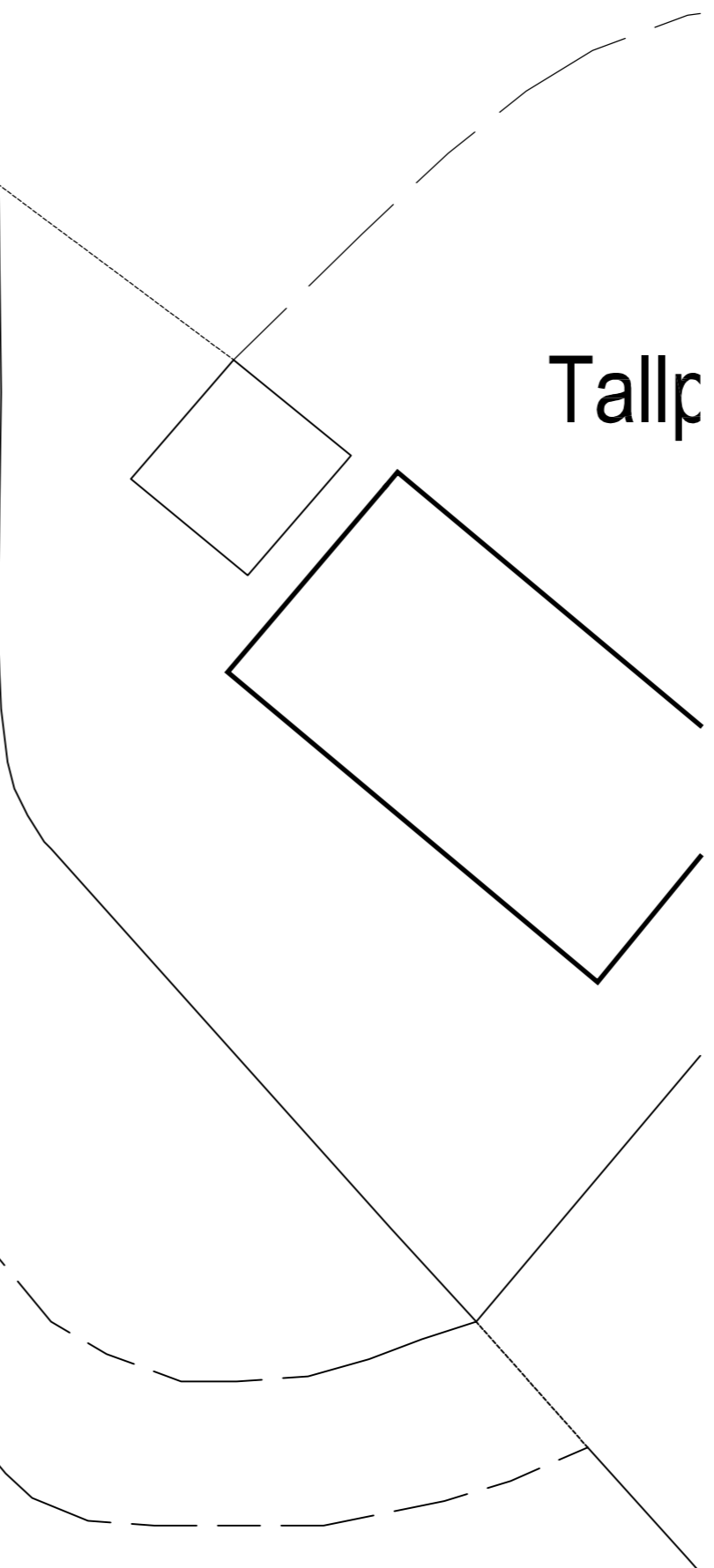
If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits.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

Signature: Nicola Drummond  
Designation: Area Planning Manager – South/Major Developments  
Author: John Kelly (01463 255199)  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 – Site/Location Plan  
Plan 2 – Elevation/Floor Plan



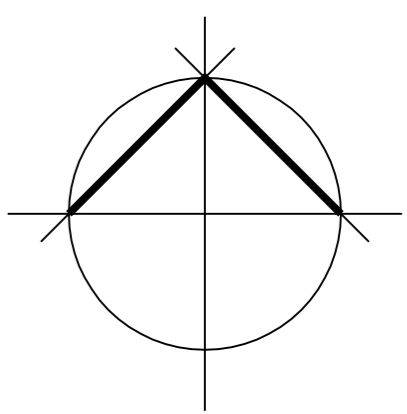
site plan.

Wheeled bins to be stored at existing bin collection area located at the junction of the existing access track with the B970 public road.

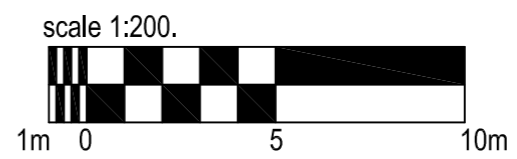


location plan. scale 1:2500.

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Squirrel  
Cottage

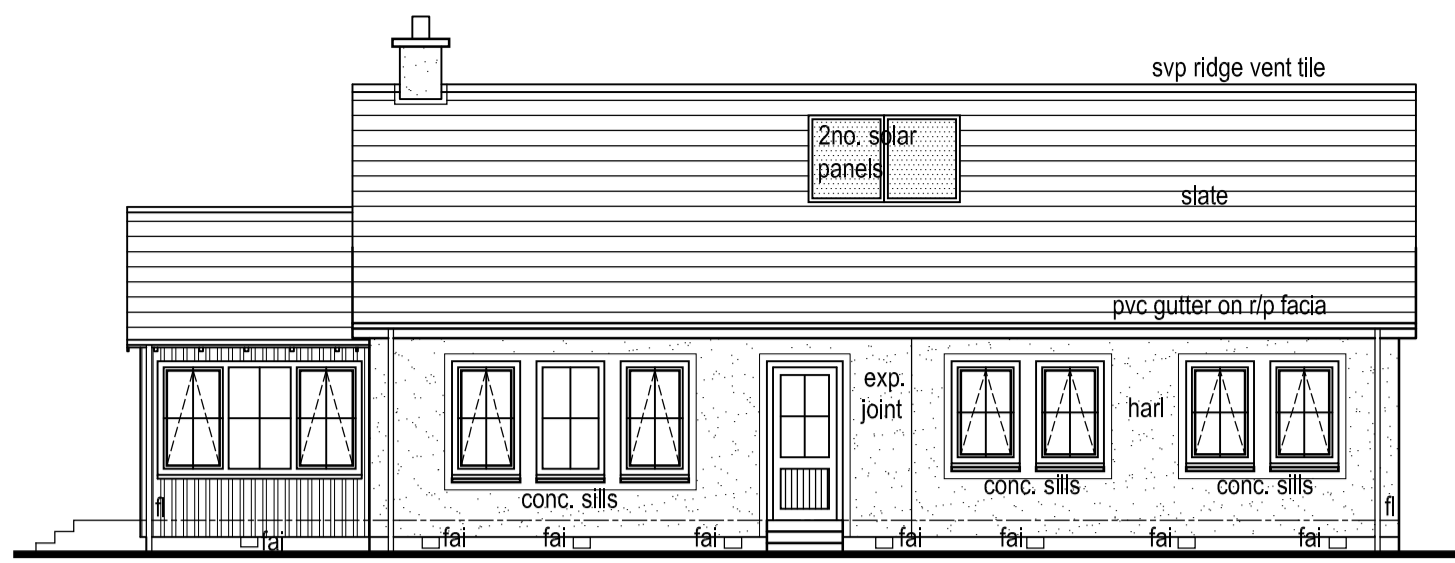


Joiners & Building contractors Tel. (01479) 872818  
 Fax (01479) 873052  
 info@awlaing.co.uk  
 78 High Street, Grantown-on-Spey, PH26 3EL

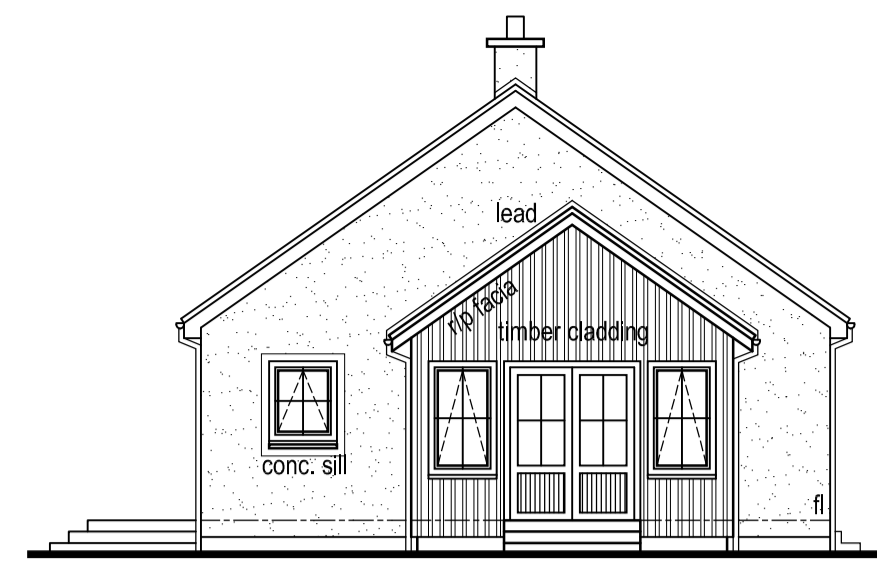
**CLIENT** Mr Hamish Jack.  
**PROJECT** New house.  
**ADDRESS** Land at Mondhuie, Nethybridge.  
**DRAWING** Site & location plans.  
**JOB NO.** 4516. **DRG. NO.** 02.  
**SCALE** 1:200, 1:2500. **DATE** December 2016.

**REVISION NO.**

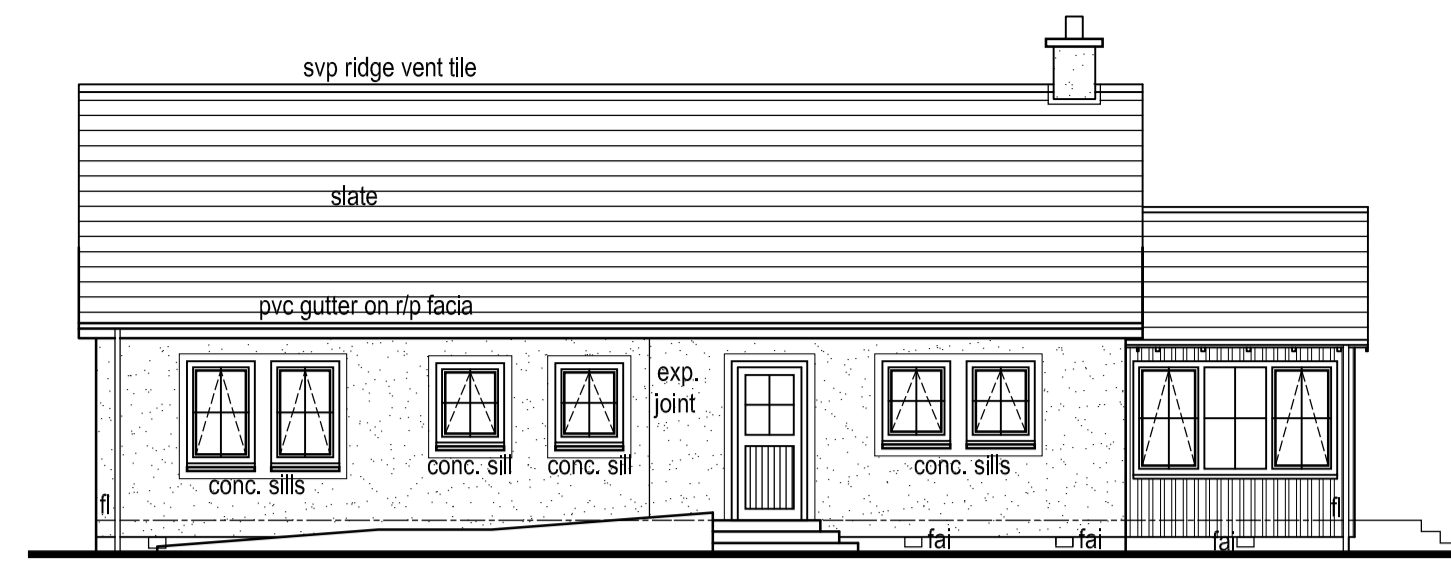

Written dimensions to be taken in all cases.  
 Any discrepancies to be reported to the Client/Architect as soon as possible.  
 Contractor to check all sizes on site.  
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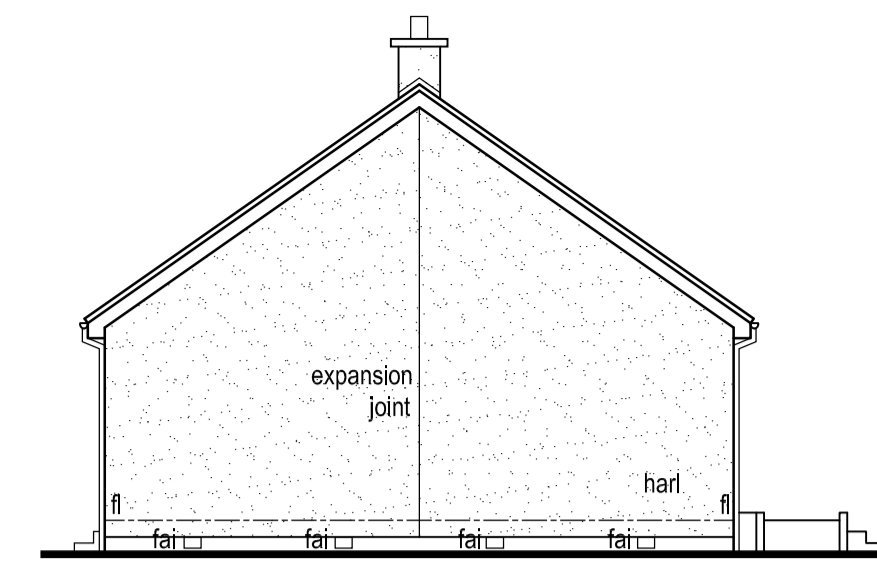
front elevation.



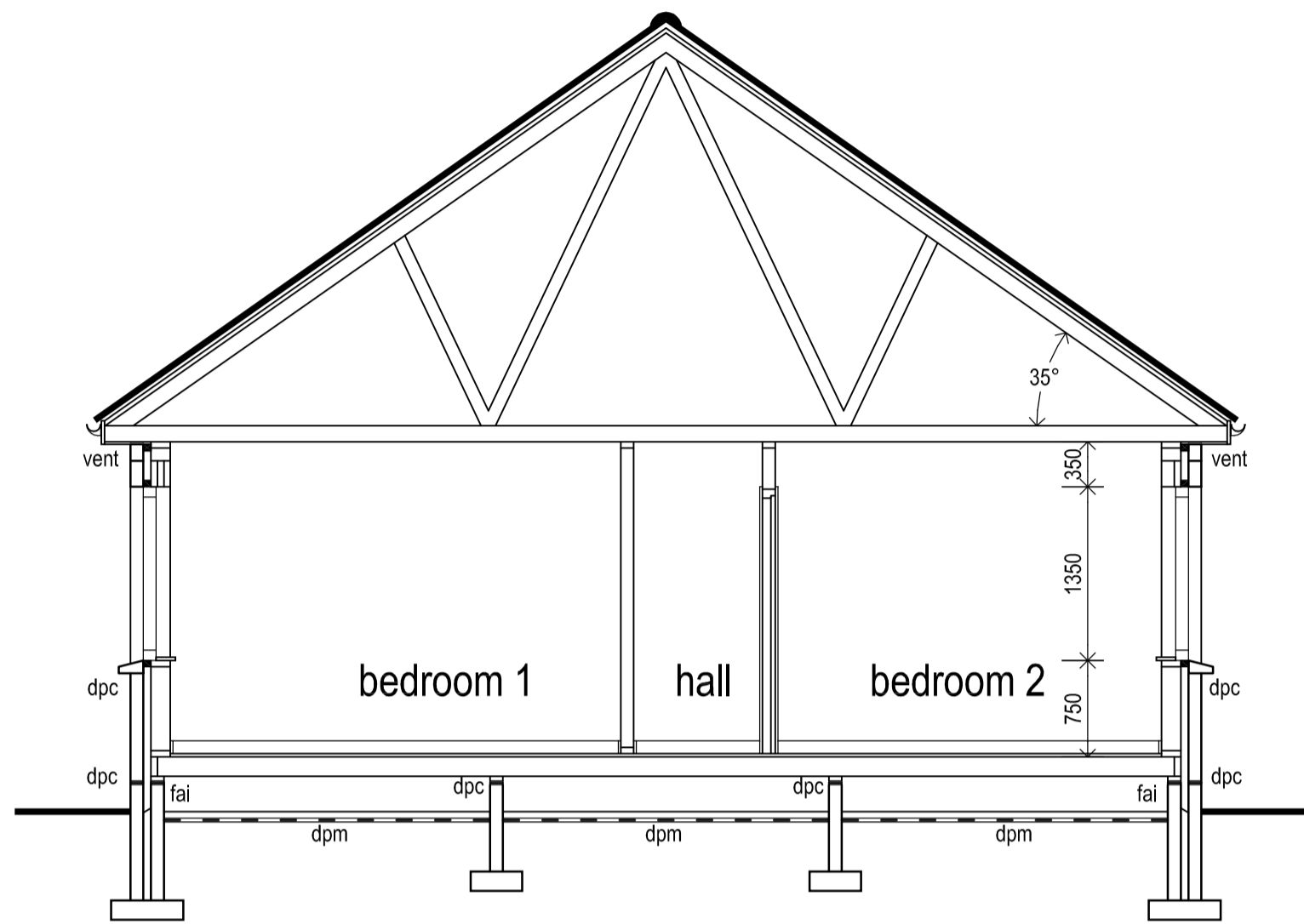
side elevation.



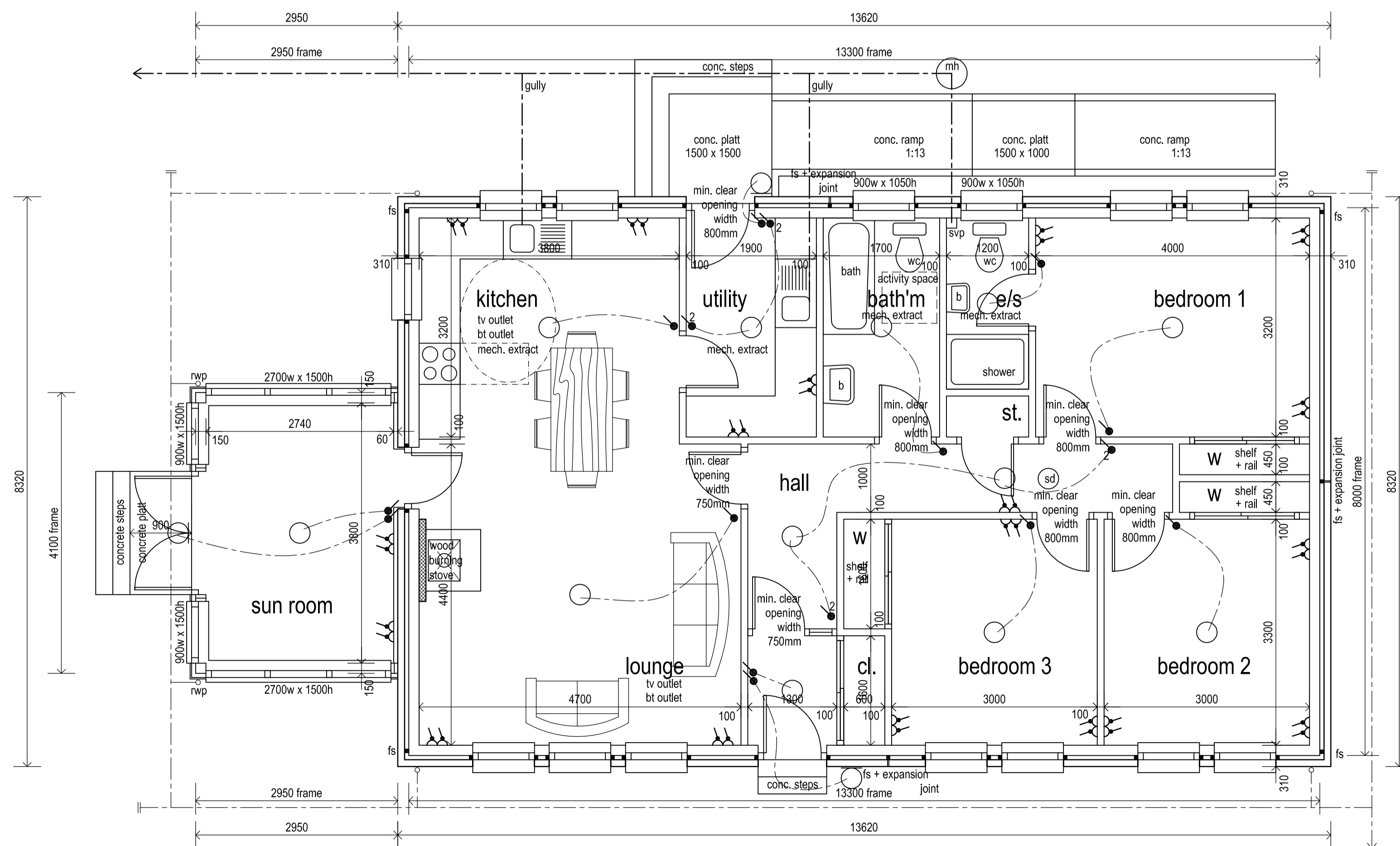
rear elevation.



side elevation.



section.



floor plan.

FLOOR AREA = 112m2



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 New house. Fax (01479) 873052  
 Land at Mondhuie, Nethybridge. info@awlaing.co.uk  
 78 High Street, Grantown-on-Spey, PH26 3EL

CLIENT Mr Hamish Jack.  
 PROJECT New house.  
 ADDRESS Land at Mondhuie, Nethybridge.  
 DRAWING Plan, section & elevations.  
 JOB NO. 4516. DRG. NO. 01.  
 SCALE 1:50, 1:100. DATE December 2016.

REVISION NO.	

Written dimensions to be taken in all cases.  
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 Contractor to check all sizes on site.  
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