

Agenda item	6.9
Report no	PLN/039/18

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 5 June 2018

Report Title: 18/00606/S42 : Ms Maggie Williams
Creagan Ban, 4 Ellishadder, Culnacnock, Portree

Report By: Area Planning Manager – North

1. Purpose/Executive Summary

Description: Application under Section 42 for the removal of Condition 1 for the temporary use of the building from planning permission 15/00113/FUL

Ward: Ward 10 - Eilean A' Cheò

Development category: Local Development

Reason referred to Committee: Referred to Committee due to number of objections

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.

2. Recommendation

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

3. PROPOSED DEVELOPMENT

- 3.1 The application is submitted under Section 42 to remove Condition 1 from planning consent 15/00113/FUL. The applicant is requesting that the temporary permission via Condition 1 to use the lower part of their house as a café/gallery is removed to allow the business to continue while the purpose built café/studio granted permission via application 10/04428/FUL, is completed.
- 3.2 Services already on site.
- 3.3 No pre-application discussions or consultation took place.
- 3.4 Supporting Information: Supporting letter from applicant outlining reasons for requesting the removal of condition 1 and issues regarding access and car parking.
- 3.5 Variations: None

4. SITE DESCRIPTION

- 4.1 This proposal is located on the northern side of the public road at Ellishadder. The site is approximately 460 metres from the junction of the township road with the A855, which runs up the eastern side of the Trotternish peninsula. The site comprises a house and a detached outbuilding to the west of the house. The outbuilding will accommodate a studio/café. Work started on this in 2012 and it is at wind and watertight stage, but due to financial constraints the development has not yet been completed.

5. PLANNING HISTORY

- | | | | |
|-----|------------|---|----------|
| 5.1 | 22.12.2010 | 10/04428/FUL: Erection of studio/café and parking | Approved |
| 5.2 | 16.01.2012 | 11/04460/FUL: Temporary change of use from dwelling house to café with living accommodation | Approved |
| 5.3 | 18.03.2015 | 15/00113/FUL: Temporary change of use from dwelling house to café/gallery with living accommodation (renewal of 11/04460/FUL) | Approved |

6. PUBLIC PARTICIPATION

- 6.1 Advertised: Unknown Neighbour 14 days

Date Advertised: 09.03.2018

Representation deadline: 23.03.2018

Timeous representations: 44 Reps (43 households): 13 Objecting; 31 Supporting

Late representations: 0

6.2 Material considerations raised are summarised as follows:

- a) Inadequate car parking and turning areas
- b) Inadequate disabled access and facilities
- c) Excess speed of traffic
- d) Important facility for tourists and locals
- e) Rural local business

6.3 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.

7. CONSULTATIONS

7.1 None.

8. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

8.1 Highland Wide Local Development Plan 2012

28 - Sustainable Design
29 - Design Quality and Place-making
34 - Settlement Development Areas
43 - Tourism

8.2 West Highland and Islands Local Plan (as continued in force 2012)

Located with Ellishadder Settlement Development Area

8.3 West Highland and Islands Local Development Proposed Plan 2017

No specific policies apply.

9. OTHER MATERIAL CONSIDERATIONS

9.1 Highland Council Supplementary Planning Policy Guidance

Sustainable Design Guide (Jan 2013)

9.2 Scottish Government Planning Policy and Guidance

Not applicable

10. PLANNING APPRAISAL

10.1 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

- 10.2 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

- 10.3 The key considerations in this case are:
- a) Compliance with the development plan and other planning policy
 - b) Implication of the proposal
 - c) Refresh of planning conditions
 - d) Any other material considerations.

Development plan/other planning policy

- 10.4 Development plan/other planning policy
- Permission was granted in 2010 for the erection of a studio/café and parking adjacent to the existing residential house at 4 Ellishadder. In 2012 permission was granted for the temporary change of use of the ground floor of the dwelling house to a café and this was renewed for another three years in 2015. The application in 2015 (15/00113/FUL) included condition 1, which stated that permission was granted for a temporary period and would cease to have effect on 31st March 2018.
- The key issue is whether the removal of this condition 1 would result in the development being incompatible with the Development Plan. The principle of the development has been established through the previous permissions. Development of the separate building for an art gallery/café has commenced. This is an application to remove a particular condition.

Implication of the proposal

- 10.5 The application seeks to remove condition 1 that limits the use of the ground floor of the house being used as a café/gallery for 3 years (cessation date 31.03.2018). The issue is therefore whether the continued use of the temporary facilities is appropriate.

Refresh of planning conditions

- 10.6 Section 42 applications allow for a review of all planning conditions attached to the initial permission. In this regard no recommendation is made to amend the other conditions as attached by the original permission. Condition 3 of planning permission 15/00113/FUL, required the access to be upgraded; the access and bell mouth were upgraded and tarred in 2017, therefore it is not proposed to carry this condition forward.

Other material considerations

- 10.7 Inadequate car parking and turning areas were raised by a number of objectors. The consented stand alone building for a café/gallery is approximately 32m². In terms of car parking there is currently a total of 8 spaces located within the site. Six are for customers (2 being disabled spaces) and two for the owners. This level of parking provision is considered acceptable and is in line with the Council's parking guidelines of 1 space per 5m² of floor space; the publically accessible floor area of the lower portion of the house currently being used on a temporary basis is 20m². It is considered appropriate to continue to use a condition which states that once the use of the purpose built café/gallery is commenced then the use of the lower part of the house as a gallery/café should cease.

Volume of traffic and the excess speed of traffic were also raised in several objections. Whilst it is accepted that a facility such as a café/gallery will attract additional people to travel along the single track road, they are beyond the control of the applicant.

Non-material considerations

- 10.8 The issue of food quality is not a material planning consideration.

Matters to be secured by Section 75 Agreement

- 10.9 a) None

11. CONCLUSION

- 11.1 In determining a Section 42 application, Committee may consider only the issue of conditions to be attached to any resulting permission; in this case the key issue is whether the removal of condition 1 would result in the development being incompatible with the Development Plan. The principle of the development has been established through the previous permissions. There are no policy provisions which would advise against this Section 42 application.
- 11.2 The applicant is requesting that the temporary permission via condition 1 is removed to allow the business to continue while the studio/café is completed. Once this development is completed then the business will be moved from inside the house to the purpose built building and the house will revert back to its original residential use.
- 11.3 However, in order to protect the wider amenity of the area it is considered appropriate to use a planning condition which states that once the use of the purpose built café/gallery is commenced then the use of the lower part of the house as a café/gallery ceases.
- 11.4 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.

12. IMPLICATIONS

- 12.1 Resource: Not applicable
- 12.2 Legal: Not applicable
- 12.3 Community (Equality, Poverty and Rural): Not applicable
- 12.4 Climate Change/Carbon Clever: Not applicable
- 12.5 Risk: Not applicable
- 12.6 Gaelic: Not applicable

13. RECOMMENDATION

Action required before decision issued N

Subject to the above, it is recommended that planning permission be

Granted, subject to the following **Conditions and Reasons**

1. This permission is granted for a mixed use as a residential/café/gallery under the terms of the Town and Country Planning (Use Classes) (Scotland) Order 1997 and the General Permitted Development Order 1992. The café/gallery element of this use shall not be carried out other than within the 'living room' of the building with further gallery use within the 'hallway' as shown on the approved plans for planning permission reference number 15/00113/FUL. For the avoidance of doubt this permission does not include the sale of hot food and drinks for consumption off the premises.

Reason: In the interests of amenity and to clarify the development approved.

2. The café/gallery use hereby approved shall not take place at any time when the building approved under planning permission 10/04428/FUL is being used as a café/gallery.

Reason: To avoid an overdevelopment of the site, in recognition of the lack of parking and the impact upon the highway network.

REASON FOR DECISION

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.

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 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

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 (paragraph 259), 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.

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.

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: Julie-Ann Bain
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 - Location Plan
Plan 2 - Location Plan JG1245 REV 01
Plan 3 - Site Layout Plan JG1246 REV01
Plan 4 - Floor Plan SE5-04-0306-A01 REV B



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Comhairle na Gàidhealtachd

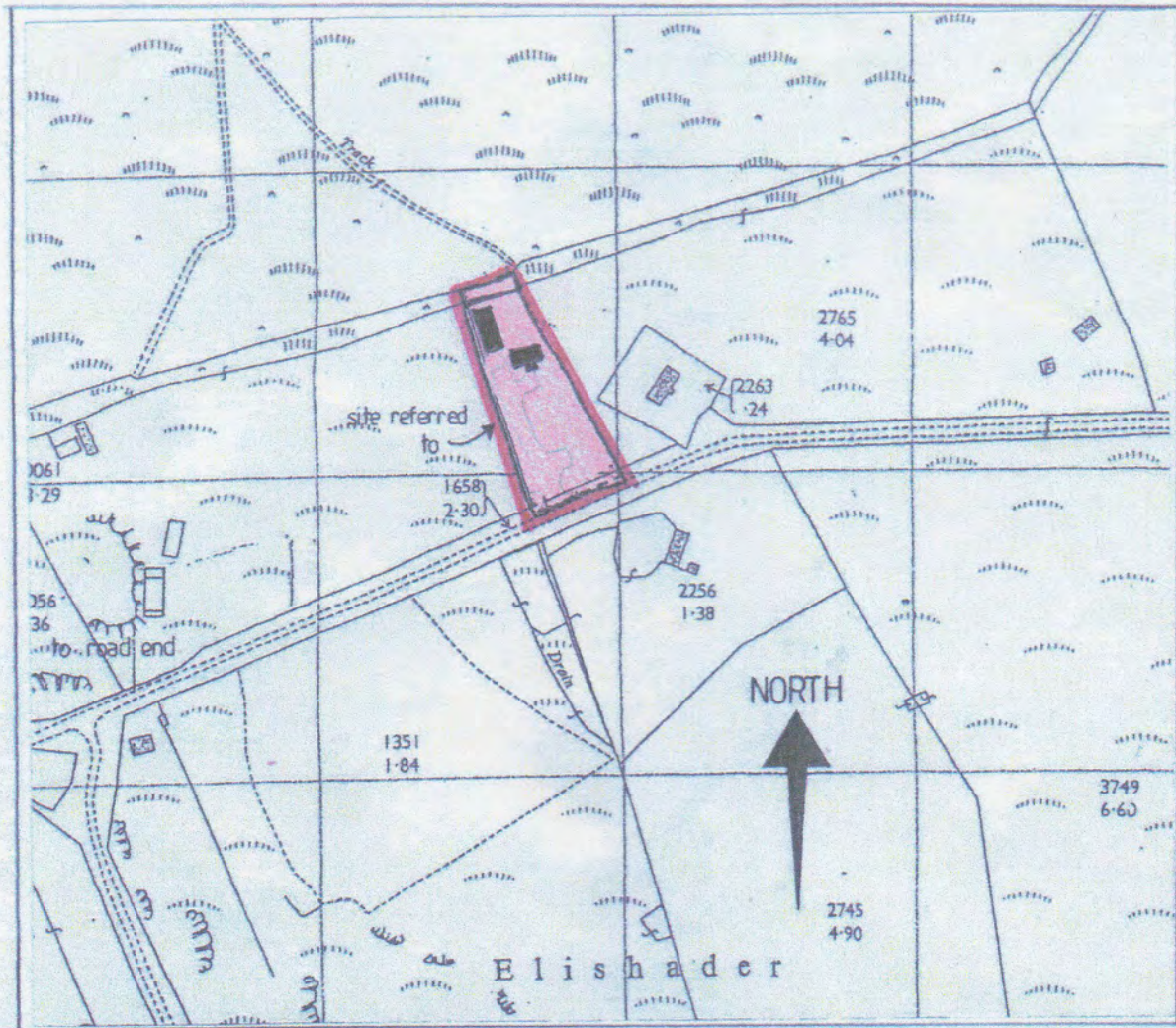
Planning and Development Service

Location Plan
18/00606/S42

Application under section 42 for the removal of condition 1 for the temporary use of the building from planning permission 15/00113/FUL

June 2018

Scale:

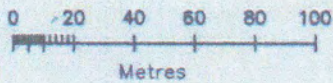


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Location Plan 1:2500

Red line indicates extent of planning development

15/00113/FUL




Jock Gordon BA (Hons)
Design & Planning
 30 Bomeskitaig Kilmuir
 Isle of Skye IV51 9YS
 01470 552 392 07799 210 799
 jockgordon30@btinternet.com

Drawing Status: Pre Planning Permission
do not use for construction

Title: Location Plan		drg. No. JG1245
Project: Proposed Studio / Cafe at 4 Ellishader, Staffin, Isle of Skye		
Clients: Mr & Mrs Quigley		Scale: 1:2500 on A4
Planning Ref:		Date: 26.10.2010
Rev: 01	Drawn: J Gordon	



Plans, drawings and other material submitted to the local authority are protected by the Copyright, Designs and Patents Act 1988 (section 47).
 You may only use material which is downloaded and/or printed for consultation purposes, to compare current applications with previous schemes and to check whether developments have been completed in accordance with the approved plans.
 Further copies must not be made without the prior permission of the copyright owner.

The Highland Council
 Planning & Development
 APPROVED - 18th January 2012

RECEIVED 17 DEC 2011



3 No. access ramps to be 5.0m long at max 1:15 gradient, (333mm max rise/ramp)
 Landings between each ramp to be 1200 wide x 1500 long, middle landing to be 1800 wide to allow passing.

Note;
 external steps to be min. 250 going and max. 170 rise.
 Ramp min 1:15 gradient for max. 5.0m length. Ramp & platt to have 100mm upstand to protect exposed edge, where edge drop is greater than 600mm, a balustrade is to be fitted.

Note;
 applicant to ensure that all Planning Conditions are addressed and/or discharged in accordance with Planning Permissions relating to this development. Failure to do so will invalidate the Planning Permission.

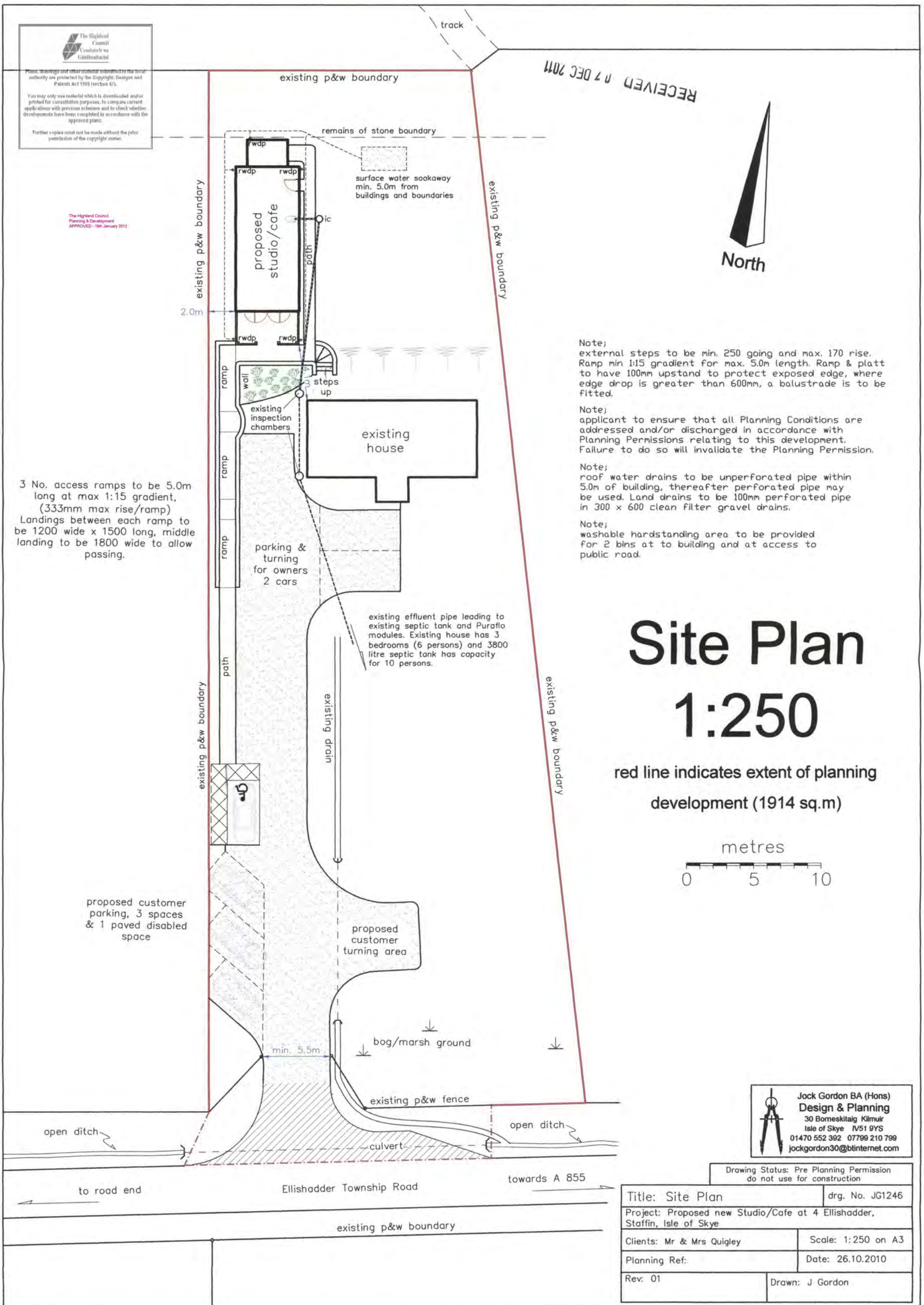
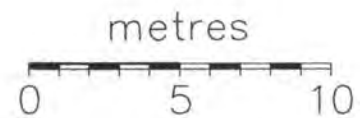
Note;
 roof water drains to be unperforated pipe within 5.0m of building, thereafter perforated pipe may be used. Land drains to be 100mm perforated pipe in 300 x 600 clean filter gravel drains.

Note;
 washable hardstanding area to be provided for 2 bins at to building and at access to public road.

Site Plan

1:250

red line indicates extent of planning development (1914 sq.m)



Jock Gordon BA (Hons)
Design & Planning
 30 Bomeskitaig Kilmuir
 Isle of Skye IV51 9YS
 01470 552 392 07799 210 799
 jockgordon30@btinternet.com

Drawing Status: Pre Planning Permission do not use for construction

Title: Site Plan	drg. No. JG1246
Project: Proposed new Studio/Cafe at 4 Ellishadder, Staffin, Isle of Skye	
Clients: Mr & Mrs Quigley	Scale: 1:250 on A3
Planning Ref:	Date: 26.10.2010
Rev: 01	Drawn: J Gordon

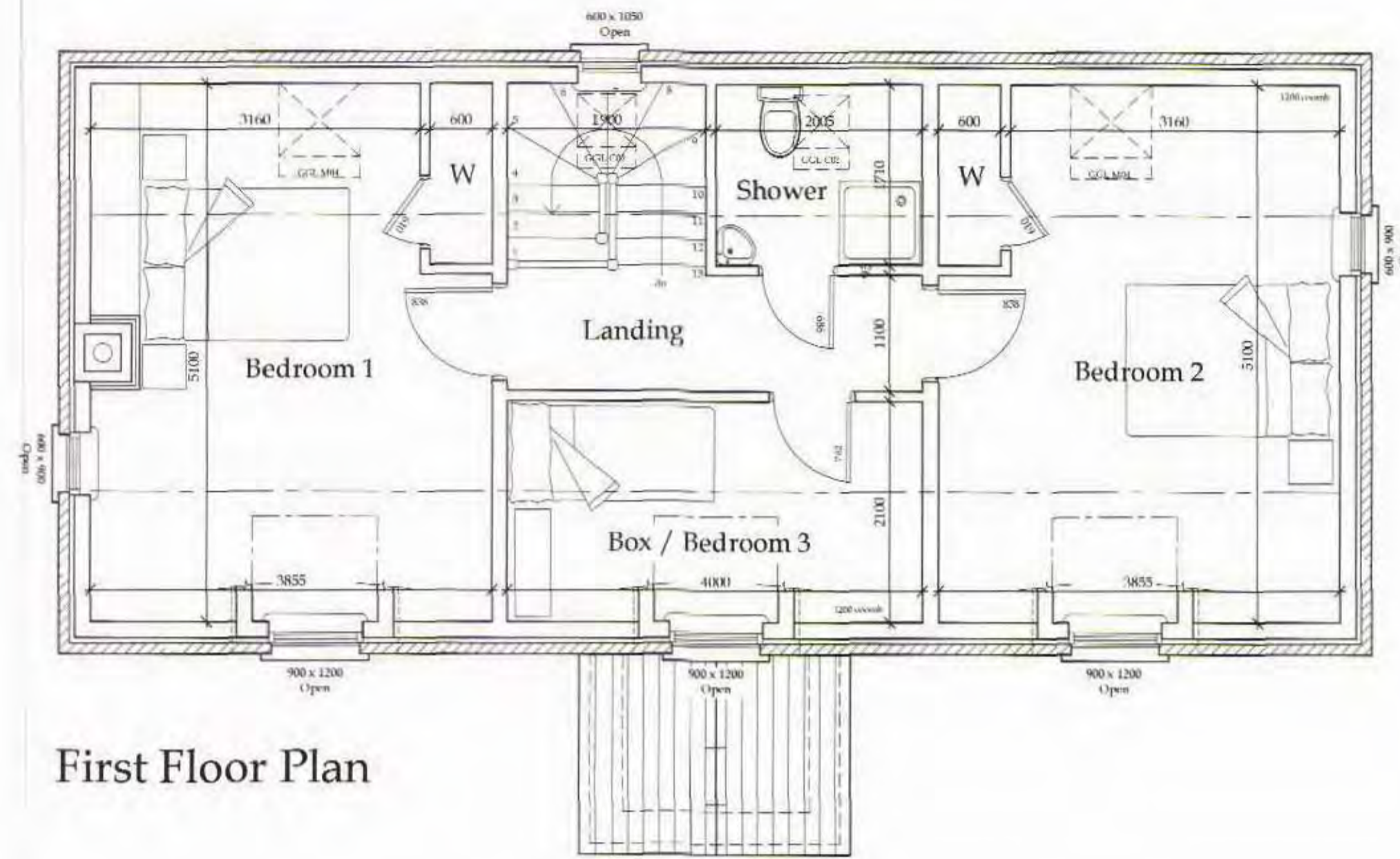
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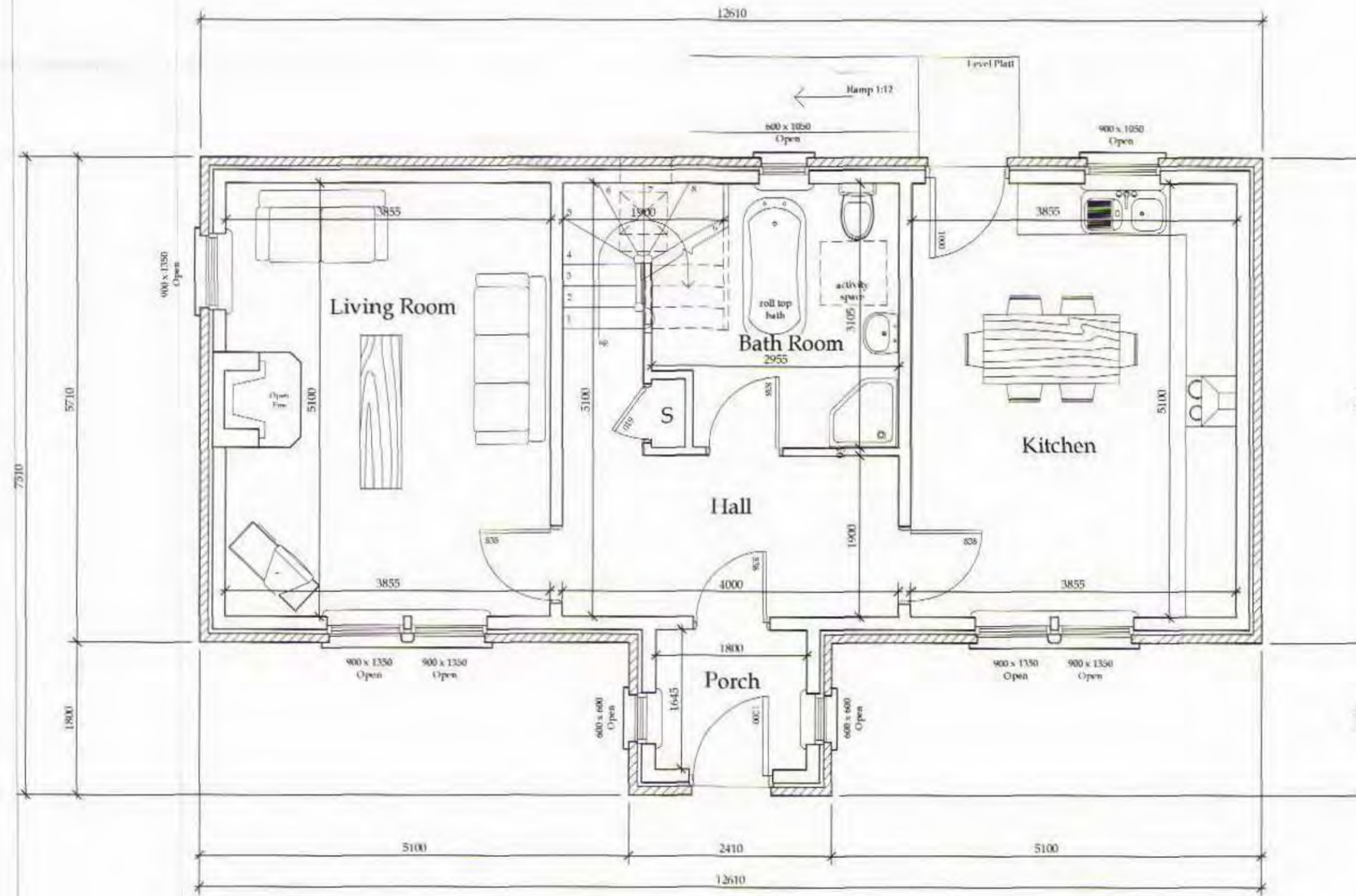
Further copies must not be made without the prior permission of the copyright owner.

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 Planning & Development
 APPROVED - 16th January 2012



First Floor Plan

TO BE KEPT
 AS LIVING SPACE,
 BEDROOM 1 to
 become LIVING ROOM



Ground Floor Plan

LIVING ROOM -
 to be CAFE AREA
 + ART DISPLAY
 HALL -
 to be ART DISPLAY/
 SALES AREA

DOWNSTAIRS BATH
 ROOM -
 for PUBLIC USE

KITCHEN -
 to be FOOD/
 DRINK PREPARATION
 AREA

RECEIVED 07 DEC 2011

Signed:
 Date:
 DRAWING STATUS

Planning

Rev Date Revision
 B 06/01/06 Planning Drawings Issued
 A 10/01/06 Draft Drawings Issued

Client: **Stuart Quigley & Maggie Williams**
 Project: **No. 4 Ellishadder Staffin Isle of Skye**

Drawing: **Ground & First Floor Plans**

Scale: 1:50 Date: 06/04/06
 Drawn: Eb, Bw Eng No: SE5/04/0306/A01 Rev B

