

**Delegated or Committee 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**

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**Reference No:** 16/02861/PP

**Planning Hierarchy:** Local Application

**Applicant:** Mr Jonathan Barton

**Proposal:** Erection of house in multiple occupation, installation of sewage treatment plant, air source heat pump and formation of vehicular access

**Site Address:** Land East Of Nant Farm, Ichrachan, Taynuilt

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**DECISION ROUTE**

**(i) Local Government Scotland Act 1973**

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**(A) THE APPLICATION**

**(i) Development Requiring Express Planning Permission**

Development Requiring Express Planning Permission

- Erection of House for Multiple Occupation (6 bedrooms)
- Formation of vehicular access
- Formation of on-site car parking and associated servicing and turning area
- Installation of sewage treatment plant and associated soakaway
- Installation of air sourced heat pump

**(ii) Other specified operations**

- Connection to existing public water supply
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**(B) RECOMMENDATION:**

It is recommended that planning permission be approved as a minor departure from policies LDP DM1 and SG LDP HOU1 subject to the attached conditions and reasons.

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**(C) HISTORY:**

It is clear from the objections received to this application that this site has a complex planning history. Indeed in objecting to this application a number of residents have

expressed concern over what they consider the lack of clarity on the process of determining previous applications. Residents have also separately written to the Head of Planning and Regulatory Services outside the application process to seek further clarity and reassurance on previous determinations and procedural matters related to the various proposals for the site.

It is felt that to reassure and inform both Members and Objectors a more detailed officer commentary explaining the planning history of the site and clarifying what has happened in the past would be a beneficial before evaluating the merits of the current planning application. This planning history and commentary is set out below:

**14/01889/PREAPP – Pre-Application inquiry for residential re-development of farm complex (seven units).**

Advice was sought on redeveloping the farm complex, which sits within the settlement boundary, for residential purposes. The response to this was generally favourable and advice to this effect was provided by the Area Team Leader at that time. His comments, by e-mail dated 18.9.14, were that:

*“I confirm that the redevelopment of the site for housing is worthy of support in principle. The physical features on the ground are such that I recommend only six units are proposed. The trees and the raised bracken covered knoll at the north end of the site combine to rule out plot 4. Assuming the overhead line crossing plot 3 is realigned, the other six plots could all be supported in principle”.*

**16/00265/PP – Erection of dwellinghouse for use as House of Multiple Occupancy-withdrawn 18.3.16**

The withdrawal of this application is related to the description of development being incorrect. I clarify this in more detail below:

An e-mail from the agent on 5.2.16 states: *I’ve just realised that I called this a ‘house’ when technically it should have been ‘house of multiple occupancy’, sorry but any chance the description could be changed please? Thanks.*

The e-mail withdrawing this application states: *Further to recent discussions I confirm that we would like to withdraw this application. Thank you.*

Both of these exchanges are on the public access system. The case officer at that time, has clarified that he was concerned that changing the description from “erection of dwellinghouse for use as house of multiple occupancy” to erection of a “house in multiple occupation”(HMO) was not a minor change to the nature of the proposal, but a substantial change which could cause confusion. Verbal advice was provided to the agent that if the erection of an HMO and not a dwellinghouse was what was desired, then the then current application for the erection of a “dwellinghouse for use as an HMO” should be withdrawn and a fresh application which correctly defined the proposals be submitted. The agent acted upon this advice.

**16/00804/PP – Erection of a six bedroom dwelling house – Approved 10.5.16**

Planning permission was granted for the erection of a six bedroomed dwelling house on 10.5.16. The Officers report to committee refers to the application being considered as a minor departure to development plan policy as part of the house and the rear garden area were located outwith the settlement boundary and within a countryside zone.

Considerable detail is contained within the officer’s report on the justification for approving this application as a departure to the Local Development Plan and the reason why this

planning judgement was reached. This report remains available through public access.

This planning permission remains extant (live) and capable of implementation. The determination has been made and planning permission issued as a point of law. Moreover the proposal was correctly identified as a departure from the Local Development Plan and planning permission has been granted for the reasons stated in the report based upon the judgement of officers.

**16/01808/PP - submitted as a dwelling house HMO - withdrawn 10.10.16**

Having examined the letters of objection and discussed the matter with the applicant's agent officers considered that the development proposed could be made more policy compliant and entered into discussions on this point.

The application for an HMO differed from the previously approved dwellinghouse and car parking required to be increased from three to six spaces. The need to consider how the HMO and increased parking requirement could be accommodated within the application site, suggested that it was opportune to reconsider siting and layout matters again for this HMO proposal and its relationship to both the settlement boundary and the adjoining farm site.

As so many objections had been lodged it was decided by the applicant, following discussions with officers, that a new and fresh application which was more policy compliant and contained greater consideration of how the application was to integrate with its surroundings was desirable. The case officer was aware of this intended course of action and also considered that if there were to be material changes to the scheme then a fresh application, accurately defining these changes was again the correct approach to take.

The current planning application, as now amended, seeks to address a number of the issues raised by local residents and also considers how the proposal will relate to likely future redevelopment proposals for the farmyard adjacent to the site. Matters such as access, servicing, foul drainage, footpath provision and general policy compliance all required to be considered. For the avoidance of doubt no planning application is before officers relating to the redevelopment of the farm yard and such information as is provided on drawing 1757 03 is for indicative purposes only and does not form part of this planning application determination.

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**(D) CONSULTATIONS:**

Area Roads Engineer - No Objections subject to conditions                      Dated 28.10.16

Environmental Health Officer (HMO Team) – No Objection                      Dated 16.12.16

*A license is required for living accommodation as a House in Multiple Occupation prior to occupation under Part 5 of the Housing (Scotland) Act 2006 (the "2006 Act").*

*The Council has approved a set of Housing Standards which owners are required to meet with regard to their property which will be a house in multiple occupation. These standards will need to be achieved for a license to be issued.*

*It should be noted that members of the public are given the opportunity to raise representations and objections to the licence application*

Scottish Water                      No Response

SNH	No Comment	Dated 26.10.16
SEPA	No Objection	Dated 27.10.16

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**(E) PUBLICITY:** The proposal was advertised in terms of Regulation 20 procedures and the closing date for representations was 3.11.16

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**(F) REPRESENTATIONS:**

Objections have been received from the following parties:

<u>Name</u>	<u>Address</u>	<u>Dated</u>
L. Ross	Hawthornbank 10 Otter Creek Taynult	7.11.16
A. Ross	Hawthornbank 10 Otter Creek Taynult	7.11.16
M. Butler	Lichen Burn Otter Creek Taynult	7.11.16 & 8.11.16
A. Butler	Lichen Burn Otter Creek Taynult	7.11.16 & 8.11.16
G. Blunsum	Tanglewood, 3 Otter Creek Taynult	10.11.16
C. Blunsum	Tanglewood, 3 Otter Creek Taynult	10.11.16
K. Pennock	Cherrywood 8 Otter Creek Taynult	13.11.16
S. Pennock	Cherrywood 8 Otter Creek Taynult	13.11.16
D. Pennock	Cherrywood 8 Otter Creek Taynult	13.11.16
M.Brown	E-Mail	11.11.16
M.Shaw	Planning Agent for M. Brown	15.11.16

**Main Issues Raised**

There is already a house in Multiple Occupation in the locality (Ichrachan Farmhouse) which would mean 2 HMO's in a small rural development which would be harmful to the amenities of residents as Otter Creek is a quiet rural location. Three people are occupying this existing HMO. Comment: In respect of the alleged unauthorised HMO at the Farm Complex reportedly being occupied by three residents raised in objections, it is important to clarify that the planning definition of an HMO being formed and the need for a License under the Housing Acts are not the same.

Not more than five unrelated persons may occupy a dwellinghouse before a change of use to an HMO use is considered to have occurred under planning legislation. Therefore in planning terms the use of the other building by a reported three persons remains as a dwellinghouse in respect of planning legislation and no breach of control has taken place.

As this is not an HMO under planning legislation it cannot be regarded as anything other than a class 9 dwellinghouse in planning terms unless further information to the contrary comes forward. Officers therefore do not at this time consider that another HMO exists in the locality and therefore no planning evaluation of the current proposal now comprising two separate HMO's in the immediate vicinity has been undertaken

Officers have already passed this information to the HMO licensing team to ensure all necessary consents are in place as the Housing (Scotland) Act 2006 defines that living accommodation is a HMO within the meaning of the Act if it is:

- occupied by three or more persons from three or more families, and
- occupied by them as their only or main residence or in some other manner specified by the Scottish Ministers by order, and

- either a house, premises or a group of premises owned by the same person with shared basic amenities, or some other type of accommodation specified by the Scottish Ministers by order.

Concerned that current and future proposals are seeking a “student campus” on this land adjoining farmyard for occupation by students of “Ballet West” and position of the house reflects wider intentions to develop the farm yard complex as a “student campus”.

Comment: It should be emphasised that all pre-application discussions in respect of redeveloping the farm complex have been in respect of class 9 dwellinghouse provision, and not for any other purposes such as additional HMO’s. It is not the role of planning officers to try and pre-judge development proposals for more HMO houses within the farm complex as this is not a matter before them. However if proposals do come forward, which meet, the legislative test set out in planning law these will be considered in respect of the LDP, Circular 1/2012 advice and also in consultation with HMO License Officers.

Wish clarity on A&B Council Policy to manage/control HMO concentrations in this area

Comment: This issue would be considered in a case by case basis in consultation with the HMO licencing team.

Allowing this HMO permission would set an undesirable precedent for others in the local area  
Comment In respect of concerns expressed on the granting of this planning permission setting a precedent officers consider that each application must be determined on its merits, and this application does not, in the judgement of officers, set precedent for any future planning application in the locality which will be determined in accordance with the requirements set out at Section 25 of the Planning Act having regard to the Development Plan and any other material considerations. Neither Members or Officers will be bound by this decision to accept further HMO uses, as defined in planning legislation, on adjoining land.

The proposed house should not be constructed on land designated as Countryside. Much of the house and garden lies in the countryside zone.

Comment: See assessment

Complex planning history of this plot requires to be fully considered along with this application as numerous applications have been submitted and withdrawn.

Comment: See planning history section in this report.

The footpath that many students currently use to access the village from the ballet school is not of a suitable standard and causes noise and disturbance when students walk along it.

Comment: It is considered that the existing footpath forms a valuable pedestrian link. Noise and disturbance emanating from the footpath and its condition is not a material consideration in the determination in this planning application.

Concern over adequate car parking being provided for this and future proposals.

Comment: Since the application was first submitted the plans have been amended to show 6 car parking spaces. The Area Roads Engineer is satisfied with this level of provision.

Sufficient land within Ballet West grounds to accommodate student accommodation on land which is also designated as a Rural Opportunity Area. Housing for students should be built there not next to housing.

Comment: The Planning Authority is required to assess the current application on its merits.

#### Other matters

A number of residents have suggested in their representations that application fees have not been paid as required by the applicants.

Comment: The current HMO application is a “free go” for the recently withdrawn application 16/01808/PP which had paid full fees. The zero application fee status of the current application is therefore correct.

A number of objectors question the submission and withdrawal of applications and seek to question the intentions and motives of the applicant.

Comment: These are matters upon which no comment can be provided as they are not material to the determination of this application. It should however be clarified that the decision to submit or withdraw a planning application and the content of that application are not matters under the control of the Planning Authority.

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#### **(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- (i) **Environmental Statement:** N
- (ii) **An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:** N
- (iii) **A design or design/access statement:** N
- (iv) **A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc:** N

**Summary of main issues raised by each assessment/report**

N/A

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#### **(H) PLANNING OBLIGATIONS**

- (i) **Is a Section 75 agreement required:** N

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- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32:** N

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- (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 DM 1	Development within the Development Management Zones
LDP 3	Supporting the Protection Conservation and Enhancement of our Environment
LDP 9	Development Setting, Layout and Design
LDP 11	Improving our Connectivity and Infrastructure

### **Supplementary Guidance**

SG LDP HOU1 – General Housing Development including affordable housing provision  
 SG LDP DEP - Departures to the Local Development Plan  
 SG LDP ENV 14 –Landscape  
 SG LDP SERV 1 –Private Sewage Treatment Plans & Wastewater Systems  
 SG LDP SERV 2 - Incorporation of Natural Features / Sustainable Drainage Systems (SuDS)  
 SG LDP TRAN 1- Access to the Outdoors  
 SG LDP TRAN 4 – New and Existing, Public Roads and Private Access Regimes  
 SG LDP TRAN 6 – Vehicle Parking Provision

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**(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 4/2009.**

Scottish Government Circular 2/2012 – “Houses in Multiple Occupation: Guidance on Planning Control and Licensing”

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

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

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

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

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**(O) Requirement for a hearing (PAN41 or other):**

In deciding whether to hold a discretionary hearing, Members should consider:

- How up to date the Development Plan is, the relevance of the policies to the proposed development, and whether the representations are on development plan policy grounds which have recently been considered through the development plan process.
- The degree of local interest and controversy on material considerations, together with the relative size of community affected set against the relative number of representations and their provenance.

Given the limited number of representations relative to the overall size of Taynuilt and the previous approval for a similar scheme for a dwelling which is still a live application, it is not considered that a Hearing would add further value to the process.

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

Planning permission is sought for the erection of a House in Multiple Occupation (HMO) on land east of Nant Farm, Ichrachan, Taynuilt. An HMO does not fall within Class 9 of the Town and Country Planning Use Classes Order and is regarded as a sui generis use. The proposed house footprint is located wholly within the settlement boundary as defined by the adopted Local Development Plan, however, part of the parking area and a section of the rear garden is located within the Countryside Zone. This application follows on from an application for a house on the same site which was approved subject to conditions. In this application part of the footprint of the house was also within the countryside zone.

As part of the development is located within the countryside zone the proposal is a considered to be a minor departure from policies DM 1 and SG LDP HOU 1 as housing development is not supported in the countryside in locations which are immediately adjacent to defined settlement boundaries. The part of the site within the countryside zone is considered to be *di minimus* and will comprise the rear garden of the HMO property and a small area of parking provision. Subject to appropriate boundary treatment which would be controlled by the proposed landscaping condition it is considered that the impact on the countryside area would be minimised whilst also providing the HMO with open space commensurate to the size of the proposed building. The current proposal also represents a reduction in the impact on the countryside zone when compared to the previous approval for a house which is still a live planning permission.

There is an informal footpath which would be affected by the development and a condition is proposed in order to ensure this link between the site and Taynuilt is maintained.

There is also a wider area of undeveloped settlement zone also within the ownership of the applicant located around the farm steading. As this could potentially be developed and the applicant has aspirations of further development at some point in the future, an indicative plan has been submitted add further context to the proposal. This development will be considered in its merits should an application be submitted. The purpose of this indicative plan is merely to show that the current development would not have an adverse impact on the remainder of the site in terms of sewage treatment provision and commensurate road improvements.

It is considered that the current application to construct a six bedroom HMO is acceptable as a minor departure from Policies LDP DM1 and policy SG LDP HOU1. The building itself is now located wholly within the settlement boundary and full parking provision for the HMO has now been provided. The design, scale and materials to be used are considered to be acceptable and in character with the locality. The submitted foul drainage solution, subject to conditions is also considered acceptable. It is therefore considered that subject to the imposition of appropriate conditions that the proposal is in accordance with SG LDP DEP, LDP STRAT 1, LDP 3, LDP 9, LDP 11, SG LDP 2, SG LDP ENV 14, SG LDP SERV 1, SG LDP SERV 2, SG LDP TRAN 1, SG LDP TRAN 4 and SG LDP TRAN 6 and planning permission should be granted.

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**(Q) Is the proposal consistent with the Development Plan: No**



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**(R) Reasons why planning permission or a Planning Permission in Principle should be granted**

The principle for the erection of a HMO and formation of a new vehicular access on land partly within the settlement of Taynuilt would largely be compatible with the Argyll and Bute Local Development Plan 2015 in terms of the land use and would not hinder future expansion into land forming part of the designated settlement of Taynuilt. It is considered that the scale, form, proportions, materials, detailing and colour of the proposed HMO dwellinghouse are all acceptable and that the proposed building respects the characteristics of the surrounding landscape and environment. The proposed development generally complies with the policy requirements of the development plan and there are no material considerations that would warrant the refusal of planning permission for this proposal.

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**(S) Reasoned justification for a departure to the provisions of the Development Plan**

While part of the application site is outside the settlement zone as designated by the LDP, it is considered that the encroachment into the countryside zone is *di minimus* and will have a minimal impact on the area and the adjustment will allow a suitable layout to be achieved in the longer term. It is therefore considered that a minor departure from development plan policies LDP DM1 and SG LDP HOU1 can be justified in this instance. The proposal is otherwise consistent with the policies and supplementary guidance of the Argyll and Bute Local Development Plan 2015 and that the site within the settlement of Otter Creek, Taynuilt is capable of accommodating a single HMO building without detriment to the built environment or wider landscape.

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**(T) Need for notification to Scottish Ministers or Historic Scotland: No**

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**Author of Report:** David Moore

**Date:** 14.12.16

**Reviewing Officer:** Angus Gilmour

**Date:** 4.1.17

**Angus Gilmour**  
**Head of Planning & Regulatory Services**

## CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO.16/02861/PP

### 1. Approved Drawings & General:

The proposed development shall be carried out in accordance with the details specified in the application form dated 18/03/16 and the approved drawings numbered:

- Plan 1 of 2 (1575 05 rev E)
- Plan 2 of 2 (1575 01 rev A)

and stamped approved by Argyll and Bute Council.

Reason: In order to ensure that the proposed development is carried out in accordance with the details submitted and the approved drawings.

### 2. Sewage Treatment Tank and Soakaway:

No development shall commence on site until full details of the proposed means of private foul drainage to serve the development and five other family sized residential units have been submitted to and approved by the Planning Authority.

The duly approved scheme shall be implemented in full concurrently with the development that it is intended to serve and shall be operational prior to the occupation of the development.

Reason: To ensure that an adequate means of foul drainage is available to serve the development.

### 3. Sustainable Urban Drainage System (SuDS):

No development shall commence on-site until details of a Sustainable Urban Drainage System (SUDS) are submitted to and approved in writing by the Planning Authority. Such details shall include a drainage layout plan which shall include any mitigation measures required to address surface water run-off from the development site. The development thereafter shall be completed in accordance with the approved details prior to the initial occupation of the house hereby approved.

Reason: To ensure that there is a satisfactory drainage system in place for the development, in the interests of health and amenity and environmental protection.

### 4. Availability of Connection to Public Water Supply:

No development shall commence on site until authorisation has been given by Scottish Water for connection to the public water supply. Confirmation of authorisation to connect shall be provided in writing to the Planning Authority before commencement of development.

Reason: To ensure that the development is adequately served by a public water supply

### 5. Sample Materials:

No development shall commence on site until samples of materials and colour finishes to be used in the external finishes of the building have been submitted to and approved in writing by the Planning Authority. The development shall thereafter be completed and

maintained using the approved materials and colours or such alternatives as may be agreed in writing with the Planning Authority.

Reason: In order to integrate the development into its surroundings.

6. Landscape/Surface/Boundary Treatment:

No development shall commence on site until a scheme of boundary treatment, surface treatment and landscaping has been submitted to and approved in writing by the Planning Authority. The scheme shall include details of:

- i) Location, design and materials of proposed walls, fences and gates;
- ii) Surface treatment of proposed means of access and hardstanding areas;
- iii) Any proposed re-contouring of the site by means of existing and proposed ground levels.
- iv) Proposed hard and soft landscape works.

The development shall not be occupied until such time as the boundary treatment, surface treatment and any re-contouring works have been completed in accordance with the duly approved scheme.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme during the first planting season following the commencement of the development, unless otherwise agreed in writing by the Planning Authority.

Reason: To assist with the integration of the proposal with its surroundings in the interest of amenity.

7. Visibility Splays:

The existing vehicular access at the junction of the existing public road shall have visibility sightlines of 2.4m x 42m x 1.05m in both directions and shall be constructed in accordance with Argyll and Bute Council Small Development Guide Drawing no. SD 08/004 rev a. This shall include a surface water drainage system to prevent water spilling onto the public road.

Reason: In the interests of road safety.

8. Parking and Turning Facilities

Prior to the occupation of the development hereby approved the parking and turning detailed on drawing no. 1575 05 Rev E shall be available for use and retained thereafter.  
Reason: In order to ensure that there are acceptable levels of parking and turning provided on the site.

9. Finished Floor Levels:

No development shall commence on site until details of the proposed finished ground floor level of the development relative to an identifiable fixed datum located outwith the application site have been submitted to and approved in writing by the Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: In order to secure an acceptable relationship between the development and its surroundings.

10. Prior to the commencement of development details of an alternative footpath route to replace that which is being obstructed by the development shall be submitted to the

planning authority for its approval. Such details as may be approved shall be provided in accordance with approved details in advance of any obstruction of the current footpath route through the curtilage of the proposed HMO.

Moreover any footpath formed in respect of the above requirement shall be retained in perpetuity unless with the written permission of the Planning Authority and maintained free of obstruction to allow the safe and unhindered passage of pedestrians linking in to the existing footpath route travelling in a north easterly direction away from the application site.

Reason: To ensure pedestrian access from Otter Creek and Ballet West is maintained to a level commensurate with the existing level of pedestrian permeability to the village of Tavnult.

11. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), (or any other revoking and re-enacting that Order(s) with or without modifications), nothing in Article 2(4) of or the Schedule to that Order, shall operate so as to permit within the area subject of this permission, any development referred to in Part 2 Class 7 of the aforementioned Schedule, as summarised below:

PART 2: SUNDRY MINOR OPERATIONS

Class 7.—

(1) The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Reason: To protect the sensitive area and the setting of the proposed dwellinghouse in the interest of visual amenity.

NOTE TO APPLICANT

This planning permission will last only for three years from the date of this decision notice, unless the development has been started within that period [See section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended).]

In order to comply with Sections 27A(1) of the Town and Country Planning (Scotland) Act 1997, prior to works commencing on site it is the responsibility of the developer to complete and submit the attached 'Notice of Initiation of Development' to the Planning Authority specifying the date on which the development will start. Failure to comply with this requirement constitutes a breach of planning control under Section 123(1) of the Act.

In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.

A Road Opening Permit (S56) under the Roads (Scotland) Act 1984 will be required in connection with the construction of an altered/improved private vehicular access at the junction of the UC182 Otter Creek Road. The Council's highway engineers should be contacted in this regard prior to any works commencing on-site. The access should be formed so as not to discharge surface water onto the public road.

## **APPENDIX A – RELATIVE TO APPLICATION NUMBER: 16/02861/PP**

### **A. Settlement Strategy**

Many objectors have taken issue with the fact that the application, as initially submitted, was proposing to locate the HMO building partially within the Countryside zone and outside the defined settlement boundary.

Officers have noted these concerns, which were also expressed in respect of historic applications, and have secured through negotiation the relocation of the HMO building wholly within the settlement boundary, with only garden land, and car parking now being proposed in the countryside zone. This makes the proposal more policy compliant than previously submitted as the main element of the development is now policy compliant within the settlement boundary.

Appropriate conditions to control the profile and landscaping of the cut into the rising ground can be imposed on any planning permission. Views into the site from the public road will be minimal because of the intervening higher ground to the east of the HMO plot. It is considered that the proposed HMO and associated parking and garden area will have a minimal impact on the surrounding landscape and will sit comfortably within the satellite settlement of Otter Creek.

A section of the rear garden area and parking will however still extend into the countryside which in officer's opinion is at a *di minimus* level and represents a minor departure from the development plan. In this instance planning permission has already been granted for a dwelling house of exactly the same design within a similar application site and therefore the fact that the rear garden area and parking provision is still within the countryside zone must be regarded as a minor departure from policy LDP DM1 in respect of land use designations and therefore appropriate under SG LDP DEP.

### **B. Location, Nature and Design of Proposed Development**

The proposed dwelling house is a modern interpretation of a traditional style and uses a simple palette of materials similar in character to existing houses in Otter Creek.

The scale, form, proportions, materials, detailing and colour of the proposed dwellinghouse mirror that previously approved under are considered to be acceptable and will ensure that the proposed development will be compatible with the characteristics of the surrounding settlement and landscape

It is however considered necessary to ensure that the means of enclosure and appearance of the garden area are not overly suburban or formal and assimilates successfully into the open countryside reflecting its character and appearance. To this end suitable conditions will be placed upon any grant of planning permission to ensure an appropriately design transition from countryside, to garden, to settlement zone is achieved. It is likely that only stock fencing will be appropriate to define the curtilage and no structures or buildings will be appropriate within the garden area which should remain natural in its appearance. Given appropriate restrictions the proposal will sit comfortably and readily assimilate into the landscape in accordance with SG LDP ENV 14.

As this is not a class 9 dwellinghouse no permitted development rights associated with a house are conveyed by the grant of this planning permission which is for a "sui generis use outside any use class. However it is necessary to remove Permitted Development rights associated with means of enclosure for non-residential uses.

In this respect it is considered that the proposal is in accordance with policies LDP 3 and LDP 9 of the adopted LDP and represents a development of appropriate scale, design and materials for this locality.

### **C. Potential impact of HMO on residential amenity**

Concerns have also been raised in respect of the current application and potential impact upon residential amenity related to the location and use of the HMO building itself. Issues have also been raised in respect of the Councils policy approach to “concentrations” of HMO uses within the locality. These points are addressed below.

The application before Officers is for a single HMO and must be determined on this basis. The LDP has no specific policy in relation to HMO proposals and therefore officers must evaluate whether the character and nature of the use would, on balance of probability, and having regard to the relationship of the proposal to residential properties, be likely to give rise to any material impacts on their level of amenity.

In this respect the proposed HMO location is not immediately adjacent to any existing residential occupier or objector and the likely activity associated with the operation of the use would not in the opinion of officers adversely impact upon the amenities of any of the objectors or of any other residential properties in the locality. The site sits outside and spatially separate from the main concentration of residential properties and the comings and goings from this HMO would not be readily apparent to the casual observer.

In respect of any future application in the locality and potential concentrations of HMO uses in a local area Circular 1/1012 paragraph 3 advises that :

*.....planning authorities may wish to adopt policies to limit HMO concentrations where the residential amenity of a community is already adversely affected by high concentrations of HMOs, or in areas where it is likely that this may happen in the future.*

No policy relating to HMO concentrations is contained within the current LDP. The promotion of such a policy approach would therefore be a matter for the LDP review as to whether the circumstances of this locality would justify the adoption of a different, and potentially more restrictive, policy approach. Residents would be able through the current LDP review process to seek to promote a policy in respect of HMO's in this locality and this matter would be considered by Planning Policy Officers. The current planning application, in the absence of an adopted policy, is not a competent mechanism to address these wider policy framework concerns expressed by residents.

However members should note that Circular 1/2012 clarifies that powers are currently available in respect of concentrations when HMO licenses are applied for. Paragraph 14 states:

*The 2011 Act also adds section 131A into the 2006 Act which gives the local authority the discretionary power under HMO licensing to refuse to grant a HMO licence if it considers that there is, or that the grant of a licence would result in, overprovision of HMOs in the locality. It is for the local authority to determine the locality.*

Therefore powers currently exist in considering any HMO license application to have regard to any concentration of other HMO's in the locality. However this requires to be balanced against advice in the circular which states;

*HMOs provide a vital source of accommodation, and **planning authorities** should seek to ensure that an adequate supply is available to meet demand. Demand for HMOs should*

*be met where it arises, and local authorities should consider HMOs when developing local housing strategies and development plans.*

Objectors have suggested that applications for HMO or other uses should be redirected into the grounds of Ballet West. Officers must determine the application before them on its merits and it is not for officers to seek to curtail the development of land on the basis of other land ownership if the proposal is considered acceptable on its own merits. It should be emphasised that this is not a planning permission personal to Ballet West students it is an HMO capable of occupation by any party in need or such accommodation.

Other additional concerns expressed in respect of the future redevelopment of the farm complex are not matters before Members at the present time. Any future planning applications for HMO proposals would require to be judged on their merits (unless a policy framework for HMO proposals has been brought forward through the LDP at some future date).

It would not be appropriate for officers to enter into conjecture about any future HMO intentions of the applicant if those matters are not before officers as planning applications. Officers would however clarify that at this time no pre-application advice has been sought for anything other than the redevelopment of the farm complex for residential purposes.

#### **D. Road Network, Parking and Associated Transport Matters.**

The application as originally submitted showed only three parking spaces. The Area Roads Engineer is of the opinion that as six unrelated persons can occupy the HMO and this is a rural location then all six persons could potentially have a car. The applicant has therefore altered the parking layout to ensure that six spaces are provided. A condition requiring these spaces to be provided prior to the occupation of the HMO will require to be imposed to ensure provision.

It should be made clear that although there is correspondence suggesting that the building will be occupied by students of Ballet West, and indeed this seems on balance of probability likely, the application does not seek a personal permission and officers can identify no reason to seek to limit occupation of the building to only students of Ballet West. In this respect any permission will be for an HMO that could be occupied by not just Ballet West students, and therefore full compliance with parking standards has been required.

The area roads engineer has confirmed that no additional works are required to the private access which serve the site and adjacent farm to accommodate this application as only one house and one HMO would then exist. However should redevelopment proposals for the farm complex come forward it is likely that the road will require to be resurfaced and passing places provided. Junction improvements may also be required. These matters will be considered at such time as any further planning application for redevelopment the adjacent farm complex comes forward. The supporting plan which has been submitted showing the applicant's aspirations for development in the future indicates that the development of the current application would not adversely impact on the provision of commensurate improvements which may be required for future development.

The current proposal is therefore in accordance with SG LDP TRAN 4 and SG LDP TRAN 6 of the LDP.

## **E. Infrastructure**

In evaluating the current application it became increasingly apparent to officers it was likely that the redevelopment of the farm complex for residential purposes was acceptable on point of principle in accordance with previous pre application advice under 14/01889/PREAPP. Officers therefore requested that confirmation be given that the new foul drainage solution which was being proposed would be able to accommodate not just existing, but likely future proposals and the need to “futureproof” foul drainage was accepted by the applicant as an appropriate way forward to address longer term development needs.

It has therefore been confirmed that the foul drainage solution being promoted will accommodate sufficient capacity for six units. This has been annotated on revised drawing 1575 05 Rev E. A condition requiring full details of this foul drainage solution, (which meets the requirement of SEPA and Building standards), to be submitted and approved prior to any construction works taking place will be imposed.

In respect of connection to a water supply and using SuDS compliant materials within the curtilage of the HMO building standards conditions will be used to address these matters in accordance with normal practice.

## **F. Footpath alterations and pedestrian access**

The proposed HMO and its curtilage will block an existing footpath which connects Otter Creek and Ballet West to the village of Taynuilt. This route forms a valuable pedestrian link and an alternative to walking along the main road which is both unlit and has no footway. It is therefore considered that maintaining pedestrian connectivity along this existing footpath is a material planning consideration and requires to be addressed to ensure the proposal is in accordance with Policy LDP 11 and SG LDP TRAN 1 which seek to ensure that connectivity and public access are maintained or improved.

An illustrative plan has been provided by the applicant (Drawing 1575-03) to assist in setting the wider context for envisaged future development of the farm complex where an alternative footpath route to that being blocked by the current proposals is suggested. This enters the farm complex along its northern boundary from land outside the control of the applicant. This would also be on undulating land and would appear to require potentially extensive engineering operations.

Officers consider that this is not the appropriate alternative route for a replacement footpath. There is an obvious desire line and alternative footpath link into the farm complex across a small bridge adjacent to the existing gas tank entering from the east of the site (the gas tank location is annotated on drawing 1575 05 Rev E and the footpath site to the west of this). This would seem the obvious route for the replacement footpath route to take.

All of the land required to form this alternative footpath linkage is on land controlled by the applicant. The route also follows a claimed legal right of access over land by one of the objectors. It is not for planning officers to form judgement on legal matters relating to rights of access, however the claimed access route would appear to be a far better route for a footpath than that indicated on the illustrative plan.

To this effect a suspensive condition will be imposed requiring details of an alternative footpath route through the farm complex to be provided, and for this linkage to be in place and appropriately delineated prior to the occupation of the HMO building. This route will require to be kept free of obstruction at all times.



This will maintain this important pedestrian link between Otter Creek and the village itself and ensure compliance with Policy LDP 11 and SG LDP TRAN 1. It should also be noted that the location of this new footpath route will have to be considered for the future design and layout of any redevelopment of the farm complex. However this should be able to be easily accommodated due to the scale of the plots and buildings indicated.

Issues have been raised in respect of the safety and integrity of the existing footpath for use by pedestrians by objectors and noise associated with its use. This is an existing footpath for those wishing to walk into the village. It is clearly well established and well used from casual inspection of the desire line formed along its route.

The current application for a single HMO in the judgement of officers does not represent a scale or type of development which would justify any substantial upgrading of the footpath at this stage. Six additional persons potentially using this footpath it is not considered to be a material planning consideration and given that the footpath is already extensively used. It is not considered that any increased activity associated with the six residents of the HMO proposal using this link would materially impact upon the amenity of any residential occupiers.

It should be noted that any alleged future unacceptable behaviour by any individual or group is not a matter for the planning authority. Circular 1/2012 –“*Houses in Multiple Occupation: Guidance on Planning Control and Licensing*” specifically addressed the interface between planning legislation and other Licensing for HMO premises. This clarifies at paragraph 3 that:

*High concentrations of HMOs can lead to a range of cultural, social, physical and economic changes in a community. Such changes may be positive or negative, and may be perceived differently from community to community. **Some of these changes, particularly regarding the behaviour of HMO tenants, are not matters for planning authorities....(Officer emphasis)***

In extreme cases the behaviour of individuals can become a matter for the police. It is not for the planning authority in the determination of a planning application to contend or give substantive weight to any future behaviour by the occupants of an HMO. This can be a matter for the grant of a License, but this is not for the Planning Authority to consider as a substantive material consideration in this instance.