

Argyll and Bute Council
Comhairle Earra-Ghàidheal Agus Bhòid

Executive Director: Douglas Hendry



Kilmory, Lochgilphead, PA31 8RT
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4 May 2021

NOTICE OF MEETING

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held **BY SKYPE** on **TUESDAY, 11 MAY 2021** at **9:00 AM**, which you are requested to attend.

Douglas Hendry
Executive Director

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST**
3. **CONSIDER NOTICE OF REVIEW REQUEST: LAND NE OF KILDONALD COTTAGE, CAMPBELTOWN (REF: 21/0001/LRB)**
 - (a) Notice of Review and Supporting Documentation (Pages 3 - 10)
 - (b) Comments from Interested Parties (Pages 11 - 20)
 - (c) Comments from Applicant (Pages 21 - 24)

Argyll and Bute Local Review Body

Councillor Graham Hardie
Councillor Roderick McCuish

Councillor David Kinniburgh (Chair)

Contact: Fiona McCallum Tel: 01546 604392

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Ref:
AB1

ARGYLL AND BUTE COUNCIL

WWW.ARGYLL-BUTE.GOV.UK/**

OFFICIAL USE

29 March 2021

Date Received

NOTICE OF REVIEW

Notice of Request for Review under Section 43(a)8
of the Town and Country Planning (Scotland) Act 1997 and the Town and
Country Planning (Schemes of Delegation and Local Review Procedure)
(Scotland) Regulations 2013

Important – Please read the notes on how to complete this form and use
Block Capitals. Further information is available on the Council's Website.
You should, if you wish, seek advice from a Professional Advisor on how to
complete this form.

(1) APPLICANT FOR REVIEW		(2) AGENT (if any)	
Name	<input type="text" value="Felicity Kelly"/>	Name	<input type="text" value="Duncan Kelly"/>
Address	<input type="text" value="Ballochgair Farmhouse"/>	Address	<input type="text" value="111 High Street"/>
	<input type="text" value="Campbeltown"/>		<input type="text" value="Fort William"/>
	<input type="text"/>		<input type="text" value="Inverness-shire"/>
Postcode	<input type="text" value="PA28 6QR"/>	Postcode	<input type="text" value="PH33 6DG"/>
Tel. No.	<input type="text"/>	Tel. No.	<input type="text"/>
Email	<input type="text"/>	Email	<input type="text"/>

(3) Do you wish correspondence to be sent to you or your agent

(4) (a) Reference Number of Planning Application

(b) Date of Submission

(c) Date of Decision Notice (if applicable)

(5) Address of Appeal Property

Land NE of Kildonald Cottage, Campbeltown

(6) Description of Proposal

Erection of dwellinghouse with integral garage, installation of septic tank and formation of access

(7)

Please set out the detailed reasons for requesting the review:-

Please refer to attached paper – APPEAL REQUEST

(8) If the Local Review Body determines that it requires further information on “specified matters” please indicate which of the following procedure you would prefer to provide such information :-

- (a) Dealt with by written submission
- (b) Dealt with by Local Hearing
- (c) Dealt with by written submission and site inspection
- (d) Dealt with by local hearing and site inspection

*NB It is a matter solely for the Local Review Body to determine if further information is required and, if so, how it should be obtained. **By email to Applicant***

(9) Please list in the schedule all documentation submitted as part of the application for review ensuring that each document corresponds to the numbering in the sections below:-

Schedule of documents submitted with Notice of Review (**Note: 3 paper copies of each of the documents referred to in the schedule below must be attached**):

No.	Detail
1	Appeal request document
2	
3	
4	
5	
6	
7	
8	
9	
10	

If insufficient space please continue on a separate page. Is this is attached? (Please tick to confirm)

Submitted by
(Please Sign)

Dated

29 March 2021

Important Notes for Guidance

1. All matters which the applicant intends to raise in the review must be set out in or accompany this Notice of Review
2. All documents, materials and evidence which the applicant intends to rely on in the Review must accompany the Notice of Review **UNLESS** further information is required under Regulation 15 or by authority of the Hearing Session Rules.
3. Guidance on the procedures can be found on the Council's website – www.argyll-bute.gov.uk/
4. If in doubt how to proceed please contact 01546 604392/604269 or email localreviewprocess@argyll-bute.gov.uk
5. Once completed this form can be either emailed to localreviewprocess@argyll-bute.gov.uk or returned by post to *Committee Services (Local Review Board), Kilmory, Lochgilphead, Argyll, PA31 8RT*
6. You will receive an acknowledgement of this form, usually by electronic mail (if applicable), within 14 days of the receipt of your form and supporting documentation.

If you have any queries relating to the completion of this form please contact Committee Services on 01546 604392/604269 or email localreviewprocess@argyll-bute.gov.uk

For official use only

Date form issued

Issued by (please sign)

Request for Review – 20/01653/PP - Land NE of Kildonald Cottage, Campbeltown

Background

The reason I took the decision to progress this application was to provide a suitable dwelling for myself for the remainder of my life, the site of which is near my only close family in the area.

The design affords the facility for a carer, if this becomes necessary, to have a separate sitting area.

The property proposed is a detached one and a half storey building with integral garage. north east of Kildonald Cottage on the B842. It sits alongside two other residential properties, but also part of the group of houses known as Ballochgar, a neighbourhood, consisting of 7 dwellings and two commercial buildings



Reasons for requesting review

1. There were no objections to the proposed development
2. In argument against the reason for refusal:

a) The building is planned to sit alongside the two existing houses, as near as possible, to allow safe line of sight. Kildonald Cottage is situated directly onto the B842 road.



b) In the Reasons for Refusal notice it stated "That the application does not meet the criteria set out in policy LDP DM1 for Housing in the Countryside as the site is not infill or rounding off. There are no material considerations which warrant departure from these provisions " The Scottish Government's PAN 72 Housing in the Countryside mainly deals with the design of new houses in the countryside but also recognises the need for these houses. Under "Location" it states that " The provision of new development should be sustainable. One way of achieving this is whether it helps to maintain the population of the area ... ". This application does this. PAN 72 also states that the purpose of new planting is not to screen or hide any new development but to help integration with the surrounding landscape. We offered as part of the planning process to plant of a small coppice in NE of the proposed site which would enhance the existing landscape but also provide a more definite end of development. This could be classed as rounding off as suggested in LDP DM1.

c) The proposed house is designed to reflect the style of an adjacent dwelling, Kildonan Bay, which was built around 14 years ago.

d) This appeal could be considered under the Argyll and Bute Council Local Development Plan Written Statement 2.12 Windfall Development

3. In argument against the detrimental environment effect on the area:

a) I have managed the land since it was purchased 27 years ago, with rush cutting, ditch control, wildlife pond and general maintenance.

b) the small coppice development would, in a small way, reduce the carbon footprint in the area as well as providing an end feature. The suggested species are Willow 35%, Rowan 20%, Birch 20%, Hazel 10% Blackthorn 5%, Oak 5%. This would link in with existing network of tree and scrub growth and would offer environmental benefits.

c) I plan to install solar panels which would also reduce emissions. (I am currently researching Air Source heating, but have yet to reach a decision on this)

4. Willingness to enter into a legal agreement to ensure no further residential development on the land owned:

a) I would be willing to enter into a Section 75 agreement with Argyll and Bute Council that would prevent the use of this application being used as a precedent for any future development.

5. Commitment to the area:

a) Having lived at Ballochgair for 27 years I am very keen to remain in this area.

b) There are no properties currently available in the area to purchase or rent. Also you can see from the location plan the area of ground currently within my ownership. I want to build a smaller house but stay within the area as all my family live in close proximity to the proposed site. With already owning a large area of ground it makes sense to try and work along side the Planning Department to agree a suitable site within my ownership to build on.

c) I have been involved in the community over the years and am currently the Chair of the local development trust, along with active participation in other local charities

d) It is important to me to be near my family for mutual support.

a) – d) above are in my opinion material considerations which would warrant a departure from the divisions set out in the refusal notice.

Felicity Kelly
Applicant
March 2021

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STATEMENT OF CASE

FOR

**ARGYLL AND BUTE COUNCIL
LOCAL REVIEW BODY**

(21/0001/LRB)

**(Request to Reconsider Refusal of Planning
Permission for a Dwellinghouse)**

(LAND NE OF KILDONALD COTTAGE, CAMPBELTOWN)

(12.04.2021)

STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council (“the Council”). The appellant is Felicity Kelly (“the appellant”) who has employed (insert agent as appropriate) to act upon his behalf (“the agent”).

The proposal was for “Erection of dwellinghouse with integral garage, installation of septic tank and formation of access” reference 20/01653/PP

The planning decision has been challenged and is subject of review by the Local Review Body.

DESCRIPTION OF SITE

The proposal is for a single house on a 0.17ha rectangular site to the east of the B842 some 3km north of Peninver. The site boundary is some 45m north of Kildonald Cottage and there are a scattering of farm buildings and houses identified as Ballochgair but not formalised as a settlement in the Local Development Plan (LDP)

SITE HISTORY

06/01245/DET Erection of dwelling house 07.03.2007, Withdrawn.

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town & Country Planning (Scotland) Act 1997 provides that where, in making any determination under the planning Acts, regard is to be had to the development plan and determination shall be made in accordance with the development plan unless material considerations indicate otherwise. This is the test for this planning application.

STATEMENT OF CASE

Argyll and Bute Council considers the determining issues in relation to the case are as follows:-

- The site is within the countryside area of the LDP where development should be on appropriate sites,
- this site has no evidence of previous use as housing from information on historical maps, remote sensing and the site visit walk through,
- for this site to be appropriate it must be infill or rounding off as defined in the LDP.

The Report of Handling (please refer to Appendix 1) sets out Planning and Regulatory Services assessment of the planning application in terms of policy within the current adopted Argyll and Bute Development Plan and all other material planning considerations.

REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING

The proposal constitutes a Local Development in accordance with the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009, has no complex or challenging issues and has not been the subject of objection from local residents, it is not considered that a Hearing is required.

COMMENT ON APPELLANTS’ SUBMISSION

The appellants' statement can be summarised under the following key issues:

1. The site proposed is close to immediate family's houses and is in the applicant's ownership,
2. the design is suitable for an infirm occupant who may require care with elements of the design offering carer accommodations,
3. the site is close to other houses and commercial buildings and is to reflect the design of the building to the south of Kildonald Cottage, built around 2007,
4. the Scottish Government's PAN 72 Housing in the Countryside document states that new housing should be sustainable and the stabilisation of populations in the countryside is one way of achieving this,
5. there is an offer to coppice the land north of the site to integrate the development in the landscape and to act as rounding off and define the end of development to the north,
6. the coppice would have a positive effect on the carbon footprint of the surrounding area,
7. the proposal may be deemed to be windfall development as termed in the LDP Written Statement 2.12,
8. the applicant is willing to accept an agreement under Section 75 of Planning Act regarding this proposal acting as precedent for any further proposals,
9. the positioning north of the nearest house is to allow adequate sightlines and visibility to the main road.

Commentary

1. It is noted that the applicant wishes to use her ground to build a house close to other family dwellings and a design allowing flexibility for caring duties is supported. However, the applicant currently lives nearby and this argument does not qualify as an 'exceptional case' under the terms of policy LDP DM 1.
2. The design would make this one of the larger houses in an Area of Panoramic Quality (APQ) and discussion with the planning team regarding the design would be expected as regarding its appropriateness for the local area. However, regardless of the design the proposal does not meet the initial policy test of LDP DM 1 with respect to the countryside development management zone.
- 3&4. Policy requires development to be on an appropriate site which requires to be sustainable. Maintaining population is accepted as one way of defining stabilisation but that should be to help keep services viable, retaining people in affordable homes and creating new businesses in rural areas. It is not felt that this proposal fulfils this wider aim of PAN 75.
- 5&6. The offer to plant trees is welcome as part of a landscape plan addressing the proposal area. However, a woodland may not easily be controlled as a permanent land use feature within the landscape. If the intention is to use plantings as the substantial ground feature to comply with the definition of rounding off, then there requires to be a proposal detailing how this feature would be protected from clearing in the future, as for example, is the case with ancient woodland. It is possible that a planning condition could control the future status of the woodland but this would need to be accompanied by an active management plan that would ensure its health and vitality in perpetuity. It would be unusual for such an approach to be used to meet the terms of planning policy.
7. If the intention is to class the site as windfall it still requires to be consistent with the policies of the LDP.

8. The use of a Section 75 agreement to regulate the use of the land to the north such that it is not developed with buildings for any use would require to be discussed with the council's legal team. It would be expected that these discussions are concluded in advance of any planning application. Such an approach could be used in conjunction with the offer of woodland planting and future land management. However, this was not in front of officers at the time of making a determination.
9. The council's Roads and Amenity department had no objection to the proposal with conditions attached regarding visibility, construction, a service bay and parking and turning

The points offered in support of a positive review of this refused proposal do not adequately address the terms of policy LDP DM1 where a suitable site would be between a substantial building and a substantial ground feature on the other. The proposals to create and maintain a new ground feature should not be a condition of a housing application but should be lawfully addressed in advance of any application. The building to the south is not substantial and indeed may be deemed subordinate in size to the proposed house and garage. This too does not meet the requirements of rounding off development.

CONCLUSION

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise.

The reasons for refusal of planning application 20/01653/PP:

The proposal is not consistent with the relevant provisions of the Local Development Plan regarding siting within the Countryside Zone and an Area of Panoramic Quality contrary to policies LDP DM1, LDP STRAT 1 and LDP 3. The application does not meet the criteria set out in policy LDP DM 1 for housing in the countryside as the site is not infill or rounding off. There are no material considerations which warrant departure from these provisions.

There are no material considerations identified of sufficient weight that justify the proposal as a departure from the provisions of the development plan.

It is respectfully requested that the review be dismissed and the refusal be upheld.

**Appendix 1
Report of Handling**

**Argyll and Bute Council
Development & Infrastructure Services**

Delegated Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 20/01653/PP
Planning Hierarchy: Local
Applicant: Felicity Kelly
Proposal: Erection of dwellinghouse with integral garage, installation of septic tank and formation of access.
Site Address: Land North East Of Kildonald Cottage Campbeltown

DECISION ROUTE

Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of dwelling house and garage
- Installation of septic tank
- Formation of vehicle access

Other specified operations

- Connection to existing services
-

(B) RECOMMENDATION:

Refuse as the proposal does not conform to the Local Development Plan regarding Policy LDP DM1 regarding development within the Countryside Development Management Zone.

(C) CONSULTATIONS:

Area Roads replied 12.10.2020 no objection subject to conditions.
Scottish Water did not reply.

(D) HISTORY:

06/01245/DET Erection of dwelling house 07.03.2007, Withdrawn.

(E) PUBLICITY:
 Regulation 20 advert Campbeltown Courier/Argyll Advertiser expired 30.10.2020
 Neighbour notification – none.

(F) REPRESENTATIONS: None

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | | |
|-------|---|--------------------------------------|
| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | No |
| (iv) | A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | Yes –
Generic supporting comments |
-

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No

(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application

(i) List of all Development Plan Policy considerations taken into account in assessment of the application.

'Argyll and Bute Local Development Plan' Adopted March 2015

- LDP STRAT 1 – Sustainable Development
- LDP DM1 – Development Within the Development Management Zones
- LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment
- LDP 8 – Supporting the Strength of Our Communities
- LDP 9 – Development Setting, Layout and Design
- LDP 10 - Maximising our Resources and Reducing our Consumption
- LDP 11 – Improving Our Connectivity and Infrastructure

'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)

General Housing Development

SG LDP HOU 1 - General Housing Development Including Affordable Housing

Provision

Landscape and Design

SG LDP ENV 13 - Development Impact on Areas of Panoramic Quality (APQs)

Sustainable Siting and Design

SG LDP Sustainable – Sustainable Siting and Design Principles

Resources and Consumption

SG LDP SERV 1 - Private Sewage Treatment Plants and Wastewater (i.e. drainage) Systems

SG LDP SERV 6 - Private Water Supplies and Waste Conservation

Transport (including core paths)

SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes

SG LDP TRAN 6 – Vehicle Parking Provision

(ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.**

- Scottish Planning Policy
- Consultations
- Planning history
- ABC LDP 2 Proposed Nov 2020

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(L) Has the application been the subject of statutory pre-application consultation (PAC): No

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

(P) Assessment and summary of determining issues and material considerations

The proposal is for a single house on a 0.17ha rectangular site to the east of the B842 some 3km north of Peninver. The site boundary is some 45m north of Kildonald Cottage with no existing buildings north of the site for round 750m. The site is within the Countryside Zone as defined in the Local Development Plan (LDP)(adopted 2015).

Policies LDP DM1 and LDP STRAT 1 encourage small scale proposals on appropriate sites which make efficient use of vacant land. For a site to be appropriate within the countryside it must be infill, rounding off, a redevelopment site or changes of use of existing buildings. The site visit showed no evidence of previous occupation of the land with built remains. Examination of historical OS maps from the early 20th century showed no buildings on the site.

The definitions of infill and rounding off within the LDP Glossary are:

Head of Development and Economic Growth



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**21/0001/LRB (Planning Ref: 20/01653/PP) -
Land NE of Kildonald Cottage, Campbeltown**

Statement of Case

**Request for consideration of additional information relating to Commentary
on summarised statement**

- 1 Although I live in an existing house nearby, this is far too big for me on my own, being a 5 bedroomed, 100 year old farmhouse, I need to downsize but still live close to my family in a modern, smaller home. There are no residential properties to rent or buy in the Ballochgair area.

- 2 The design of the proposed house was never questioned as part of the planning process. The footprint of the proposed building is 170 sq.m. which includes a garage and the footprint of the nearby Kildonald Cottage is 250 sq.m.

- 3&4 By moving out of a much larger house this then leaves a house for sale which could potentially create a new business in this rural area as, for example, a holiday let, with available accommodation for owners on site.

- 5&6 Below are details of required management of the suggested wooded area from an experienced local forester as follows:

DETAILS of Small SCRUB / COPPICE AREA

Area : 0.25 ha

Recommended species: Willow 35%, Rowan 20%, Birch 20%, Hazel 10%, Hawthorn 5%, Blackthorn 5%, Oak 5%

Management

The area will need to be stock fenced with an allowance to put a temporary Deer fence on top of the stock fence for the first 5 years.

The soil condition is good with lowland brown earths and schist soil.

This will need to be cultivated either using a digger to make a mound for each tree or agriculturalist plough to make a raised planting position.

The trees should be planted at 1.8 metres spacing.

The trees would need to be kept free of weeds for the first three years.

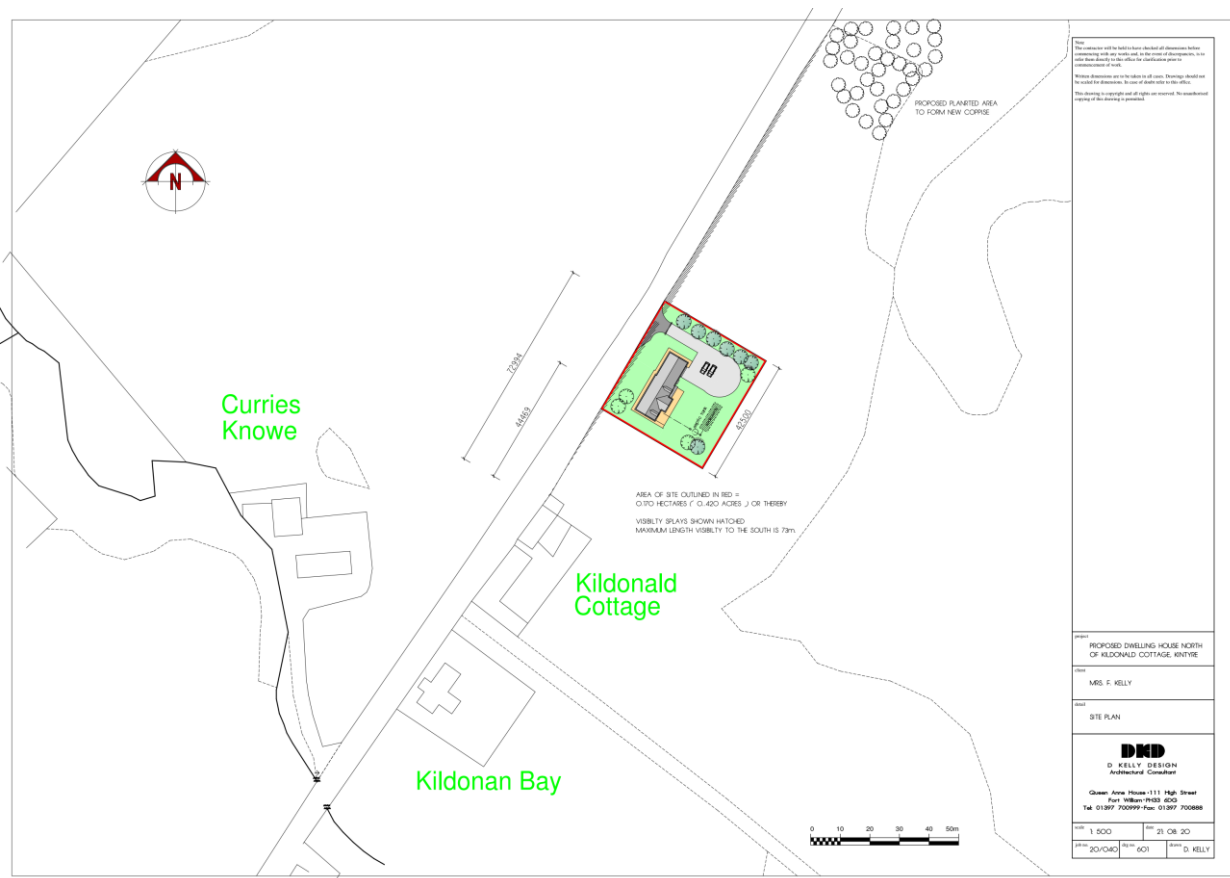
Care should be taken by planting the lower growing species next to the B842 roadside so that in future the sight of the access to the proposed house is not impeded.

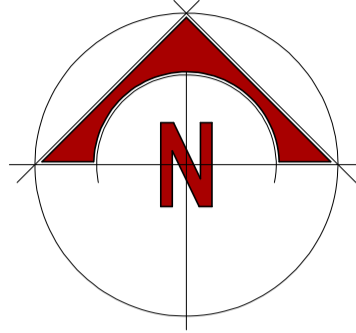
A possible site for tree planting is attached

- 8 I would be happy to progress the use of a Section 75 agreement with the Council's Legal Department for the land north of the proposed site. I would be willing to sign such an agreement.
- 9 I note that the Roads and Amenity Department has no objections to the proposal for visibility and vehicular access.

Felicity Kelly
 Applicant
 27 April 2021

Site Plan 6A – Position of Tree Planting

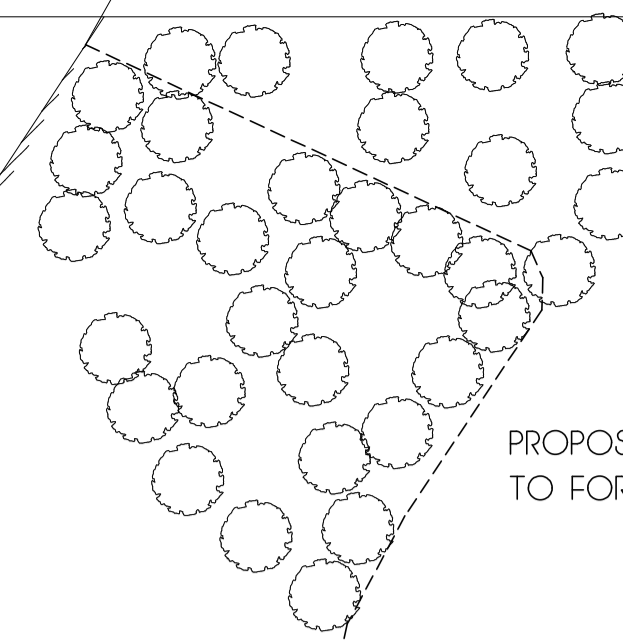




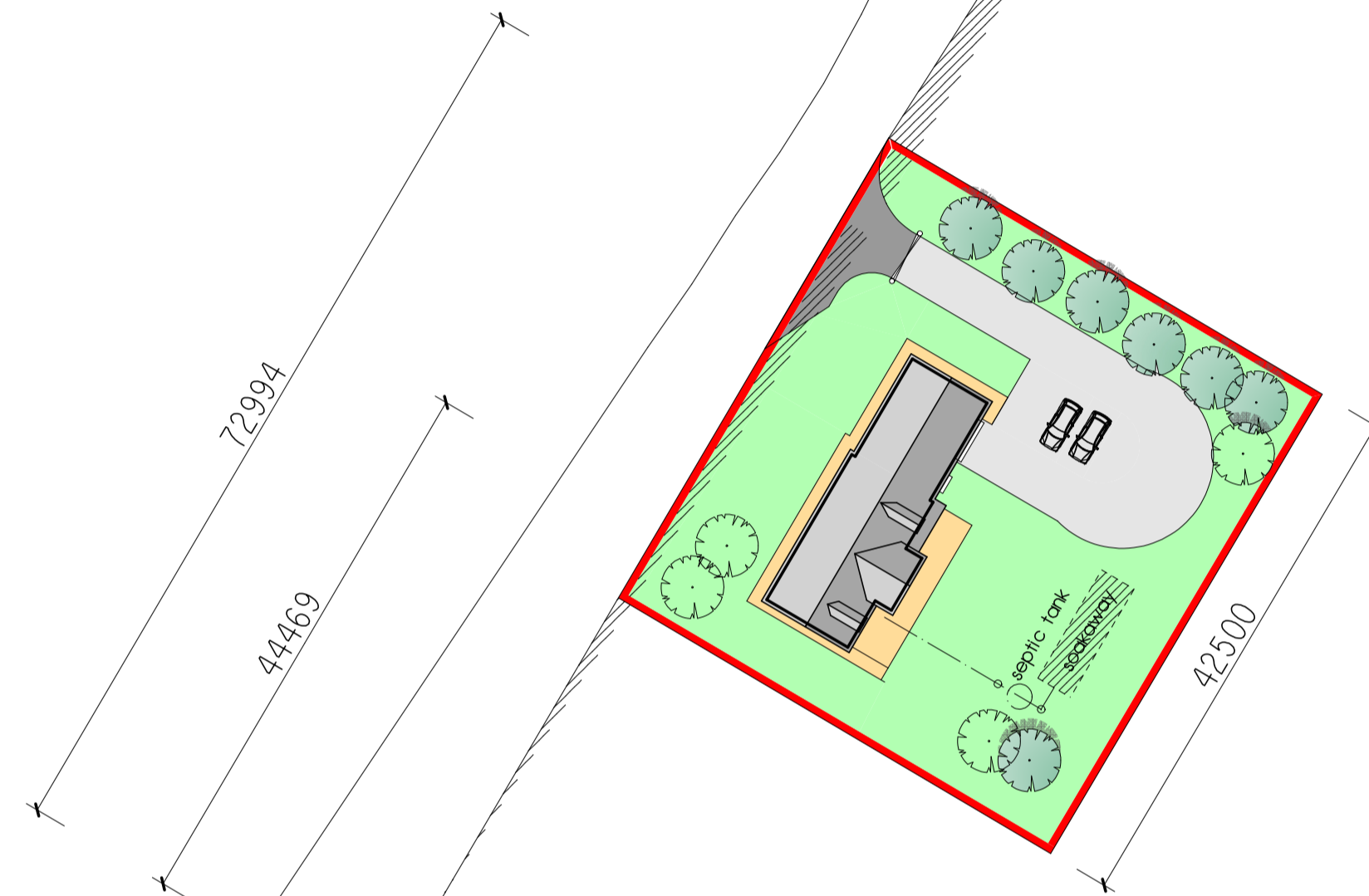
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Kildonald Cottage

Kildonan Bay

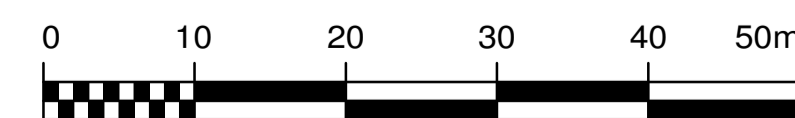


PROPOSED PLANTED AREA TO FORM NEW COPSE



AREA OF SITE OUTLINED IN RED = 0.170 HECTARES (0.420 ACRES) OR THEREBY

VISIBILITY SPLAYS SHOWN HATCHED
MAXIMUM LENGTH VISIBILITY TO THE SOUTH IS 73m.



Note
The contractor will be held to have checked all dimensions before commencing with any works and, in the event of discrepancies, is to refer them directly to this office for clarification prior to commencement of work.

Written dimensions are to be taken in all cases. Drawings should not be scaled for dimensions. In case of doubt refer to this office.

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project
PROPOSED DWELLING HOUSE NORTH OF KILDONALD COTTAGE, KINTYRE

client
MRS. F. KELLY

detail
SITE PLAN



D KELLY DESIGN
Architectural Consultant

Queen Anne House • 111 High Street
Fort William • PH33 6DG
Tel: 01397 700999 • Fax: 01397 700888

scale 1:500 date 21.08.20

job no. 20/040 drg no. 601 drawn D. KELLY

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