

Agenda Item	6.7
Report No	PLS-58-24

HIGHLAND COUNCIL

Committee: South Planning Applications Committee
Date: 01 October 2024
Report Title: 24/03592/FUL: Gateway
Westview House Upper Myrtlefield Inverness IV2 5BX
Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Change of use from house (Class 9) to residential institution (Class 8)
Ward: 19 – Inverness South

Development category: Local

Reason referred to Committee: 5 or more objections from members of the public

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

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour

Date Advertised: 02.09.2024

Representation deadline: 21.09.2024

Timeous representations: 10 from 10 households

Late representations: None

4.2 Material considerations raised are summarised as follows:

- a) Area is unsuitable for vulnerable individuals due to lack of facilities and public transport
- b) Single track road is dangerous for pedestrians; no footpaths or streetlights and limited passing places. Subject to the national speed limit – consideration should be given to a 40mph limit on the Nairnside road; can be snowed in in winter.
- c) Proposal will result in additional vehicle traffic from staff and deliveries which would add to risk for pedestrians and dog walkers as vehicles will need to come and go daily to collect residents for activities and services
- d) Not in keeping with the character of the area which is a small residential community providing quietness and privacy to its residents; this is a commercial property and would be detrimental to the area
- e) Original application was as an HMO – disingenuous to apply under a different classification for the same proposal; Class 8 refers to medical care and treatment; other Gateway properties are run as HMOs
- f) Applicant intends to increase parking spaces from 6 to 9 which suggests there will be more vehicles than the 4-5 stated.
- g) No information is provided about the proposed use of the annex
- h) Does not meet Council's tests for HMO use as it is not within close proximity to public transport connections or social and community facilities
- i) Waste services may need to be increased as a consequence of the development resulting in additional vehicle trips

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 Cradlehall and Westhill Community Council: No response received

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 13 - Sustainable Transport

Policy 14 - Design Quality and Place
Policy 15 - Local Living and 20 Minute Neighbourhoods
Policy 16 - Quality Homes

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

28 - Sustainable Design
33 - Houses in Multiple Occupation
34 - Settlement Development Areas
35 - Housing in the Countryside (Hinterland Areas)
56 - Travel

6.3 **Inner Moray Firth Local Development Plan 2 (2024) (IMFLDP2)**

No specific policies apply.

6.4 **Highland Council Supplementary Planning Policy Guidance**

Houses in Multiple Occupation (March 2013)
Housing in the Countryside and Siting and Design (March 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Not Applicable

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, design and amenity
- c) access and infrastructure
- d) any other material considerations

Development plan/other planning policy

8.4 The key NPF4 policies in the assessment of this type of development are Policy 14 (Design, quality and place) and Policy 16 (Quality Homes). Policy 14 supports development proposals which are designed to improve the quality of an area and does not support development proposals which are poorly designed or detrimental to the amenity of the surrounding area. Policy 16 supports householder developments where they do not have a detrimental impact on the character or

environmental quality of the home or surrounding area in terms of size, design and materials, or the neighbouring properties in terms of physical impact, overshadowing or overlooking.

- 8.5 Policy 28 (Sustainable Design) of Highland wide Local Development Plan (HwLDP) assesses proposals against a number of criteria, including their compatibility with public service provision; transport; impact on individual and community residential amenity; demonstration of sensitive siting and high-quality design in keeping with local character; and contribution to the economic and social development of the community.
- 8.6 The property is currently being used for residential purposes and this application seeks a change of use to another residential use. In amenity terms, therefore, the change is not hugely significant. The building will still be used as a permanent home and the proposal will not introduce any other uses (e.g. industrial) that may impact upon the amenity of local residents, and which may not be considered appropriate within a residential area. The key factor in planning terms that requires to be assessed is the number of unrelated residents utilising the space. Class 9 (houses) only allows for up to 5 unrelated people living together (there is no limit to the number of related people who can live in a house). This proposal is for 6 unrelated people with learning disabilities, who have already lived together for 10 years, plus staff, to reside in the house. The Supporting Statement makes it clear that there is a staff presence 24/7, including overnight, which means that under the Town and Country Planning (Use Classes) (Scotland) Order 1997 as amended, the proposal would fall within Class 8 (residential institutions), part a: “for the provision of residential accommodation and care to people in need of care other than a use within class 9 (houses)”.
- 8.7 The proposal is effectively for a residential use within a residential area. It is therefore considered to be acceptable in principle and can be supported subject to it being acceptable in terms of siting and amenity and compliance with all other relevant development plan policies.

Siting, Design and Amenity

- 8.8 The house is large and detached, set within generous garden grounds, in keeping with the established settlement pattern and character of the area. The Supporting Statement states that the accommodation where the residents are currently housed does not have sufficient living space and has little to no garden space for residents to enjoy the outdoors, making Westview House, with its extensive garden grounds, an attractive proposition. A detached 3-bed annex sits immediately to the southeast of the house. This was originally a garage but has been converted to residential accommodation and in the past has been let as holiday accommodation. The annex is not intended to be used by Gateway to house residents at this time, however it is within the application boundary and remains tied to Westview House in planning terms. In order to retain control over any future use a planning condition will be applied to ensure that it is used only for ancillary purposes associated with the Class 8 use of Westview House and cannot be sold off separately or let out on a commercial basis, without planning permission being granted.

- 8.9 In keeping with the semi-rural feel of the area only one of the site's boundaries adjoins another property (Myrtlefield Cottage to the southwest) with the others facing onto agricultural land or hedging/shrubs. A planning application for 2 houses on land to the southeast is currently pending consideration. No external alterations are proposed by the applicant.
- 8.10 While the house has been used as a family home for the past two years, parts of the property (the external annex and an internal annex) were previously let out through Airbnb and 2 bedrooms within the house were also let out on a bed and breakfast basis. Prior to this the property and annex were run as a bed and breakfast establishment. The exact timelines are unknown, however visitor reviews dating back to 2011 can be found online. A commercial element to the use of this residential property is therefore already established.
- 8.11 The Supporting Statement identifies that the residents who will be accommodated at Westview House are aged between 40 to 75 and all have learning disabilities. None of them consume alcohol or take illicit drugs. The accommodation will be staffed 24/7 (with a member of staff present overnight) by trained and experienced support staff. The current service is graded at level 5 (Very Good) by the Care Inspectorate and Gateway have just been assessed at gold level by Investors in People. The applicant also notes that the residents have already been housed together for 10 years, during which time there has not been a single complaint from neighbours.
- 8.12 The applicant has made it clear that there will be staff on site to provide adequate care and support and to manage any issues that arise. There is no reason to assume any loss of amenity to neighbouring properties, and the house being accommodated by an established household unit rather than its previous Bed and Breakfast and Airbnb use, with associated regular changeover of guests, could arguably result in improved amenity for neighbouring properties.

Access and Infrastructure

- 8.13 The site is situated on the outskirts of Inverness just outside the Inverness Settlement Development Area. It is accessed off the B9006 Culloden Road, around 825m along an unlit, minor road with no pavements. In terms of facilities there is very little within close proximity. It is estimated that it would take around 1.5 hours to walk to the nearest shop and back (Cradlehall or Culloden) and there are limited public transport opportunities. A number of objections to the application raise concerns about the distance to services and road safety. It is agreed that were this application for a general HMO to house residents who may not drive and who may need to access employment opportunities and services by foot or public transport, the semi-rural location, lack of pedestrian provision, and distance from services would, indeed, render it unacceptable in this location. However, this application is specifically for supported accommodation where transport and assistance is provided. Residents will not, therefore, need to walk to access shops and facilities or use public transport, and while this will result in a reliance on private vehicles, this is likely to be the case whatever the use of the property in this location.
- 8.14 There is already sufficient parking space for 9 cars within the curtilage of the property however the Supporting Statement confirms that no more than 4 cars are likely to be

present on site at any one time for staff, plus the occasional visit from health professionals/social services. A number of letters of representation express concern about any increase in vehicle numbers using the minor roads to access the property. This is not an application for a new house and given its semi-rural location the use of private vehicles to access it is almost certain. The existing house is very large and if retained as a house is likely to attract either a large family or again be used as a bed and breakfast. In comparison to the likely alternative uses it is not considered that the proposal will result in any significant increase in the vehicle numbers, and indeed, may well represent a reduction when compared with the property's past use as a holiday letting/bed and breakfast establishment.

Other material considerations

- 8.15 A number of letters of representation refer to the fact that this proposal was originally applied for as an HMO then resubmitted as a Class 8 residential institution. It is further understood that the applicant runs several other properties as HMOs.
- 8.16 The Use Classes Order allows for up to 5 unrelated people to live together as a household under Class 9 (houses) including a household where care is provided for residents. However, for proposals of 6 or more unrelated people living together as a household planning permission is required. Class 8 (residential institution) covers "the provision of residential accommodation and care to people in need of care other than a use within class 9 (houses)". HMOs are *sui generis* and applications are considered on their individual merits. Given the small scale of the proposal it is considered that an application for either Class 8 or HMO could have been accepted, however in this instance, due to the particular circumstances of the proposal and the fact that 24/7 care is provided, Class 8 is considered a better fit. Also, importantly, any planning permission granted for Class 8 use will only cover the proposed use or other use falling into Class 8. This means that if the circumstances of the applicant change in the future and they wanted to house unsupported people in the property, this would not be covered by Class 8 and a further application for planning permission would need to be submitted. This will allow the Council to retain some control over the use of the property. A planning condition will be included to further restrict the use to Class 8 (a). This will exclude permitted change to Class 8 (b) hospital/nursing home or Class 8 (c) residential school or training centre.
- 8.17 It is not considered that an application for an HMO could have been supported in this location due to the fact that an HMO permission would allow any 6 or more unrelated people to live in the property in the future, whatever their circumstances. Due to the issues raised above relating to distance from services and poor pedestrian and public transport links, it is not considered that an HMO in this location would comply with Council policy and guidance on HMOs.
- 8.18 It should be noted that the licensing process is separate to planning and has different requirements. It is the applicant's responsibility to ensure that they have all necessary approvals in place prior to operation.

Matters to be secured by Legal Agreement / Upfront Payment

9. CONCLUSION

- 9.1 This proposal is for the use of a property under very specific circumstances. The property will provide a permanent home for 6 unrelated people with additional support needs who have already lived together as a household for 10 years. The proposal will allow consistency of care and a better living environment for residents with access to spacious garden grounds.
- 9.2 The residents do not work due to their medical conditions and do not drive. The applicant, Gateway, provides 24/7 care and support with daily needs including transportation to activities and services. The otherwise legitimate concerns raised by members of the public about poor pedestrian and public transport links and distance from facilities are not, therefore, relevant in this instance.
- 9.3 Concern has also been raised about the impact of the proposal on the character of the area and increase in the number of vehicles using the minor roads. The proposal is effectively for a residential use within a residential area therefore there is not considered to be any significant impact upon the character of the area or amenity of existing residents. There is likely to be a maximum of 4-5 cars on site at any one time from members of staff and visiting health and social care professionals. This is not considered to be significantly different from the number of vehicles which could be expected from a house of this size.
- 9.4 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

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 conditions and reasons

1. The development to which this planning permission relates must commence within THREE YEARS of the date of this decision notice. If development has not commenced within this period, then this planning permission shall lapse.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997 (as amended).

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Scotland) Order 1997 (as amended, revoked or re-enacted; with or without modification) and Article 3 and Classes 10 to 13 of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended, revoked or re-enacted; with or without modification), the development hereby approved shall be used solely for the provision of residential accommodation and care to people in need of care (Class 8 (a)) other than a use within class 9 (houses) and for no other use or purpose.

Reason: In order to enable the Planning Authority to retain effective control over future development within the application site so that it is carefully managed and does not result in an adverse impact on the amenity of the area.

3. The self-contained annex within the southeastern curtilage of Westview House shall be used solely for purposes ancillary to the Class 8 (a) use of Westview House. For the avoidance of doubt the annex shall not be let out on a separate commercial basis.

Reason: In order to enable the Planning Authority to retain effective control over future development within the application site.

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.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Septic Tanks and Soakaways

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud and Debris on Road

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

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

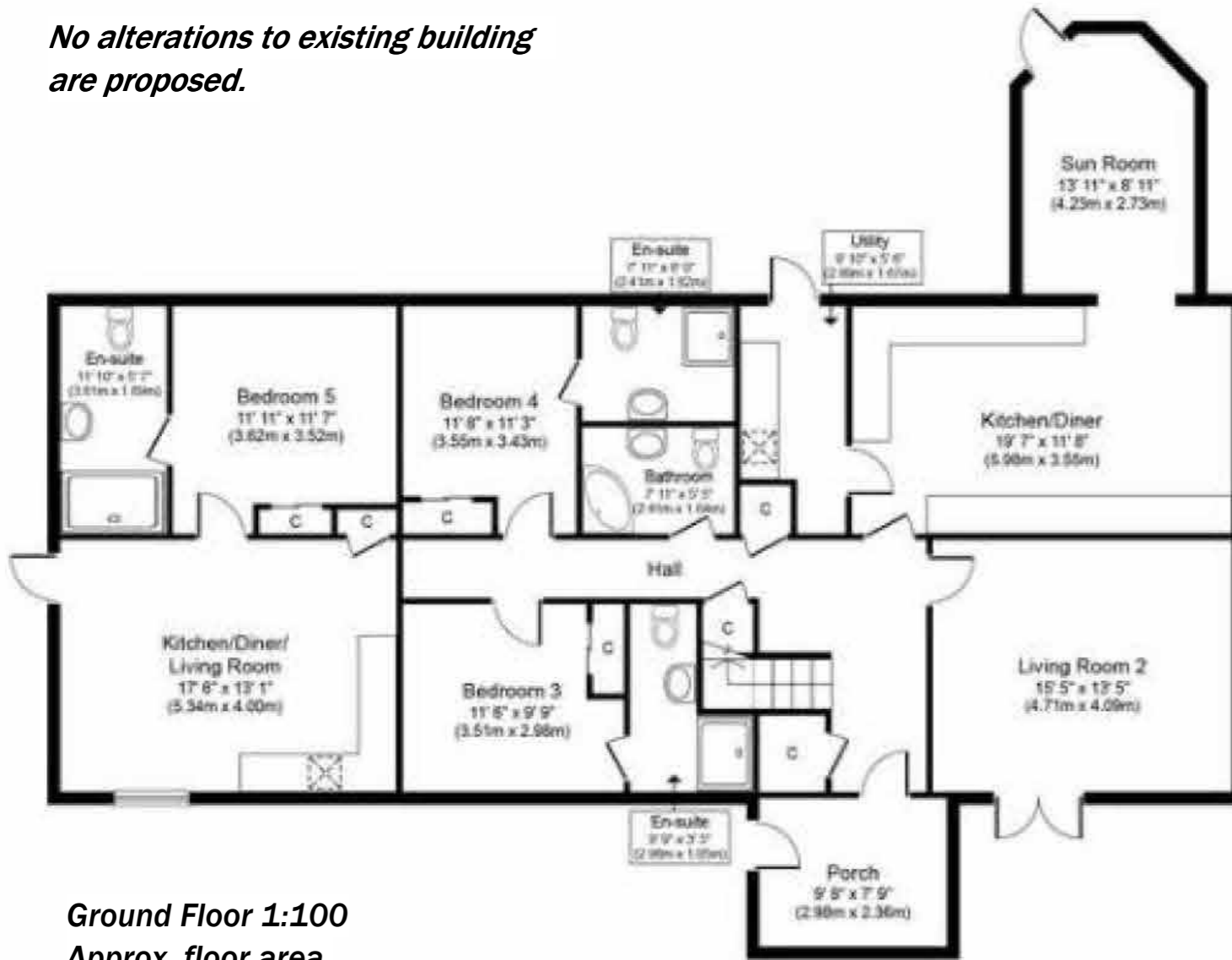
You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

Signature: David Mudie
Designation: Area Planning Manager - South
Author: Christine Macleod
Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - 2024 053 - 001 REV A - Location/Site Plan
Plan 2 - 2024 053 - 002 - Floor Plan

No alterations to existing building are proposed.

0 1 2 3 4 5
 Scale 1:100 @ A3
 Meters



Ground Floor 1:100
 Approx. floor area
 161.8m²



First Floor 1:100
 Approx. floor area
 114.3m²

PLANNING ISSUE		
Rev	Description	Date

Homeless Trust

Change of use from dwelling to Residential Institution

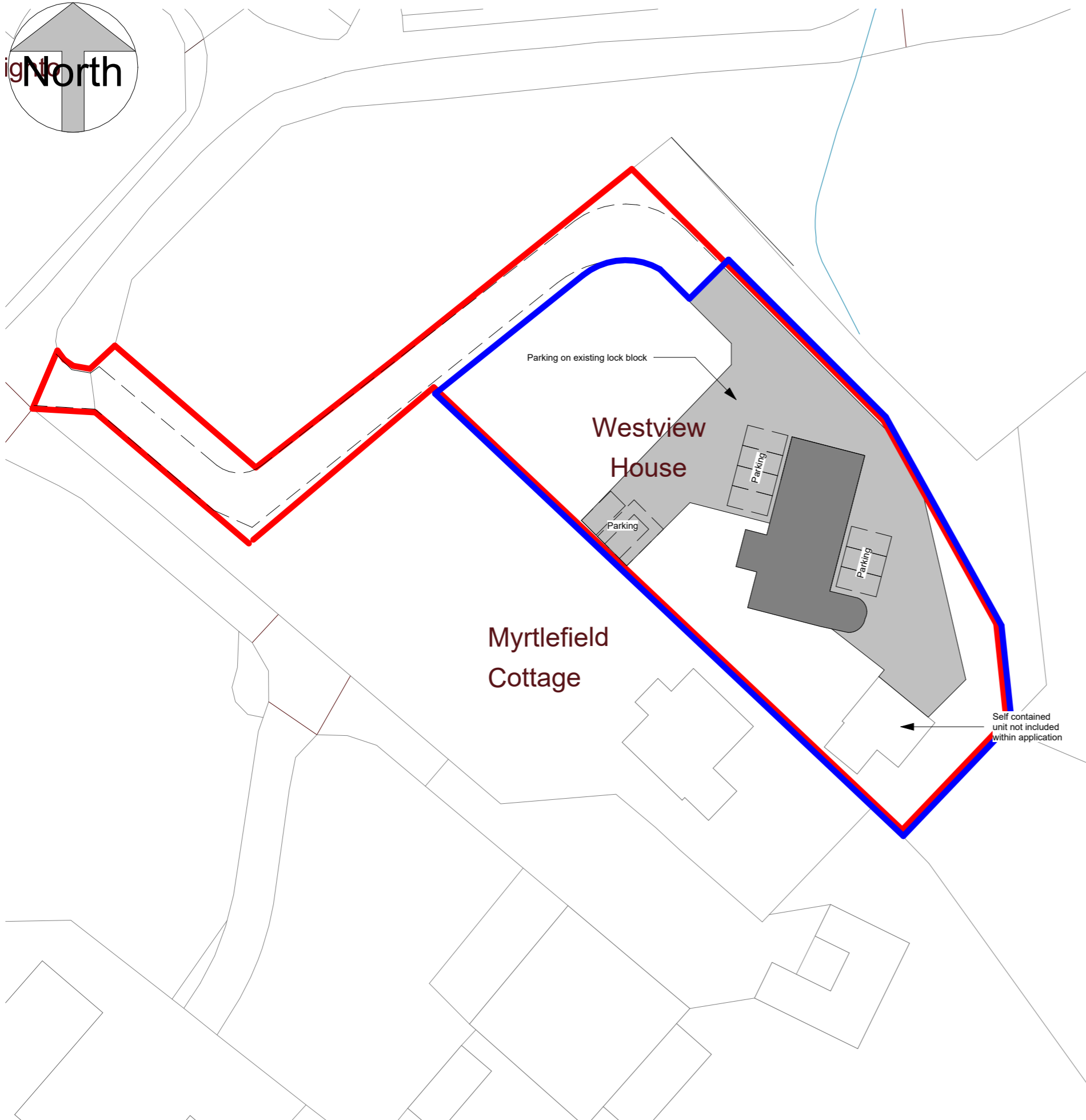
Floor Plans

Date	21.08.24
Drawn by	RS
Scale	1 : 100

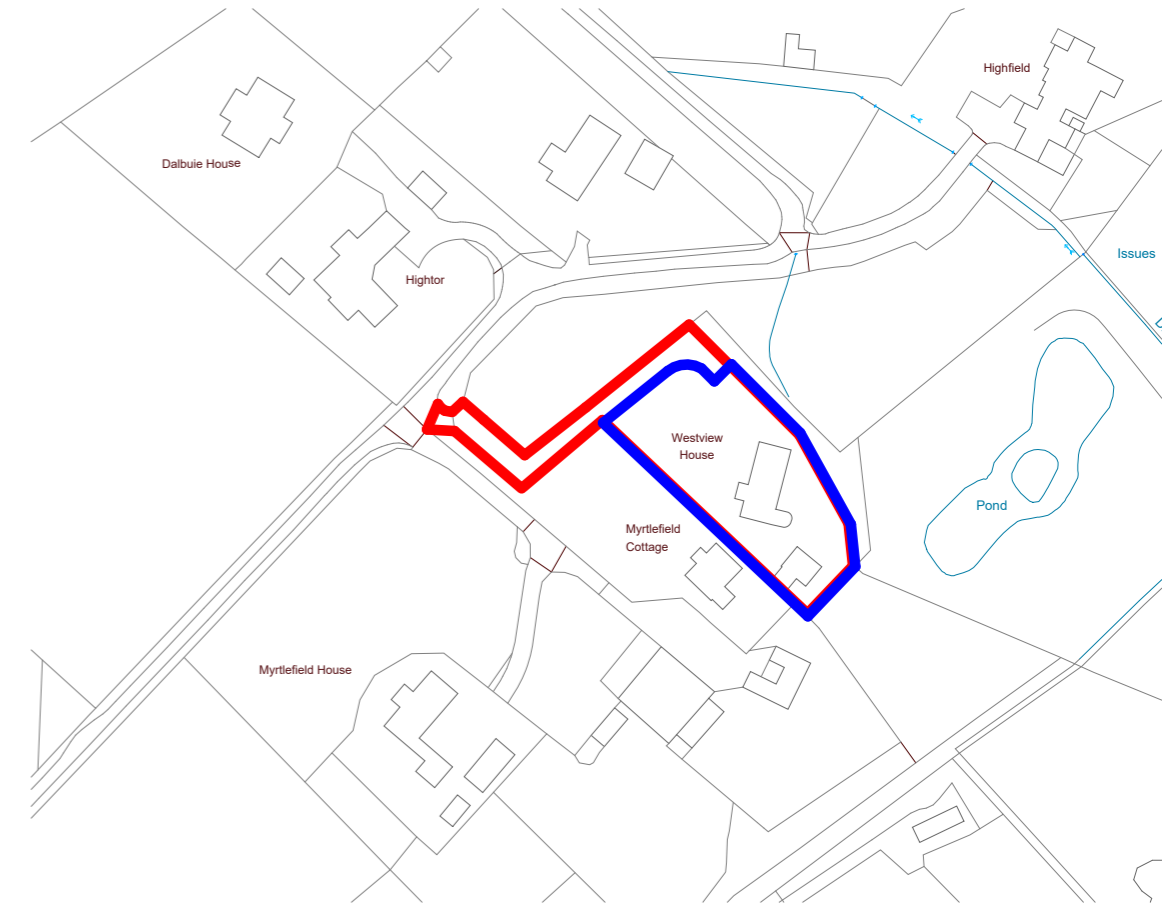
2024 053 - 002

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2. Contractor is responsible for checking all dimensions prior to construction.
3. Discrepancies to be referred to architect for decision.
4. Must be read in conjunction with written spec and engineers/sub-contractors construction information.

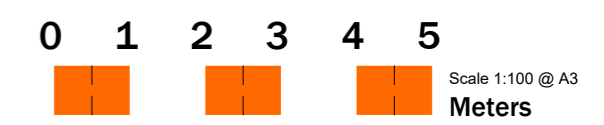




Site
1 : 500



Location
1 : 2000



PLANNING ISSUE

Rev	Description	Date
A	Planning info	02.07.24

Homeless Trust

Change of use from dwelling to Residential Institution

Site & Location

Date	21.08.24
Drawn by	RS
Scale	As indicated

2024 053 - 001

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1 tulloch street
dingwall
IV15 9JY
te. 01349 867766