

Agenda Item	6.2
Report No	PLN/004/22

HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 25 January 2022

Report Title: 20/04204/PIP: Mr Archie and Sandra Macnab
Land 40M West of Torwood
Blairninich, Strathpeffer

Report By: Area Planning Manager – North

Purpose/Executive Summary

Description: Erection of house

Ward: 05 - Wester Ross, Strathpeffer and Lochalsh

Development category: Local Development

Reason referred to Committee: Request by local members

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 unacceptable in terms of applicable material considerations.

Recommendation

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

1. PROPOSED DEVELOPMENT

- 1.1 The application seeks planning permission in principle for a house. The site is located on a small croft called Orsay Croft within the settlement of Blairninich.
- 1.2 By way of background, Orsay Croft and Blairninich Croft were created in 2016 through the sub-division of a much larger croft called Old Inn Croft. Historically, a total of two sites have been decrofted by the applicant on Old Inn Croft, one for the property called Taranaki Old Inn Croft, and one for a property to the south called Torwood.

One of the applicants - Sandra Macnab – is identified on the crofting register as the tenant of both Orsay and Blairninich crofts. However, the applicants have stated that they have recently transferred the tenancy of Blairninich croft as part of their retirement plan.

In 2020, the applicants sold their croft house - Taranaki Old Inn Croft – and moved into a chalet sited a short distance to the north-east of the site and adjacent to Taranaki Old Inn Croft. The chalet is unauthorised and on ground retained as part of Orsay croft.

This application seeks permission to build a third house on the Orsay Croft element of the original Old Inn Croft. The applicants describe this proposed dwelling as their retirement home and suggest that it will be designed to be more suited to accommodating elderly people than their previous Taranaki home or, indeed, the unauthorised chalet.

- 1.3 Pre-Application Consultation: 17/00233/PREAPP - plot adjacent to the road and also a plot slightly south of the site currently under consideration. Advised that plots are located within hinterland and did not meet criteria for the expansion of a housing group.

2. SITE DESCRIPTION

- 2.1 The site is within the dispersed linear settlement of Blairninich located approx. 1km to the east of Strathpeffer. The site is positioned at the eastern edge of an open field which is a registered croft called Orsay croft. The A834 lies approx. 100m to the north and neighbouring properties lie immediately to the north-east and east. An adjacent croft called Blairninich Croft lies to the south and west. Both Orsay Croft and Blairninich Croft were previously combined into a larger croft called Old Inn Croft. The river Peffery is located approx. 280m to the south.

3. PLANNING HISTORY

- 3.1 21.03.2005 04/01154/FULRC - Erection of House (Detail) Application
Temporary Siting of Residential Caravan - Old Permitted
Inn Croft, Blairninich, Strathpeffer, Highland
Previous application for a house made by applicant.

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour

Date Advertised: 13.11.2020

Representation deadline: 27.11.2020

Timeous representations: 1

Late representations: 0

4.2 Material considerations raised are summarised as follows:

a) The southern line of the building should be no further south than currently indicated on the plan, so it does not stray to directly opposite our entrance.

b) The proposed building should be a bungalow of one storey with no upper floors now or in the future.

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 **Flood Risk Management Team: Object** – SEPA's Flood Map shows that the application site lies partly inside the 1 in 200-year (0.5% annual exceedance probability) flood extents of the River Peffery. This indicates that the site is potentially at risk of flooding during a severe weather event. The Highland Council has carried out detailed flood modelling of the River Peffery as part of the River Peffery Flood Protection Study. This work confirms that the majority of the plot and access is at risk of flooding in a 1 in 200 year plus climate change flood event. Due to the extent of the 1 in 200-year flood risk within the plot and the predicted flooding on the access/egress route we are not able to support new development at this location.

5.2 **Crofting Commission** – Have declined to comment citing a conflict of interest as the applicant is a board member.

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

31 - Developer Contributions

35 - Housing in the Countryside (Hinterland Areas)

47- Safeguarding Inbye/Appportioned Croftland

64 - Flood Risk

65 - Waste Water Treatment

66 - Surface Water Drainage

6.2 **Inner Moray Firth Local Development Plan**

Within Designated Hinterland

6.3 **Highland Council Supplementary Planning Policy Guidance**

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

Developer Contributions (March 2013)

Flood Risk & Drainage Impact Assessment (Jan 2013)

Housing in the Countryside and Siting and Design (March 2013, September 2021)

Sustainable Design Guide (Jan 2013)

7. **OTHER MATERIAL CONSIDERATIONS**

7.1 **Scottish Government Planning Policy and Guidance**

Promoting Rural Development – Paras 74 – 83

Managing Flood Risk and Drainage – Paras 255 – 268

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 Policy 35 of the Highland-wide Local Development Plan (HwLDP) and associated Housing in the Countryside Guidance
- b) Flood Risk and Compliance with Policy 64 of the Highland-wide Local Development Plan (HwLDP).

Policy 35 (Housing in the Countryside – Hinterland Areas)

8.4 The site is located within the designated hinterland and so must be assessed against policy 35 (Housing in the Countryside - Hinterland Areas) of the HwLDP and the associated Housing in the Countryside Supplementary Planning Guidance.

8.5 The hinterland is an area of countryside close to a main settlement and subject to pressure for housing development. Within these areas, to be acceptable, housing development must meet an exception listed in policy 35 and further detailed within the Housing in the Countryside SPG. Scottish Planning Policy requires that this

approach is taken within pressurised areas of countryside and the purpose of such an approach is to reduce car-based commuting and to direct development to sites where loss of agricultural land and impact upon its rural character is minimised. The exceptions are listed below;

- House essential for land management purposes;
- House for a retiring farmer/rural business operator or their spouse;
- Affordable Housing to meet demonstrable affordable housing need;
- Housing in association with a new or existing rural business;
- Replacement of an existing dwelling subject to existing dwelling being demolished;
- Conversion or reuse of traditional buildings or redevelopment of brownfield land;
- Proposal meets policy regarding acceptable expansion of a housing group.

8.6 The applicant is the tenant of a small 10-acre croft called Orsay croft upon which he currently lives in a timber chalet (currently unauthorised). The applicant previously built a house (Taranaki Old Inn Croft) on the Croft however this house has since been sold to a separate party and the area of land decrofted. Prior to this a neighbouring property called Torwood was also decrofted by the applicant in 2001. It is proposed that the house subject to this application shall be a retirement home for the applicant to meet their ageing and failing health needs.

8.7 Until recently the applicant also tenanted a second larger croft named Blairninich Croft (66 acres) adjacent to Orsay Croft. However, the tenancy of this is being transferred as part of the applicant's move towards retirement. The applicant has stated that the aspiration is to retain Orsay Croft and allow a family member to work the croft with the existing chalet used as holiday rental accommodation. With regards to the house previously built upon Orsay Croft and now in separate ownership, the applicant has stated that it was not suitable for their ageing needs and so the chalet has been occupied on a temporary basis with the proposed house required to meet their longer-term accommodation needs. It should be noted that the applicant also de-crofted an area of Blairninich Croft, known then as Old Inn Croft, for a house site in 2001 (the Torwood property).

8.8 While no case is being made by the applicant that there is an operational need for the house, the applicant has made a case on the grounds that the house supports their retirement from crofting. The applicant has been a tenant of Orsay Croft, and until recently Blairninich Croft as set out above, since 2004 and has stated that they are no longer able to manage the croft wishing to provide new entrants an opportunity.

8.9 The retirement case made does have credence in that the house is positioned on land tenanted by the applicant for 17 years. Furthermore, despite part of Orsay Croft having been developed and de-crofted by the applicant previously, Orsay Croft does not currently have a house suitable for the applicant's aging needs. However, the 'housing to support a retiring land manager' exception is intended to allow housing development where the existing accommodation is to be occupied

by the new land manager and where there is a full-time operational need for the new land manager to be present. Therefore, it is not considered that in this instance there is a justifiable need for the retirement home to be developed on the croft.

- 8.10 Another policy 35 exception of relevance to this application is the Housing Groups exception. Within the updated Housing in the Countryside Guidance a housing group is defined as “at least 3 buildings (2 of which must already be houses) that are physically detached from each other but have a well-defined, cohesive character”. The guidance also sets out the Council’s criteria for the acceptable expansion of a housing group.
- 8.11 Blairninich is a dispersed linear roadside settlement where development generally fronts the public road and is also contained in small clusters behind the road. Blairninich is not however defined as a settlement within the Inner Moray Firth Local Development Plan due to the absence of any facilities and instead falls within the designated hinterland countryside. This site sits adjacent to an existing cluster of housing development on the south side of the A834. Although neighbouring housing exists in close proximity to the north-east and east, the site is positioned in a currently open and undeveloped field which is distinctly separate from and further west than the existing housing. This field currently constitutes a clear gap in the development pattern. This means that rather than the site constituting in-fill or rounding-off of a housing group, as demanded by policy, the site protrudes into a currently undeveloped space between the existing housing cluster and development further west. While the site is located within a wider dispersed settlement, the predominant development pattern is roadside with any clusters of housing set back from the road being cohesive and contained. It is considered that the site does not fit cohesively within an existing group and therefore the proposal cannot be supported under the housing groups exception. A copy of the extent of the applicant’s croft was supplied. However, no other sites were identified which could be supported under the housing groups exception.
- 8.12 The proposal is not considered to accord with any of the exceptions contained within the policy 35 (Housing in the Countryside – Hinterland Areas). In particular, there is not a strong enough justification that a house is required on the croft given there is no operational need associated with a new entrant residing on the croft. Furthermore, the house is positioned within a gap in the settlement pattern rather than constituting the in-fill or rounding-off of a housing group.
- 8.13 Policy 47 (Safeguarding Inbye/AppORTioned Croftland) expects development proposals to minimise the loss of in-bye/appORTioned croft land and further states housing proposals should be for single houses with consideration given to the history of development on the croft and any division of the croft. This application would constitute the second proposal for a house on Orsay croft by this applicant, and the third property on the larger original Old Inn Croft since 2001. Further, the croft is on land capability Class 3.1, which is considered better quality croftland.

Flood Risk

- 8.14 Scottish Planning Policy (SPP) (June 2014) sets out that the planning system should adopt a precautionary approach to flood risk, taking account of the predicted effects of climate change. Furthermore, development should be located away from functional flood plains and medium to high risk areas. Paragraph 264 of SPP states that the effects of flooding on access, including emergency services, should be taken into consideration when assessing flood risk. Highland-wide Local Development Plan policy 64 (Flood Risk) requires avoidance of flood risk areas and states that for developments within or bordering flood risk areas compliance with SPP should be demonstrated through the submission of a flood risk assessment. The Council's Flood Risk and Drainage Impact Assessment Supplementary Guidance reinforces that new development needs to be free from unacceptable flood risk for all flood events up to the 1 in 200-year return period, including an allowance for climate change. Section 4.1 of this guidance states that safe access and egress to and from the development during a flood event should be considered in relation to flood risk.
- 8.15 SEPA's Flood Map shows that the application site and part of the access route lies within the 1 in 200-year flood extents of the River Peffery. This indicates that the site is potentially at risk of flooding during a severe weather event. The Highland Council has carried out detailed flood modelling of the River Peffery as part of the River Peffery Flood Protection Study. This work confirms that the majority of the plot and access is at risk of flooding in a 1 in 200-year plus climate change flood event. Due to the extent of the 1 in 200-year flood risk within the plot and the predicted flooding on the access/egress route the Council's Flood Risk Management Team are not able to support new development at this location.
- 8.16 The majority of the flooding is modelled to occur within the southern half of the house site, with approx. 0.47m being the highest depth. The route of access from the A834 passes through an area of predicted flooding at depths up to 0.3m. Other possible alternative routes of access through the croft from the A834 are also subject to flood risk. Although it would be possible to re-position the house site within the croft to an area not at flood risk, any alternative route of access from the A834 is at risk of flooding. This means that during a flood event an emergency vehicle would not have a flood free route of access to the site.
- 8.17 The proposal is not considered to accord with Policy 64 - Flood Risk of the Highland-wide Local Development Plan as both the site and route of access, including alternative access routes, are subject to flood risk.

Other material considerations

- 8.18 Neighbour amenity and road safety - It is considered that a sensitively designed single or 1½ storey house could be positioned within the site without any adverse impact upon neighbour amenity or the general character and amenity of the area. The access point utilised by the proposal onto the public A834 road has recently undergone upgrade works in connection with an application to the north-east for 3 house plots 19/02623/PIP and is considered adequate for the additional single dwelling proposed.

Non-material considerations

8.19 None

Developer Contributions (see also Appendix 2 below)

8.20 Policy 31 requires that, where developments create a need for new or improved public services, facilities or infrastructure, the developer makes a fair and reasonable contribution in cash or kind towards these additional costs or requirements. The following is required before any decision can be issued;

Summary of Developer Contributions		
Infrastructure / Service Type	Select Answer	Contribution Rate Per Home (a small scale housing discount has already been applied)
Number of Homes Proposed	1	
Strathpeffer Primary School		
Build Costs	None - No capacity constraints	£0
Major Extension / New School - Land Costs	None - No land costs required	£0
Primary Total		£0
Dingwall Academy		
Build Costs	Major extension / new school	£796
Major Extension / New School - Land Costs	None - No land costs required	£0
Secondary Total		£796
Affordable Housing		
CNPA	No	£0
Cumulative Transport		
Development Brief / Agreement Area	None - No cumulative transport costs required	£0
Breakdown	N/A	N/A
	N/A	N/A
	N/A	N/A
Total Per Home		£796
Total for Development		£796
appropriate quarter.		

Should this application be approved, the applicant has 28 days from the date that the Council send the invoice for developer contributions to be paid to make a payment of the developer contributions set out in this report. Should a payment not be made with 28 days, the application shall be refused under delegated powers unless there is written agreement for an extension.

9. CONCLUSION

- 9.1 The application is not considered to sufficiently meet any exception contained within policy 35 (Housing in the Countryside – Hinterland Areas) of the HwLDP. The proposal protrudes into an undeveloped gap in the settlement pattern rather than constituting infill or rounding-off of a housing group as demanded by the Housing in the Countryside SPG. There is also not considered to be a strong case that a house is required on the modest sized croft for retirement purposes. Clarification had been sought from the Crofting Commission in their consultation response but at the time of writing they had declined to comment further given the applicants role at the Commission. Further, the site and its route of access from the A834 are subject to flood risk.
- 9.2 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 unacceptable in terms of 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: Proposal subject to flood risk.
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

The application is recommended to **REFUSE** the application for the following reasons;

- 1 The proposal is considered to be contrary to policy 35 (Housing in the Countryside – Hinterland Areas) of the Highland-wide Local Development Plan and the associated Housing in the Countryside Supplementary Guidance (adopted March 2013, Amended September 2021). In particular, the proposal protrudes into an undeveloped gap in the settlement pattern rather than constituting infill or rounding-off of a housing group as demanded by the Housing in the Countryside SPG. Also, there is not considered to be a strong case that a house is required on the modest sized croft for retirement purposes as in this instance there is no operational need associated with a new tenant inhabiting the existing house.
- 2 The proposal is considered contrary to policy 47 (Safeguarding Inbye/AppORTioned Croftland) which expects development proposals to

minimise the loss of in-bye/apportioned croft land. The croft upon which this proposal sits was previously part of a larger croft where two house sites have already been built out and decrofted. Further, the croft is on land capability Class 3.1, which is considered better quality croftland. This application would constitute further incremental erosion of good quality croftland.

- 3 The proposal is considered to be contrary to policy 64 (Flood Risk) of the Highland-wide Local Development Plan which states that development at risk from flooding should be avoided. SEPA's Flood Map shows that the application site lies partly inside the 1 in 200-year (0.5% annual exceedance probability) flood extents of the River Peffery. This indicates that the site is potentially at risk of flooding during a severe weather event. The Highland Council has carried out detailed flood modelling of the River Peffery as part of the River Peffery Flood Protection Study. This work confirms that the majority of the plot and access is at risk of flooding in a 1 in 200 year plus climate change flood event. The development fails to accord with the principle of avoiding development on sites at risk of flooding. Further, paragraph 264 of SPP states that the effects of flooding on access including emergency services should be taken into consideration when assessing flood risk. The access/egress routes to the site would be affected by flood water and therefore inhabitants would be at risk due to the absence of flood free emergency access.

REASON FOR DECISION

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 unacceptable in terms of applicable material considerations.

Designation: Area Planning Manager - North

Author: Rebecca Hindson

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

Relevant Plans:

Document Type	Document No.	Version No.	Date Received
Location Plan	000001		27.10.2020
Location Plan	000002		02.11.2020

Appendix 2

Type	COMPLETE FOR LEGAL AGREEMENTS AND UPFRONT PAYMENTS				REQUIRED FOR LEGAL AGREEMENTS ONLY				
	Contribution	Rate (per house)	Rate (per flat)	Total Amount* ¹	Index Linked ¹	Base Date* ²	Payment Trigger* ³	Accounting Dates* ⁴	Clawback Period* ⁵
Schools²									
Primary – Build Costs	Insert what contribution is for	£0.00	£0.00	£0.00	BCIS	Q2 2018	TOC/CC	Apr/Oct	15 or 20
Primary – Land Costs	Insert what contribution is for	£0.00	£0.00	£0.00	BCIS	Q2 2018	TOC/CC	Apr/Oct	15 or 20
Secondary – Build Costs	Dingwall Academy - major extension/new school	£796	£0.00	£796	BCIS	Q2 2018	TOC/CC	Apr/Oct	15 or 20
Secondary – Land Costs	Insert what contribution is for	£0.00	£0.00	£0.00	No		TOC/CC	Apr/Oct	15 or 20
Community Facilities	Insert what contribution is for	£0.00	£0.00	£0.00	BCIS	Q2 2018	TOC/CC	Apr/Oct	15 or 20
Affordable Housing									
On-site provision ³	X units. Insert details of unit size and timescale for delivery if agreed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Off-site provision ⁴	X units. Insert details of location, unit size and timescale for delivery if agreed	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Commuted Sum ⁵	£0.00 per affordable unit not delivered on/off site. Insert expected timescale for payment - can be in installments	N/A	N/A	£0.00	N/A	N/A	N/A	N/A	5 Years

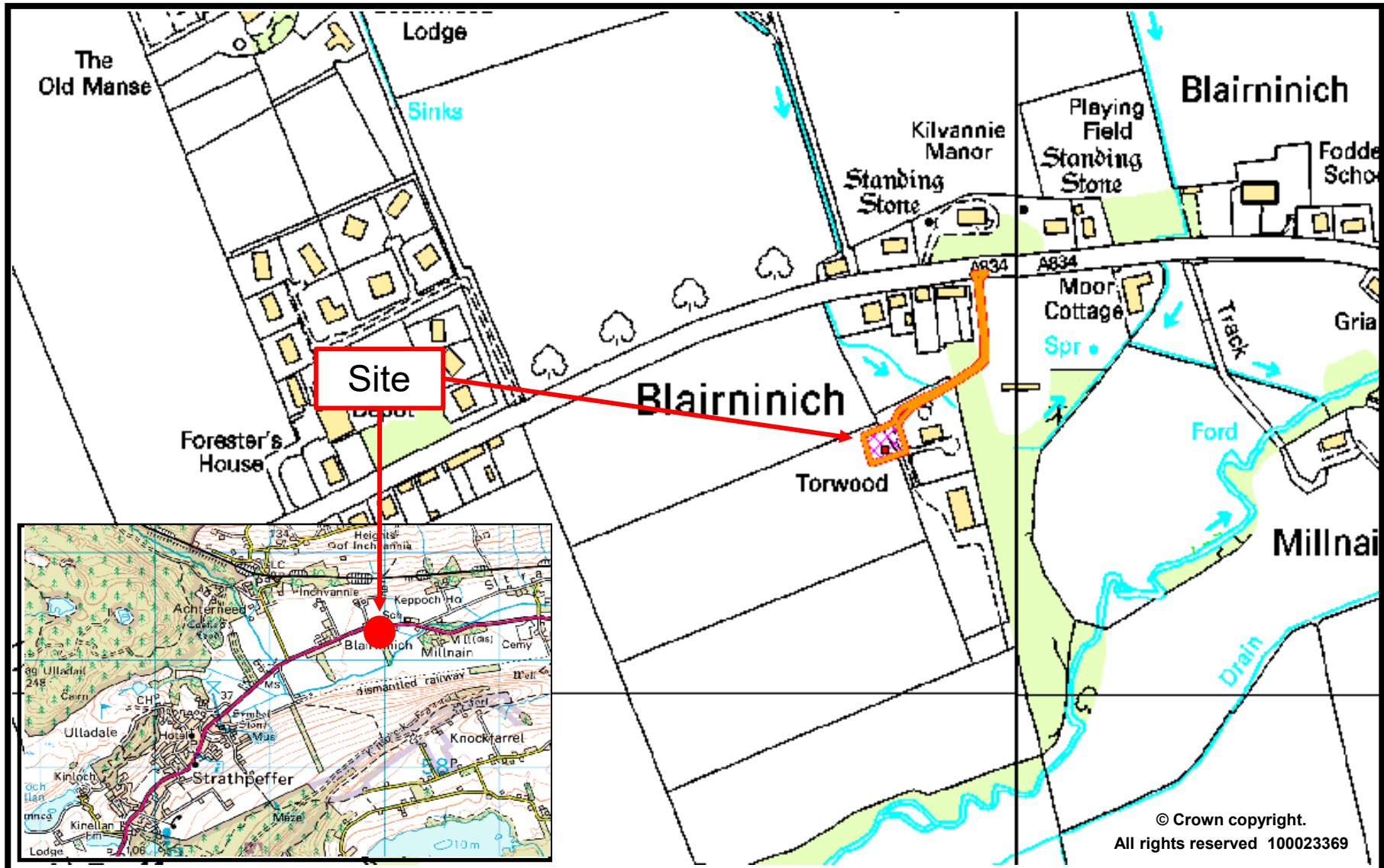
¹ If the contribution is to be used towards infrastructure projects involving building e.g. new school, new cycle route etc BCIS ALL IN TENDER will be the index, if it doesn't involve building then another appropriate index may need to be chosen with the agreement of Team Leader

² Indicate whether or not 1 bed houses/flats are exempt

³ Indicate whether a penalty payment due for late delivery (and, if so, what it is based upon).

⁴ As above

⁵ Indicate whether a penalty payment is due for late payment of commuted sum (and, if so, what it is based upon)



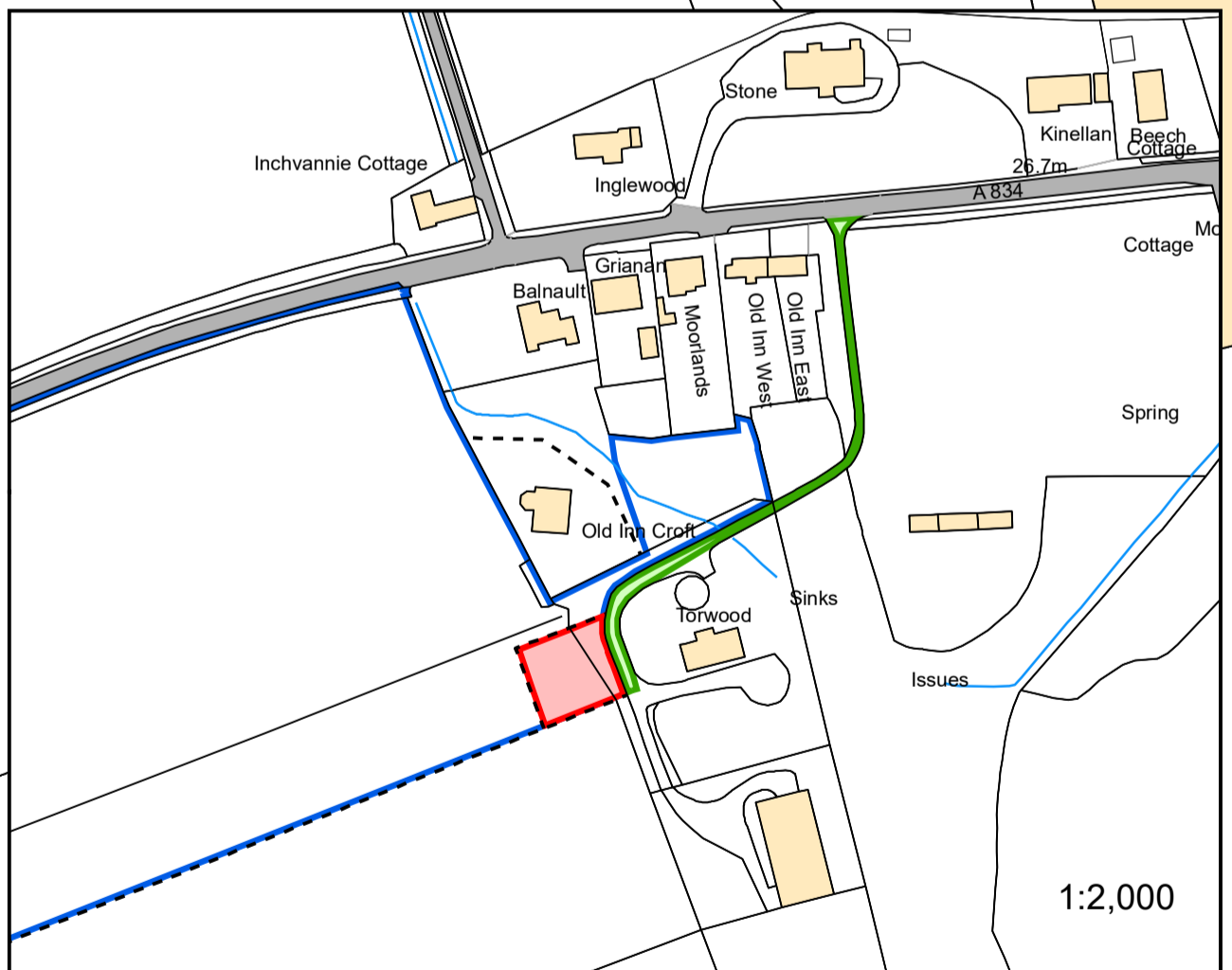
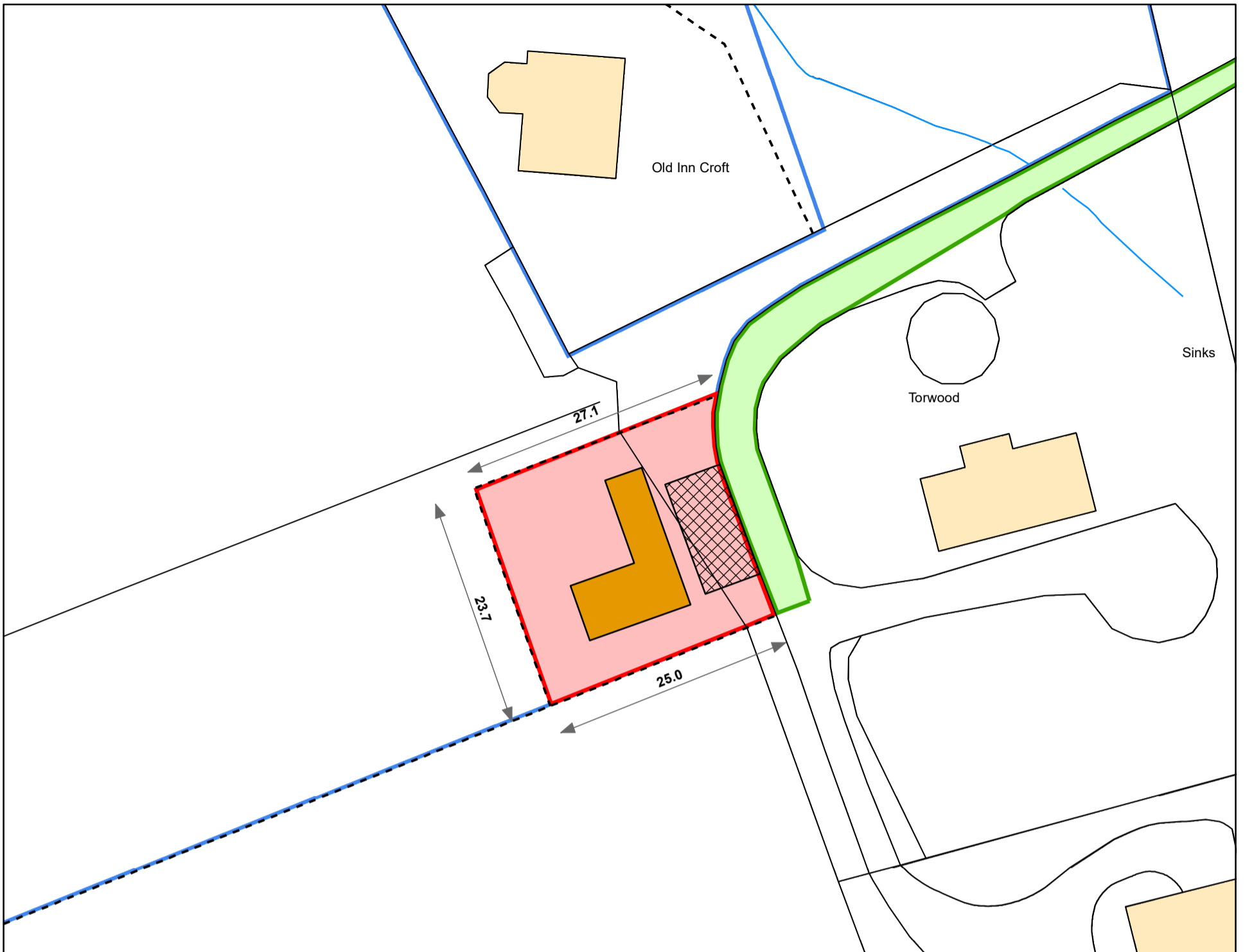
The Highland Council
Comhairle na Gàidhealtachd

Planning and Development Service

Location Plan
20/04204/PIP
Erection of house
January 2022



Scale:



Croft Boundary


Property

- Orsay
- Development Site (0.059ha)


Access Detail

- Orsay House
- Parking (12m x 6m)
- - - - Undefined

Orsay Croft, Strathpeffer, IV14 9AD

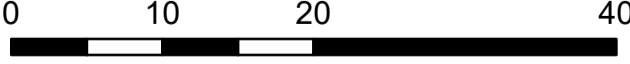


N



Easting: 249,895
Northing: 859,228

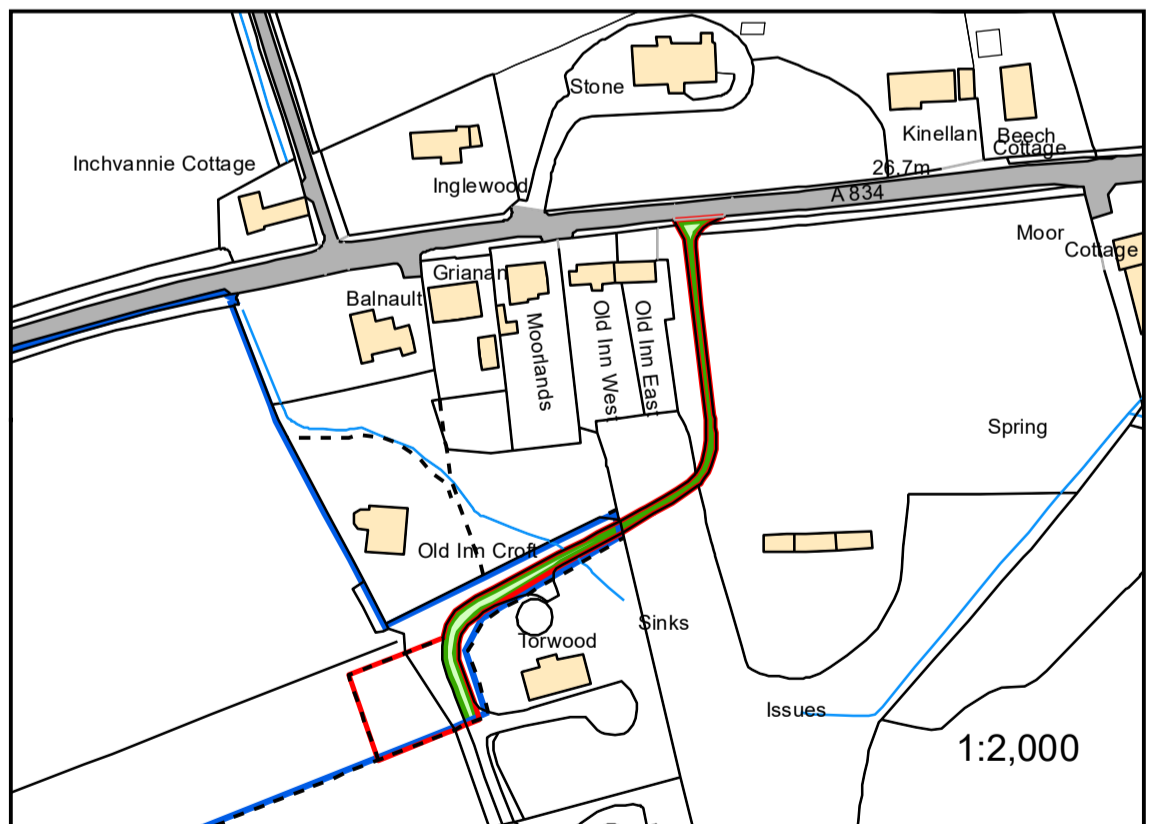
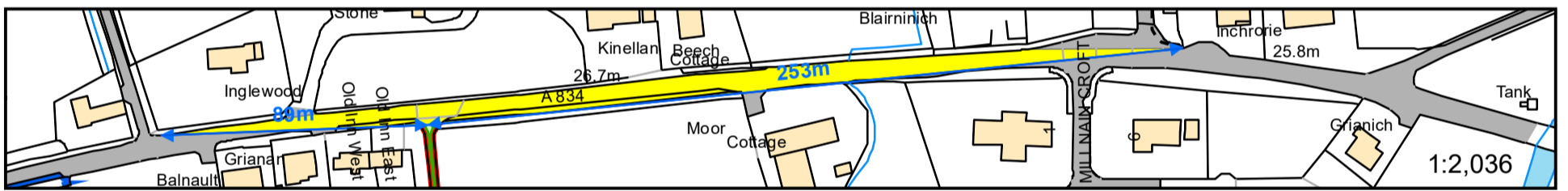
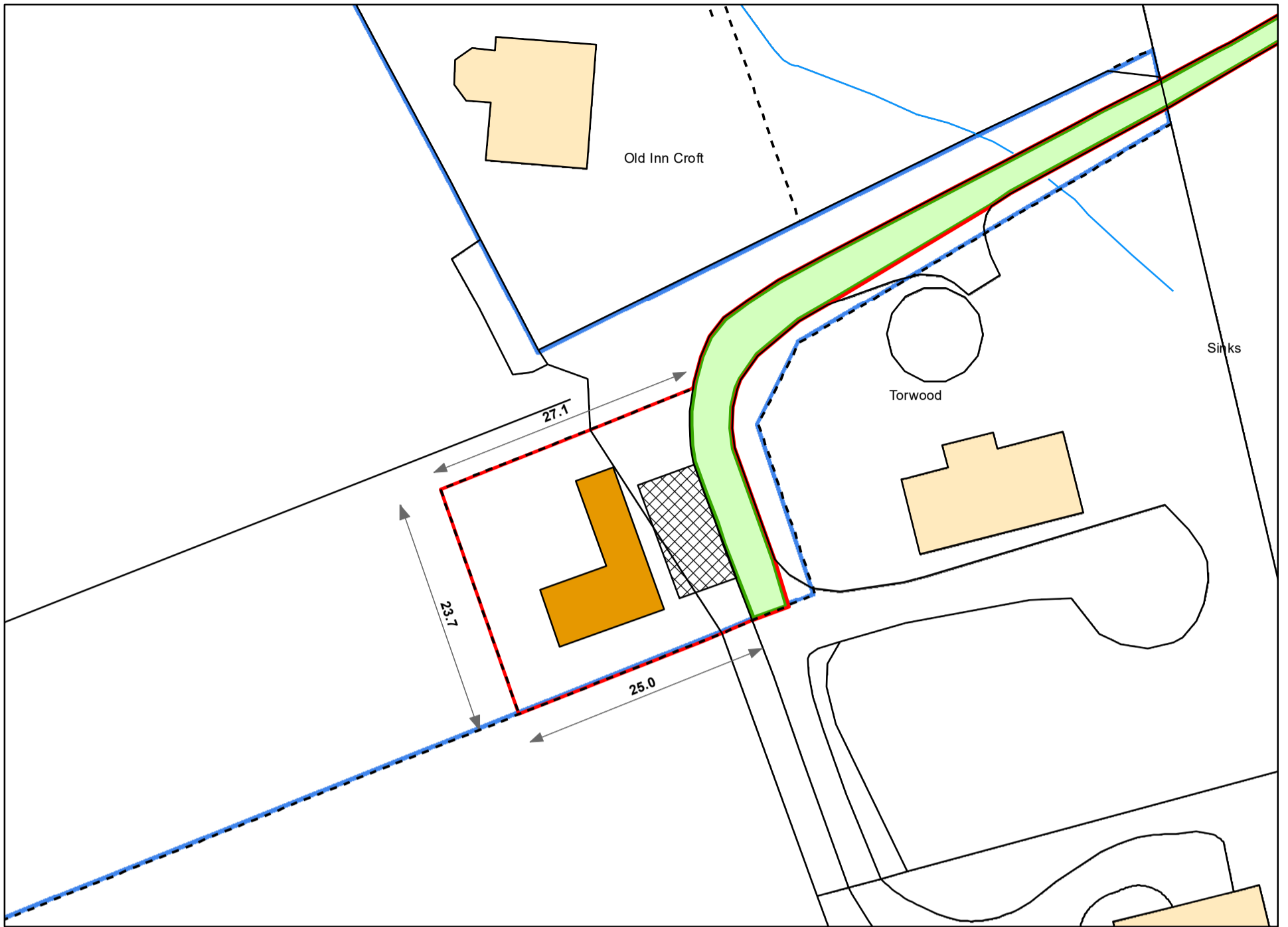
1:500










0 10 20 40
Metres

All boundaries aligned with OS features except where shown as 'undefined'. Dimensions in metres and 'or thereby'.

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Highland Geomatics, part of Natural Resource Services Group 26/04/2018

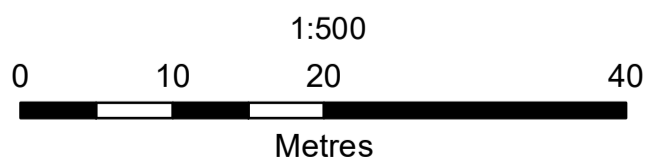


-  Orsay Croft Boundary
-  Development Site (0.059ha)
-  Cottage
-  Existing Shared Access Track
-  Parking (12m x 6m)
-  Visibility Splay (40mph)
-  Undefined

Orsay Croft, Strathpeffer, IV14 9AD



Easting: 249,895
 Northing: 859,228



All boundaries aligned with OS features except where shown as 'undefined'. Dimensions in metres and 'or thereby'.

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 Highland Geomatics, part of Natural Resource Services Group 02/11/2020