

LOCAL REVIEW BOARD

STATEMENT OF APPEAL

*NEW DWELLINGHOUSE ON SITE WEST OF MAVERSTON HOUSE,
URQHART, ELGIN*



Sept 2017

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Our Reference:	1500144.ATKINSON.
Local Authority:	The Moray Council
Planning Application Ref:	17/00735/APP
Application Proposal:	Erect Dwellinghouse
Site Address:	Site west of Kempston House, Maverston, Urquhart, Elgin
Appellants:	Mr Nigel Atkinson
Date Application Validated:	
Council Decision Notice Date:	29 th June 2017
Reason for Refusal:	<p><i>"The proposal is contrary to policy E9 : Settlement Boundaries for the following reason</i></p> <p><i>1) The site is immediately outwith the Maverston Rural Grouping and policy E9 states that such settlement boundaries represent the limit to which these settlements can expand during the local Development Plan period. As a development immediately outwith the boundaries of this settlement, such a development is stated as not being acceptable. On this basis it is considered that the proposal would represent the unplanned expansion of a boundary specifically defined to avoid such development and protect distinction between settlement and surrounding countryside.</i></p> <p><i>The Proposal would be contrary to Policies IMP1 : Development requirements and T2 : Access for the following reasons.</i></p> <p><i>2) On the available evidence the applicant does not appear to control sufficient land in order to provide the required visibility splay at the development access onto the prospective public road.</i></p>

	<p><i>The proposal, if permitted, would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development requirements”</i></p>
Application Drawings & Supporting Documents:	<ul style="list-style-type: none"> • CMD Doc 001 – Moray Council Refusal Documents • CMD Doc 002 – Application Drawings -01A (site and location plan) • CMD Doc 003 – Application Drawings – 02 (elevations)
Contents	<ol style="list-style-type: none"> 1. Introduction – page 3 2. Background – page 4 3. Statement of Case – page 5 4. Policy Compliance – pages 6-9 5. Conclusion – page 10

1. Introduction

1.1 The following Statement of Case, submitted by **CM Design Town Planning & Architectural Consultants**, has been prepared to support a Local Review Board submission to :

Secure planning consent for a previously approved new house site (since lapsed)

- 1.2 The site referred to in this case previously enjoyed full planning consent granted in 2009 (ref 08/02070/FUL) to the appellants parents who own the site having historically operated the farm at Maverston.
- 1.3 Following the passing of the appellants father, his mother was not aware of the importance of ensuring that the Planning Approval for the site should not be allowed to lapse.
- 1.4 The Appellant was given Power of Attorney to look after his mothers affairs and has since been asked to secure renewed consent for the site.
- 1.5 A previous application lodged in 2016 and before the new Rural Grouping Settlement Policy was introduced, was withdrawn to allow for successful mitigating research to be carried out in respect of contamination and wildlife matters.
- 1.6 Had this application been decided previously, the current conflict with the new settlement boundary would not have applied. It is unfortunate for the appellant that, in agreeing to withdraw the original application to allow time to respond to environmental issues, the subsequent application fell foul of an emerging policy that would not have applied previously.
- 1.3 In the midst of this Review statement, the appellant wishes to demonstrate that -
- The site continues to enjoy the **same design and siting merits** that secured its approval in 2009 and a Non Material Variation in 2012.
 - That the issue relating to T2:Access is extremely minor and in any case is **not considered to be legally enforceable** as the Maverston roads network has not yet been formally adopted and is **currently suffering legal challenges by The Forestry Commission that might result in it never being adopted**. The need for a compliant visibility splay should therefore be concentrated at the Maverston Development junction with the Garmouth to Elgin Road, where it complies fully.
 - The revised boundary settlement at Maverston should clearly have included the land at Kempston house in light of the previous consent for the site and the ongoing

enquiries with regard to development at the time of appraising the Maverston settlement.

- Two existing houses (West Maverston Cottage and Stony Bank) safely use the access being questioned in this appeal.
- This application represents an acceptable departure from Policy in both these regards (ie T2:Access and E9: Settlement boundaries)

1.4

1.5 With regard to the contentious need for a compliant visibility splay, it is worth noting out that the recent planning consent granted to the occupants [REDACTED] for a house within their own grounds would, if implemented, remove the very minor infringement on the splay requirements being forced upon the appellant.

1.6 This infringement can be seen on Doc No 002 – Site & Location Plan.

2. Background.

2.1 The application site enjoyed full planning consent granted in 2009 at which point in time it was considered an acceptable proposal under “Housing in the Countryside” guidelines.

2.2 The site would continue to be considered suitable under this policy if it were not for the fact that Moray Council declared Maverston to be a **rural settlement** and chose to propose a settlement boundary that fell short of the garden ground at Kempston House.

2.3 The appellant was not in charge of his family’s affairs when the matter of Maverstons boundary was presented for public consultation and would undoubtedly recommended that the application site be included at that time.

2.4 A formal application for the settlement boundary to be revised has been submitted within the recently launched “Call for Sites” process offered by Moray Council.

2.5 The other issue of **safe access** and visibility splay did not feature in the 2009 approval of the site, as the Maverston road network was not considered to be the “main road” onto which the application site emerges. At that time, the “main road” was considered to be the Garmouth to Elgin Road.

2.6 Should the requirement for a compliant splay be proven to be applicable, the statement of case demonstrates pictorially, how minor the shortfall in visibility actually is and in any case the junction in question has been used safely since time immemorial, by two other households.

2.8 Whilst it is recognised that the current settlement boundary was plotted to define the edge of the growing development at Maverston, it perhaps failed to realise the worth of including the parcel of ground referred to in this application.

2.9 Any departure from Policy in this regard and this location would not present any precedent as the circumstances are quite unique to this site and certainly in light of previous acceptance and approval of the site.

2.9.1 The requirement for a visibility splay at the entrance to the applicants site is not believed to be legally enforceable due to the non-adopted nature of the main road AND concerns that current legal issues between the Maverston Development and The Forestry Commission might result in the road never being adopted.

3. Statement of Case

3.1 Section 25 of the Town and Country Planning (Scotland) 1997 Act (as amended) requires that planning applications be determined in accordance with the development plan **unless material considerations require otherwise**.

3.2 Moreover, it should be recognised that the **principle** of the current local development plan is to **guide** development decisions across Moray but **not to preclude** focussed and local decision making which better informs localised development at any given point in time.

3.3 The current Development plan requires that – *“In determining planning applications, the Council will apply appropriate weight to all of the issues and material considerations before reaching a decision”*

3.4 It is a fact that – if an opportunity had been afforded to the appellant, to object to the settlement boundary proposals for Maverston, it would likely have included for the application site and will likely be so in the near future.

3.5 However, the opportunity to formalise this change will take some time as the current “call for sites” process gets underway. This is understood **not to prohibit** the merits of **departing from Policy** when **worthy circumstances** permit.

3.6 The appellant believes several material considerations exist that might allow a Local review Board to depart from Policy in this unique case.

- The site previously enjoyed consent and approval for new housing in the countryside
- The proximity of a previously approved site to a new settlement boundary is unique and will not provide for risk of precedent.
- The access to the site is SAFE and has been used to by two other existing households, without accident or incident since records began.

2. Vision for Moray

- 2.1 Sustainable economic development is a key objective for both the Scottish Government and Moray Council. The economic and employment benefits of business and industrial growth should be a material consideration in any development proposals.
- 2.2 The Vision for Moray is strongly based on that of the Moray Economic Strategy.
- 2.3 It seeks to have:
 - A growing population, which retains more of its younger people and attracts new residents to the area.
 - A broad business base with stable, well paid employment; a focus on high quality jobs in engineering; science and technology; growth of established tourism, food, drink sectors.
 - Sufficient housing land to meet the Housing Need and Demand Assessment, that will facilitate the provision of affordable housing, and to ensure high quality residential developments.
 - Attractive, sustainable environments where people will wish to live and work, which incorporate high quality design; green and blue corridors and open spaces.
 - A policy context which supports growth and development, whilst at the same time protecting and enhancing the natural and built heritage, which are amongst Moray's prime assets.
 - Good, efficient transport links to the rest of the country, with the encouragement of active travel and enhancement of rail as alternatives to journeys by car and truck.
 - Renewable energy technologies; reduced carbon emissions; embedded within all development
- 2.4 To assist in achieving and delivering this, the Local Development Plan
 - Provides an adequate supply of land designated for development
 - Responds positively to economic development proposals
 - Safeguards and enhances Moray's environmental qualities
 - Promotes low carbon, sustainable development, and provides alternative travel options to car use.
- 2.5 The Local Development Plan reflects Scottish Government core principles/objectives as expressed in the National Planning Framework and Scottish Planning Policy, of having a low carbon economy; an increased emphasis on placemaking; respecting and maximising environmental assets; a sustainable approach to growth and development; being a well connected place.

4. Policy Compliance

4.1 Two main Policies are listed by the Case Officer for consideration and the appellant responds to each (E9: Settlement Boundaries and T2: Access) as follows.

4.1.2 **Policy E9** – This policy directs development toward recognised settlements and limits incremental spread of development beyond agreed boundaries. When deciding upon such settlements, cognisance is usually taken of existing features, buildings and natural boundaries on which to base current and future development aspirations.

Policy E9	Settlement Boundaries
<p>Settlement boundaries are drawn around each of the towns, villages and rural communities representing the limit to which these settlements can expand during the Local Development Plan period. Development proposals immediately outwith the boundaries of these settlements will not be acceptable, unless the proposal is a designated “LONG” term development site which is being released for development under the terms of Policy H2.</p> <p>(In accordance with policy H11, for proposals involving Gypsy/Traveller sites, a distance of 1km will be applied as being “immediately outwith”.)</p>	<p>Justification</p> <p>Settlement boundaries are defined on the Proposals Maps for the purpose of guiding development to the towns and villages, preventing ribbon development and maintaining a clear distinction between the built up area and the countryside.</p> <p>The five main towns also have a Countryside Around Town (CAT) designation which further restricts development in the vicinity of the settlement boundary.</p>

4.1.3 The Policy itself declares its purpose to “**guide**” development in and around towns and villages rather than prohibit development, in a case by case basis.

4.1.4 This application would be considered to be one of the cases requiring an **individual approach**.

4.1.5 The adjacent extract from Supplementary Guidance on Rural groupings clearly shows how the settlement awkwardly avoids the clearly defined lands at Kempston House on which a new house site is already approved and on which the appellant previously enjoyed consent for a further house site.

4.1.7 The already an approved house is situated squarely upon the boundary, to the east of Kempston House



Figure 1 - Maverston Settlement Boundary

4.1.7 There would appear to be two distinctly different material considerations that could be applied to justify a **Departure from Policy** in respect of Policy E9.

4.1.8 The **first** consideration, that could justify a departure from Policy in this case, would be to simply assess the acceptability of this application in proximity to the settlement boundary.

4.1.9 The Policy clearly states its purpose to prevent ribbon development (which this not) and to maintain a clear distinction between the built up area and the countryside.

4.2.0 There is no risk of loss of distinction in this case due to the nature of the woodland surrounding the proposed house, the natural boundaries and unique setting.

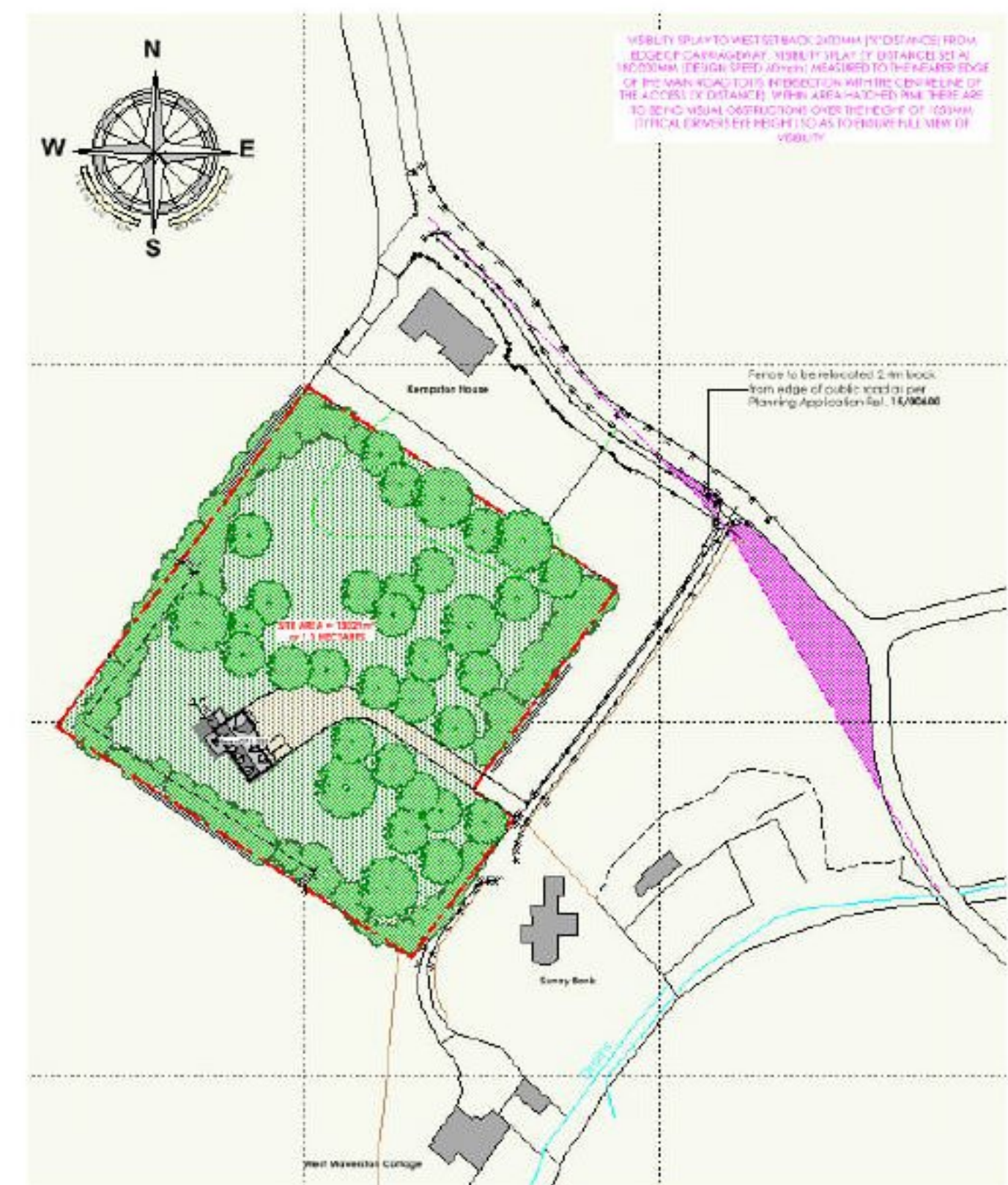
4.2.1 This application is not the kind of creeping, random and in-cohesive spread of housing that this Policy seeks to limit and should be assessed on its own merits.



4.2.2 The **second** consideration would be the question of whether or not the previous hasty settlement boundary audit should have included for this parcel of land? The appellant contends that the previous acceptability of the site for housing, the ongoing planning history and the clearly cohesive nature of the site boundaries would suggest that the site should have been considered for inclusion

4.2.1 As stated previously, a separate application has been lodged to revise the settlement boundary accordingly and on this basis The Board could take advice on the likelihood of inclusion and choose to justify a departure from this policy in this instance.

4.2.5 **Conclusion** – The appellant believes that the aims of Policy E9 are **not principally directed** at sympathetic, previously approved sites **such as this**. The appellant further believes that consideration of the merits of the site should negate the mere fact that a drawn line separates it from the larger development to which it clearly belongs (Maverston)

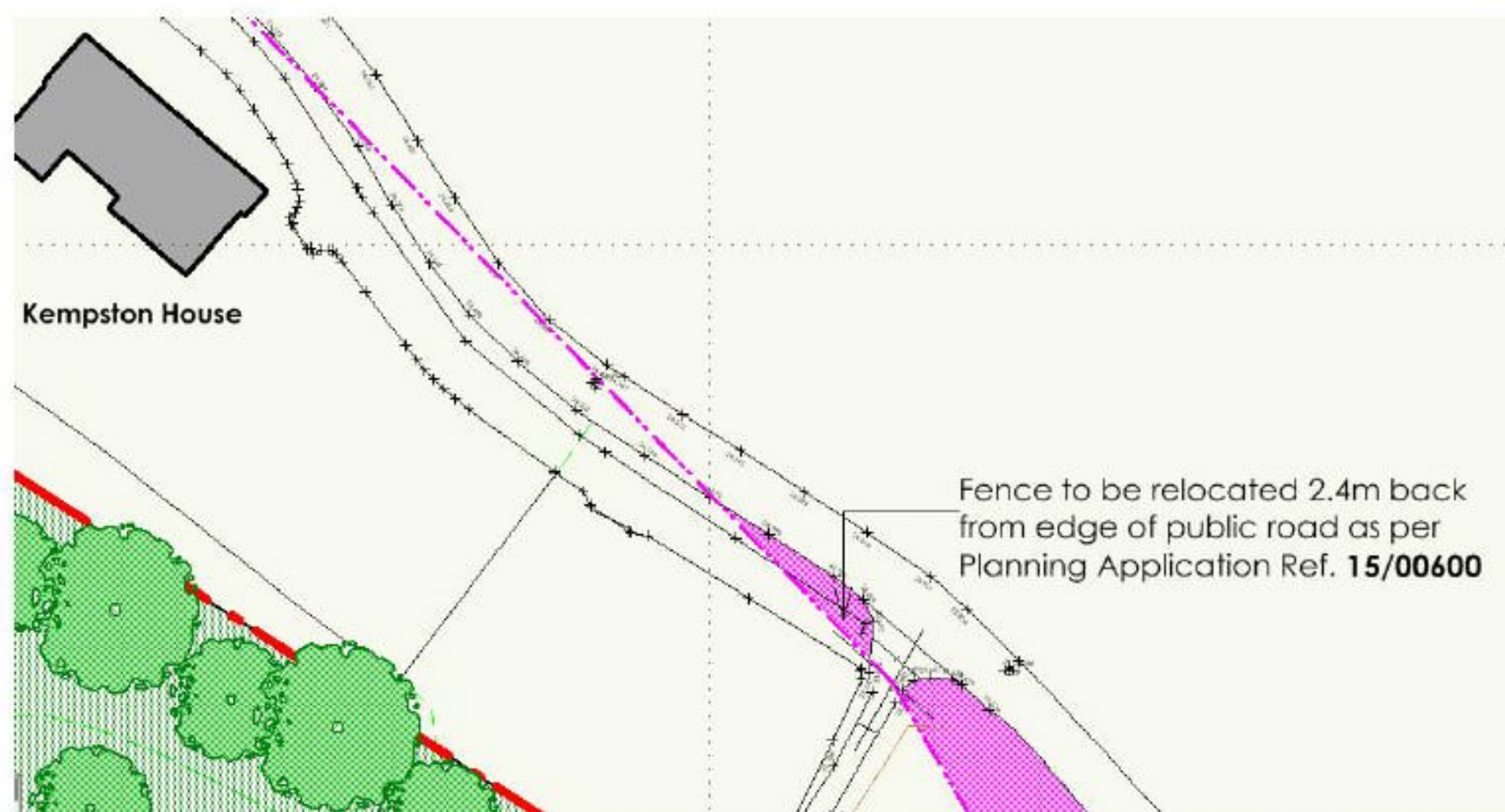


4.3 Policy T2 – Despite the argument that T2 is **not legally applicable** to this application, the Maverston Development offers all the significant access benefits that T2 seeks to encourage.

4.5.1 The appellant believes that the requirement for a visibility splay at the top of the access track leading to the appeal site, is **not legally enforceable** due to the Maverston road network not yet being adopted and other legal issues ongoing.

4.5.1 Two existing houses currently use the junction in question and have done without accident or incident since time immemorial.

4.5.2 Notwithstanding the dispute that a splay the top of the appellants track is not required, it is perhaps important to note what the shortfall in splay actually entails.



4.5.3 The above extract shows the visibility splay at the top of the track leading to the appeal site, where it joins the Maverston road network. The infringement on the small section of fenceline owned by the occupants at Kempston House can be clearly seen and is not considered to cause any danger.

4.5.3 More interestingly, please note that the removal of this fenceline is a requirement of a Planning Condition placed upon the consent granted to the occupants of Kempston House under approval 15/00600/FUL

Policy T2

PROVISION OF ACCESS

The Council will require that new development proposals are designed to provide the highest level of access for end users including residents, visitors, and deliveries appropriate to the type of development and location. Development must meet the following criteria:

- Proposals must maximise connections and routes for pedestrian and cyclists, including links to active travel and core path routes, to reduce travel demands and provide a safe and realistic choice of access.
- Provide access to public transport services and bus stop infrastructure where appropriate.
- Provide appropriate vehicle connections to the development, including appropriate number and type of junctions.
- Provide safe entry and exit from the development for all road users including ensuring appropriate visibility for vehicles at junctions and bends.
- Provide appropriate mitigation/modification to existing transport networks where required to address the impacts of new development on the safety and efficiency of the transport network. This may include but would not be limited to, the following measures, passing places, road widening, junction enhancement, bus stop infrastructure and drainage infrastructure. A number of potential road improvements have been identified in association with the development of sites the most significant of these have been shown on the Settlement Map as TSPs.
- Proposals must avoid or mitigate against any unacceptable adverse landscape or environmental impacts.

Developers should give consideration to aspirational core paths (under Policy 2 of the Core Paths Plan) and active travel audits when preparing proposals.

New development proposals should enhance permeability and connectivity, and ensure that opportunities for sustainable and active travel are protected and improved.

4.5.4 Conclusion – Whilst the need to form a compliant splay to access the appeal site is disputed, the actual shortfall in compliance is minor and in any case dealt with by the conditions placed upon the neighbouring approval at Kempston House. In most circumstances, an agreement would be reached between householders to remove small infringements like this but The Board will be aware that a dispute between landowners has not enabled this, so far.

4.6 Policy IMP1 – was a final Policy that the case officer suggested conflicted with the proposals. It can be seen from the Policy details that this conflict arose as a result of the perceived non-compliance with E9 and T2 and not any specific design and siting issues that require to be mitigated.

4.6.1 The appellant believes that in suggesting compliance with E9 & T2 all the requirements of IMP1 are being met.

4.6.2 Lastly and in general terms, the proposals will meet the wider aims of The Development plan in releasing a high quality house for residential use and without any impact upon the environment or the landscape.

4.6.3 Conclusion – this proposal complies with the general requirements of IMP1 in all respects

POLICY IMP1: DEVELOPMENT REQUIREMENTS

New development will require to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area. It must meet the following criteria:

- a. the scale, density and character must be appropriate to the surrounding area,
- b. the development must be integrated into the surrounding landscape,
- c. adequate roads, public transport, and cycling and footpath provision must be available, at a level appropriate to the development,
- d. adequate water, drainage and power provision must be made,
- e. sustainable urban drainage systems should be used where appropriate, in all new developments
- f. there must be adequate availability of social, educational, healthcare and community facilities,
- g. the development should, where appropriate, demonstrate how it will incorporate renewable energy systems and sustainable design and construction. Supplementary Guidance will be produced to expand upon some of these criteria,
- h. provision for the long term maintenance of public landscape and amenity areas must be made,
- i. conservation of natural and built environment resources must be demonstrated,
- j. appropriate provision to deal with flood related issues must be made, including the possibility of coastal flooding from rising sea levels and coastal erosion,
- k. pollution, including ground water must be avoided,
- l. appropriate provision to deal with contamination issues must be made, and
- m. the development must not sterilise significant workable reserves of minerals, prime quality agricultural land, or preferred areas for forestry planting.
- n. where appropriate, arrangements for waste management should be provided.

JUSTIFICATION

The quality of development in terms of its siting, design and servicing is a priority consideration within the Plan. In the first instance development needs to be suitable to the surrounding built and natural environment. Development should be adequately serviced in terms of transport, water, drainage, power, facilities. Particular emphasis is placed on providing pedestrian, cycle and public transport access to the development, and the use of sustainable urban drainage systems and the incorporation of renewable energy equipment and systems, and sustainable design and construction into the development in order to promote sustainability within Moray. Flooding is an important consideration particularly within the Laich of Moray and needs to be adequately addressed. Similarly, pollution issues in relation to air, noise, ground water and ground contamination must be adequately addressed to provide proper development standards.

5. Conclusion

5.1.1 This statement of case has demonstrated

- That certain material considerations are available to enable this case to be considered more closely, particularly the ongoing legal issues surrounding the adoptability of the Maverston road network.
- That the need for a visibility splay to access the existing farm track is legally questionable.
- That the proposals could be deemed a suitable departure to Policy E9 – settlement boundaries – due to the unique nature of the site, its boundaries, its setting and the existing approved development already located upon the settlement boundary (New house application 15/0600/ful)
- That a house could be accommodated in this location without any impact upon the environment and landscape – just as it had been approved previously.
- That renewed consent for this site is reasonable and that the lapse of consent was not intended and was regrettable

5.1.2 It is respectfully requested that consideration be given to **upholding this Appeal**.

C.J.S Mackay

Principle Designer & Planning Consultant

CM Design



**THE MORAY COUNCIL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
as amended**

REFUSAL OF PLANNING PERMISSION

**[Fochabers Lhanbryde]
Application for Planning Permission**

TO Mr Nigel Atkinson
c/o C M Design
St Brendans
69 South Guildry Street
Elgin
Moray
IV30 1QN

With reference to your application for planning permission under the above mentioned Act, the Council in exercise of their powers under the said Act, have decided to **REFUSE** your application for the following development:-

Erect dwellinghouse on Site West Of Kempston House Maverston Urquhart Elgin

and for the reason(s) set out in the attached schedule.

Date of Notice: **29 June 2017**



HEAD OF DEVELOPMENT SERVICES

Environmental Services Department
The Moray Council
Council Office
High Street
ELGIN
Moray IV30 1BX

IMPORTANT
YOUR ATTENTION IS DRAWN TO THE REASONS and NOTES BELOW

SCHEDULE OF REASON(S) FOR REFUSAL

By this Notice, the Moray Council has REFUSED this proposal. The Council's reason(s) for this decision are as follows: -

The proposal is contrary to policies E9 T2 and IMP1 of the Moray Local Development Plan (MLDP) 2015 for the following reasons:

The site is immediately out with the Maverston Rural Grouping, and policy E9 states that such settlement boundaries represent the limit to which these settlements can expand during the Local Development Plan period. As a development immediately out with the boundaries of this settlement such development is stated as not being acceptable. On this basis it is considered that the proposal would represent the unplanned expansion of a boundary specifically defined to avoid such development and protect distinction between settlement and surrounding countryside

On the available evidence the applicant does not appear to control sufficient land in order to provide the required visibility splay at the development access onto the prospective public road. The proposal, if permitted, would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development Requirements.

LIST OF PLANS AND DRAWINGS SHOWING THE DEVELOPMENT

The following plans and drawings form part of the decision:-

Reference	Version	Title
150144.ATKINSON.01PP 150144.ATKINSON.02PP 1 OF 1	C	Site and location plan Elevations and floor plans Tree protection plan

**DETAILS OF ANY VARIATION MADE TO ORIGINAL PROPOSAL,
AS AGREED WITH APPLICANT (S.32A of 1997 ACT)**

N/A

**NOTICE OF APPEAL
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997**

If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval 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 within three months from the date of this notice. The notice of review should be addressed to The Clerk, The Moray Council Local Review Body, Legal and Committee Services, Council Offices, High Street, Elgin IV30 1BX. This form is also available and can be submitted online or downloaded from www.eplanning.scot/eplanningClient

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 the 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.

REPORT OF HANDLING

Ref No:	17/00735/APP	Officer:	Emma Mitchell
Proposal Description/ Address	Erect dwellinghouse on Site West Of Kempston House Maverston Urquhart Elgin		
Date:	29/06/17	Typist Initials:	FJA

RECOMMENDATION

Approve, without or with condition(s) listed below		N
Refuse, subject to reason(s) listed below		Y
Legal Agreement required e.g. S,75		N
Notification to Scottish Ministers/Historic Scotland		N
Hearing requirements	Departure	N
	Pre-determination	N

CONSULTATIONS

Consultee	Date Returned	Summary of Response
Environmental Health Manager	24/05/17	No Objection
Contaminated Land	23/05/17	No Objection subject to informative
Transportation Manager	25/05/17	Object due to being a departure from policy T2
Scottish Water	05/06/17	No Objection
Development Plans (Environment)	31/05/17	Object due to being a departure from policy E9
Planning And Development Obligations	01/06/17	Contribution sought

DEVELOPMENT PLAN POLICY

Policies	Dep	Any Comments (or refer to Observations below)
Maverston	Y	
E9: Settlement Boundaries	Y	
IMP3: Developer Obligations	N	
H7: New Housing in the Open Countryside	N	
EP9: Contaminated Land	N	
IMP1: Developer Requirements	Y	
EP10: Foul Drainage	N	
T2: Provision of Access	Y	
T5: Parking Standards	N	

EP2: Recycling Facilities	N	
E3: Protected Species	N	
E4: Trees and Development	N	
ER2: Development in Woodlands	N	

REPRESENTATIONS		
Representations Received	YES	
Total number of representations received		
Names/Addresses of parties submitting representations		
Name and address details of parties submitting representations withheld in accordance with the Data Protection Act.		
Summary and Assessment of main issues raised by representations		
<p>Issue:</p> <p>Environmental</p> <ul style="list-style-type: none"> Building waste including contaminated material was dumped on the site to cover tree roots. An Environmental Assessment may need to be carried out. <p>Local Plan</p> <ul style="list-style-type: none"> The Maverston Development area has boundaries which the application is out with. Council has stated that no further application should be considered outside stated area. <p>Access</p> <ul style="list-style-type: none"> Permission is required to remove a fence on neighbouring ground to give the site access that is required to meet the roads criteria. Permission will not be given as it would disturb hedge that is starting to mature. Road is becoming increasingly busy as the Maverston Golf Club increases in popularity. The road is soon to be adopted by the Moray Council. Concern over poor access from the proposed site onto an increasingly busy road particularly given the speed of traffic to and from the golf course and the sightlines from the access road at that point. There is already an issue shared by neighbours over road safety and this proposal, if approved would compound that, and increase the potential for a road traffic incident. An affect is being seen on the wildlife, as well as cyclists and walkers from the speed of the traffic heading to and from the golf course. This is yet another house with a number of cars heading out of a lane onto a busy and hazardous road. Plot 3 has children and are yet to move in. It unknown who is going to live at plot 1. Two plots are yet to build on the spare ground heading to the golf course and another is being built on Plot 38. When the neighbouring site was purchased one of the legal stipulations placed on the purchase stated that the boundary was to be fenced. The applicant makes reference to application 15/00600/APP, as previously stated there is no intention of developing this site for the foreseeable future, if at all. The right of access leading to the site at the south is far too narrow to allow anything other than a car to turn into it. A lorry or car and trailer would not manage around the 90 degree bend to enter the site. <p>Wildlife</p> <ul style="list-style-type: none"> This area has active badger sets on it, one being close to the entrance of the site. In addition 		

to this there is an established rookery and red squirrels also appear to habit the area, they are often seen in the trees on the site.

Other

- Refuse the plot and ask the applicant to consider another plot that already has planning consent.

**Comments (PO):
Environmental**

- The Contaminated Land department were consulted on the proposal. Their consultation response includes an informative advising the applicant to investigate the matter further prior to proceeding with the proposed works.

Local Plan

- The proposal site is out with the settlement boundary of Maverston therefore is a departure from policy E9 (Settlement Boundaries).

Access

- The applicant does not appear to control sufficient land in order to provide the required visibility splay at the development access onto the prospective public road. The proposal, if permitted, would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development Requirements.

Wildlife

- For the previous application (16/01582/APP) that was refused in the site a Badger survey was undertaken in March 2016. One active sett was found lying 65m from the proposed house and 30m within the proposed driveway. If consent was to be issued SNH's advice would be sought in relation to these findings.

It is the developer's legal responsibility under separate wildlife legislation to ensure protected species are not harmed when carrying out development.

Other

- It is not the Planning Officers role to ask the applicant to consider other plots in the local vicinity.

OBSERVATIONS – ASSESSMENT OF PROPOSAL

Proposal

- Planning permission is sought for the erection of a one and a half storey 4 bed dwelling with attached garage.
- The proposal has a ground floor area of 133 sqm and the first floor has an area of 123 sqm
- Details of the external materials have not been provided.
- The site is accessed off the private (soon to be adopted) road to Maverston Golf Club via a dirt track.
- Connection to the public water supply is proposed. Private drainage arrangements and a

septic tank are proposed.

Site Characteristics

- The site is 1.3ha in size and is currently almost entirely covered with coniferous trees.
- The site appears to have been previously planted as a commercial plantation
- The site has boundaries on all sides of a post and wire fence.
- To the northwest and southwest sides there is open agricultural land.
- Kempston House is located to the northeast.
- An unsurfaced track is located and an intervening strip of woodland excluded from the site
- The site roughly level, but uneven.
- Outline consent was granted on the site under 05/00293/OUT contrary to recommendation. Following this full consent was granted under 08/02070/FUL. This consent has now lapsed. Full planning permission was applied for under 16/01862/APP, this was refused due to being contrary to policies E9, T2 and IMP1.

Policy

Section 25 of the 1997 Act as amended requires applications to be determined in accordance with the development plan i.e. the adopted Moray Local Development Plan 2015 (MLDP) unless material considerations indicate otherwise. The main planning issues are considered below.

Maverston and Settlement Boundaries (E9)

The site of the proposed development is directly outside the boundary of the Maverston Rural Grouping, as identified within the Rural Groupings Supplementary Guidance. This grouping has an extant planning consent for 40 houses, two golf courses and leisure facilities and no further opportunities for development have been identified. Policy E9 Settlement Boundaries states that "proposals immediately out with the boundaries of these settlements will not be acceptable". Therefore, the proposal is contrary to the Maverston and E9 boundary as it is out with the settlement boundary of the Maverston Rural Grouping.

Siting / Design and Housing in the Countryside (H7 and IMP1)

Policy H7: New Housing in the Open Countryside of the Moray Local Development Plan 2015 contains the necessary siting and design criteria for assessing new housing proposals in the countryside. This aims to allow new housing in the open countryside provided it can be easily absorbed into the landscape, and for new development to be low impact and to reflect the character of the surrounding area. Policy IMP1 Developer Requirements requires new development proposals to be sensitively sited, designed and serviced appropriate to the amenity of the surrounding area and to be comply with set criterion (detailed within policy). These include amongst others the requirement for new development to be of a scale and character appropriate to its setting and for development to integrate into the landscape.

In relation to policy H7 and IMP1 it is considered that the proposed development is in a relatively remote location and would be reasonably well screened within its established woodland setting. On this basis it should not detract from the character of the setting or be obtrusive.

It is noted that details on the external materials have not been provided within the plans therefore if the proposal was to be approved a condition would be attached to the consent to address this, which would ensure that the materials used would be satisfactory in terms of policy H7.

Access and Parking (T2 and T5)

The applicant does not appear to control sufficient land in order to provide the required visibility splay at the development access onto the prospective public road. The proposal, if permitted, would therefore be likely to give rise to conditions detrimental to the road safety of road users contrary to Moray Local Development Plan policies T2 Provision of Access and IMP1 Development Requirements.

There is a request within the supporting statement in relation to the use of a suspensive planning condition to secure the visibility splay at the access onto the prospective public road. However, Transportation notes that there has been an objection submitted from the owner of land over which part of the visibility splay falls and within which there is a boundary fence. The existence of this objection implies to Transportation that at the present time there is no reasonable prospect of an agreement being reached between the applicant and the land owner. Transportation therefore considers that unless circumstances change, a suspensive planning condition in relation to the access onto the prospective public road should not be applied.

Drainage and Water (EP10)

In relation to EP10: Foul Drainage, and in the absence of any public foul drainage system being available, a septic tank and soakaway arrangement is proposed within the site. The acceptability of this non-mains drainage arrangement will be determined as part of Building Standards requirements.

Connection to a public water supply is proposed. Scottish Water were consulted on the proposal and have no objections to the proposal.

Development within Woodland (E4 and ER2)

The proposed site is within a woodland area and felling will be required to create the space for the house site. Policies E4 Trees and Development and ER2 Development in Woodlands apply to all woodland removal. There is an identified threshold of 0.1 ha that triggers a requirement for compensatory planting which is set out in the Trees and Development Supplementary Guidance.

Proposals for removal of less than 0.1ha should be considered in the context of balancing the merits of the proposal in relation impact on the natural environment/landscape and other policy considerations, for example the removal of trees has been minimised and the site has adequate screening so there is no adverse visual impact associated with the removal of trees. Plans have been provided identifying the trees to be retained, removed and planted within the site along with an Arboriculture Impact Assessment.

The impact assessment states that in terms of management of the woodland, it would appear that none has taken place in the recent past. The southern half of the site would benefit from thinning, and the introduction of new native species would increase the ecological value of the site.

In order to develop the site to the proposed layout, it will be necessary to remove 226 out of a total of 845 trees included in the survey. 222 of the trees removed are of moderate quality. In order to mitigate the loss of the trees, it is proposed to plant 56xRowan, 183xSilver Birch and 104xSessile Oak be planted within the site.

Given the findings of the Arboriculture Impact Assessment and compensatory planting is to be provided, the proposal acceptable in terms of E4 and ER2.

Protected Species (E3)

Proposals that could impact on European Protected Species (such as bats, otter and great crested newt), species on Schedule 5 of the Wildlife and Countryside Act as amended (such as red squirrels and water voles) and badgers (Protection of Badgers Act 1992) require the most careful scrutiny.

A badger survey by an accredited badger surveyor was submitted with the previous application (16/01862/APP) in 2016. Due to the short period of time that has lapsed this survey can be used in conjunction with the current application. It was established that the proposed house is 65m from the current active hole onsite, however the proposed driveway falls within the 30m buffer zone. The construction of the driveway within 30m of the hole will therefore have to be constructed by hand, with no heavy machinery used for its construction to prevent any disturbance. This sett will not be a breeding sett and will only be occupied by 1-2 Badgers. The majority of the woodland is proposed to remain, allowing the small amount of foraging by Badgers on the site to continue. It is likely that the

new householders would erect a perimeter fence; this should incorporate 3 Badger gates with it to allow the existing path network to remain. The installation of these should be supervised by an ecologist.

It is considered that conditions on any consent granted could be applied in terms of the drive construction method and badger access provision through the perimeter fence to ensure that appropriate steps can be taken to ensure that harm to the statutorily protected badger species is avoided.

The survey also seeks a condition beginning applied for a further survey immediately before any development commences due to the lengthy time delay that can occur between consent and implementation.

An ecological assessment of the site should be undertaken in order to eliminate the presence of protected species prior to any works commencing.

Developer Obligations (IMP3)

As from 14 October 2016, the Council has adopted Supplementary Guidance on developer obligations as a material consideration in the determination of planning applications. The proposal has been subject to an assessment for developer obligations. If planning permission were to be granted a £496 contribution would be required to be paid towards local transport and healthcare prior to consent being issued.

Conclusion

On the basis of the above assessment and for the reasons stated it is considered that the proposals breach policies E9: Settlement Boundaries and policy T2: Access, and should therefore be refused on this basis.

OTHER MATERIAL CONSIDERATIONS TAKEN INTO ACCOUNT

None

HISTORY

Reference No.	Description			
16/01582/APP	Erect dwellinghouse on Site West Of Kempston House Maverston Urquhart Elgin			
	Decision	Refuse	Date Of Decision	07/12/16
16/00409/APP	Erect new house on Site West Of Kempston House Maverston Urquhart Elgin Moray			
	Decision	Withdrawn	Date Of Decision	18/04/16
08/02070/FUL	Erect new dwellinghouse and double garage at Site To The West Of Kempston House Maverston Urquhart Moray			
	Decision	Permitted	Date Of Decision	16/01/09
05/00293/OUT	Outline to erect a new dwellinghouse on Site Near Kempston House Urquhart Elgin Moray			
	Decision	Permitted	Date Of Decision	20/09/05

04/01313/OUT	Outline to erect new dwellinghouse on Site Near Kempston House Urquhart Elgin Moray			
	Decision	Refuse	Date Of Decision	01/11/04

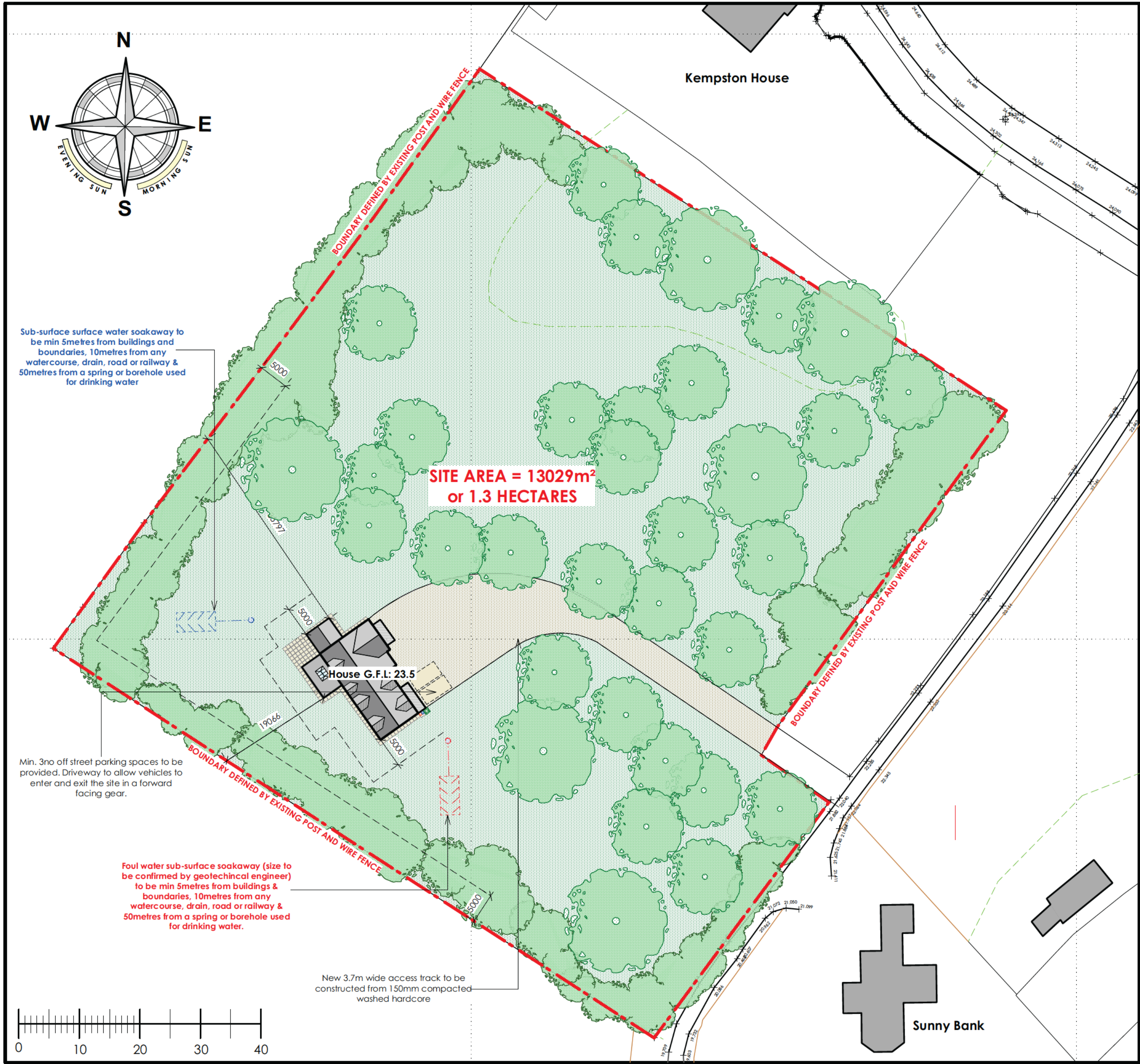
ADVERT			
Advert Fee paid?	Yes		
Local Newspaper	Reason for Advert	Date of expiry	
Northern Scot	No PremisesDeparture from development plan	15/06/17	
PINS	No PremisesDeparture from development plan	15/06/17	

DEVELOPER CONTRIBUTIONS (PGU)	
Status	

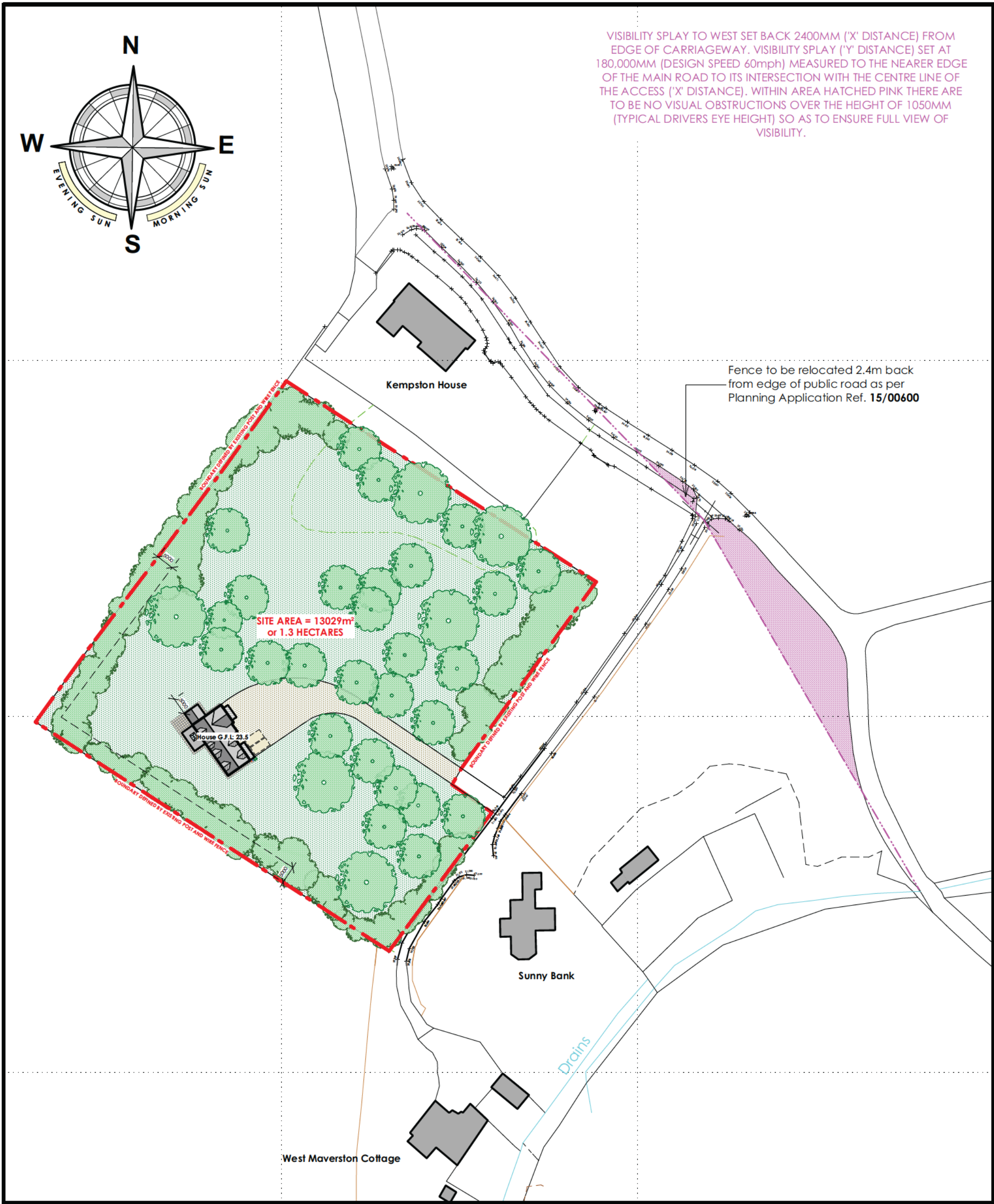
DOCUMENTS, ASSESSMENTS etc. *		
* Includes Environmental Statement, Appropriate Assessment, Design Statement, Design and Access Statement, RIA, TA, NIA, FRA etc		
Supporting information submitted with application?	YES	
Summary of main issues raised in each statement/assessment/report		
Document Name: Arboriculture Impact Assessment		
Main Issues:	<ul style="list-style-type: none"> • Survey method • Site description • Description of proposed development • Designations relating to trees • Implications of proposed development • Changes in site use and tree management impact • Recommend arboriculture works • Arboriculture method statement 	

S.75 AGREEMENT		
Application subject to S.75 Agreement		NO
Summary of terms of agreement:		
Location where terms or summary of terms can be inspected:		

DIRECTION(S) MADE BY SCOTTISH MINISTERS (under DMR2008 Regs)			
Section 30	Relating to EIA		NO
Section 31	Requiring planning authority to provide information and restrict grant of planning permission		NO
Section 32	Requiring planning authority to consider the imposition of planning conditions		NO
Summary of Direction(s)			



SITE PLAN 1:500



LOCATION PLAN 1:1000

DENDROLOGY & BOTANY PROPOSALS

In accordance with Policy H8 of the Moray Local Plan 2008, a minimum of 25% of the site area is to be retained/planted with native trees, shrubs and/or hedges.

Total new planting to extend to 13029m² or 26% of total site area.

Trees

The area hatched green (13029m²) is to be planted out with a mixture of 1800mm high native trees, which are to be planted in groups of species in a random pattern of approximately 3metre spacing. All new transplanted trees to be a mixture of Standard, Half-Standard and Whips. All new trees to be staked, tied and protected with growing shelters, rabbit, vole and/or trimmer guards.

Any existing trees removed, severely damaged, dying or which become diseased during construction work (including site clearance works) shall be replaced with trees of similar species and in close proximity to the original location.

For the duration of the development, including site clearance works, all the trees to be retained within and adjoining the development site, shall be protected by fencing or suitable means of enclosure. Within this area all contractors will be advise that no activities associated with building operations shall take place.

All excavations and works above ground level in the crown spread of any tree to be retained, shall be carried out in a manner to ensure that all roots that are uncovered are retained and protected.

Following the completion of the development (taken from the date of the issue of Building Warrant Completion Certificate), on a yearly basis (for a five year period) all trees and hedges are to be inspected. Any tree/hedging found dying or diseased will be replaced with similar species in close proximity to the original location.

New native tree planting to consist of an even mixture of: Common Alder (Alnus Glutinosa), Mountain Ash (Sorbus Aucuparia), Silver Birch (Betula Pendula), Wild Cherry (Prunus Avium), Common Hawthorn (Crataegus Monogyna), Common Hazel (Corylus Avelana), Holly (Ilex Aquifolium), Blackthorn (Prunus Spinosus), Scots Pine (Pinus Sylvestris), Common Ash (Fraxinus Excelsior), Common Aspen (Populus Tremula) and Willow (Salix Caprea).

Hedging

New Beech hedging shown along the site boundaries to be formed by a double row of 450x600mm plants, protected by rabbit proof fencing and mulch mat weed protection.

General Landscaping

Site to be levelled, weeded, cultivated and prepared for grass seeding and sown with a suitable grass seed mix.

Reference Material

Moray Development Plan - Trees & Development: Supplementary Planning Guidance
BS British Standards - BS5837: 2005 Trees in relation to construction - recommendations
BS British Standards - BS428: 1989 Code of practice for general landscape operations - excluding hard surfaces

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Mr Nigel Atkinson

NEW HOUSE ON SITE WEST OF KEMPSTON HOUSE, MAVERSTON, URQUHART, ELGIN, IV30 8LR

PLANNING PROPOSALS
SITE & LOCATION PLANS

Date:	Amendments:	Rev:
10/10/16	house position relocated	A

Drawn By:	Date:	Checked By:	Date:
CJSM	10.10.16	Craig Mackay	10.10.16

150144.ATKINSON.01PP (A)

Site Plan for Neighbour Notification purposes only

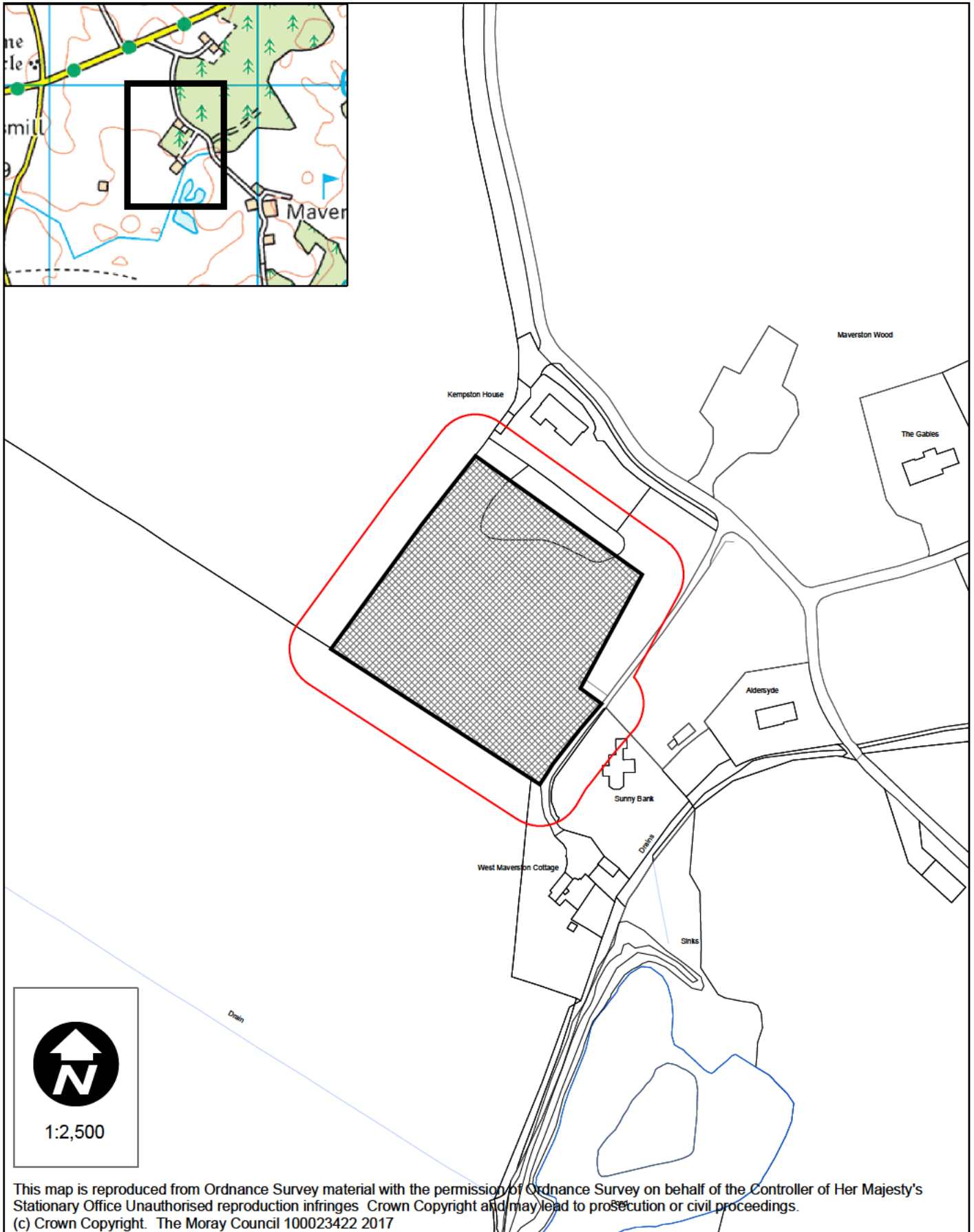
Town and Country Planning

(Development Management Procedure)(Scotland) Regulations 2008



Planning Application Reference Number:

17/00735/APP





NORTH EAST ELEVATION 1:100



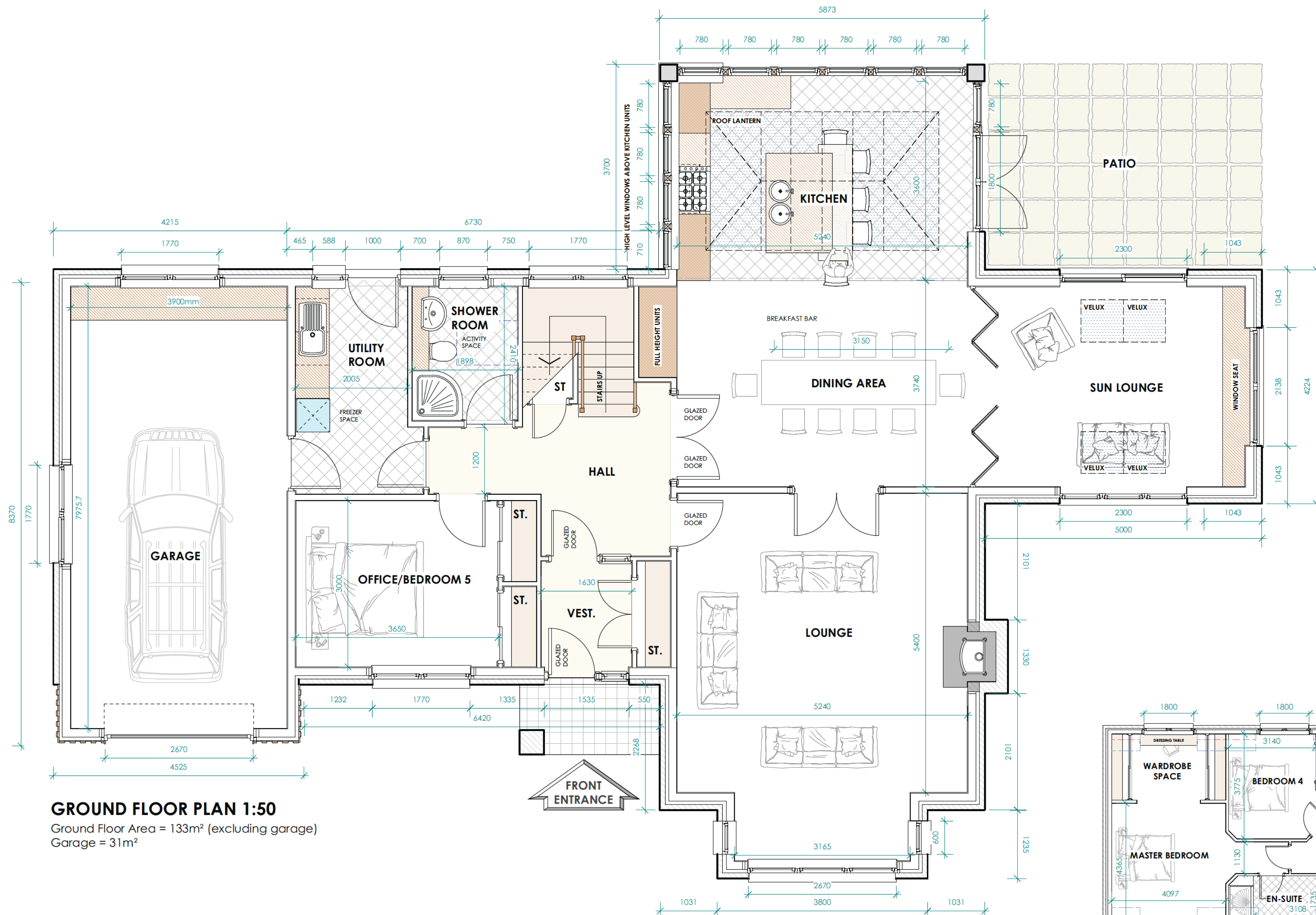
SOUTH WEST ELEVATION 1:100



NORTH WEST ELEVATION 1:100

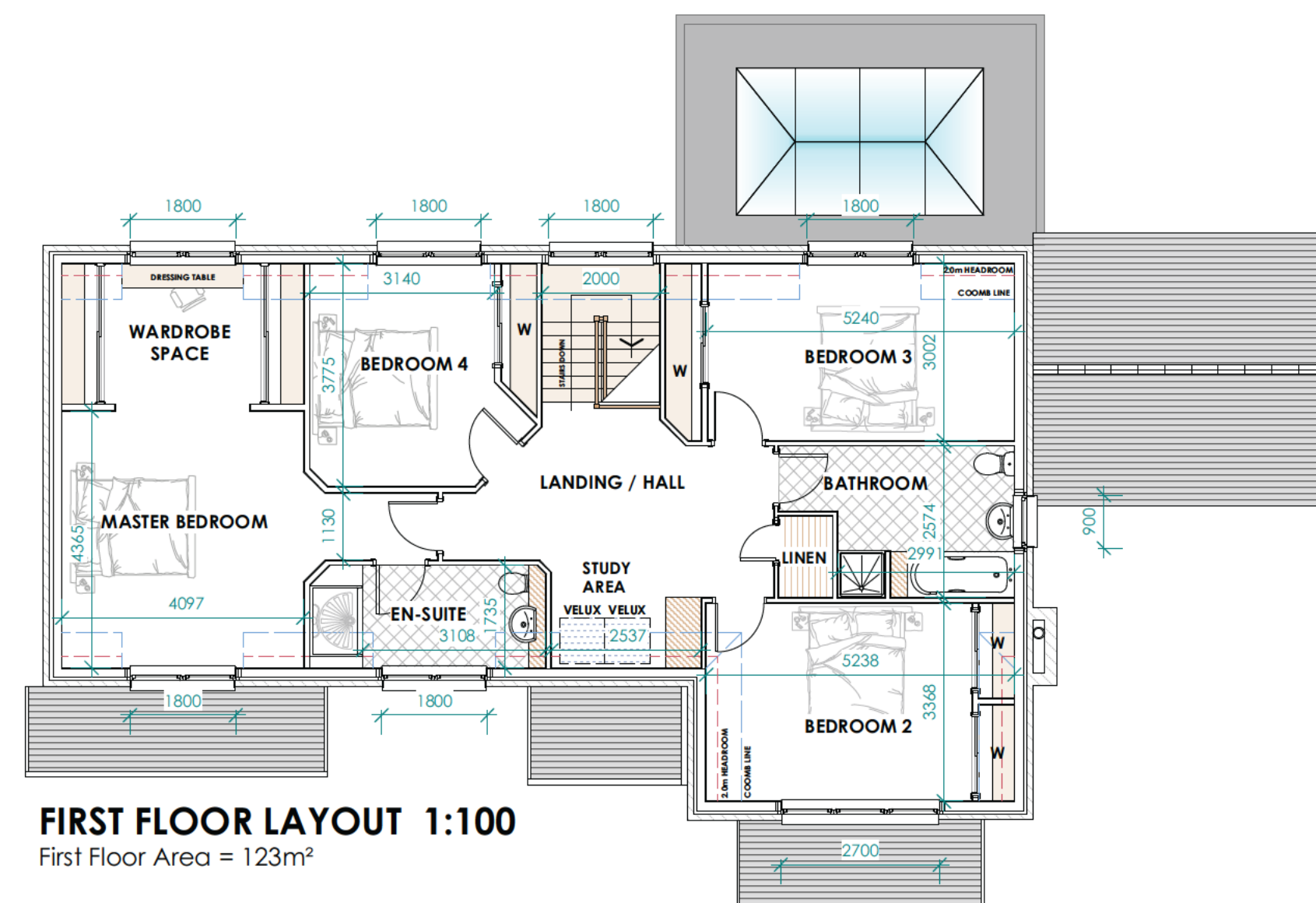


SOUTH EAST ELEVATION 1:100



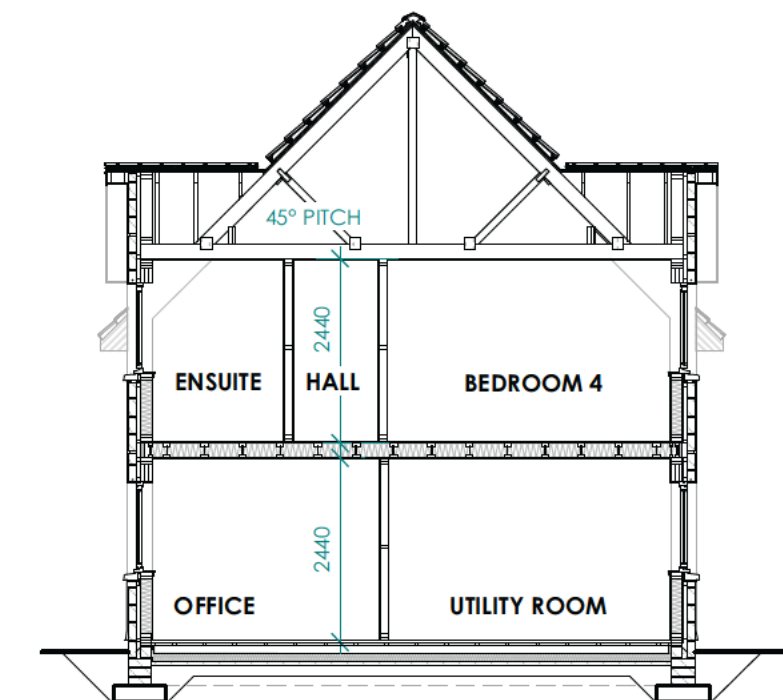
GROUND FLOOR PLAN 1:50

Ground Floor Area = 133m² (excluding garage)
Garage = 31m²



FIRST FLOOR LAYOUT 1:100

First Floor Area = 123m²



GENERAL SECTION 1:100

CONTRACTOR/CUENT TO ENSURE THAT ONLY THE APPROVED BUILDING WARRANT DRAWINGS ARE USED FOR CONSTRUCTION
DO NOT SCALE OFF DRAWINGS. ALL SIZES ARE TO BE CHECKED CONFIRMED ON SITE PRIOR TO COMMENCEMENT OF WORKS/ORDERING OF MATERIALS. NO WORK TO COMMENCE BEFORE APPROPRIATE APPROVALS ARE GRANTED CONTRACTORS RESPONSIBILITY TO ENSURE POSSESSION OF APPROVED DRAWINGS

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Mr Nigel Atkinson

NEW HOUSE ON SITE WEST OF KEMPSTON HOUSE,
MAVERSTON, URQUHART, ELGIN, IV30 8LR

PLANNING PROPOSALS
FLOOR PLANS, ELEVATIONS AND SECTION

Date: Amendments: Rev:

Drawn By: A James Date: 17.02.16 Checked By: C Mackay Date: 17.02.16

150144.ATKINSON.02PP