

Agenda Item	6.5
Report No	PLS-56-24

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 01 October 2024
Report Title: 24/01791/S42: Atina Property UK Limited
Land 120M NW Of Taigh Breagh, Achnabobane, Spean Bridge
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Section 42 application to develop land without compliance with Condition 1 of 19/02043/MS: saplings 40cm - 60cm in size shall be planted in shelters and staked in the area to the NW of the plot, as shown on the revised layout site plan drawing, together with groups of feathered 1.2m - 1.8m bare root trees in the positions shown along the boundaries of the plot

Ward: 11 – Caol and Mallaig

Development category: Local Development

Reason referred to Committee: Community Council objection

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

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

1. PROPOSED DEVELOPMENT

- 1.1 Planning permissions 16/00938/PIP and 19/02043/MSC were granted for the development of a house on this plot. One of the planning conditions attached to 19/02043/MSC stated:

“Notwithstanding the notes attached to approved Layout drawing no.101, a minimum of 120 saplings 40cm - 60cm in size shall be planted in shelters and staked in the area to the NW of the plot, outlined green on the Layout drawing, together with groups of feathered 1.2m - 1.8m bare root trees in the positions shown along the SW, SE and NE boundaries of the plot; species to comprise bird cherry, silver birch and rowan, unless otherwise approved in writing by the Planning Authority.

Tree planting shall be carried out in accordance with the approved scheme. All planting, in the approved details shall be carried out in the first planting and seeding seasons following the commencement of development, unless otherwise stated in the approved scheme.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.”

Reason:In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site, in accordance with policies 28, 29 and 57 of the Highland wide Local development Plan.

- 1.2 The application is for a change to this condition which required tree planting over all of the parcel of land immediately to the north of the present application site. This has come forward because the person who has bought this plot, which has the benefit of planning permission for a house (16/00938/PIP and 19/02043/MSC), was sold a smaller area of land than was the subject of the planning permissions – and the land to the north of the plot, which is specifically referred to in the condition, is not within their ownership or control. The applicant cannot therefore comply with that planning condition.
- 1.3 The applicant is however proposing to plant a minimum of 120 trees within the garden curtilage, to the north of the house, which is alongside the area of land in question. Saplings 40cm-60cm in size shall be planted in shelters and staked in the area as shown on the revised layout site plan drawing, together with groups of feathered 1.2m-1.8m bare root trees in the positions shown along the boundaries of the plot.
- 1.4 Pre Application Consultation: None.
- 1.5 Supporting Information: None.
- 1.6 Variations: None.

2. SITE DESCRIPTION

- 2.1 This is a large property set within a generous residential garden curtilage. It is sited behind the former farmhouse at Achnabobane, now a Bed and Breakfast. It is

adjacent to another new house, Rainbow's End, and east of Sealladh na Coille. It is accessed from the lane that leads beyond the farmhouse to the northern cluster of houses at Achnabobane. This access road is built to adopted standard to just beyond this plot. The land to the east, across the lane, is not developed, and the land immediately to the rear which was subject to the tree planting condition has been cleared and left as hard standing. Behind it there is an existing reasonable sized belt of trees, dividing it from Aonach Glas to the rear.

- 2.2 Achnabobane is approx. 3km south-west of Spean Bridge, and north of the A82. It is within the Fort William "hinterland", as defined in the Highland wide Local Development plan (and WestPlan), and Accessible Rural area, as defined in the Scottish Government's 6 fold Urban Rural Classification 2020. This site is just outwith the Parallel Roads of Lochaber SSSI, designated for geomorphological features; and woodland listed on the Ancient Woodland Inventory just clips a very small portion of the NW corner of the plot.

3. PLANNING HISTORY

- | | | | |
|-----|------------|--|---|
| 3.1 | 05.08.2016 | 16/00938/PIP: Erection of house (Plot 1) | Planning
Permission in
Principle
Granted |
| 3.2 | 23.07.2019 | 19/02043/MS: Erection of house (Plot 1) | Matters
Specified
Approved |

4. PUBLIC PARTICIPATION

- 4.1 Advertised: Unknown neighbour
Date Advertised: 14.06.24
Representation deadline: 27.06.24
Timeous representations: 4
Late representations: 1

- 4.2 Material considerations raised are summarised as follows:

- a) The requirement to plant trees is highly desirable and sensible since so much land has been cleared to the detriment of wildlife
- b) Other residents have planted large numbers of trees as per their permissions
- c) The motivation for removing the tree planting requirement is to create a new house plot or for additional pods, or a road
- d) If accepted, this would be rewarding failure to meet planning requirements
- e) This site is now for sale on Braveheart Auctions [weblink provided]
- f) This is an SSSI – development is subject to permission from NatureScot
- g) The tree planting should have been undertaken in 2022
- h) Every mechanism put in place by the Council to protect the environment from wholesale destruction by the proposer/landowner has been overturned, ignored or set aside to the detriment of the area.

i) Lack of consistency in planning decisions over the past 20 years

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 **Spean Bridge, Roy Bridge, and Achnacarry Community Council:** Object – as follows:

“We note that the request does not include the whole of [the area covered by] condition 1. The previous landowner notified Highland Council of his intention to initiate development on 19th June 2019 and sent photos of the cleared site on 22 June 2021. According to Condition 1 the planting of native broadleaves should have taken place in 2022 but didn't. Policies 4a) and 6a) of NPF4 are relevant as well as those policies referred to in the reason for the condition: “Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported”; and “Development proposals that enhance, expand and improve woodland and tree cover will be supported”.

The Community Council are an avid supporter of ensuring that trees are included in developments and have been pressing for some time that restocking obligations at Achnabobane be discharged fully.

It is most regrettable to find that although the planning in principal application was honoured by Highland Council after the ruling of 30th April 2019, this sole condition was not completed. Both the previous landowner and the applicant were able to benefit from a live planning permission in place, yet the former failed to execute the conditions thereon, and the latter wants it removed entirely.

The Community Council is not convinced that Section 42 of the Town and Country Planning (Scotland) Act 1997 is the proper vehicle for removing a condition which should have already been discharged. However irrespective of that we feel that both NPF4 Policy 4a and 6a and Policies 28, 29 and 57 of the Highland wide Local Development Plan caution against allowing this request and accordingly we object against the application for the reasons given.”

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 **National Planning Framework 4 (2023) (NPF4)**

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 6 - Forestry, Woodland and Trees

Policy 14 - Design Quality and Place

6.2 **Highland Wide Local Development Plan 2012 (HwLDP)**

- 28 - Sustainable Design
- 29 - Design Quality and Place-making
- 35 - Housing in the Countryside (Hinterland Areas)
- 51 - Trees and Development
- 55 - Peat and Soils
- 57 - Natural, Built and Cultural Heritage
- 61 - Landscape

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

No specific policies apply.

6.4 **Highland Council Supplementary Planning Policy Guidance**

- Sustainable Design Guide (Jan 2013)
- Trees, Woodlands and Development (Jan 2013)

7. **OTHER MATERIAL POLICY CONSIDERATIONS**

7.1 **Scottish Government Planning Policy and Guidance**

N/A

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) any other material considerations

Development plan/other planning policy

- 8.4 The previous permission was for a plot that extended to include a parcel of land to the north: 0.54ha in total. The current application site measures 0.37ha and excludes the parcel of land referred to in the planning condition, which amounts to an area 0.17ha in size. The previous permission required the land to the north to be planted up with trees to provide a landscaped buffer between this house plot and the cluster of houses to the north.

- 8.5 When 19/02043/MSA was approved, the tree planting condition met the tests that are set out in Regulations. A Notice of Initiation of Development (NID) was submitted by D Kelly Design on behalf of the previous landowner, Alistair Macgregor, on 20 May 2021 and the site was cleared and re-profiled to create a level platform soon after. Photos to show the site clearance were submitted on 22 June 2021.
- 8.6 Through the back end of 2021 there was correspondence with another potential developer/purchaser of the plot, and with the landowner's agents regarding the status of the site and possible amendments to the approved plans. An email from the case officer to the agent dated 08.12.2021 flags up the need to comply with conditions. A Variation to the house design was subsequently approved in Feb 2022.
- 8.7 The purchaser of the plot, and current applicant, enquired about the tree planting requirement, through his agent, in Nov 2023. It became apparent at this time that the plot he had bought excluded the area identified on the MSA permission for the tree planting. He was concerned to address the matter and suggested that he would plant additional trees to the rear of the house, within the plot he had purchased and adjacent to the area that was identified in the planning permission.
- 8.8 The current applicant proposes to plant the same number (min 120) trees on his property. This will be no less than the 120+ saplings originally required on the 0.17ha to the north of his plot. The intention was to provide a tree belt as a landscaped break to separate the central and northern clusters of housing at Achnabobane. This estate is in the countryside and its extensive development has resulted in the loss of many trees, including areas listed in the Ancient Woodland Inventory. Approximately half of the land to the north, referred to in the MSA approval, is designated as Long Established woodland of Plantation origin (LEPO) - as is a small corner at the NW edge of the current application site.
- 8.9 Whilst the current proposed tree planting does not include the parcel of land to the north, it is considered that the current applicant's proposal for tree planting within his garden curtilage, to the north of the house and along the plot boundaries, should be accepted. This will not have the effect of freeing up the land to the north for future development or prejudice the Council's ability to resist future development on this land. If the 0.17ha (approx.) parcel of land that was intended to be planted up is the subject of any future applications for development, officers will assess those applications on their individual merits, although it would be unlikely development on this land would be accepted, given the planning history of the area in question, and specifically with reference to Condition 1 of permission 19/02043/MSA.

Other material considerations

- 8.10 The fact that the land in question has subsequently been for sale on an auction site is not relevant to the consideration of this planning application.
- 8.11 The site is not within the SSSI – the boundary actually adjoins the NW corner of the application site.
- 8.12 Planning policy relating to developments at Achnabobane has changed in recent times due to the adoption of NPF4 in 2023. The implications of this change are referred to extensively in other recent Reports of Handling, e.g. for 23/02401/FUL -

erection of a house on land 65M SE Of Stockman's Cottage, which was refused permission in July 2024. The policy changes do not however affect the recommendation in this case. The adoption of NPF4 may result in a perception of inconsistency in decision making – however the Reports of Handling do set out in full the policy basis for decision making and the planning history of sites.

Non-material considerations

8.13 None.

Matters to be secured by Legal Agreement / Upfront Payment

8.14 N/A

9. CONCLUSION

9.1 The proposal is considered acceptable in that it will result in a substantial amount of tree planting at the rear of the house, and a landscaped buffer with land to the rear. It is unfortunate that the current applicant does not have ownership or control of the land to the north, and therefore the ability to secure complete compliance with the previous tree planting condition. However, it would be unreasonable to refuse the current application given the applicant is proposing as much tree planting as previously proposed and is reasonable on his land.

9.2 This will not preclude the Planning Authority from resisting any future applications for development on the land to the north which was included in the previous planning condition for tree planting.

9.3 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

10.1 Resource: Not applicable

10.2 Legal: Not applicable

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

10.4 Climate Change/Carbon Clever: Not applicable

10.5 Risk: Not applicable

10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued N

Notification to Scottish Ministers N

Conclusion of Section 75 Obligation	N
Revocation of previous permission	N

Subject to the above actions, it is recommended to **GRANT** the application subject to the following amended condition

1. A minimum of 120 no. saplings 40cm-60cm in size shall be planted in shelters and staked in the areas as shown on the approved site plan; species to comprise bird cherry, silver birch and rowan, unless otherwise approved in writing by the Planning Authority.

All planting, as per the approved details shall be carried out in the first planting season following the grant of this planning permission, unless otherwise agreed in writing by the Planning Authority.

Any trees or plants which within a period of five years from the completion of the development die, for whatever reason are removed or damaged shall be replaced in the next planting season with others of the same size and species.

Reason: In order to ensure that a high standard of landscaping is achieved, appropriate to the location of the site, in accordance with policy 6 of NPF4, and policies 28, 29 and 57 of the 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 accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

INFORMATIVES

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Mud and Debris on Road

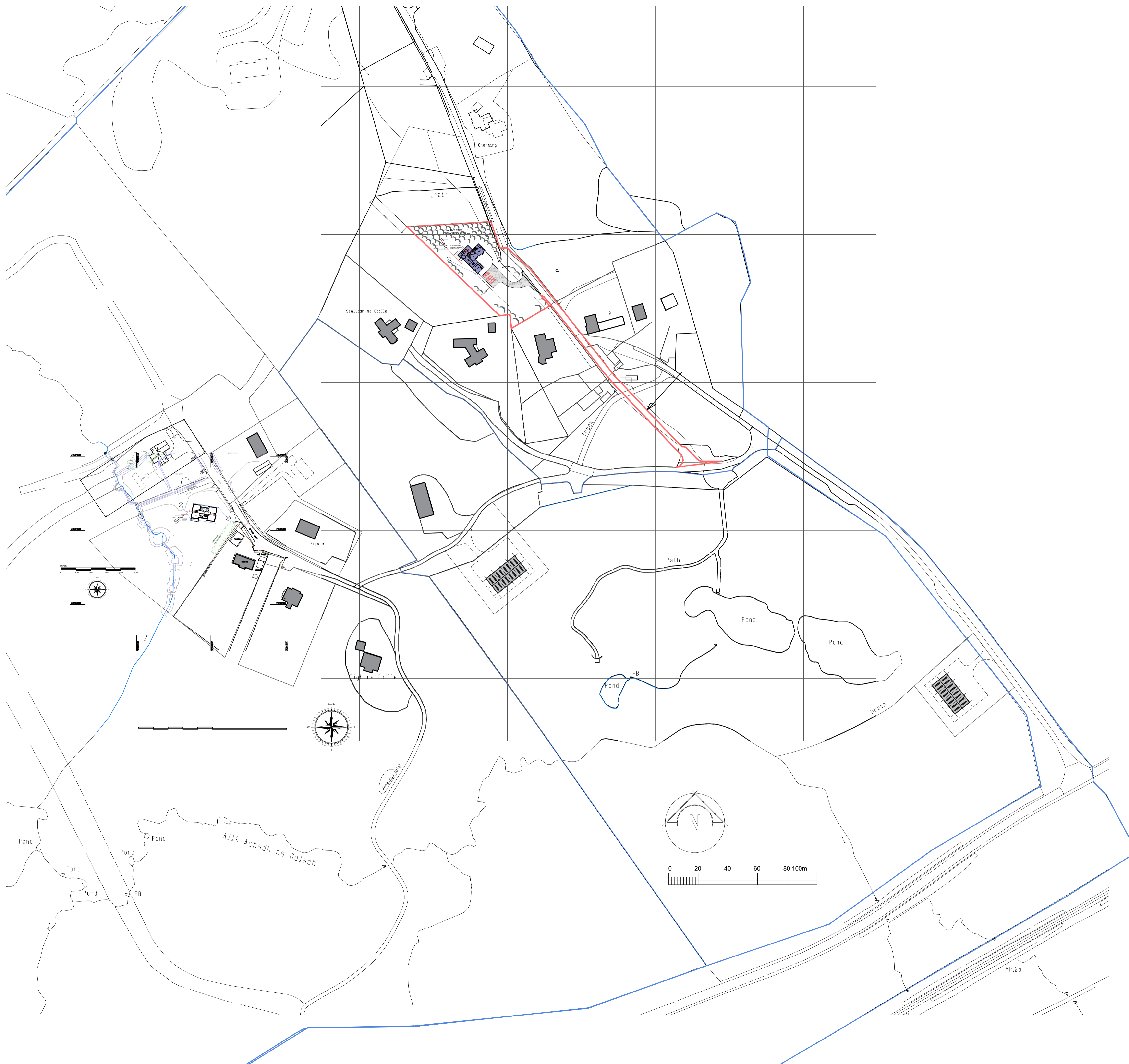
Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

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 - Location Plan PL101.2A
Plan 2 - Block Plan PL102.2A
Plan 3 - Site Layout Plan PL102.3

NOTE:
 All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, Codes of Practice and British Standards. All dimensions to be verified by the Contractor on site. Work to figured dimensions only.

© This drawing remains the Copyright of David Bell Architect and may not be reproduced in whole or in any part without prior written permission.

REVISION / DESCRIPTION / DATE



DAVID BELL ARCHITECT

1 John's Place Edinburgh EH6 7EL
 T: 0131 478 7100 M: 07767 880 488
 email: david.bell.arch@gmail.com

CLIENT

Mr Marcello Crolla

PROJECT
**NEW DWELLING HOUSE
 AT LAND 120m NW OF TIAGH BREAGH
 ACHNABOBANE
 SPEAN BRIDGE**

SCALE@A1 1:1250@ A1, 1:2500@ A3	DATE May 2024
DRAWN BY rb	CHECKED dwb
STAGE Title	

DRAWING
Site Location Plan

PROJECT NUMBER 21-xxx	DRAWING NUMBER PL101.2	REVISION A
---------------------------------	----------------------------------	----------------------

NOTE:
 All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, Codes of Practice and British Standards. All dimensions to be verified by the Contractor on site. Work to figured dimensions only.

© This drawing remains the Copyright of David Bell Architect and may not be reproduced in whole or in any part without prior written permission.

REVISION / DESCRIPTION / DATE



DAVID BELL ARCHITECT

1 John's Place Edinburgh EH6 7EL
 T: 0131 478 7100 M: 07767 880 488
 email: david.bell.arch@gmail.com

Mr Marcello Crolla

PROJECT
 NEW DWELLING HOUSE
 AT LAND 50m NW OF TIAGH BREAGH
 ACHNABOBANE
 SPEAN BRIDGE

SCALE@A1 1:500 @ A1, 1:1000 @ A3	DATE May 2024
DRAWN BY rb	CHECKED dwb
STAGE Title	

DRAWING
 Site Block Plan
 Title Plan

PROJECT NUMBER 21-xxx	DRAWING NUMBER PL102.2	REVISION A
--------------------------	---------------------------	---------------

NOTE:
 All proprietary goods and materials are to be fitted in accordance with manufacturer's instructions, Codes of Practice and British Standards. All dimensions to be verified by the Contractor on site. Work to figured dimensions only.

© This drawing remains the Copyright of David Bell Architect and may not be reproduced in whole or in any part without prior written permission.

REVISION / DESCRIPTION / DATE



**DAVID BELL
 ARCHITECT**

1 John's Place Edinburgh EH6 7EL
 T: 0131 478 7100 M: 07767 880 488
 email: david.bell.arch@gmail.com

CLIENT
Mr Marcello Crolla

PROJECT
 NEW DWELLING HOUSE
 AT LAND 120m NW OF TIAGH BREGAH
 ACHNABOBANE
 SPEAN BRIDGE

SCALE@A1 1:250 @ A1, 1:500 @ A3	DATE May 2024
DRAWN BY rb	CHECKED dwb
STAGE Title	

DRAWING
**Site Block Plan
 Title Plan**

PROJECT NUMBER 21-xxx	DRAWING NUMBER PL102.3	REVISION
---------------------------------	----------------------------------	----------

Sealladh Na Coille