

Agenda Item	6.1
Report No	PLN/032/19

THE HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 9 April 2019

Report Title: 18/01886/PIP: Mr Donald MacLeod
Land to east of 12 Strath, Gairloch

Report By: Acting Head of Development Management – Highland

Purpose/Executive Summary

Description: **Erection of house**

Ward: 5 – Wester Ross, Strathpeffer and Lochalsh

Development category: Local Development

Reason referred to Committee: Managers discretion

All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan and is not considered acceptable in terms of all other applicable material considerations.

Recommendation

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

1. PROPOSED DEVELOPMENT

1.1 The application seeks planning permission in principle for a house, formation of a new access point with the public road and private foul drainage.

1.2 Variations: An additional plan was submitted showing the existing access with the public road blocked off and a new access with improved geometry and visibility formed to the south (drawing ref 2018/101/2).

2. SITE DESCRIPTION

2.1 The site is a relatively level parcel of land located on the eastern side of Mihol Road within the Strath area of Gairloch. The site is accessed via a private track leading from the linear north/south stretch of the adopted Mihol road. The house plot is located on the north section of the track, and private foul drainage on the south side. Four other houses are served by the track, two to the west of the site, one to the north-east and one to the south-east.

3. PLANNING HISTORY

The following history is relevant to the applicant's croft as a whole.

House plot **not yet developed** located approx. 40m to the north-west and **de-crofted in 2016**;

- 18/03676/PIP - Erection of house and access track improvements (Renewal of planning permission 15/00519/PIP) – Permitted 11.12.2018.
- 15/00519/PIP - Erection of house (resubmission of 14/01060/PIP) – Permitted 11.08.2015
- 14/01060/PIP - Erection of house - site located 40m to the north-west of the proposed site – Withdrawn 04.04.2014

House **now built** located immediately to the west of proposed site and **de-crofted 2004 with additional garden area de-crofted in 2017**.

- 06/01109/FULRC - Erection of house – Permitted 23.01.2007
- 04/00504/OUTRC – Erection of house – Permitted 30.08.2004

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour

Date Advertised: 18.05.2018 and 18.01.2019 (re-advertisement)

Representation deadline: 01.06.2018 and 01.02.2019 (re-advertisement)

Timeous representations: 4

Late representations: 1

4.2 Material considerations raised are summarised as follows:

- a) Proposal will result in loss of good agricultural land

- b) Existing junction with the public road is sub-standard, proposal will place additional strain on the track and add to the need for bin storage.
- c) Development is out of keeping with the settlement pattern.
- d) Existing drainage infrastructure is inadequate to deal with proposal and site will result in problems with rainwater run-off.
- e) Revised access arrangements and OS marked boulder at the existing access are not within the applicants control.
- f) Proposal will have a detrimental impact upon the amenity of neighbouring properties.
- g) Loss of habitat for local wildlife.

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.

5. CONSULTATIONS

5.1 **Transport Planning** - Proposed access arrangements acceptable and bin storage is provided outwith visibility splays. While visibility to the north is still below the standard 90m, the small number of residences and the restricted speeds of vehicles approaching the access is taken into consideration.

5.2 **Development Plans** - Where policies of the Development Plan are relevant to the determination of an application they should be considered equally. Whilst some policies become more relevant to the determination of an application no one policy is likely to be able to supersede or override any other. While some policies signpost to others that may be relevant, this need not be relied upon for identification or consideration of relevant policy issues.

Policy 34 of the HwLDP states that: "We will support proposals within Settlement Development Areas (as defined in the existing local plans and future area local development plans) if they meet the requirements of Policy 28: Sustainable Design and all other relevant policies of the plan."

Accordingly support for developments within SDA boundaries is qualified and equal consideration needs to be given to Policy 47.

Where crofting land is found within SDA boundaries Policy 47 is considered to be a relevant policy for the consideration of the proposals. As such proposals for development of crofting land must meet the criteria identified within Policy 47 before support can be given by Policy 34, i.e. if support cannot be given for proposals under Policy 47 then support cannot be given under Policy 34.

For the avoidance of doubt Policy 34 does not 'outrank' or take precedence over Policy 34 or any other policy of the Plan. Proposals must meet the requirements of all relevant policies in the Plan for support to be given.

5.3 **SEPA** - Request condition ensuring the development will be connected to the public sewer when this becomes available.

5.4 **Crofting Commission** - Commission can confirm that the land in question pertains to croft N° 12 Strath which is recorded on our Register of Crofts and also the Registers of Scotland's Crofting Register, where the agreed boundary of the croft can be ascertained.

Having reviewed our records for croft N° 12 Strath, it is confirmed that three areas totalling 0.255 ha have already been removed for the purposes of development through the de-crofting process reducing the total in-bye land down to 1.24 hectares.

Year	Area (Ha)	Reason
2004	0.09	To provide a house site.
2016	0.15	To provide a house site.
2017	0.015	Additional garden area for the 0.09 ha plot.

The Commission has considered the above planning application from a crofting perspective.

In terms of agricultural land classification, the in-bye croft land is classified as category 4.2: land capable of producing a narrow range of crops but is primarily used as grassland. Land of such quality on the West Coast of Scotland is confined to relatively small pockets and so is regarded by the Commission as being a valuable and finite resource, which plays an important role within the crofting system. In addition, the application concerns good quality land within the croft.

The Commission cannot support this planning application due to the following specific concerns, namely:

- there is no apparent operational need for such a development on the croft.
- the croft is of limited area and composed of high-quality croft land.
- the location of the development would appear to be sited on better quality in-bye land that is considered to be capable of cultivation.

We would request that the planning Department consider the implications of this application from the perspective of Policy 47 of the current Highland-wide Local Development Plan which seeks to safeguard in-bye croft land such as this.

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

34 - Settlement Development Areas

47 – Safeguarding In-bye/AppORTioned Croft land
57 - Natural, Built and Cultural Heritage

6.2 **Wester Ross Local Plan (as continued in force 2012)**

Within Gairloch settlement boundary

6.3 **West Highland and Islands Proposed Local Development Plan (As Submitted to Scottish Ministers 2018)**

Within Gairloch settlement boundary

6.4 **Highland Council Supplementary Planning Policy Guidance**

Access to Single Houses and Small Housing Developments (May 2011)
Sustainable Design Guide (Jan 2013)

7. **OTHER MATERIAL POLICY CONSIDERATIONS**

7.1 **Scottish Government Planning Policy and Guidance**

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 principal determining planning policies of the Highland-wide Local Development Plan

Compliance with the principal determining planning policies of the Highland-wide Local Development Plan

8.4 The principal determining planning policies of the HwLDP are as follows;

- Policy 28 (Sustainable Design)
- Policy 34 (Settlement Development Areas)
- Policy 47 (Safeguarding Inbye/AppORTioned Croftland)
- Policy 57 (natural, Built and Cultural Heritage)

8.5 Policy 28 (Sustainable Design) of the HwLDP aims to ensure that development is socially, economically and environmentally sustainable. The policy lists criterion against which development shall be assessed. Of particular relevance to this proposal, the policy states that developments will be assessed on the extent to

which they are compatible with public service provision, impact on individual and community residential amenity and demonstrate sensitive siting and high quality design.

- 8.6 Policy 34 (Settlement Development Areas) of the HwLDP highlights the importance of supporting existing communities and identifies SDA's as the preferred location for most types of development, as this makes the best use of infrastructure, services and protects the character of surrounding countryside. Policy 34 states that proposals within Settlement Development Areas will be supported if they meet the requirements of policy 28 (Sustainable Design), and are judged compatible with the existing pattern of development and landscape character, conform with existing and approved adjacent uses and have no negative effect on any heritage features.
- 8.7 Policy 47 (Safeguarding Inbye/AppORTioned Croftland) aims to protect croft land and crofting as a core component of life in the Highlands. This policy aims to secure development which avoids the loss of better parts of a croft in terms of its agricultural value and do not impede the use of the remaining croft land. If proposals do not meet these aforementioned criteria, then they will only be deemed acceptable where there exists a proven wider community interest and other policy considerations such as accordance with settlement pattern or impact upon natural, built or cultural heritage features can be demonstrated.
- 8.8 Policy 57 (Natural, Built and Cultural Heritage) of the HwLDP is relevant to this application as it is located with Wester Ross National Scenic Area. The policy states that developments will only be allowed if they do not compromise the feature of national importance.
- 8.9 The proposal is considered to accord with some aspects of the principal determining Development Plan policy noted above such as conformity with development pattern, however, it is considered to fail in meeting policy 47 which seeks to protect croft land and crofting as a core component of life in the Highlands.
- 8.10 The site is located within the Settlement Development Area for Gairloch as defined within the Wester Ross Local Plan and the West Highland and Islands Proposed Local Development Plan. The settlement pattern to the north of the B8021 comprises of linear spurs rising northwards from the coastline below. The proposal is located off Mihol Road, which is one of these linear north/south spurs. Both traditional and modern housing exist on either side of this road in a variety of arrangements. There is no uniform development pattern off Mihol Road with examples of tighter clusters, stand alone dwellings and looser groupings of properties.
- 8.11 The proposed site is located close at the north limit of Mihol Road and along an existing private road stretching east. There are currently five other properties within close proximity to the site and an undeveloped house plot to the north-west. Two of the five existing properties are grouped closely together to the west, adjacent to Mihol Road. One is located immediately adjacent to the proposed site. The other two are located off the end of the track to the north and south. The plot will infill an area of land that currently provides separation between the plot to the west and the other neighbouring properties to the east. The result of permitting this plot will be

tighter grouping of housing at this location; however, this does not deviate from the pattern of development in the area as there are other examples of close groupings of properties. The plot is on a similar level to the adjacent neighbours, will sit comfortably amongst the existing built form at this location and has no significant adverse impact upon the Wester Ross National Scenic Area. Overall, the visual impact is not considered significant and there is not considered to be any impact upon the landscape character of the location. No neighbour amenity issues arise as the relationship between the site and neighbours is such that any privacy/overlooking issues could be avoided through considered siting and design.

- 8.12 The proposal offers no significant concerns in terms of conflict with the pattern of development or neighbour amenity and in this regard is not considered to conflict with policies 28 (Sustainable Design) and 34 (Settlement Development Areas) of the Highland-wide Local Development Plan.
- 8.13 The point of access with the public road is currently sub-standard in terms of its geometry and visibility splay. The access point with the public road cannot be improved at its current position due to the presence of an electricity pole. It is therefore proposed to improve the access onto the public road by re-locating its position slightly to the south on land within the applicants control and to create an SDB2 Highland Council standard bell-mouth with lay-by arrangement. A short section of the existing track will become redundant and shall be closed-off and reinstated. Visibility to the south is unobscured and compliant with the Council standard of 90m. Visibility to the north will be sub-standard at 63m, however, this splay is an improvement upon the existing and given the location close to the termination point of the stretch road and reduced speeds on this single track, the shortfall is not considered significant. A boulder on the roadside verge currently obscures visibility to the north at the existing access point with the public road and will still be within the splay at the relocated access position. It is therefore proposed to move this feature, which currently sits within land shown to be controlled by the applicant. The improved access arrangement has recently been approved as part of another PIP consent for a house plot on higher ground to the north-west of this site (18/03676/PIP). Beyond the point of access with the public road, the private track is narrow in geometry and hard surfaced. The track is considered adequate for the small number of properties which it serves over a short distance of approx. 150m.
- 8.14 Transport Planning are content with the improved access arrangements proposed and refusal of permission on access grounds would not be justified. The application does not raise any significant issues regarding access and parking and in this regard is not considered to conflict with policies 28 (Sustainable Design) and 34 (Settlement Development Areas) of the Highland-wide Local Development Plan.
- 8.15 Generally development within settlements should be directed to the public sewer, however, no connection is possible at this location as it is not currently served by a public sewer. It is therefore proposed at present to serve this development via a private drainage system. SEPA have requested a condition ensuring that the development can be connected to the public waste water network when this becomes available, which could be attached to any consent issued. Properly maintained private waste water systems suitable for ground conditions are unlikely to result in environmental or health problems. The Building Standards process

ensures that drainage is correctly specified in relation to ground conditions and the scale of development proposed. There is adequate ground within the application site and within the applicant's ownership to provide adequate foul and surface water drainage compliant with standards.

- 8.16 The application does not raise any significant issues regarding drainage and in this regard is not considered to conflict with policies 28 (Sustainable Design) and 34 (Settlement Development Areas) of the Highland-wide Local Development Plan.
- 8.17 The Crofting Commission were consulted on this application as the development will remove part of croft No 12 Strath from crofting use. The response from the crofting commission is set out in section 5.3 above. The Commission concludes that they cannot support the proposal as there is no operational need for the house and the croft is located on relatively high-quality land.
- 8.18 HwLDP Policy 47 (Safeguarding Inbye/AppORTioned Croftland) seeks to protect the viability of crofts by minimising the loss of inbye/appORTioned croft land. The policy states siting should avoid the better quality agricultural land on the croft and any obstruction to accessing the remainder of the croft. It also sets out that proposals should be for single houses only and that previously approved development within the existing croft or its historic boundaries is also a material consideration. Cumulative impact must therefore be taken into account. There is already a dwelling house on the applicant's croft, immediately to the west of the site on land which was decrofted in 2004. This is the house which was permitted by applications 04/00504/OUTRC and 06/01109/FULRC, as listed above in section 3 and is now built. Furthermore, a site on the croft to the north-west has recently been de-crofted and granted a renewal of planning permission by application 18/03676/PIP, as noted above in section 3.
- 8.19 The proposal does not impede access to the remainder of the croft as the applicant's land can be accessed from other locations off the private access road. The Crofting Commission however have stated that in terms of agricultural land quality, the in-by-e land is classified as category 4.2: land capable of producing a narrow range of crops. Land of such quality on the west coast is confined to relatively small pockets and in this regard the Crofting Commission considers the land a valuable and finite resource. Policy 47 of the HwLDP states that proposals should avoid siting on the better part of a croft in terms of its agricultural value. The proposal therefore fails to meet this specific policy 47 criteria.
- 8.20 Where proposals fail to meet the initial criteria of policy 47 of the HwLDP noted above, the policy states that proposals will only be considered acceptable where there exists a proven wider community benefit and where the proposal is considered acceptable in terms of other policy considerations such as accordance with settlement pattern. In this instance although the proposal is deemed acceptable in terms of other applicable policy considerations, as outlined in paragraphs 8.10-8.16 above, no wider community interest exists with regards to developing this site. Furthermore this would be the third house on the croft and therefore the cumulative impact on the croft has to be taken into consideration. Accordingly, the proposal also fails to accord with policy 47 of the HwLDP in this regard.

- 8.21 Overall, despite the proposal according with other aspects of relevant Highland-wide Development Plan policy, it fails to meet the criteria of policy 47 of the HwLDP as it is sited on better quality croft land and will result in the further erosion of croft 12 Strath. Given that proposals must meet all relevant policies in a plan, support of this proposal cannot be justified.

Other material considerations

- 8.22 The site is not within any species or habitat designations and while impact upon wildlife was raised as an issue in a representation, the site location and conditions do not present any need for species or habitat survey work to be undertaken. Refusal of permission on these grounds is not justified.
- 8.23 In a representation the boulder positioned adjacent to the existing access is purported to have an Ordnance Survey mark on it. This boulder requires to be moved so that it does not obscure visibility onto the public road. The boulder is not awarded any historic environment protection and the requirement to improve road safety at this location is considered to outweigh the desirability to leave the boulder in situ.
- 8.24 The applicant has asserted ownership over all land pertaining to this application. Any private legal land dispute cannot be considered in relation to this application and is a matter for the Courts to determine. The granting of planning consent has no bearing on the outcome of any such dispute.

Developer Contributions

- 8.25 Single house applications are below the threshold for requiring affordable housing contributions. There are no High School or Primary School capacity constraints in Gairloch at present, and therefore no financial contribution towards education is required.

9. CONCLUSION

- 9.1 All relevant matters have been taken into account when appraising this application. It is considered that the proposal does not accord with the principles and policies contained within the Development Plan.

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

Subject to the above, it is recommended that planning permission be **REFUSED**, subject to the following reason:

1. The proposal is contrary to Policy 47 (Safeguarding Inbye/AppORTioned Croftland) of the Highland-wide Local Development Plan in that the proposal is sited on better quality croft land in terms of its agricultural value, and the proposed house would be the third part of the croft to be lost to housing development resulting in the unacceptable permanent loss of in-bye agricultural land from a relatively small croft. No proven/recognised community interest has been demonstrated that would justify approval in this context under the terms of Policy 47.

Designation: Acting Head of Development Management – Highland

Author: Rebecca Hindson

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

Relevant Plans: Plan 1 - Location plan

Plan 2 - Site Layout Plan – 2018-101and108-3

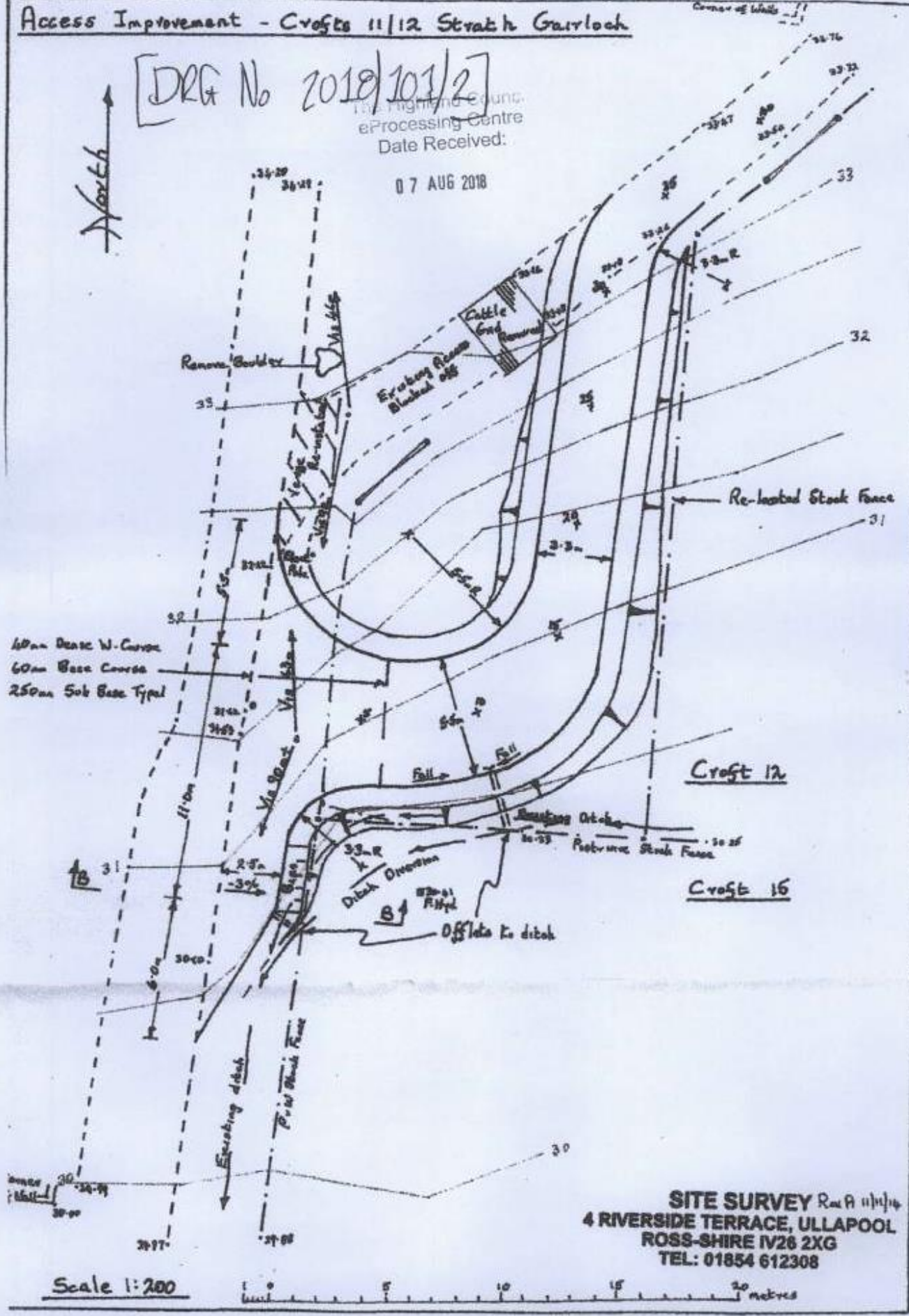
Plan 3 - Access Layout Plan – 2018-101-2

Access Improvement - Crofts 11/12 Strath Garloch

[DRG No 2018/101/2]

The Nightingale Coun.
eProcessing Centre
Date Received:

07 AUG 2018



40m Dense W. Curve
60m Base Course
250m Sub Base Typal

Croft 12

Croft 15

Scale 1:200



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