

Agenda Item	8.1
Report No	PLS-66-24

HIGHLAND COUNCIL

Committee: South Planning Applications Committee

Date: 19 November 2024

Report Title: 24/02574/S42: GF Job Ltd
Land 180M SW of Easter Delfour, Alvie, Kincaig

Report By: Area Planning Manager – South

Purpose/Executive Summary

Description: Application under S42 to develop land without compliance with (00/00279/FULBS Winning and working of stone and aggregate) conditions 1 to 4 to extend quarry operations for a further 5 years to 2030, updated extraction and restoration plan

Ward: 20 – Badenoch and Strathspey

Development category: Major

Reason referred to Committee: Major Development

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 This application has been submitted under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) and relates to Condition 1 of planning permission 00/00279/FULBS granted on 09 November 2015 for the winning and working of stone and aggregate at Delfour Quarry, Alvie, Kincaig. Condition 1 limits the duration of the existing planning permission to 09 November 2025. The applicant seeks to extend this timescale for a further 5 years. The existing planning permission is attached as Appendix 2 to this report.
- 1.2 The current permission is an extension of a previous planning permission (BS/95/232) granted on 08 December 1995 that expired on 31 December 2000.
- 1.3 Access to the site is via an approximately 2.7 kilometre length of private road leading from the B9152 Aviemore to Kingussie public road, and its use for quarry traffic is controlled through Condition 4 of the current permission.
- 1.4 The overall site area of the application extends to approximately 3.8 hectares. The applicant has advised that the remaining working area is limited to 1.6 hectares, including a short section of access track to the quarry top. The working face continues to progress to the southern end of the site, with extraction to the north mainly completed.
- 1.5 Pre Application Consultation: Not required.
- 1.6 Supporting Information: The following information has been submitted in support of the application:
 - Supporting Statement;
 - Extraction Working Plan; and
 - Site Restoration Plan
- 1.7 Variations: None.

2. SITE DESCRIPTION

- 2.1 The site is located to the west of the A9 Trunk Road, approximately 2.2 kilometres north-north-east of the settlement of Kincaig. The site is roughly rectangular in shape, lying on a northeast/southwest axis. The northwestern boundary is approximately 245m in length; the southwestern boundary 320m in length; and the width of the quarry varies between 145m and 160m.
- 2.2 The site is surrounded with areas of woodland which helps reduce the visual impact of the quarry area. The higher ground to the northwest of the quarry and outwith the working area is currently covered with naturally established Scots pine trees interspersed throughout the steeply sloping ground which has natural granite bed rock at the surface.

3. PLANNING HISTORY

- 3.1 08.12.1995 BS/95/232: Winning and working of stone and Planning Permission

		aggregate.	Granted
3.2	09.11.2015	00/00279/FULBS: Winning and working of stone and aggregate.	Planning Permission Granted

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour

Date Advertised: 11.07.2024

Representation deadline: 25.07.2024

Timeous representations: 1

Late representations: 1 (from same third party)

4.2 Material considerations raised are summarised as follows:

- a) The applicant has not complied with conditions imposed on the existing planning permission, with particular reference to the rate of extraction.

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 **Kincraig and Vicinity Community Council:** No response received.

5.2 **Transport Planning:** No objection.

5.3 **Environmental Health:** No objection.

5.4 **Flood Risk Management:** No comments to make.

5.5 **SEPA:** Agreed with case officer that no response is required.

5.6 **Transport Scotland:** Does not advise against the granting of permission.

6. DEVELOPMENT PLAN POLICY

6.1 National Planning Framework 4 (NPF4) was adopted by the Scottish Ministers and published on 13 February 2023. It is now part of the statutory development plan, while also replacing NPF3 and Scottish Planning Policy.

6.2 The following Development Plan policies are relevant to the assessment of the application

6.3 National Planning Framework 4

- 1 – Tackling the climate and nature crises
- 3 – Biodiversity
- 4 – Natural places
- 12 – Zero waste

23 – Health and safety
33 – Minerals

6.4 **Cairngorms National Park Local Development Plan 2021**

2 – Supporting Economic Growth
4 – Natural Heritage
5 – Landscape
10 – Resources
11 – Developer Obligations

6.5 **Cairngorms National Park Local Development Plan Supplementary Guidance**

Supporting Economic Growth Non-Statutory Guidance
Sustainable Design Non-Statutory Guidance
Natural Heritage Non-Statutory Guidance
Landscape Non-Statutory Guidance
Resources Non-Statutory Guidance
Developer Obligations Non-Statutory Guidance

7. **OTHER MATERIAL POLICY CONSIDERATIONS**

- 7.1 PAN 50 - Controlling the Effects of Surface Mineral Workings (1996)
PAN 51 - Planning, Environmental Protection and Regulation (2006)
PAN 60 - Planning for Natural Heritage (2000)
PAN 63 - Waste Management Planning (2002)
PAN 64 - Reclamation of Surface Mineral Workings (2002)
PAN 79 - Water and Drainage (2006)
PAN 1/2011 - Planning and Nosie (2011)

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 principle of development has been established through the previous permissions. However, since the granting of the current planning permission there

has been a change to the Development Plan with the adoption of both National Planning Framework 4, and the 2021 Cairngorms National Park Local Development Plan. Whilst policies at a national and local level have evolved, the general position in relation to mineral extraction remains the same. In principle, the development complies with the Development Plan.

- 8.5 The Development Plan recognises the importance of mineral resources in meeting industry demands, noting their essential contribution to the economy, and the need to safeguard these in appropriate locations. Mineral extraction is supported where it can be adequately demonstrated that there will not be a significant adverse impact on the environment, and that appropriate mitigation measures can be put in place to manage any adverse impacts.
- 8.6 Subject to the proposal having no significant adverse environmental impact, the proposal would comply with the Development Plan.

Other material considerations

- 8.7 In determining a Section 42 application, the Planning Authority may consider only the issue of conditions to be attached to any new planning permission. However, this does not preclude consideration of the overall effect of granting a new permission.
- 8.8 The applicant's supporting statement informs the Planning Authority that as a result of market fluctuations and delays to other projects in the area, including the planned dualling of the A9 Trunk Road, there is insufficient time under the terms of the current permission to extract the remaining mineral reserves, prepare processed material from existing stock, and carry out the required restoration works prior to the expiry of the current permission in November 2025.
- 8.9 Granting this Section 42 application with an extension of time will allow the remaining reserves to be extracted within the site boundary, in accordance with the quarry working plan. It will also give sufficient time for the existing material held in stock to be available for local customers and leave a suitable period prior to April 2030 for the quarry reinstatement work to be completed in accordance with the quarry reinstatement plan.
- 8.10 One objection has been received from the landowner, Alvie Trust. An initial letter submitted on 18 July 2024 cited three grounds for the objection. This was subsequently revised in a further letter received on 09 October 2024, where the Trust alleged non-compliance with conditions imposed on the existing planning permission; specifically concerns that the extraction rate was exceeding the limitations of Condition 5, which limits extraction to 12,000 tonnes in any single calendar year, unless otherwise approved in writing by the Planning Authority.
- 8.11 In response to the objection, the applicant has been able to provide evidence of written contact with the Planning Authority on several occasions where increased extraction rates have been agreed. This has enabled the applicant to adapt to customers' requirements when required. The restriction on extraction of 12,000 tonnes per year is not absolute; it simply requires advance agreement with the Planning Authority.

- 8.12 Extending the timescale for extraction will require a restoration and aftercare bond to be agreed with the Planning Authority to ensure that suitable safeguards are in place if, after extraction, the site is not adequately restored. This can be secured by condition and is separate from any contractual obligations that the applicant has with the landowner.
- 8.13 As well as considering the extension of the timescale for extraction, this Section 42 application affords the Planning Authority with the opportunity to review the remaining conditions on the existing planning permission. In this case, it is recommended that, in addition to agreeing the extension of time requested by the applicant to 30 April 2030, it is recommended that the restoration and aftercare condition is updated.

Non-material considerations

- 8.14 The objection from the landowner on the grounds that the applicant is allegedly in breach of the terms of their lease, is not a material planning consideration.

Matters to be secured by Section 75 Agreement

- 8.15 There is an existing Section 75 Agreement in place relating to the current planning permission. Subject to approval of recommended Condition 3 appended to this report relating to the provision of a financial guarantee (bond) for the restoration and aftercare of the site, there will be no requirement to modify the existing Agreement.

9. CONCLUSION

- 9.1 Planning permission is sought to essentially amend Condition 1 of planning permission 00/00279/FULBS granted on 09 November 2015 for the winning and working of stone and aggregate at Delfour Quarry, Alvie Estate, Kinncraig. Condition 1 limits the duration of the existing planning permission to 09 November 2025. The applicant seeks to extend this timescale for a further 5 years.
- 9.2 Granting the Section 42 application with an extension of time will allow the remaining reserves to be extracted within the site boundary, in accordance with the quarry working plan. It will also give sufficient time for the existing material held in stock to be available for local customers and leave a suitable period of time prior to April 2030 for the quarry reinstatement work to be completed in accordance with the quarry reinstatement plan.
- 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

Notification to Scottish Ministers N

Conclusion of Section 75 N
Obligation

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 permission hereby granted shall endure until 30 April 2030 by which time all workings shall have ceased, all plant and equipment removed, and the site restored in accordance with the details to be provided in accordance with Condition 2 below.

Reason: To clarify the terms of this planning permission and ensure that the site is adequately restored.

2. A scheme for the phased final restoration and aftercare of the whole site shall be submitted for the written approval of the Planning Authority within 12 months of the date of this permission. The scheme shall include detailed information on landform levels, drainage, soil coverage, and phasing of restoration works and shall include the following:

- a) The treatment of surfaces prior to and after topsoiling and proposals to establish suitable vegetative cover to enable the quarry floor to be returned to rough grazing land and naturally regenerated vegetation cover as well as providing enhanced screening of the site to the A9 Trunk Road; and

- b) A programme of aftercare and maintenance for a minimum period of 36 months following the last working of the site.

Following approval of the restoration and aftercare scheme, all works shall be carried out within 12 months of the date of the expiry of this permission.

Reason: In the interests of visual amenity and to ensure appropriate level of restoration and aftercare is carried out.

3. Within six months of the date of this planning permission, the applicant shall submit for the approval in writing by the Planning Authority, details of a financial guarantee to cover all site restoration and aftercare liabilities imposed on the expiry of this planning permission. Such guarantee must, unless otherwise approved in writing by the Planning Authority:
- i) be granted in favour of the Council as Planning Authority;
 - ii) be granted by a bank or other institution which is of sound financial standing and capable of fulfilling the obligations under the guarantee;
 - iii) be for a specified amount which covers the value of all site restoration and aftercare liabilities as agreed between the developer and the planning authority at the commencement of development;
 - iv) either contain indexation provisions so that the specified amount of the guarantee shall be increased on each anniversary of the date of the guarantee taking effect by the same percentage increase in the General Index of Retail Prices (All Items) exclusive of mortgage interest published by on or behalf of HM Government or the Building Cost Information Service (BCIS) indices, whichever is deemed most appropriate, between the date of the guarantee taking effect and such relevant anniversary or be reviewable to ensure that the specified amount of the guarantee always covers the value of the site restoration and aftercare liabilities; and
 - v) come into effect at least 12 months prior to the expiry of this planning permission and the guarantee itself must not expire earlier than 12 months after the end of the aftercare period.

Reason: To ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this planning permission in the event of default by the operating company.

4. Two years from the date of the issue of this planning permission and every two years thereafter, there shall be submitted to the Planning Authority a survey plan showing the extent of extraction carried out over the preceding two year period.

Reason: To enable the Planning Authority to monitor development at the site.

5. Unless otherwise approved in writing by the Planning Authority, the rate of extraction shall not exceed 12,000 tonnes in any single calendar year.

Reason: To enable the Planning Authority to control development at the site.

6. For the avoidance of doubt, no quarry traffic shall enter the site or leave the site directly by means of the A9 Trunk Road. All quarry traffic shall use the access marked in BLUE on the docquetted plan attached to this permission for both entry and exit from the site.

Reason: In the interests of traffic safety.

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 & 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: John Kelly
Background Papers: Documents referred to in report and in case file.
Relevant Plans: Plan 1 – Location Plan
Plan 2 – Working Plan
Plan 3 – Restoration Plan

PLANNING PERMISSION

Reference No: 00/00279/FULBS

To:
Alvie Trust
Alvie Estate Office
Kincaig
PH21 1NE

Per:
G F Job Limited
Units 3 And 4
Greigorhill Industrial Estate
Nairn

Town & Country Planning (Scotland) Act 1997 as amended by the Planning Etc. (Scotland) 2006 Act

DECISION NOTICE

**Winning and working of stone and aggregate
Quarry To West Of East Delfour Farm Alvie Estate Kincaig Kingussie Inverness-Shire**

The Highland Council in exercise of its powers under the above Acts **grants planning permission** for the above development in accordance with the particulars given in the application and the following plans/drawings:

Type of Plan	Plan Number	Version No.	Date Plan Received
Location Plan	100339-02	1	31.03.2015
General Existing	AD001-Operational Plan		31.03.2015
General Proposed	AD002-Restoration Plan		31.03.2015
Supporting Information	Operational plan		31.03.2015
Section Plan	100339-03	1	31.03.2015
Site Layout Plan	100339-01	1	31.03.2015

This permission is granted subject to the following conditions: -

- (1.) This permission shall endure for a period of 10 years from the date of consent by which time all quarry workings shall have ceased and the site shall be restored in accordance with the terms of Condition 2 of this consent.

Reason: It is the Council's Policy not to grant planning permission for mineral extraction except for limited periods.

- (2.) Within 12 months of the implementation of this consent there shall be submitted to, and approved in writing by, the Planning Authority a plan showing proposed landscaping works at the site. Such a plan shall consist of a rolling programme of works designed to enhance screening of the site to the A9 trunk road along with progressive restoration work within the areas which have been worked out, where possible. The plan shall also show the proposed final restoration of the site. All works for the restoration of the quarry shall be carried out within 12 months of the date of expiry of consent for the extraction of minerals at the site.

Reason: In the interests of visual amenity and to ensure restoration of the site.

Dated: 9th November 2015

Head of Planning and Building Standards

PLANNING PERMISSION

Reference No: 00/00279/FULBS

- (3.) In the event of mineral working ceasing at the site for a period of 6 months, unless otherwise approved by the Planning Authority in writing, the terms of Condition 1 of this consent shall come into operation.

Reason: To prevent long term abandonment of the quarry without restoration taking place.

- (4.) Two years from the date of the issue of the consent and every two years thereafter, there shall be submitted to the Planning Authority a plan and a schedule showing the extent of extraction carried out over the preceding two year period, along with any restoration work carried out over the same period. In addition, the plan and schedule shall indicate where extraction is proposed over the next two year period along with proposed restoration and planting.

Reason: To allow the Planning Authority to monitor development at the site.

- (5.) Unless otherwise approved in writing by the Planning Authority, the rate of extraction shall not exceed 12,000 tonnes in any single calendar year.

Reason: To allow the Planning Authority to control development at the site.

- (6.) For the avoidance of doubt no quarry traffic shall enter the site or leave the site directly by means of the A9 trunk road. All quarry traffic shall use the access marked in BLUE on the docquetted plan attached to this permission for both entry and exit from the site. Within two months of the date of this permission there shall be submitted to, and approved in writing by, the Planning Authority details of proposed improvements of the access onto the B9152. All works thereby approved shall be carried out within three months of the date of approval.

Reason: In the interests of traffic safety and to allow the Planning Authority to retain control and to prevent access to the A9 trunk road.

REASON FOR DECISION

The proposal accords with the provisions of the Development Plan and applicable supplementary guidance. There are no material considerations which would warrant refusal of the application.

INFORMATIVES

Accordance with Approved Plans & Conditions

You are advised that development must progress in accordance with the plans approved under, and any conditions attached to, this permission. You must not deviate from this permission without consent from the Planning Authority (irrespective of any changes that may separately be requested at the Building Warrant stage or by any other Statutory Authority). Any pre-conditions (those requiring certain works, submissions etc. prior to commencement of development) must be fulfilled prior to work starting on site. Failure to adhere to this permission and meet the requirements of all conditions may invalidate your permission or result in formal enforcement action.

Mud & 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.

Dated: 9th November 2015


Head of Planning and Building Standards

Damage to the Public Road

Please note that the Council, under Section 96 of the Roads (Scotland) Act 1984, reserves the right to recover all costs for repairing any damage to the public road (and/or pavement) which can be attributed to construction works for this development.

Variations

None.

Section 75 Agreement

A planning obligation in respect of site restoration is in place for this development

Building Regulations

Please note that Building Regulations and/or a Building Warrant may be applicable to some or all of the works described in this decision notice. You must check with the Council's Building Standards service prior to work commencing to establish what compliance or approval is necessary. If a warrant is required, you must not commence work until one has been applied for and issued. For more information, please contact Building Standards at Building.Standards@highland.gov.uk or on 01349 886608.

NOTIFICATION TO APPLICANT

1. If the applicant is aggrieved by the decision of the planning authority -
 - a. to refuse planning permission for the proposed development;
 - b. to refuse approval, consent or agreement required by a condition imposed on a grant of planning permission;
 - c. to grant planning permission or any approval, consent or agreement subject to conditions;

The applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months beginning with the date of this notice. The notice of review should be addressed to:

Planning Review Body Administration Team
The Highland Council
Corporate Development Service (Legal Services)
Council Headquarters
Glenurquhart Road
Inverness, IV3 5NX
(Review.Body@highland.gov.uk)

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

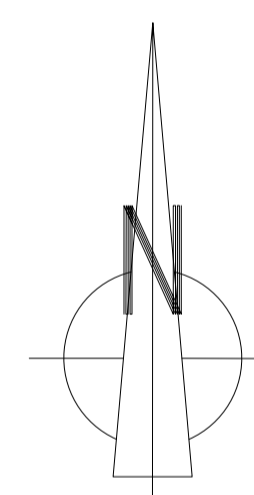
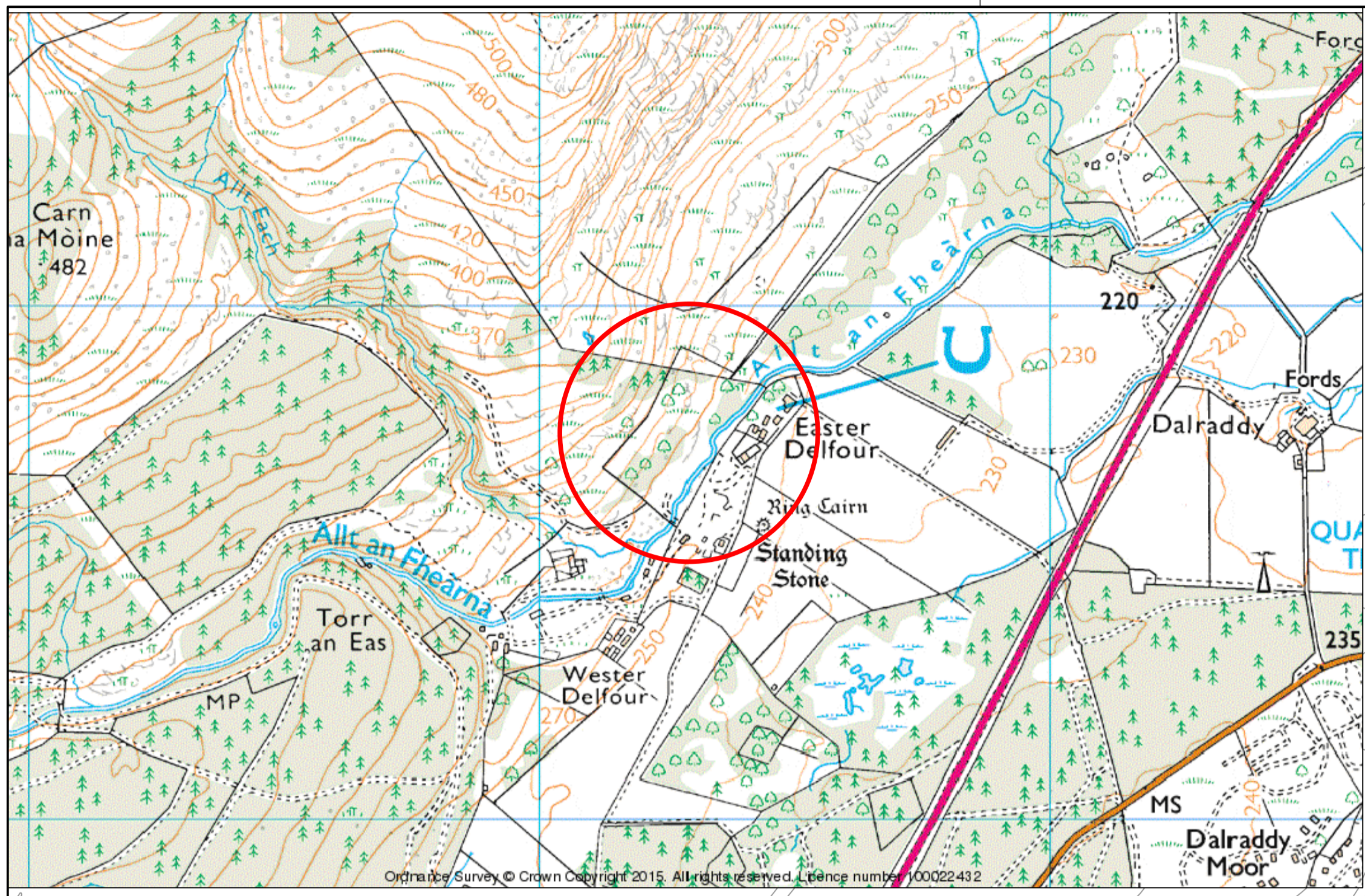
Dated: 9th November 2015



Head of Planning and Building Standards

Notes:

- Working Area
- Site Location
- Access Route



1.0	For Issue	RS	RS	RS	25/02/15
Rev	Description	Surveyed	Drawn	Chk'd	Date

This drawing is the property of Zenith Surveying and must not be copied or used for any purpose other than that for which it is supplied without the written consent of Zenith Surveying.



Client: G F JOB LIMITED
GRIGORHILL INDUSTRIAL ESTATE
NAIRN
IV12 5HX

Surveyed By	Drawn By	Checked By
R.STOKES	R.STOKES	R.STOKES
Date	Date	Date
20/02/15	25/02/15	25/02/15

Scale: 1:2000 @ A1
Status: FOR ISSUE

Sheet: 1 of 1

Project Title: ALVIE ROCK QUARRY
ALVIE

Drawing Title: SECTIONS

Drawing No.: 100339-02-1.0

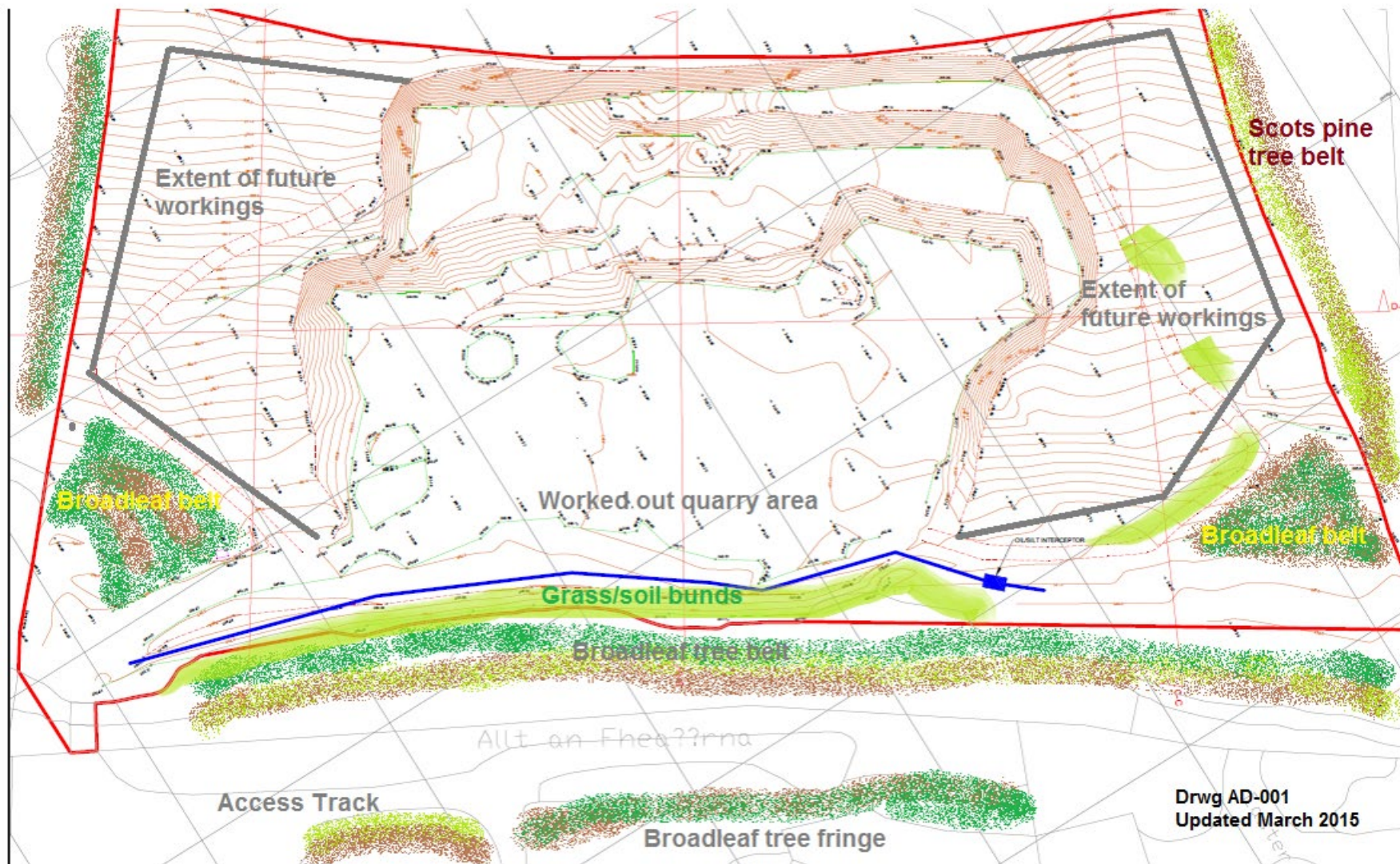


Figure 1 Alvie Delfour Plan 1/updated March 2024

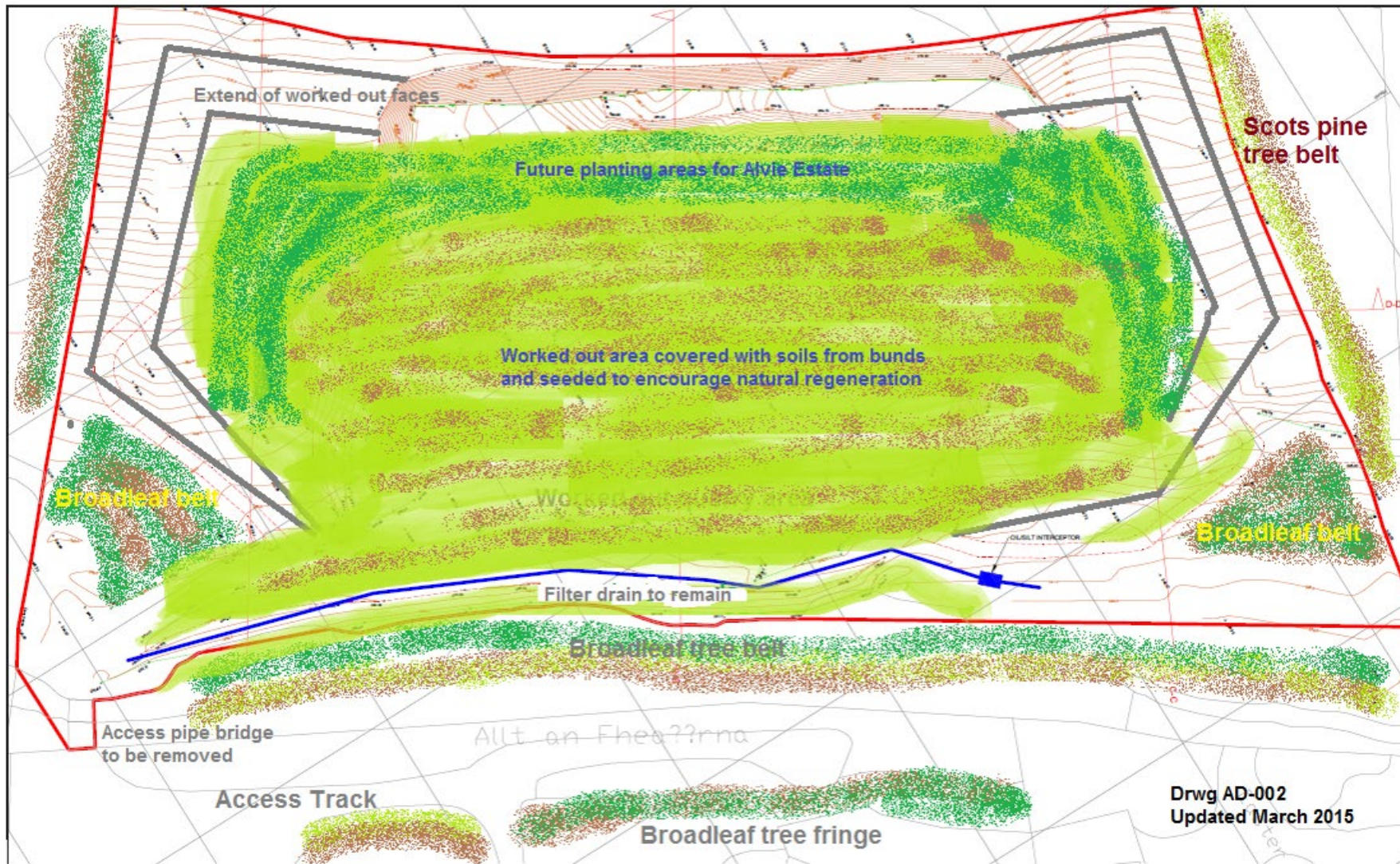


Figure 1 Alvie Delfour Plan 2 updated March 2024