

Item: 3

Planning Committee: 9 October 2024.

**Siting of Two Replacement Houses at Land Near North Quatquoy,
Burness Road, Firth.**

**Report by Corporate Director for Neighbourhood Services and
Infrastructure.**

1. Overview

- 1.1. This report considers an application in principle for the siting of two replacement houses (one for ones) at land near North Quatquoy, Firth. As an application for planning permission in principle, the detail comprises the outline of both sites only, and if approved the development would be subject to one or more applications for approval of matters specified in conditions, for the full details of the development. One valid representation has been received, objecting to the development on grounds of siting, loss of agricultural land, landscape impact due to plot sizes, suburbanisation and settlement pattern, and quality of the Site Development Statement. The development complies with relevant policies, and objections and other material considerations do not merit refusal of the application.

Application Reference:	22/295/PIP.
Application Type:	Planning Permission in Principle.
Proposal:	Siting of two replacement houses (2 x one for one) (resubmission of 22/113/PIP).
Applicant:	Ms Doreen More.
Agent:	Stephen J Omand, c/o Christopher Omand, 14 Victoria Street, Kirkwall, KW15 1DN.

- 1.2. All application documents (including plans, consultation responses and valid representations) are available for members to view [here](#) (click on “Accept and Search” to confirm the Disclaimer and Copyright document has been read and understood, and then enter the application number given above).

2. Recommendations

2.1. It is recommended that members of the Committee:

- i. Approve the application for planning permission in respect of the siting of two replacement houses at land near North Quatquoy, Burness Road, Firth, subject to the conditions detailed in Appendix 1 to this report.

3. Consultations

3.1. Scottish Water.

No objection to the planning application.

3.2. Environmental Health.

“It is noted that there is a small scale wind turbine located within 250 metres of the proposed development. The applicant will need to demonstrate that the existing turbine will not impact the amenity of this development prior to any decision being made.” A Noise Impact Assessment was subsequently submitted.

3.3. Roads Services.

No adverse comment, subject to conditions and informatives.

4. Representations

4.1. One valid representation (objection) has been received from:

- Mr and Mrs M Byres, Coubister House, Burness Road, Firth, KW17 2ET.

4.2. The representation is on the following grounds:

- Siting.
- Loss of agricultural land.
- Landscape impact due to plot sizes, suburbanisation and settlement pattern.
- Quality of the Site Development Statement.

5. Relevant Planning History

5.1. Planning applications

Reference	Proposal	Location	Decision	Date
22/113/PIP.	Siting of two replacement houses (2 x one for one).	North Quatquoy (Land Near), Burness Road, Firth.	Withdrawn.	07.07.22.

6. Relevant Planning Policy and Guidance

- 6.1. The full text of the Orkney Local Development Plan 2017 and supplementary guidance can be read on the Council website [here](#).
- 6.2. National Planning Framework 4 can be read on the Scottish Government website [here](#).
- 6.3. The key policies, supplementary guidance and planning policy advice listed below are relevant to this application:
- National Planning Framework 4:
 - Policy 17. Rural homes.
 - Orkney Local Development Plan 2017:
 - Policy 1: Criteria for All Development.
 - Policy 2: Design.
 - Policy 5: Housing.
 - Policy 14: Transport, Travel and Road Network Infrastructure.
 - Supplementary Guidance:
 - Housing in the Countryside (2021).
 - Planning Policy Advice:
 - National Roads Development Guide (2015).
 - Development Management Guidance:
 - Housing in the Countryside (2024).
 - Wind Energy: Definitions Associated with Noise Assessments (2023).

○

7. Legislative position

- 7.1. Section 25 of the Town and Country Planning (Scotland) Act 1997 as amended (the Act) states, “Where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination is, unless material considerations indicate otherwise...to be made in accordance with that plan...”
- 7.2. Annex A of Planning Circular 3/2013: ‘development management procedures’ provides advice on defining a material consideration, and following a House of Lords’ judgement with regards the legislative requirement for decisions on planning applications to be made in accordance with the development plan, confirms the following interpretation: “If a proposal accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the proposal does not accord with the development plan, it should be refused unless there are material considerations indicating that it should be granted.”
- 7.3. Annex A continues as follows:
 - The House of Lords’ judgement also set out the following approach to deciding an application:
 - Identify any provisions of the development plan which are relevant to the decision.
 - Interpret them carefully, looking at the aims and objectives of the plan as well as detailed wording of policies.
 - Consider whether or not the proposal accords with the development plan.
 - Identify and consider relevant material considerations for and against the proposal.
 - Assess whether these considerations warrant a departure from the development plan.
 - There are two main tests in deciding whether a consideration is material and relevant:
 - It should serve or be related to the purpose of planning. It should therefore relate to the development and use of land.
 - It should relate to the particular application.
 - The decision maker will have to decide what considerations it considers are material to the determination of the application. However, the question of

whether or not a consideration is a material consideration is a question of law and so something which is ultimately for the courts to determine. It is for the decision maker to assess both the weight to be attached to each material consideration and whether individually or together they are sufficient to outweigh the development plan. Where development plan policies are not directly relevant to the development proposal, material considerations will be of particular importance.

- The range of considerations which might be considered material in planning terms is very wide and can only be determined in the context of each case. Examples of possible material considerations include:
 - Scottish Government policy and UK Government policy on reserved matters.
 - The National Planning Framework.
 - Designing Streets.
 - Scottish Government planning advice and circulars.
 - EU policy.
 - A proposed local development plan or proposed supplementary guidance.
 - Community plans.
 - The environmental impact of the proposal.
 - The design of the proposed development and its relationship to its surroundings.
 - Access, provision of infrastructure and planning history of the site.
 - Views of statutory and other consultees.
 - Legitimate public concern or support expressed on relevant planning matters.
- The planning system operates in the long term public interest. It does not exist to protect the interests of one person or business against the activities of another. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development.

7.4. Where a decision to refuse an application is made, the applicant may appeal under section 47 of the Act. Scottish Ministers are empowered to make an award of

expenses on appeal where one party's conduct is deemed to be unreasonable. Examples of such unreasonable conduct are given in Circular 6/1990 and include:

- Failing to give complete, precise and relevant reasons for refusal of an application.
- Reaching a decision without reasonable planning grounds for doing so.
- Not taking into account material considerations.
- Refusing an application because of local opposition, where that opposition is not founded upon valid planning grounds.

7.5. An award of expenses may be substantial where an appeal is conducted either by way of written submissions or a local inquiry.

Status of the Local Development Plan

7.6. Although the Orkney Local Development Plan 2017 is “out-of-date” and has been since April 2022, it is still a significant material consideration when considering planning applications. The primacy of the plan should be maintained until a new plan is adopted. However, the weight to be attached to the Plan will be diminished where policies within the plan are subsequently superseded.

Status of National Planning Framework 4

7.7. National Planning Framework 4 (NPF4) was adopted by Scottish Ministers on 13 February 2023, following approval by the Scottish Parliament in January 2023. The statutory development plan for Orkney consists of NPF4 and the Orkney Local Development Plan 2017 and its supplementary guidance. In the event of any incompatibility between a provision of NPF4 and a provision of the Orkney Local Development Plan 2017, NPF4 is to prevail as it was adopted later. It is important to note that NPF4 must be read and applied as a whole, and that the intent of each of the 33 policies is set out in NPF4 and can be used to guide decision-making.

7.8. In the current case, there is not considered to be any incompatibility between the provisions of NPF4 and the provisions of the Orkney Local Development Plan 2017, to merit any detailed assessment in relation to individual NPF4 policies.

8. Assessment

8.1. As noted in section 1 above, planning permission in principle is sought for two replacement houses at North Quatquoy, Firth, as indicated in the Location Plan attached as Appendix 2 to this report. The planning application site adjoins the western corner of the steading of North Quatquoy, comprising two plots. Each plot

is proposed as a replacement house (one for one) for a redundant building – one a Nissen hut and the other an L-shaped shed, previously a dwelling. As an application in principle, only the plot boundaries are provided, and full details of the development would require to be submitted only with any subsequent application for approval of matters specified in conditions.

Principle

- 8.2. The principle of the development rests on Policy 5E ‘Single Houses and New Housing Clusters in the Countryside’, part (iii) ‘The replacement of an existing building or structure’ of the OLDP. The policy provision is detailed in Supplementary Guidance ‘Housing in the Countryside’ (2021). The Supplementary Guidance confirms three types of building that can be replaced under the policy provision. The Nissen hut meets the definition of ‘a building or structure that is redundant’, with walls over 1.6 metres in height (and the roof generally in situ) and an external floor area of over 50 square metres, and being no longer suitable for its previous use. The L-shaped shed is evident on historic Ordnance Survey maps and meets the definition of being a redundant former house. In that regard, the principle of two replacement houses, on a one-for-one basis, is acceptable in accordance with Policy 5E of the OLDP. This aligns with Policy 17 ‘Rural homes’ of NPF4, as confirmed by Development Management Guidance ‘Housing in the Countryside’ (2024).

Layout and Design

- 8.3. Supplementary Guidance provides guidance on the layout of replacement houses, including that replacement houses should be located on the same site unless there are exceptional reasons for an alternative location. The matter of layout and resultant landscape impact are raised in the objection. The two existing buildings are approximately eight metres apart. Plot 2 is closest to the steading and is based on the L-shaped building, which is proposed to be retained as an ancillary outbuilding to the replacement house within that plot. The replacement house would be ‘located next to [the] original building and within the same curtilage’ as required by the Supplementary Guidance. Neither plot exceeds the 1500 square metres maximum plot size identified within Supplementary Guidance; however, such is the proximity of the Nissen hut to the L-shaped building, that it is also within the area enclosed as Plot 2.
- 8.4. The separate Plot 1 adjoins Plot 2, with a shared access from the existing private farm access track and would be based on the replacement of the Nissen hut. The relocation of this building to the immediately adjoining alternative location is

raised within the objection; however, in accepting the principle of two replacement houses, it is necessary that two plots be defined, and this is as close as possible. The withdrawn planning application 22/113/PIP referenced in section 5 above had both plots further from the steading but was withdrawn on the advice of the planning authority due to being considered too distant from the original building, and the proposal was redesigned and submitted as the current application.

- 8.5. As noted above, the design of the houses would be subject to further application. Notwithstanding the concerns raised in the objection, in terms of plot size, general location, and the layout and pattern of development in its countryside setting and in the context of the steading, the development is considered to comply with the relevant requirements of Supplementary Guidance and Policy 2 'Design' of the OLDP. Terms within planning conditions would provide further control over the scale of development, and the layout of the plots. This requirement for additional detail is relevant in terms of the concerns raised by the objector regarding the detail of content of the submitted Site Development Statement.
- 8.6. Any subsequent application for approval of matters specified in conditions would include details of surface water drainage and foul drainage, as well as biodiversity enhancement in terms of Policy 3 'Biodiversity' of NPF4.

Residential Amenity

- 8.7. The plots would be of sufficient size that a house could be accommodated in a way that would protect occupants from overlooking or overshadowing. The plots are also sufficiently distant from any existing houses, including the main house at the steading. A planning condition would control building operations to protect residential amenity from construction noise, in accordance with Policy 1 'Criteria for all development' of the OLDP.

Access

- 8.8. The plots would be accessed from the existing private track to the steading, with no new access formed to the public road. Roads Services has no objection subject to upgrading of the junction of the existing access track with Burness Road, and also the construction of a new passing place at a location to be determined on the Burness Road. Both matters could be controlled by planning condition, and on that basis the development complies with Policy 14 'Transport, Travel and Road Network Infrastructure' of the OLDP.

Noise

- 8.9. The application site is located within 250 metres of a third-party wind turbine. In accordance with Development Management Guidance ‘Wind Energy: Definitions Associated with Noise Assessments’ (2023), Environmental Health required submission of an assessment to confirm that the turbine would not unacceptably affect the amenity of occupiers of the development through noise impact. A Noise Impact Assessment was duly submitted, which includes assessment of the distance between the site and the turbine and relevant British Standards with regards noise levels, and includes noise modelling based on the determined source noise. The Noise Impact Assessment confirms that the closest point of the application site boundary to the turbine is below the established noise limit, and the entirety of the site is in full compliance with Environmental Health requirements. This allows a conclusion that the proposed houses would be sufficient distance from the turbine, and any external amenity space would allow typical relaxation and enjoyment activities without the need for any mitigation in terms of site layout orientation. The conclusions of the turbine noise assessment confirm that in terms of noise impact, the development complies with Policy 1 ‘Criteria for All Development’.

9. Conclusion

- 9.1. The proposed development complies with Policies 1, 2, 5E and 14 of the Orkney Local Development Plan (2017), Policies 3 and 17 of National Planning Framework 4, Supplementary Guidance ‘Housing in the Countryside’ and Development Management Guidance ‘Housing in the Countryside’ (2024) and ‘Wind Energy: Definitions Associated with Noise Assessments’ (2023). The proposal is acceptable in principle, and in terms of layout and landscape impact, noting that the application is in principle only. There are no material considerations including those raised in the objection that outweigh this conclusion.

For Further Information please contact:

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Implications of Report

- 1. Financial:** None.
- 2. Legal:** Detailed in section 7 above.
- 3. Corporate Governance:** In accordance with the Scheme of Administration, determination of this application is delegated to the Planning Committee.
- 4. Human Resources:** None.
- 5. Equalities:** Not relevant.

6. **Island Communities Impact:** Not relevant.
7. **Links to Council Plan:** Not relevant.
8. **Links to Local Outcomes Improvement Plan:** Not relevant.
9. **Environmental and Climate Risk:** None.
10. **Risk:** If Members are minded to refuse the application, it is imperative that clear reasons for proposing the refusal of planning permission on the basis of the proposal being contrary to the development plan policy and the officer's recommendation be given and minuted. This is in order to provide clarity in the case of a subsequent planning appeal or judicial review against the Planning Committee's decision. Failure to give clear planning reasons for the decision could lead to the decision being overturned or quashed. In addition, an award of costs could be made against the Council. This could be on the basis that it is not possible to mount a reasonable defence of the Council's decision.
11. **Procurement:** None.
12. **Health and Safety:** None.
13. **Property and Assets:** None.
14. **Information Technology:** None.
15. **Cost of Living:** None.

List of Background Papers

Orkney Local Development Plan 2017, available [here](#).

National Planning Framework 4, available [here](#).

Appendix

Appendix 1 – Planning conditions.

Appendix 2 – Location Plan.

Appendix 1.

01. An application (or applications) for the approval of matters specified in conditions attached to this planning permission in principle must be made no later than the expiration of three years beginning with the date of this decision notice.

The development to which this planning permission in principle relates must commence no later than two years from the date of the requisite approval of all matters specified in conditions (including, in the case of approval of different matters on different dates, two years from the date of approval of the last such matter). If development has not commenced within this period, then this planning permission in principle shall lapse.

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

02. No development shall commence until all matters specified below have been approved on application to the Planning Authority:

- A detailed layout of the site of the proposed development, including that the house and any other buildings in Site 1 (as annotated within the application site area) be in the south-eastern half of the site, to not unduly extend the building group.
- Site levels as existing and proposed, based on a fixed datum point.
- The design and external appearance of the proposed development (all buildings and structures, including retained buildings), noting that the scale and proportions should relate to the existing L-shaped building in the eastern corner of the site, accompanied by a Design Statement.
- All hard and soft landscaping proposals for the site of the proposed development (including boundary treatments, including retention of existing stone boundary walls).
- Measures for biodiversity enhancement, in accordance with Policy 3(c) of National Planning Framework 4.
- Details of access and parking arrangements, including width, detailed geometry and surfacing of the access track.
- Details of the proposed water supply arrangements.
- Details of the foul drainage disposal.
- Details of the management of surface water.
- Details of refuse and recycling bin storage, including for collection.

Reason: Planning permission is granted in principle only and these specified matters must be approved prior to commencement of development.

03. In accordance with Conditions 01 and 02 above, the Design Statement shall be produced describing the scale, simple massing, traditional form and proportions, building and surface materials, and site layout. That Design Statement shall be submitted with the first application for approval of matters, and the whole development shall be designed to accord with the terms of the Design Statement.

Reason: To protect the appearance of the area, and in accordance with the terms of Supplementary Guidance 'Housing Development in the Orkney Countryside'.

04. No other development shall commence until a passing place has been constructed on Burness Road. The location of this passing place shall be approved in advance, in writing, by the Planning Authority, in conjunction with Roads Services. The passing place shall thereafter be constructed wholly in accordance with the Council's detail for a passing place, attached to and forming part of this decision notice, in the location approved.

Reason: In the interest of road safety.

05. No other development, except for the passing place specified in Condition 04 above, shall commence until the junction of the existing access track with the public road has been upgraded to the Council's Roads Services standard drawing 'SD-01 Typical Access for Single Development (2-4 houses)', attached to and forming part of this decision notice, including dimensions, road construction, any pipe required, and verge or footway. Thereafter, the access junction shall be retained in accordance with these details throughout the lifetime of the development, unless otherwise agreed in writing by the Planning Authority.

Any damage caused to the existing road infrastructure during construction of the development shall be repaired prior to first occupation of the development, to the satisfaction of the Planning Authority, in conjunction with Roads Services.

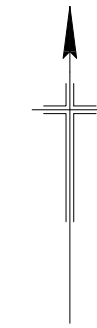
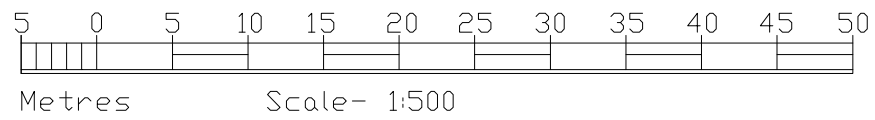
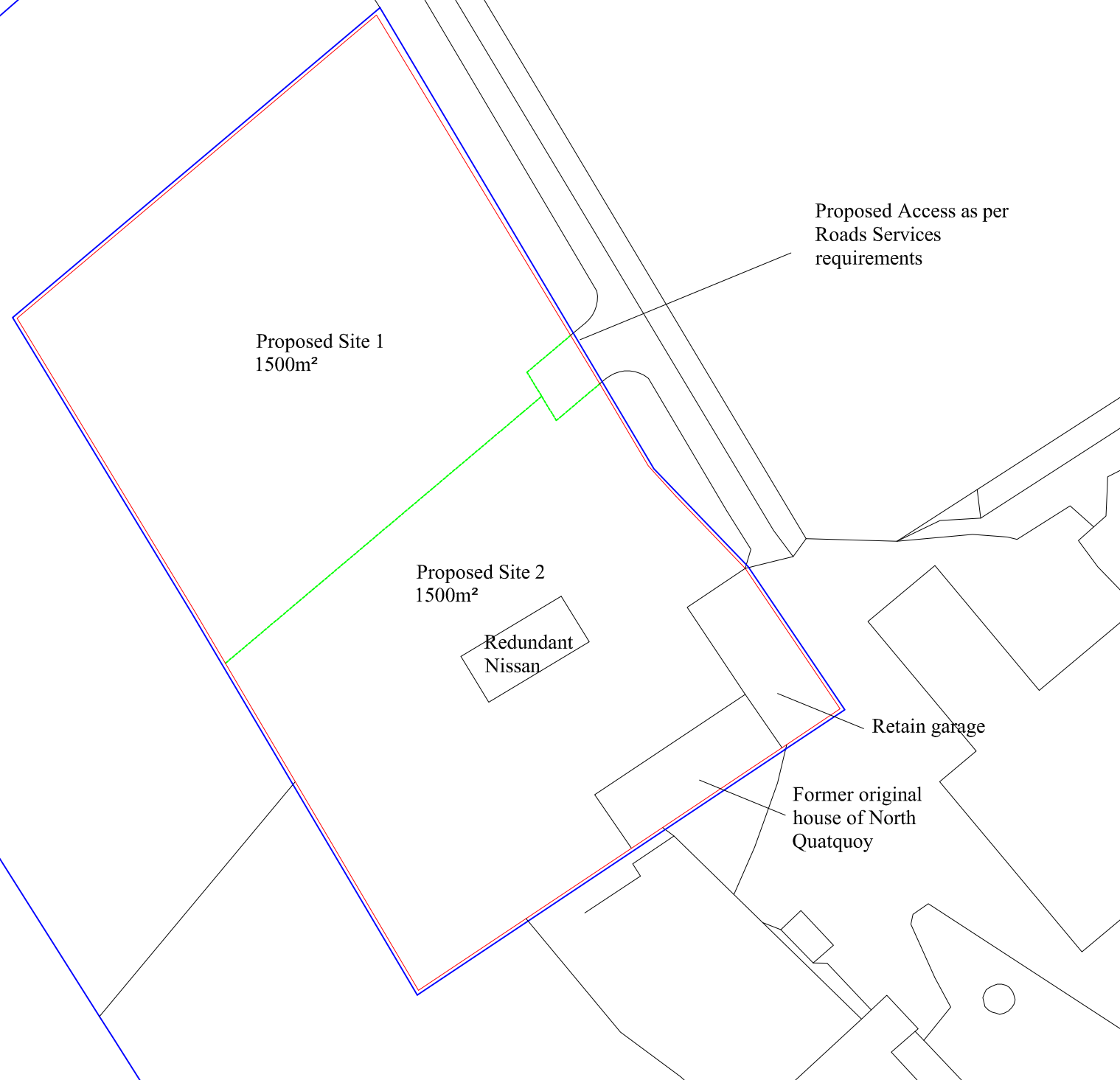
Reason: In the interests of road safety.

06. Hours of work during the construction of the development hereby approved, involving the use of machinery and powered tools, or any other operation, for example hammering, that would generate noise audible beyond the boundary of the site, shall be restricted to 07:30 to 18:00 Mondays to Fridays, 08:00 to 13:00 on Saturdays and not at all on Sundays, Christmas or New Year Public Holidays unless otherwise agreed, in writing, with the Planning Authority.

Throughout the construction phase of the development there shall be no burning of waste material on site.

Reason: In the interest of residential amenity of the area and to reduce any possible nuisance arising to nearby residents during the construction of the development.

Site Plan



2no. proposed one for ones at
North Quatquoy, Burness Road, Firth, KW17 2ET.

Location Plan

