

Agenda Item	6
Report No	PLS-11-24

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee  
**Date:** 19 March 2024  
**Report Title:** 23/05217/FUL: Ms Zoe Sheard  
Sleat View, Kinloid, Arisaig, PH39 4NS  
**Report By:** Area Planning Manager – South

### Purpose/Executive Summary

**Description:** Erection of house (plot 4) (amended location from previous permission 22/03307/FUL) Retrospective  
**Ward:** 11 – Caol and Mallaig  
**Development category:** Local Development  
**Reason referred to Committee:** Area Manager's 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 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 This application is for planning permission for the erection of a four bedroom house with three bedrooms plus an office on the first floor and one on the ground floor, and sewage treatment plant and surface water soakaway. This application is in retrospect as the house has been built not in accordance with planning permission granted on 08 September 2022 (22/03307/FUL). The matter was raised as an enforcement complaint in October 2023.
- 1.2 This is one of five house plots that have been granted permission on a triangle of land just beyond Arisaig on the east side of the A830 at Kinloid. Plot 4 is the first one to be built. It is located towards the middle of the group with Plot 3 adjacent to the north. Site clearance on Plot 4 was commenced on 27 March 2023, and construction started in early May 2023. It was approx. 80% complete as of 30 Oct 2023, when this retrospective application was submitted, following an initial investigation of the enforcement complaint. The building is largely complete externally and appears at first fix stage internally. The siting error is stated to have derived from a 12m discrepancy over a fence position to the west of the site on the OS map. This is thought to have been where most of the error has come from given that the house position was determined from this fence line. The agent has completed a GPS survey of the site to record the as built position, and this has been overlaid on the site plan for permission 22/03307/FUL to highlight the differences.
- 1.3 The house, as built, is set 15.8m further to the east within the plot as compared with the approved position. In addition, the footprint has been rotated clockwise by approx. 25 degrees from its NNW position to almost due north. The house is located 8m from the boundary to the north of the plot compared with 7.4m as previously approved. With it being located further to the east the house is now much closer to the approved house position for Plot 3, with a horizontal separation distance between the nearest points of each house of between 15m – 16.75m. This is difficult to measure because of the difference in levels. The driveway and a levelled platform have been created for Plot 3 with the corners of the proposed house marked by stones but construction has not yet commenced. The agent for the applicant for Plot 4 has stated that the amount of cut made to create the level platform for the house as built on Plot 4 was greater than originally proposed, and there was less fill at the front/north side of the plot, and this was undertaken in order to reduce the elevation of the house overall.
- 1.4 There is a marked change in levels at the shared boundary between Plots 4 and 3, the difference in levels being greatest at the NE corner of Plot 4 and the SW corner of Plot 3. The ground has been raised by approx. 0.45m at the front (north east side) of Plot 4 following the construction of the house to create a low screening mound. There is a cut of over 2.5m high at the SW corner of Plot 3, and the unaltered intervening ground slopes steeply from Plot 4 down to Plot 3 (south to north). The revised position of the house on Plot 4 is much closer to the proposed house on Plot 3 and is significantly elevated in relation to Plot 3. The revised orientation of the house on Plot 4 results in the two pairs of patio doors in the living room and the two master bedroom windows above (which are escape windows) more directly overlook the proposed house on Plot 3 compared with the situation that was considered to have been the case with the approved plans. A large

window to the living room in the east elevation, the dining and kitchen windows, and a pair of rooflights above, serving the master bedroom, together with a window to bedroom 1 in the east elevation (an escape window) also obliquely overlook Plot 3 more closely than as per the previously approved plans. The house, in terms of its design, has otherwise been built in accordance with the approved plans.

- 1.5 The position of the access is unchanged. The approved septic tank has been changed to a sewage treatment plant and moved east, due to the revised house footprint; and the surface water soakaway has moved from the SE side of the house and south of the driveway, to the east, adjacent to the sewage treatment plant.
- 1.6 A 1800mm high privacy fence and tree planting with birch, rowan and alder is now proposed around the NE corner of the house, inside of the plot boundary on the raised ground, to mitigate overlooking to Plot 3.
- 1.7 The camping pod approved under permission 23/02123/FUL has been brought to site but not yet installed. It is on the south side of the driveway, close to the site entrance.
- 1.8 Pre Application Consultation: Application invited following initial investigation of enforcement complaint.
- 1.9 Supporting Information: Design Statement, photos, response to objection
- 1.10 Variations: None

## **2. SITE DESCRIPTION**

- 2.1 The site comprises rough grazing land between the A830 trunk road, which is to the west of the site in a cutting, and the minor road to the east which serves Kinloid. The site slopes north-eastwards towards the minor road and the wider site benefits from a degree of containment due to the rising ground to the south and west. The boundaries of the wider parcel of land are lined by trees, however there are no trees affected on this plot. There is a small watercourse alongside the east boundary of the plot by the Kinloid road – not affected by the revised development. The Mallaig railway line runs roughly parallel, on the far side of the Kinloid road.
- 2.2 The site is prominent, though at a distance of between 0.5km and 1km from the A830 when travelling south from Mallaig and Morar towards Arisaig. It is within the Moidart, Morar and Glen Shiel Special Landscape Area.

## **3. PLANNING HISTORY**

Plot 4 - four previous PIPs going back to 2010 and a S42 permission to provide a separate (not shared) driveway. Plot 3 has two previous PIPs. More recently:

- 3.1 08.09.2022 22/03307/FUL - Erection of house on Plot 4 Planning  
Land 660M South East Of Moss Of Keppoch Permission  
Granted

3.2	13.12.2022	22/03541/FUL - Erect house and garage (Plot 3) on Land 615M South East Of Moss Of Keppoch	Planning Permission Granted
3.3	15.06.2023	23/02123/FUL - Siting of pod (holiday letting) – Plot 4	Planning Permission Granted

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

##### 4.1 Advertised: Unknown neighbour

Date Advertised: 30.11.23

Representation deadline: 14.12.23

Timeous representations: 1

Late representations: 0

Material considerations raised are summarised as follows:

##### 4.2 23 November 2023 - Objection

- a) The previous permission included a planning condition which removed permitted development rights for extensions and outbuildings in the NE quarter of the site in order to avoid development on the elevated section of the plot. This was for landscape interests and to avoid undermining the buffer between the site and A830.
- b) The house has been moved into the NE part of the plot, contrary to this condition.
- c) The elevated sections of the plot have been flattened and re-profiled.
- d) The building is now excessively prominent and isolated from the landscape and there is no longer a buffer to the A830.
- e) The house has been pushed as far east and north as possible tight against the boundary of Plot 3 and perched on the edge of the hill and removing the only land capable of providing a buffer between the plots.
- f) It will remove light and sun from the house on Plot 3.
- g) It is less than 20m from the proposed house on Plot 3 with the ground floor 8m higher, such is the overpowering visual dominance that there is no privacy inside Plot 3 and there is unobstructed penetrating intrusion throughout the site, especially into the living room, bedroom, patio, entrance, and car parking area.
- h) The land is open countryside here – not a heavily built up urban area, and there is a greater expectation of privacy and respectful space between neighbouring developments.
- i) Planning conditions also removed “permitted development rights” for walls, fences and means of enclosure above 1.2m in height – to protect the open character of the site. The proposed 1.8m high fence on the boundary would increase the negative impact in relation to the neighbouring property and the

surrounding area, and it will have no impact in avoiding overlooking from the first floor windows and rooflights some 12m above.

- j) The applicant's plot is over 1 acre – there is more than enough space to provide a suitable development whilst maintaining a basic respect for the neighbour's property, privacy and amenity in their own home and garden.
- k) Visualisations have been supplied to illustrate the impact of the house on Plot 3.

4.3 06 December 2023 - Agent's response:

- a) Only one small corner of the house, as built, is within the area identified as not suitable for development. If the site is split into quarters the previously approved siting of the house partly fell within this area.
- b) The NE corner of the site was not, and never has been an elevated portion of the site. The elevated area is to the south of the house – photos provided of site at the start of ground re-profiling.
- c) The as-built house level is approx. 1.6m lower than previously approved – the site has been cut to level rather than cut and fill that was proposed. If it had been built as approved it would have had a more drastic impact from the A830, regardless of its position.
- d) The house is slightly further off the shared boundary than previously approved [8m rather than 7.4m]. It is further east due to the boundary fence error on the OS map - this was an honest mistake.
- e) The impact on Plot 3 from the north gable is similar to that of the view from the east gable in the approved position – especially if the house had been elevated by a further 1.6m as previously approved.
- f) The 8m buffer between the house and shared boundary could be fully utilised to create a natural screen with native plants and trees – willow (for example) may be more appropriate than a fence.
- g) Due to the site profile, there is minimal opportunity to look into the dwelling on Plot 3 from the downstairs windows, especially if screening was provided - even if only to 1.2m in height. Plot 4 was always going to look over Plots 2 and 3 especially so if the house was built at the previously approved higher level.
- h) The position of Plot 3, equally close to the boundary, is at the foot of an embankment rockface that will limit light and sun in any case. It was always at risk of being overlooked due to its proximity to the boundary rather than further towards the middle of the plot, regardless of where Plot 4 was positioned.
- i) The objector's desire to have both privacy and an open landscape is contradictory – compromise is required to achieve both objectives.
- j) The two rooflights in the side (east) elevation of the master bedroom look directly east towards the railway line and not towards Plot 3. The two windows in the north elevation look towards Plot 3 however trees such as birch and alder will reach a height of 5m within a few years if mature trees

are planted initially. These would screen Plot 3 sufficiently from the upper floor windows

4.4 10 December 2023 - Applicant's further response:

- a) The images in support of the objection are not an accurate representation of the actual situation on the site.
- b) The relative positions of the houses in the objector's visualisation are inaccurate – they show the western end of the house on Plot 3 overlapping the as-built house on plot 4 by 2-3m. When the approved house position for Plot 3 is plotted onto the revised site layout plan for Plot 4, and then two parallel lines are drawn along the eastern gable of the as-built house, and the western gable of the proposed house on Plot 3, it shows a gap of between 3.75m and 5.92m between the east elevation of the house on Plot 4 and the western gable of the approved house on Plot 3. [They are not square on to one another – the house on Plot 3 faces more to the NNW]. This means the visualisations submitted by the objector make the situation seem worse than it really is.
- c) A photo taken straight on of the north elevation of the house as built shows that it is offset to the west of Plot 3.
- d) The images provided by the objector omit the topography behind the house making it seem perched on top of the only raised piece of land on the site, whereas the land behind the house rises – and it falls in front of the house.
- e) The slope to the front of the house is inaccurately shown as tapering off when in fact a soil bund creates a far greater degree of screening than is suggested in the visualisations.
- f) Opaque glazing is further suggested to mitigate overlooking from the master bedroom windows in the north facing elevation of the house.
- g) The stones marking the corners of the house on Plot 3 indicate the house position is under 12m from the boundary with Plot 2 (to the west) – which moves it about 2.5m closer to the house on Plot 2 than approved [Plot 4 stated in error?]. Also, the stone marking the furthest SW corner of the house on Plot 3 appears to be about 4-5m from the shared boundary between plots 3 and 4 whereas on the approved site plan it scales out at just over 8m.

4.5 22 January 2024 – Further objection.

The objector has explained how they arrived at the images provided in their objection – which were produced following a topographic survey of all relevant land within Plots 1, 2, 3 and 4 (site setting out plan provided). The landscape, roads, features, fences, and electricity poles in the drawings are as surveyed relative to OS data with heights in metres to three decimal points. 3D images were extrapolated from an accurate, full size 3D model and the applicant's plans submitted for the as-built house were used to generate the visualisations. They do not however include the soil bund added at the front, NE corner of the house – it has simply been placed on the original survey without any attempt to measure or reflect the extent of this ground re-profiling. The objector cannot readily build his home elsewhere on the plot due to the challenging ground conditions. The are of the views that they should not be in the situation whereby if they continue with their

own build, it is at their own risk due to their neighbour's recklessness, and the resulting ongoing uncertainty. They consider that if this application is approved, it will affect the value of Plot 3 for all time.

4.6 23 February 2024 - Applicant's further comments:

The applicant reiterates that the objector's visual images are not accurate – the need to view on site; similar GPS accuracy was used in the revised plans for Plot 4; it was always proposed to landscape excess soil south of the house on Plot 3; and there was never a hill on Plot 4.

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).

## 5. CONSULTATIONS

5.1 **Planning Enforcement Team** was consulted as it is standard practice to do so when a retrospective application has been submitted. It responded to say: "Matter raised as an enforcement case due to developer moving location on the plot from approved plan. From being on site it was observed this created an overlooking issue, however the site geography is such that overlooking was an issue regardless. The applicants exacerbated the overlooking situation by the change and it is not unreasonable that they should offer some mitigation in the form of screening, planting or opaque glass."

## 6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application:

6.1 **National Planning Framework 4 (2023):**

Policy 1 - Tackling the Climate and Nature Crises

Policy 2 - Climate Mitigation and Adaptation

Policy 3 - Biodiversity

Policy 4 - Natural Places

Policy 5 - Soils

Policy 14 - Design Quality and Place

Policy 16 - Quality Homes

Policy 17 - Rural Homes

6.2 **Highland Wide Local Development Plan 2012**

28 - Sustainable Design

29 - Design Quality and Place-making

31 - Developer Contributions

32 - Affordable Housing

36 - Development in the Wider Countryside

56 - Travel

57 - Natural, Built and Cultural Heritage

58 - Protected Species

61 - Landscape

65 - Waste Water Treatment

66 - Surface Water Drainage

**6.3 West Highlands and Islands Local Development Plan 2019 (WestPlan)**

No specific policies apply.

**6.4 Highland Council Supplementary Planning Policy Guidance**

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

Developer Contributions (March 2018)

Flood Risk and Drainage Impact Assessment (Jan 2013)

Highland's Statutorily Protected Species (March 2013)

Rural Housing (December 2021)

Special Landscape Area Citations (June 2011)

Sustainable Design Guide (Jan 2013)

**7. OTHER MATERIAL POLICY CONSIDERATIONS**

**7.1 Scottish Government Planning Policy and Guidance**

Circular 10/2009 Planning Enforcement

**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 impact on amenity
- c) soils
- d) biodiversity
- e) impact on Special Landscape Area
- f) services
- g) any other material considerations

**Development plan/other planning policy**

8.4 Permission 22/03307/FUL was granted in September 2022 prior to the introduction of National Planning Framework 4 (NPF4) in Feb 2023. This application must therefore take NPF4 into account, whilst the existence of the previous full



permission, and legacy of PIPs before it, are relevant factors which also carry weight in the decision-making process.

- 8.5 Policy 17, para c) of NPF4 supports new homes in remote rural areas where the proposal:
- i. Supports and sustains existing fragile communities;
  - ii. Supports identified local housing outcomes; and
  - iii. Is suitable in terms of location, access, and environmental impact.

The proposal would not meet any of the criteria for new homes in rural areas as set out in para a) of Policy 17. Para b) states that development proposals for new homes in rural areas will consider how the development will contribute towards local living and take into account identified local housing needs (including affordable housing), economic considerations and the transport needs of the development as appropriate for the rural location.

- 8.6 It is understood that the applicant is a local family. No further information is provided as to the proposed occupancy of the house. The location of this whole development is within walking and active travel distance of services and facilities in Arisaig including the primary school, railway station and a bus route. A Developer Contribution has already been made in relation to this plot as part of a previous permission. It is considered that the proposal would broadly accord with paras b and c of Policy 17 and, given the lengthy planning history of previous permissions on the site together with those on adjacent plots, and the retrospective nature of this application, the principle of development on this plot should continue to be accepted. Policy 16 on quality homes seeks consistency with Policy 17 with respect to the sustainable location of residential development.
- 8.7 Policy 14 of NPF4 requires proposals to be consistent with the six qualities of successful places: Healthy, pleasant, connected, distinctive, sustainable, and adaptable. Proposals that are poorly designed, detrimental to the amenity of the surrounding area or inconsistent with the six qualities of successful places will not be supported.
- 8.8 Other key policies of NPF4 are Policies 3, 4 and 5 of NPF4 given the particular locational characteristics. Policy 3 requires all local developments to include appropriate measures to conserve, restore and enhance biodiversity. Measures should be proportionate to the nature and scale of development. Policy 4 seeks to ensure that development within Special Landscape Areas does not impact upon the qualities for which it has been identified. Policy 5, which considers the effect of development on valued soils must also be given due consideration.
- 8.9 In terms of the Highland wide Local Development Plan, Policy 36 seeks development that is acceptable in terms of siting and design; sympathetic to existing patterns of development, and compatible with landscape character and capacity. Policy 28 requires development proposals to be assessed on the extent to which they meet a number of criteria including impact on individual and community and residential amenity; demonstrate sensitive siting and high quality design in keeping with local character and the natural environment; and to conserve and enhance the character of the Highland area, and minimise the environmental impact of development. Policy 29 of the HwLDP requires new development to make a positive

contribution to the visual quality of the place; demonstrate sensitivity and respect towards the local distinctiveness of the landscape and layout of their proposals. Given the location, within the Special Landscape Area, this is particularly so and a requirement of Policy 57.

- 8.10 The principle of a house on the site has been accepted. The acceptability or otherwise of the proposal in this new location however rests on its ability of the development to be accommodated within the site without any additional significant detriment to the quality of place, including landscape setting and visual amenity, and/or individual and community residential amenity.

### **Siting and Impact on amenity**

- 8.11 The position of the house on Plot 4 was approved in Sept 2022, 3 months before that of Plot 3 in December 2022. Both applications were submitted around the same time (Plot 4 on 27 July 22 and Plot 3 on 9 August 2022). The house on Plot 4 (22/03307/FUL) was slightly further to the north west than the indicative position shown in the previous permission in principle however it was considered acceptable. When the owner of Plot 3 became aware of the approved house position for Plot 4 their proposal was revised (during the course of application 22/03541/FUL) to move it to the east in order to increase the separation distance and their privacy.
- 8.12 The approved positions of the respective houses would have resulted in a separation distance of approx. 29m. There is now a separation distance of somewhere between 15m – 16.75m between the nearest points of the as-built house on Plot 4 and the approved position of the house on Plot 3. The front elevation of the house on Plot 4 (as-built), and the rear elevation of Plot 3 are not parallel; the as-built house was also rotated to face more directly due north which has turned it more towards the rear of Plot 3, whereas its previous approved orientation was more to the NNW. This, together with it being significantly elevated in relation to Plot 3 exacerbates its impact. The difference in finished floor levels is estimated to be 8m when measured from the supporting information submitted on 10 December 2023 and as stated in the objection.
- 8.13 The house on Plot 3 is proposed to be 5.35m high to the ridge, whilst the cut on the boundary is up to 2.7m high. There is a full height glazed gable in the room closest to the as-built house at the rear of the proposed house on Plot 3 that will serve a living area which will extend across the full width of the house. Also, there are rooflights proposed above a window serving a bedroom in the back of the house that will also be overlooked by the as-built house. The glazing in this part of the proposed house would be vulnerable to overlooking from the as-built house, as it is higher than the cutting and there is a more direct angle of vision due to its revised orientation.
- 8.14 The land has been reprofiled around the NE corner of the as-built house to mitigate overlooking to some extent; the proposed fence and tree planting would provide further mitigation. Whilst tree planting would appear relatively natural in the landscape, it would appear incongruous in relation to the house, given this would be the principal elevation, and in this exposed position there would be likely concerns about its risk of wind throw in relation to both properties. A 1.8m high

fence around this corner would be highly intrusive in this position in the landscape, and also incongruous being partially in front of the principal elevation of the as-built house.

- 8.15 The offer of opaque glazing to the master bedroom windows in the as-built house would prevent overlooking and reduce the impact on the neighbour's privacy to an extent, although opaque glazing would be a highly undesirable feature for the occupants of that house, particularly as this is the master bedroom and the principal elevation, with views to the Skye Cuillins. Such a measure would also be difficult to enforce as an ongoing requirement. As these are also escape windows it would not be possible for them to be un-openable.
- 8.16 The 'as-built' development is judged to be unacceptable on the basis that the revised position and orientation has resulted in an unacceptable level of overlooking and overbearing to the detriment of the amenity of the future occupants of the approved house on Plot 3.
- 8.17 The proposed mitigation measures could improve the situation, but they are not considered sufficient to overcome the harm caused by the loss of privacy and amenity to the neighbour. They would also appear incongruous in visual amenity and landscape terms. The opinion provided by the Enforcement Team in its response on the application is therefore not one that is shared.
- 8.18 Condition 5 attached to permission 22/03307/FUL specifically sought to avoid any development in this quarter of the site (although the stated reason was in the interests of the landscape and to avoid undermining the buffer with the A830). The as-built siting does not affect the buffer with the A830. It is accepted that the level that the house has been built on may be lower than previously approved, and this is a desirable change, however it is its re-positioning 15.8m to the east that is considered unacceptable due to its resulting relationship to the approved house position on Plot 3. No part of the previously approved house site was within the NE quarter of the site. It is acknowledged however that the plot is an irregular shape and therefore there is some uncertainty around the precise area to which this condition applies. The degree of overlooking towards the neighbouring plot is significantly greater than would have been the case from the windows in the east elevation of the house in its previously approved position, due to the much greater intervening distance; approx. 29m.
- 8.19 Given the proposed density of development in this area and the layout that would be achieved if all 5 plots are developed, the relationship between the as-built house and the house on Plot 3 is unacceptably close and overbearing, particularly due to the difference in levels and its orientation.

## **Soils**

- 8.20 The National Soil map of Scotland shows this whole parcel of land as peaty gleys with peaty rankers with dystrophic semi-confined peat. Policy 5 of NPF4 (Soils) states that Development proposals on peatland, carbon-rich soils and priority peatland habitat will only be supported in certain circumstances; namely:

- i. Essential infrastructure and there is a specific locational need and no other suitable site;
- ii. The generation of energy from renewable sources;
- iii. Small scale development directly linked to a rural business, farm or croft;
- iv. Supporting a fragile community in a rural or island area; or
- v. Restoration of peatland habitats.

8.21 No information on peat has been sought or submitted. It is not now possible to know what the distribution of peat across the site was. It is unlikely however to have been significantly different between the previously approved site and where the house has actually been built - 15.8m apart. If development proposals were now being considered afresh across this wider area, peat surveys would now be required, and this would be a significant factor in the assessment of development here. It is possible that the siting of each of the five proposed houses would be significantly different, or permission might even not now be forthcoming for residential development on this area at all due to the extent and quality of peat. It is however considered that the planning history and retrospective nature of this application should outweigh the peat issue in this case. If planning permission is granted, to address this issue, a condition to secure enhancement of the peatland within the plot and outwith the residential curtilage would ensure that the aims and objectives of Policy 5, and Policy 3, of NPF4 are achieved.

### **Biodiversity**

8.22 In a similar vein, if planning permission is granted, a condition to secure biodiversity enhancement measures such as additional tree planting, provision of bird and/or bat boxes and habitat improvements within the plot beyond the identified residential curtilage then the aims of Policy 3 of NPF4 could be achieved.

### **Impact on Special Landscape Area**

8.23 The impact of the as-built house on the wider landscape, in comparison to the previous approval is not significant. It is seen on the skyline when viewed from the A830 to the north. However, it is at a sufficient distance and when the rest of the plots around it are developed it is unlikely to be as conspicuous. If permission were to be forthcoming, it is recommended that additional planting is sought along the southern boundary, to the rear of the plot, to assist in softening the visual impact of the house where it breaks the skyline in views from the A830.

### **Services**

8.24 The change to the foul drainage arrangements and surface water drainage scheme are considered to be acceptable.

### **Other material considerations**

8.25 The visualisations submitted by the objector on 24 November 2023 do not accord with the relative positions of the houses shown in the applicant's further submission of 10 December 2023. It is difficult to explain the discrepancy without undertaking independent survey work. The objector acknowledges that their visualisations do

not take into account the mound that has been provided around the NE corner of the house, in an attempt to mitigate overlooking from the ground floor windows. This will effectively result in the visualisations appearing to exaggerate the extent of the issue. The position of Plot 3 does appear to be slightly more offset in relation to Plot 4 than the visualisations would suggest. It is also possible that the stones marking the corners of the house footprint on Plot 3 were not accurately positioned when the site was first visited by the planning officer – as they are not fixed and could have been moved. However, it is not disputed that the separation distances between the houses would be less than 18m.

- 8.26 It would not be reasonable for the planning authority to now seek adjustments to the position of the house on Plot 3. The owner has an extant planning permission and groundworks have commenced on the site. The ground conditions are difficult on that plot – there is likely to be more peat on Plot 3 than on Plot 4, given its lower elevation and the fact that there is a watercourse running through it. While the owner of Plot 3 could proceed with their development as approved, they may wish to await the outcome of this application, and any appeal in the event it is refused, before deciding how to proceed. Although not material to the assessment of the case, there may be a cost impact to the neighbouring landowner as a result of the incorrect siting of the house on Plot 4.
- 8.27 Likewise, there may be significant cost implications for the applicant arising from the incorrect siting if this application is refused and dismissed on appeal, resulting in planning enforcement action, which could ultimately result in its demolition.

#### **Non-material considerations**

- 8.28 The financial value of each plot and how these may have been affected by the incorrect positioning of the house on Plot 4 is not a material planning consideration. Each planning application must be considered on its own merits, whether or not it is retrospective.

#### **Matters to be secured by Legal Agreement / Upfront Payment**

- 8.29 In order to mitigate the impact of the development on infrastructure and services the following matters require to be secured prior to planning permission being issued:
- None - No additional developer contributions identified. Affordable housing contribution has previously been made (previous Section 75 obligation now discharged).

### **9. CONCLUSION**

- 9.1 The revised, as-built position of the house on Plot 4 is too close to the approved site of the house on Plot 3 at between 15m – 16.75m horizontal separation, and its re-orientation to face almost due north has resulted in it more directly overlooking the neighbouring plot. It is also over-bearing due to its finished floor level being approx. 8m higher than the proposed floor level of the house on Plot 3 in this amended position. It will unacceptably affect the privacy and amenity of the future occupants of the house on Plot 3, and the proposed mitigation measures will not

adequately overcome these concerns, contrary to Policies 14 and 17 of NPF4 and Policies 28, 29 and 36 of the Highland wide Local Development Plan.

- 9.2 If this application is refused, as per the recommendation, the next steps would be to seek enforcement action to remedy the breach of planning control. This is most likely to be for the removal of the house from its current location. There is a right of appeal available to the applicant against a refusal of planning permission and also the serving of an enforcement notice.
- 9.3 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: 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 Obligation N

Revocation of previous permission N

**Subject to the above actions**, it is recommended to **REFUSE** the application for the following reason

1. The revised, as-built position of the house on Plot 4 will unacceptably affect the privacy and amenity of the occupants of the approved house on Plot 3, by virtue of its proximity to the approved site of the house on Plot 3 at between 15m – 16.75m horizontal separation, its orientation with the principal elevation facing directly towards the neighbouring plot, and its finished floor level being approx. 8m higher than the proposed floor level of the house on Plot 3 in this revised position. The proposed mitigation measures comprising a 0.45m high bund, a 1.8m high fence and tree planting around the NE corner of the house, together with opaque glazing in the master bedroom windows will not adequately overcome these concerns and would appear incongruous, contrary to Policies 14 and 17 of National

Planning Framework 4 and Policies 28, 29 and 36 of Highland wide Local Development Plan.

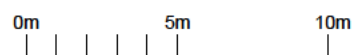
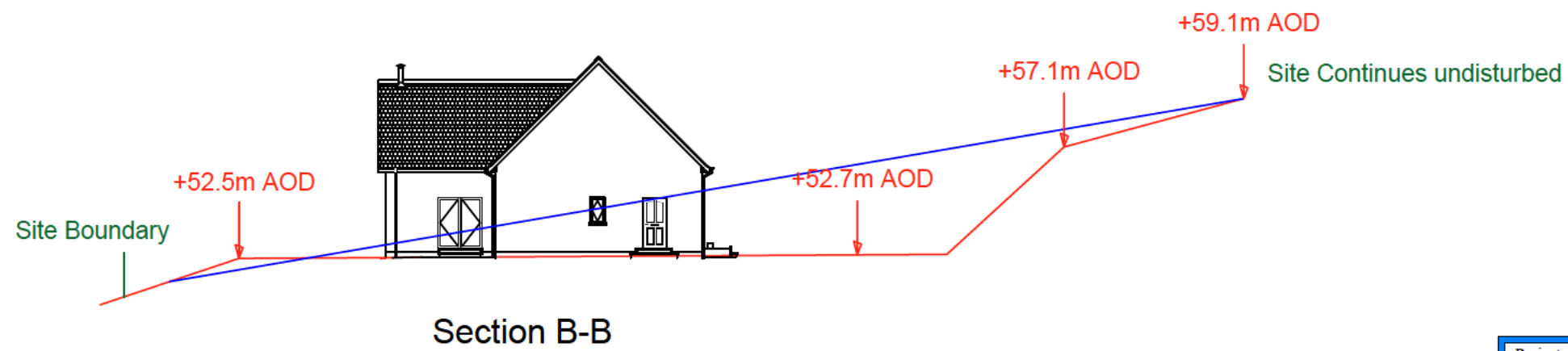
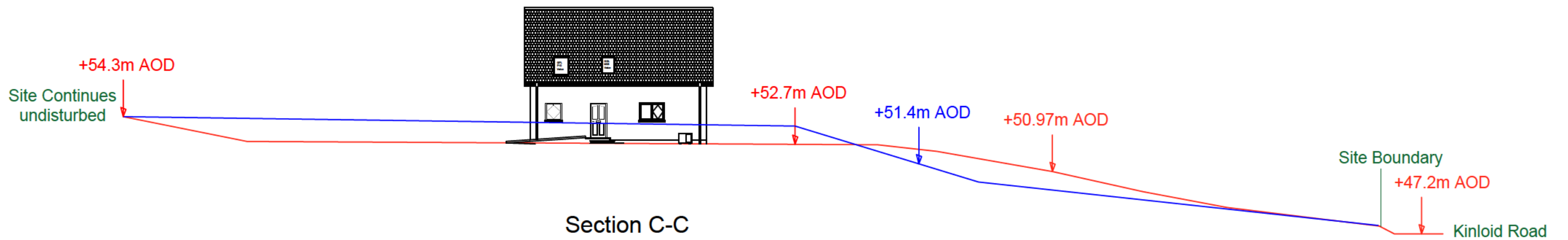
## **REASON FOR DECISION**

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.

Signature: David Mudie  
Designation: Area Planning Manager – South  
Author: Lucy Prins  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 - Amended Location Plan 1215/5 Rev2 7 Nov 2023  
Plan 2 - Ground floor plan 1215/1 30 Oct 2023  
Plan 3 - First Floor Plan 1215/2 30 Oct 2023  
Plan 4 - Section A-A 1215/4 30 Oct 2023  
Plan 5 - Elevations 1215/5 30 Oct 2023  
Plan 6 - Section Plan 1215/6 30 Oct 2023

Red Line Shows As Built Site Profiles

Blue Line Shows Original Site Profile



Project: Plot 4, Kinloid Arisaig		<b>A. N. FRASER</b> Joinery & Building Contractor Innishail	
Drawing: Site Sections Drawing No.: 1215 / 6			
Scale: 1 : 250 Date 30/10/23	South Laggan By Spean bridge Inverness Shire PH34 4EA Tel/Fax 01809 501451		



Black Concrete Ridge

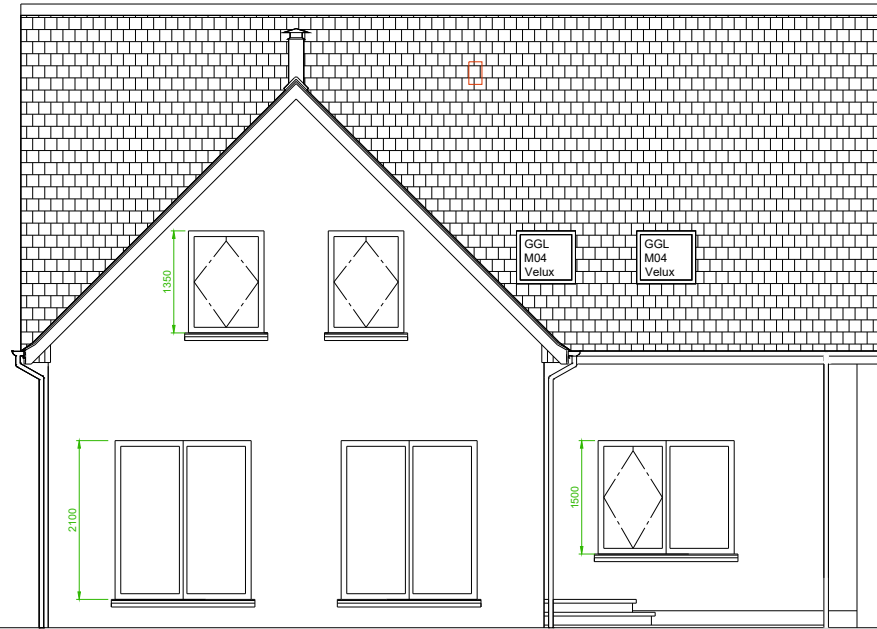
Natural Slate

K-Rend Pure White Smooth Render

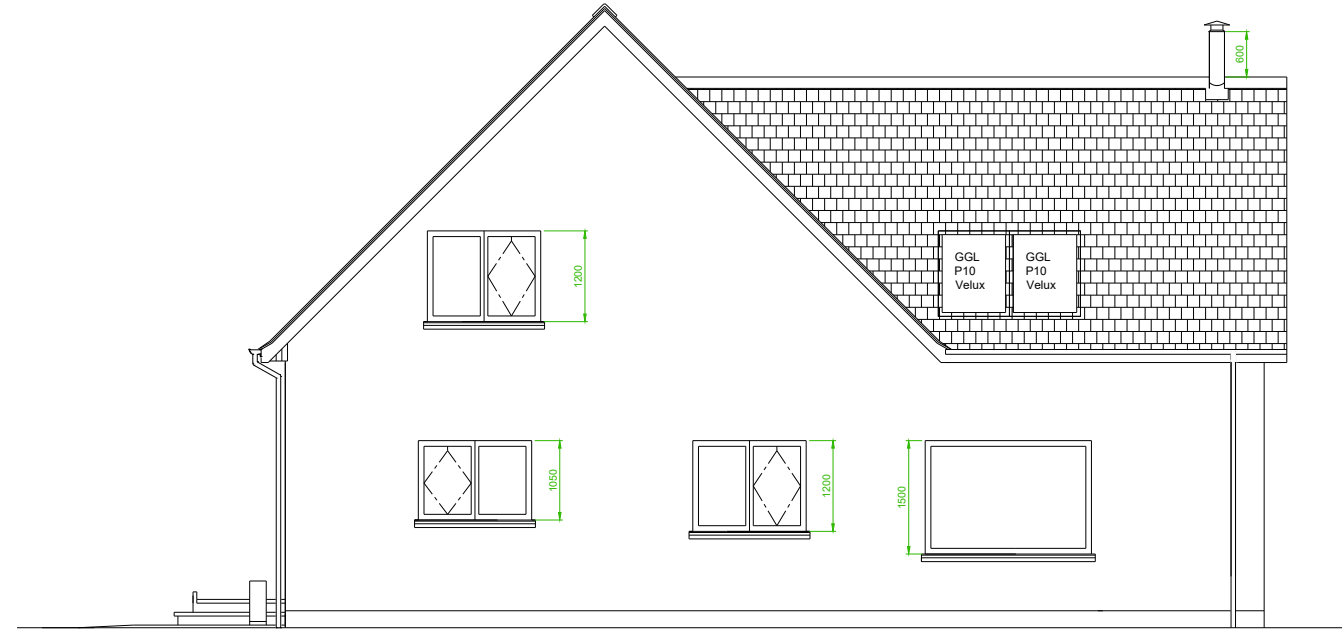
K Rend Smooth Grey Base Course

Anthracite Grey PVC Fascias and Soffits

Anthracite Grey Doors and Windows



Front Elevation 1 : 100



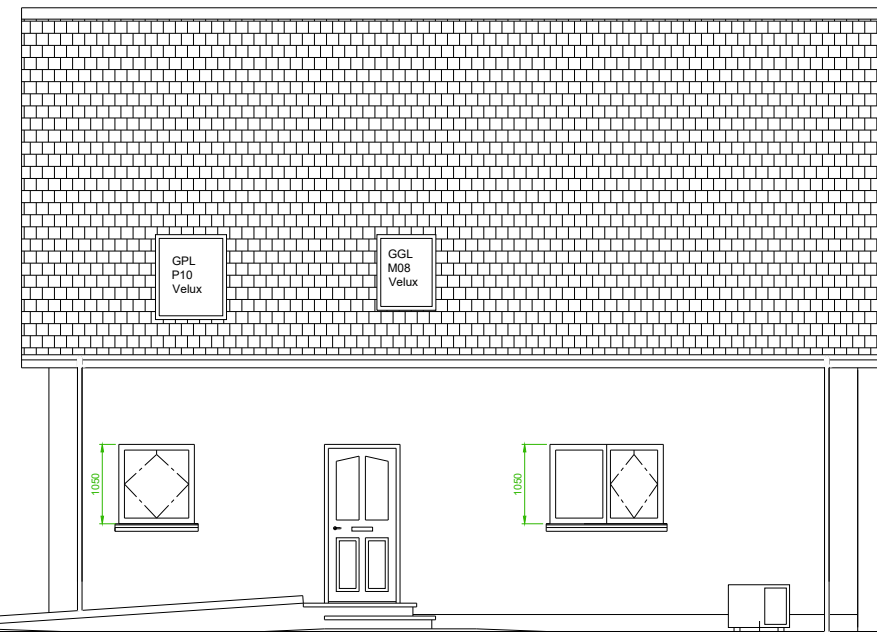
End Elevation

Black Concrete Ridge

Natural Slate

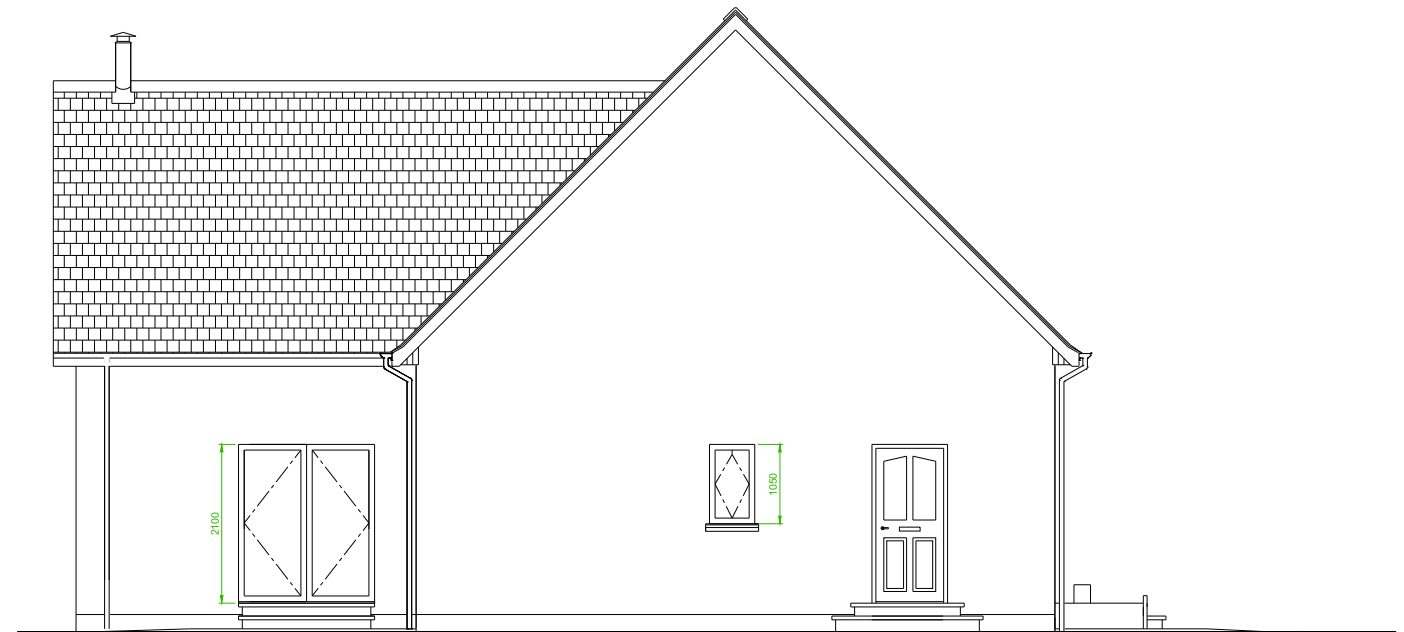
K-Rend Pure White Smooth Render

Krend Smooth Grey Base Course



Rear Elevation 1 : 100

Mitsubishi Ecodan 8.5 kW  
Air to water ASHP



End Elevation



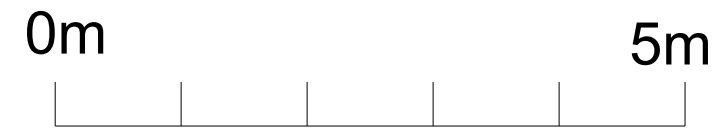
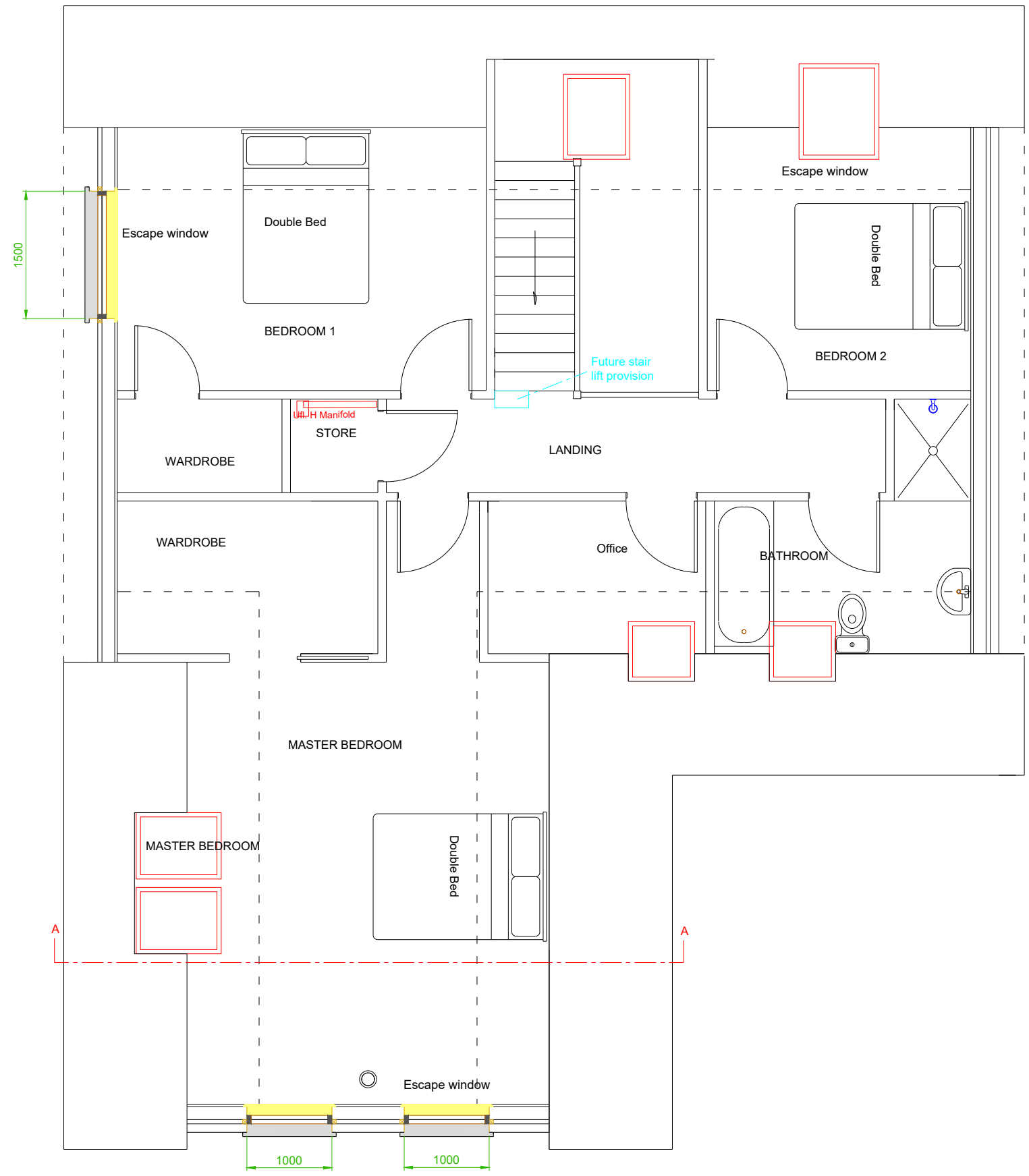
Project:  
Proposed House, Kinloid Arisaig

Drawing:  
Elevations

Drawing No.:  
1215 / 5

Scale:  
1 : 100  
Date 30/10/23

**A. N. FRASER**  
Joinery & Building Contractor  
Innishail  
South Laggan  
By Spean bridge  
Inverness Shire  
PH34 4EA  
Tel/Fax 01809 501451



FIRST FLOOR PLAN SCALE 1 : 50  
Floor Area 89 Sqm.

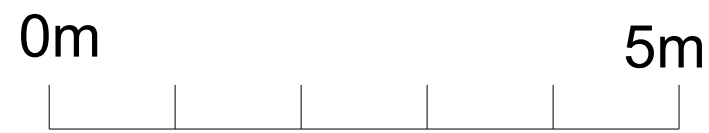
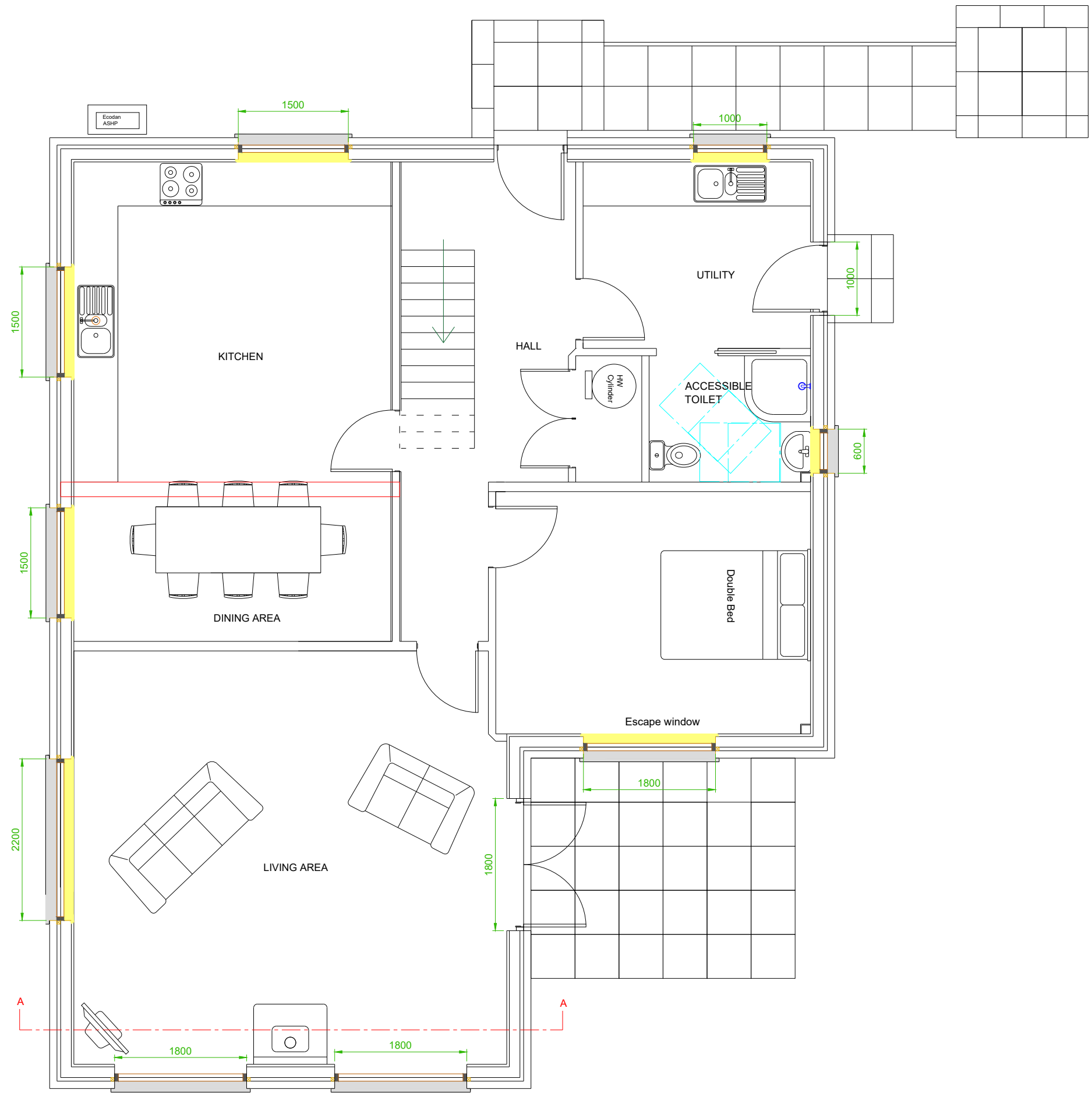
Project:  
Plot 4, Kinloid Arisaig

Drawing:  
First Floor  
Layout

Drawing No. 1215/2  
Scale @A3:  
1 : 60  
Date 30 / 10 / 23

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GROUND FLOOR PLAN SCALE 1 : 60  
Floor Area 105 Sqm.

Project:  
Plot 4, Kinloid Arisaig

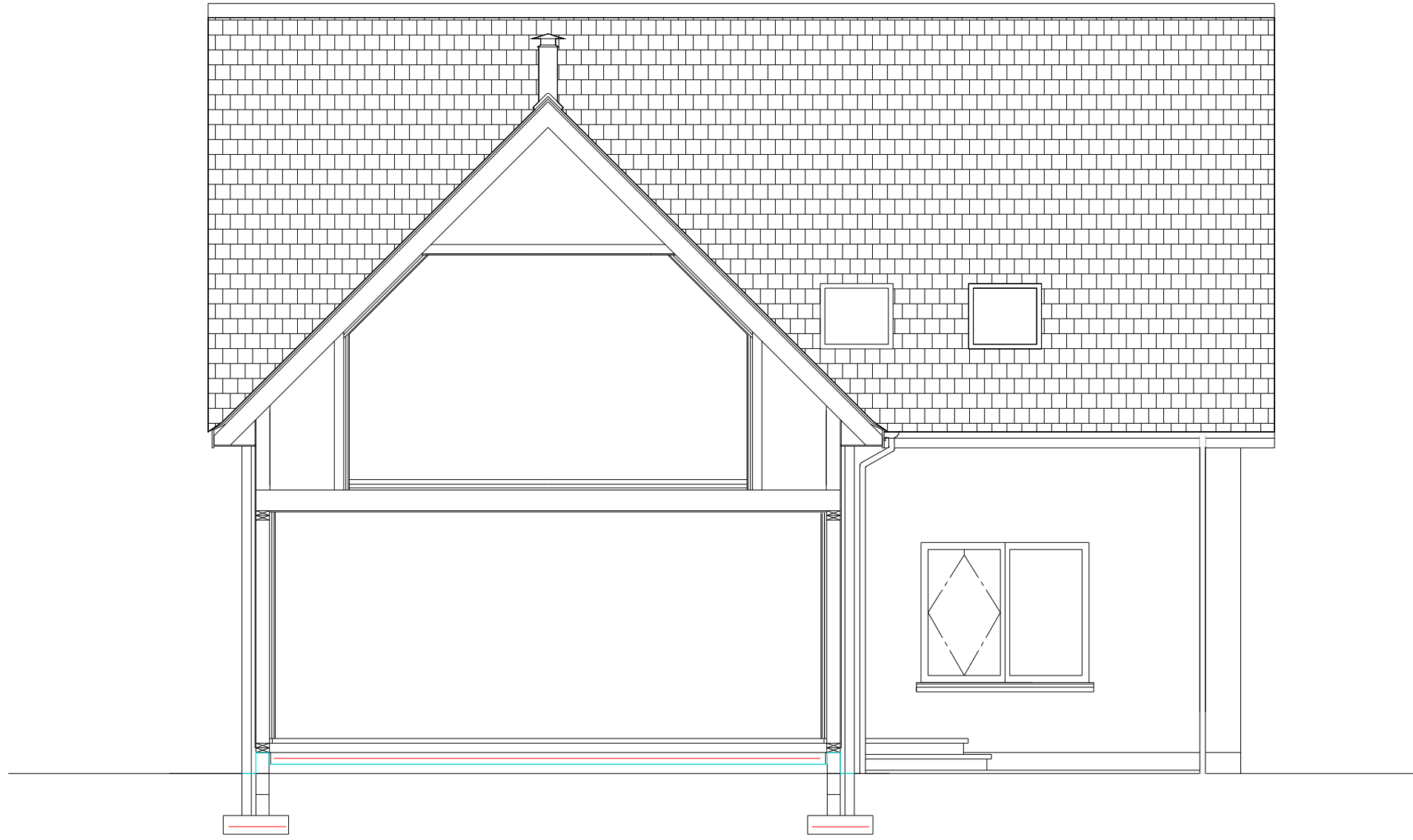
Drawing:  
Ground Floor  
Layout

Drawing No. 1215/1  
Scale @A3:  
1 : 60

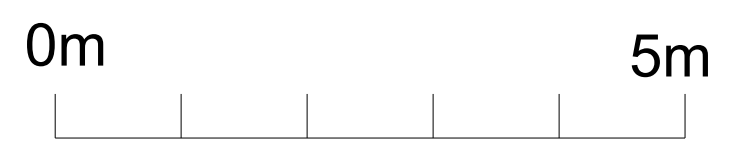
Date 30 / 10 / 23

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PH34 4EA  
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SECTION AA SCALE 1 : 60




Project:  
Plot 4, Kinloid Arisaig


Drawing:  
Section A-A

Drawing No. 1215/4  
Scale @A3:  
1 : 60

Date 30/10/23

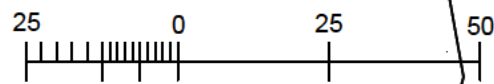
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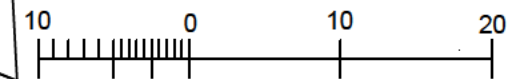
Location Plan  
Scale 1:1250

Land Outlined in Red Shows Site Out Line - All Owned By Applicant



Site Layout Plan  
Scale 1:500

11.8m



PLOT 3

PLOT 2

PLOT 3

Pit (dis)

Cattle Grid  
Access Road

Drain

House Position as Approved  
Application 22/03307/FUL

Birch, Rowan and Alder Trees Planted to act  
as screening barrier between Plots 3 & 4

1800mm High privacy  
fence to mitigate  
overlooking on Plot 3

Surface Water  
Soakaway

As Built House Position  
Waste collection Area

Sewage  
Treatment  
Plant

Pod sited As approved  
23/02123/FUL

7.4m

8m

15.8m

Existing Concrete Slab

GPS Surveyed  
Fence Position

OS Maps Fence Position

Track

Project:  
Plot 4, Kinloid Arisaig

Drawing:  
Site Location  
& Layout

Drawing No. 1215/5 REV2  
Scale @A3:  
As Stated

Date 07 / 11 / 23

**A. N. FRASER**  
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