

PETITION

COMMITTEE DATE: 13/07/2016

APPLICATION No. **16/01016/MJR** APPLICATION DATE: 05/05/2016

ED: **ELY**

APP: TYPE: Discharge of Conditions

APPLICANT: Waterstone Homes

LOCATION: LAND OFF, CLOS-Y-CWARRA, ST FAGANS, CARDIFF, CF5
4QT

PROPOSAL: DISCHARGE OF CONDITIONS 3 (CONSTRUCTION
MANAGEMENT SCHEME) OF PLANNING PERMISSION
15/02847/MJR

RECOMMENDATION: That consent be **GRANTED** for the partial discharge of condition 3 of planning permission 15/02847, in accordance with the details submitted with this application.

1. **DESCRIPTION OF PROPOSAL TO DISCHARGE CONDITION**

- 1.1 Full planning permission was granted earlier this year for 44 affordable houses on land at the end of Clos y Cwarra subject to conditions. The applicant has submitted details to address the following condition:-

Condition 3:- Prior to commencement of development a scheme of construction management shall be submitted to and approved by the Local Planning Authority to include details of construction traffic routes, site hoardings, site access, wheel washing facilities and parking of contractors vehicles. The development construction shall be managed strictly in accordance with the scheme so approved.

Reason: In the interests of highway safety, public amenity and to protect water quality and the integrity of the Ely Valley SSSI.

- 1.2 Construction traffic will use the only vehicular access to the site which is Clos y Cwarra. The submitted plan identifies the location of the materials storage area and site office (shown as two blocks with a unit stacked on each other) behind 42,44 and 46 Clos y Cwarra and the contractors car park behind 43 Clos y Cwarra. The development will be carried out in 3 phases. Phase 1 will be the estate road, phase 2 the lower part of the site and phase 3 the upper part of the site. The hardstanding for the jetwash will be at the entrance to the site. The site will be enclosed by a heras fence.

2 **INTERNAL CONSULTEE RESPONSES**

- 2.1 The Highways Officer states: I can confirm that the submitted document is generally acceptable for the purpose of discharging the associated condition

(3). I note that the contractor has already responded to you on outstanding matters and queries that have been raised and the responses are acceptable where they relate to highways and transport matters.

Our Highways Team have raised the following:

- (i) Is there a start date for commencement of the works? If not yet known, could we be informed when this information is available?
- (ii) Will there be any new service works located within the existing adopted highway for which reinstatement etc will be necessary.

2.2 The developer provided the following response.

- 1. The contractors have a site target start date of the 4th of July, this may be in jeopardy but they need to get on site somewhere near that date
- 2. No there are no anticipated works to the existing highway, services connections are in the footpath at the entrance to the site and the drainage connection will be installed in to the existing pumping station adjacent to the scheme

2.3 Following the submission of this additional information by the applicant the Highways Officer considers the submitted details to be acceptable.

2.4 The Tree Officer has no adverse observations

3. **EXTERNAL CONSULTEE RESPONSES**

3.1 NRW has no comments to make with regard to the discharge of condition 3.

4. **REPRESENTATIONS**

4.1 It is not normal practice to notify local residents or local members of an application to discharge a condition but in this case objections had been made by local residents to the construction traffic and the site compound to the rear of 4 existing dwellings. Residents who objected to application 15/02847 or resided to the rear of the site compound were notified of this application.

4.2 A local resident has resubmitted a petition made after the determination of application 15/2847 to accompany his objection to the current proposal. He advocates that construction traffic should access the site from Drope Road, to use and upgrade an existing private roadway for 200m going north and then construct a road base and creek crossing for a further length to access the site from the west. He also says that construction traffic to the Ecohomes at Ffordd y Barcar development had to come off Michaelston Road rather than Denison Way.

4.3 The petition signed by 176 residents' states: "We the undersigned reject the proposal regarding the transport route to the development at the bottom of Clos y Cwarra we request that you put this application on hold pending further investigation regarding alternative building service route."

4.4 Individual letters of objection have been received from 13 residents to the

access route for construction vehicles along Clos y Cwarra and Denison Way as they consider that the safety of residents and their vehicles and their amenities will be prejudiced. Some of the residents also object to the material store's position next to housing, which they say will result in an adverse impact on privacy, noise, dust and odour issues, and that the on-site parking area for workers is insufficient. One of the objectors submitted a lengthy criticism of errors he considers are contained in the submitted Construction Management Report.

- 4.5 Four other residents, and some of the residents objecting to construction traffic, have repeated original objections to the overall development which was approved by Committee earlier this year.

5. **ANALYSIS**

- 5.1 Applications to discharge conditions are normally determined under the delegated power arrangements, however, in this case a petition of objection has been received which has made it necessary to report this application to Committee.

- 5.2 The developer has been contacted to seek clarification on the following matters:-

Whilst jet and wheel washing are referred to in your submission no details of these facilities have yet been provided.

Reference is made to site offices in the Construction Method Statement (CMS) but it does not specify that the offices will be single storey, or, if 2 storey how far they will be from the boundary with adjoining properties and confirmation that there will be no clear glazed windows facing those properties. The height of the fence next to the compound and site office has not been specified.

In paragraph 2.1 of the CMS Jehu says it will use its expertise to communicate and engage with the local community. Has Jehu discussed their CMS with the immediately adjoining neighbours who will be most affect by this part of the development?

In paragraph 3.3 of the CMS reference is made to parking on public roads. You should clarify whether public road is a reference to the new estate road rather than the existing public road Clos y Cwarra.

- 5.3 The developer has provided the following information:

Jet Washing, - A dedicated operative will be employed to guide traffic in and out of the scheme, there will be a holding area within the scheme where all wheels of the delivery traffic will be cleaned prior to leaving the scheme to prevent and ensure no mud or debris is laid along the Clos-y-Cwarra road. It is also the developer's intention on the scheme to install all the access roads up to and including base tarmac prior to any of the plots being constructed again to ensure and control both dust in dry spells and mud in the wetter periods

A copy of the site accommodation layout proposed for the scheme has now been provided. The units will be double stacked due to the limited space on the scheme and to install the security cameras to protect the scheme; these will need to be elevated to get the best panoramic view of the scheme for the monitoring.

Confirmed that the reference to contractors on road parking is in respect of the new road within the development.

Confirmed that they have met with the residents of Clos-y-Cwarra, including the home owners from number 43 & 46. They have also been in contact via email with the occupier of Number 43 to discuss the reconfiguration of his drive way and rear boundary fencing. There is another proposed meeting with the residents to further discuss their concerns and issues, exact dates yet to be confirmed.

The applicant's agent has reviewed the arboricultural plans and the construction plan that was submitted and can see that although the compound areas do appear to encroach onto a construction exclusion zone, this plan is indicative and these areas are marked out on the plan only as a rough outline.

The arboricultural plan, attached, states within the Key that works associated with the construction are an exception to the 'Construction Exclusion Zone' and there are also specific mitigation measures included within. The contractors will ensure that no construction related materials or equipment will encroach on to the area of the tree protection zone.

The protection barriers will still be erected, in line with the arboricultural plan. The heras fencing will not override the approved tree protection plan and barrier specification.

- 5.4 The applicant's agent has further confirmed that:-
1. Routing of Construction Traffic is from Culverhouse Cross to the site;
 2. Confirmation that the stacking of the on-site cabins will be limited to 2 storey;
 3. Confirmation that the security cameras will not point into the existing properties
- 5.5 The staff canteen and toilets would be approximately 15m from the rear wall of the dwelling at no 46 but angled towards the road and no 46's garage. The base of the proposed units would be set 2.5 m below the level on no 46's garden. The material storage areas would be approximately 15m from the rear of nos. 42 and 44. Contractor car parking would be located behind part of the rear garden of no 43.
- 5.6 When planning application 13/00444 for up to 50 dwellings with access off Clos Y Cwarra was considered highway objections were received from St Fagans Community Council and 12 local residents. Those highway objections and others were detailed and assessed within the report to the Planning Committee. There was no objection to the access arrangements from the Council's

Highways Officer.

- 5.7 The Planning Committee deferred consideration of that application until they had conducted a Committee site visit. After visiting the site Committee met again to reassess the proposal and resolved to approve. The approval notice was issued on 12/2/16 following a delay in concluding a Section 106 Agreement.
- 5.8 Planning application 15/2847 for 44 affordable dwellings on the same site with the same access arrangements was also subject to highway objections from the St Fagans Community Council and 17 local residents. These objections were reported to and carefully considered by the Planning Committee on 9/3/16. There was no objection to the access arrangements from the Council's Highways Officer. Committee were mindful of the objections received, their previous planning decision on this site and that the Highway Officer's position remained unchanged. Committee resolved to approve the application with access from Clos Y Cwarra, the only vehicular access to the site. The approval notice was issued on 19/4/16 following the conclusion of a new Section 106 Agreement.
- 5.9 Creating an alternative access to the site would involve an additional cost for the developer which was not considered when the full application was determined. The report on application 15/2847 referenced the District Valuer's assessment that the viability of the site only provided for a Section 106 contribution of £105,000. The earlier application for 50 dwellings, the majority private, made the site more profitable and allowed for a larger S106 contribution. However, the issue of profitability of the site is not relevant as to the consideration of whether the existing access arrangements are satisfactory or otherwise. In the case of both applications the Highway Officer had no objections to the access arrangements and the Planning Committee concurred.
- 5.10 If the Highway Officer had considered in 2013 that access was unacceptable from Clos Y Cwarra then it would have been open to the developer at that time to investigate the feasibility of an alternative access. The access route that objectors are currently suggesting for construction vehicles runs through a Special Landscape Area, as shown on the Cardiff Local Development Plan. Policy EN3 of the Local Development Plan seeks to protect, manage and enhance such areas. In addition the access road would need to bridge Nant Y Plac, would cut through a Site of Nature Conservation and through an area of deciduous woodland protected by a Tree Preservation Order. In my opinion it is questionable that the Local Planning Authority or Natural Resources Wales would have been happy if such an access route had been proposed, even for a temporary period. However, this is a hypothetical as the developer has never proposed an alternative access.
- 5.11 Notwithstanding the above issues regarding a possible alternative access for construction vehicles, neither United Welsh nor Waterstone Homes own any of the adjoining land. The construction route proposed by the objector/petitioners could not be required from Drope Road, to the south, as this is on land outside the application site and outside the control of the Housing Association or their

house builder.

5.12 The developer's agent for the Ecohomes development has confirmed that it was a voluntary offer by his client to access their development by vehicles associated with its construction from Michaelston Road, over land in their control and through an existing access, rather than use Denison Way.

5.13 Paragraph 3.25 Welsh Government circular "The Use of Planning Conditions for Development Management" states:-

"Whether compliance is possible

3.25 A condition should only be imposed if a developer can reasonably be expected to fulfil its requirements. If not, then the condition may be unlawful and enforcement action cannot be taken. One type of case where this might happen is where a condition is imposed requiring the carrying out of works (e.g. construction of a means of access) on land within the application site, but not under the control of the applicant at the time of the grant of planning permission. Conditions may be imposed on land that falls outside the planning application site provided the land is under the control of the applicant. Conditions should not be imposed on land that is not under the control of the applicant, but see paragraph 3.27."

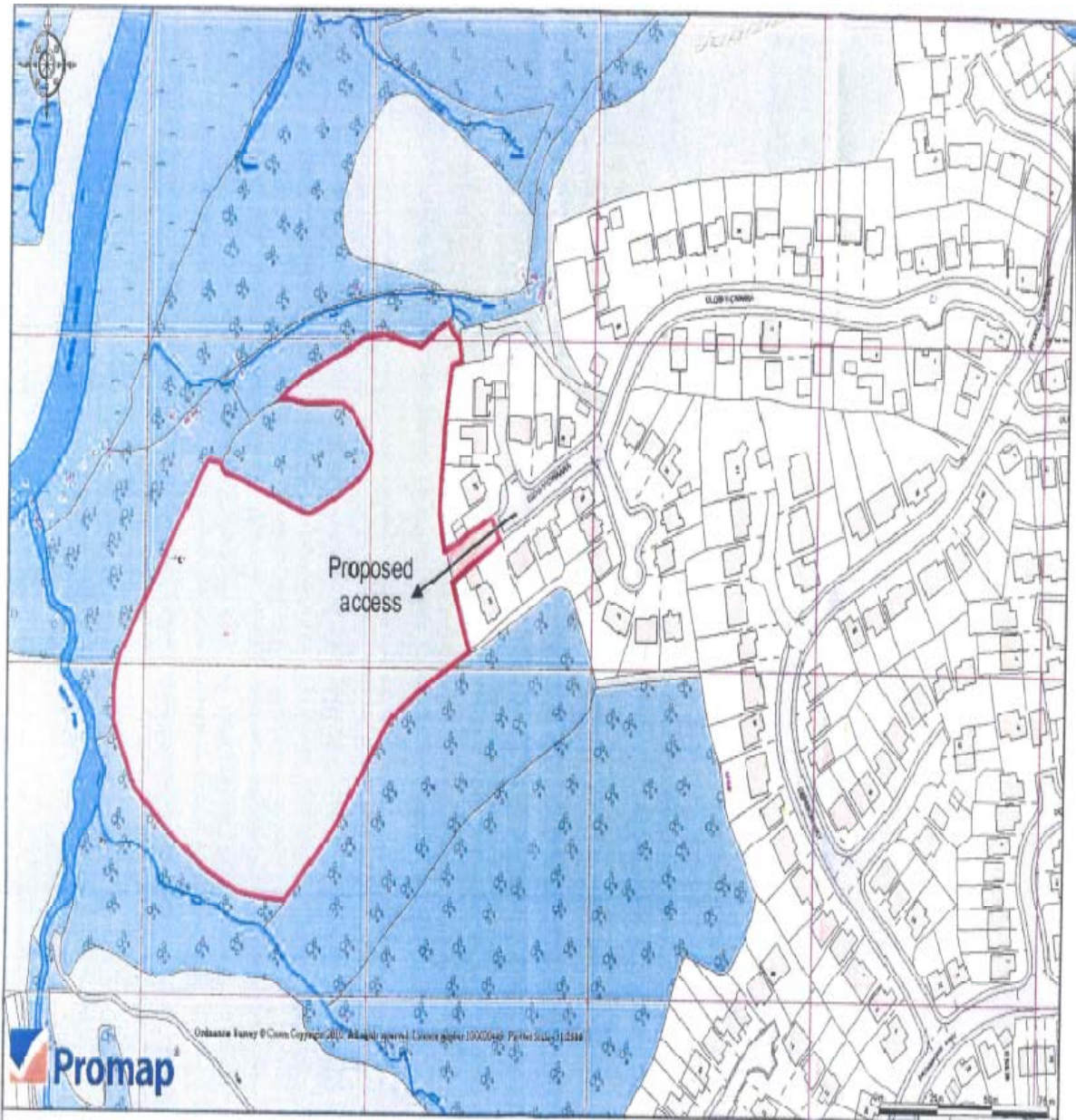
5.14 Paragraph 3.27 of the Circular states "Case law⁸, however, has demonstrated that scenarios may occur where conditions can be imposed when land falls outside applicant's control, if they are nevertheless able to comply with it. An example condition would be one which prevents the collection of passengers from a taxi office."

5.15 In this case condition 3 was imposed in accordance with the Welsh Government circular on The Use of Planning Conditions for Development Management. There is no alternative access for construction vehicles or land where such constructional vehicles could access the site that is under the control of the developer. The developer has to use the public highway from Culverhouse Cross along Clos y Cwarra to develop this site.

5.16 The Highways Officer, Tree Officer and NRW have no objections. It is considered that the details submitted to address condition 3 are acceptable and it is the responsibility of the developer to ensure that he carries out the development in accordance with the submitted construction management scheme.

6. **CONCLUSION**

6.1 For the above reasons it is recommended that condition 3 of 15/02487 can be partially discharged as the submitted details are considered acceptable.

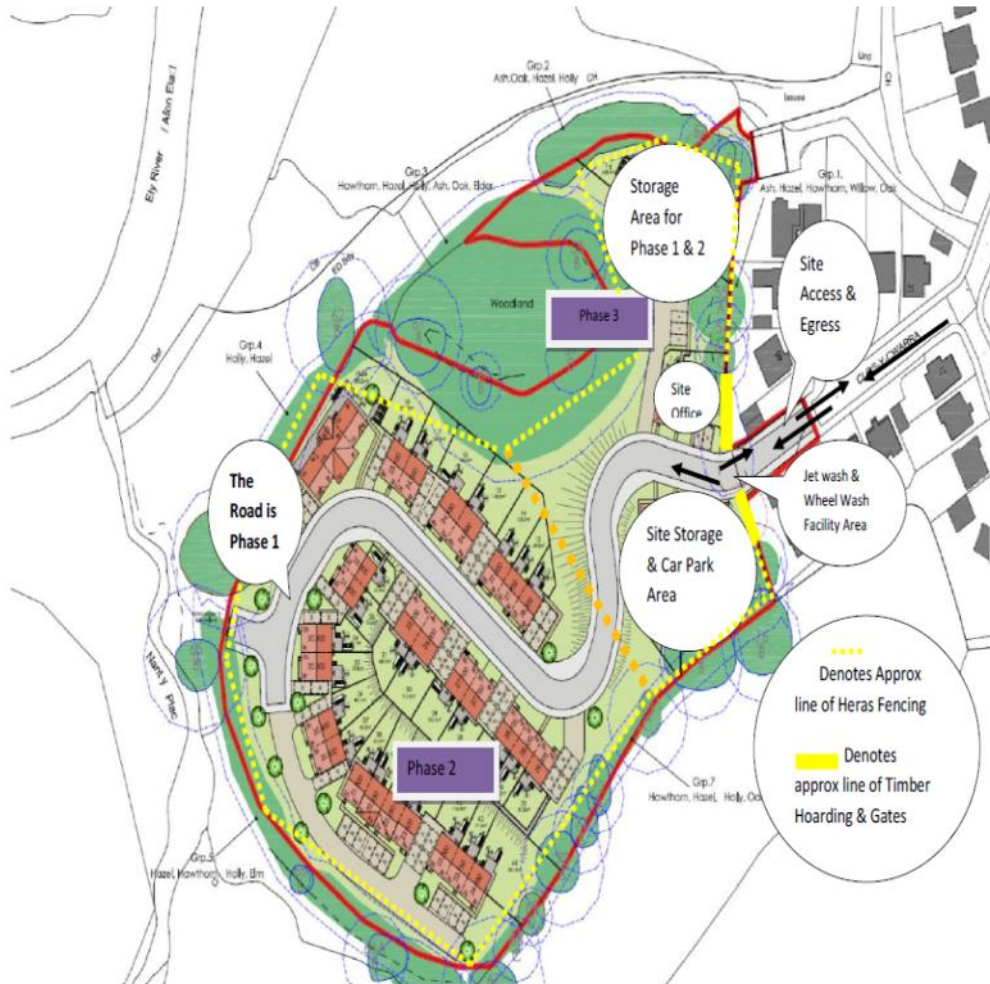


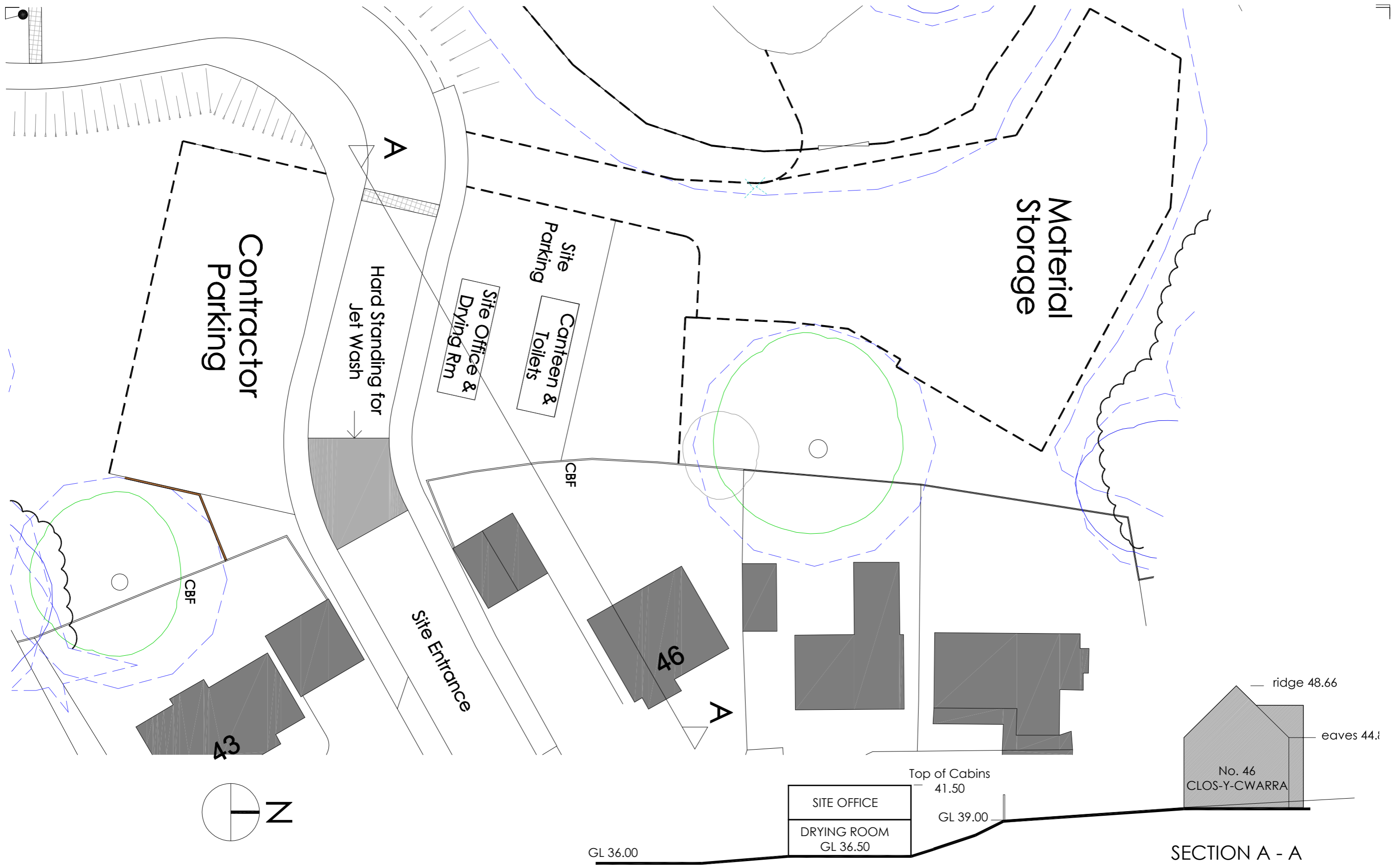
Land to the west of Clos y Cwarra, Michaelston-super-Ely.

Scale 1 : 2500

October 2011

Appendix A





Number One Waterton Park
 Bridgend
 CF31 3PH
 Tel: 01656 644500
 Fax: 01656 644555

Rev.	Description.	Date.	Initial.
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Drg Title:
**Site Compound / Parking
 & Material Storage Plan**

NHBC Ref:
 Date: **May 2016**
 Scale: **NTS**

Drawn: **MD**
 Checked:
 Drawing No: **2066 - 103** Revision: