

**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 2008 relative to applications for Planning Permission or Planning Permission in Principle**

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**Reference No:** 10/02048/PPP

**Planning Hierarchy:** Local Development

**Applicant:** Mr Colin Gladstone

**Proposal:** Erection of 2 dwelling houses and installation of 2 septic tanks

**Site Address:** Land North East of East Kames, Kilmelford

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**DECISION ROUTE**

**Local Government Scotland Act 1973**

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**(A) THE APPLICATION**

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

- Erection of 2 dwelling houses
  - Installation of 2 septic tanks
  - Alterations to the junction at the public road
  - Installation of access track serving each plot
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**(B) RECOMMENDATION:**

It is recommended that the application be granted subject to:

- 1) A discretionary local hearing being held in view of the number of representations received in the context of a small community, and
  - 2) the conditions and reasons detailed below.
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**(C) HISTORY:**

08/01835/OUT – Erection of 6 houses and septic tanks  
Application withdrawn prior to determination

09/01074/OUT – Erection of 6 houses and sewage treatment works

Application withdrawn due to conflict with LP BAD2 (Bad Neighbour in Reverse) policy. The proposal was considered to be in conflict with the operations of the neighbouring fish farm operations at a nearby pier and the hatchery building on the other side of the main road.

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**(D) CONSULTATIONS:**

Area Roads Manager (report dated 21 December 2010) – raises no objections subject to several conditions to ensure a suitable access and road safety provisions. A summary of the requirements is detailed below.

- Access at junction to public road to be constructed with 4.5m radii, 5.5m width for first 10m
- No walls, hedges, fences etc will be permitted within 2m from the channel line of the public road. Visibility splays measuring 160m x 2.4m to be cleared and maintained.
- Carriageway width to be 3.5m to beyond access to dwellings
- 2m wide footway at radius of access road
- Turning head to diagram 5.24 of the Council's Guidelines for Developments at access to dwellings.
- 2m wide verge on both sides of the access road.
- A system of surface water drainage is required to prevent water from passing onto the public road.
- Parking for vehicles commensurate with the size of the dwelling to be provided.

Local Biodiversity Officer (letter dated 21 December 2010) - no objections and confirms that the Ecological Assessment Report has been carried out appropriately. Two conditions have been suggested relating to the use of mainly native species in the landscaping of the site and a site management plan relating to the construction phase of the development to ensure that the mitigation measures identified within the ecological assessment are adhered to during construction.

Public Protection Unit (memo dated 29 December 2010) - raise no objections but have asked for two conditions relating to external lighting and water supply.

*Note: It is considered unreasonable to attach a condition restricting permitted development rights for external lighting associated with houses unless there are very particular reasons for requiring it. No such circumstances have been identified in this case. There are other dwellings in the locality with no such restrictions. With regard to water supply, the applicant previously submitted a Hydrological Assessment detailing water supply in connection with planning application for 6 houses on the site and that was considered by Public Protection at the time. Whilst this provides comfort that the supply will be adequate to serve the two additional dwellings proposed, additional detail is required, hence the requirement for a water supply condition.*

Kilninver and Kilmelford Community Council (Letter dated 14<sup>th</sup> January 2011) - object on the basis that the applicant has not addressed the issues set out within the PDA schedule sufficiently. Concerns are expressed over the suitability of the water supply to service two additional dwellings, the impact on the proposal from the fish farm operations ('bad neighbour in reverse' scenario), and visual impact. The community council are also concerned that this proposal might be the start of a number of proposals to try and develop the PDA site further.

*Comment: Views expressed about the principle of the development must be considered in the light of the fact that the land forms part of a PDA identified in the local plan for housing development, subject to constraints being addressed. The proposal is not intended to be the precursor of further development but rather represents a scaling down of original proposals addressing water supply, 'bad neighbour in reverse' and visual and nature conservation considerations in the process. The level of information is adequate to establish the scale and location of acceptable development in the context of a planning application in principle.*

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**(E) PUBLICITY:**

The proposal has been advertised in terms of Regulation 20, closing date 13 January 2011

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**(F) REPRESENTATIONS:**

Lorna Hill, Kames Lodge, Kilmelford, Oban  
James Dinsmore, Tulloch Breag, Kames, Kilmelford, PA34 4XA  
Robert Hill, Kames Lodge, Kilmelford, Oban  
Alan Loughrey, Creag Na Linne, Kames Bay, Kilmelford PA34 4XA  
Gillian Dinsmore, Tulloch Breag, Kames, Kilmelford, PA34 4XA  
Ewen Kennedy, Kinloch, Degnish Road, Kilmelford, PA34 4XD  
Fergus G R Gillanders, Craigaol, Kilmelford, Oban PA34 4XA  
Caroline Gillanders, Craigaol, Kilmelford, Oban PA34 4XA  
Beryl P Brown, 20 Stoneylawn, Marnhull, Dorset DT10 1HW  
A.T.H. Wells, 4 Home Farm Mews, Bingley Road, Menston, Ilkley LS29 6BF  
Mrs Shain Wells, 4 Home Farm Mews, Bingley Road, Menston, Ilkley LS29 6BF  
Rosemary Wells, Ardbeithe, Kames, Kilmelford PA34 4XA

**(i) Summary of issues raised**

- Adequacy of water supply and implications for existing users

*Comment: The applicant has previously submitted an assessment of the water supply in the area and the Council's Environmental Health department has agreed the supply would be suitable to serve this development without impacting adversely on the existing supply serving other residents in the area. Additional detail is required, hence the requirement for a water supply condition.*

- The proposed positioning of the house plots is over an existing water supply pipe.

*Comment: The positioning of the houses on the plots is, at this stage, indicative only and is subject to change as the application is for planning permission in principle. Supply pipes are potentially capable of re-routing if necessary. In any event, this is a civil matter and not a material planning consideration.*

- Impact on habit

*Comment: The applicant has commissioned a habitat survey on the entire PDA site and has identified areas of low, medium and high sensitivity. These two plots are outwith areas of medium and high sensitivity. The Council's Biodiversity Officer has agreed the findings of the survey.*

- Impact on visual quality of the area

*Comment: The proposals are in principle only therefore there are no details on the final design of the houses. However, it should be stated that the plots are located between East Kames and the houses on the other side of the access track. The proposal sits between 250m and 400m (east and north) from the coastline and will be suitably screened through planting and natural landform so as not to adversely impact on the visual quality of the wider area.*

- The proposal would result in a 'bad neighbour in reverse' situation

*Comment: The proposal is shielded from the fish farm hatchery building by a busy public road, significant planting and East Kames. Any impact from the pier is negated by natural undulations in the landform, a rocky knoll and planting. The relationship between the dwellings proposed and commercial activity locally will be no worse than that which exists with existing residential properties in the area. Additionally, windows of principal rooms can be kept to areas not facing the pier so as to further protect amenity. The Council's environmental health officers have not raised this as an issue with this application.*

- Responsibility of the upkeep of the access road

*Comment: The first section of the access road from the A816 is to be constructed to adoption standard up to the point where it serves the new dwellings. The remainder will remain privately maintained, as existing.*

- No future development should be permitted within the PDA

*Comment: The local planning authority cannot prevent further applications for development on the remainder of the PDA site. However, considering the constraints on the site is unlikely any further proposed development would be considered favourably. The applicant has reduced his intended development from six to two dwellings in recognition of this.*

- The site is a PDA not a housing allocation

*Comment: The PDA designation within the local plan presumes in favour of development provided that identified constraints are overcome. The applicant has addressed these issues within this submission relative to the limited scale of development now proposed.*

- No demonstrated need for the development

*Comment: The 'need' for development does not require to be demonstrated in this case.*

- Application should be detailed not in principle

*Comment: The local authority has accepted this application in principle as a detailed Design Statement has been submitted stating how houses will appear on the site and the parameters to which they should abide.*

- Waste water drainage

*Comment: The applicant has proposed separate septic tanks and soakaway systems. This aspect of the proposal will be thoroughly assessed during any application for Building Warrant.*

- Remainder of PDA site should be transferred to the ownership of current residents to ensure no further development occurs.

*Comment: This is not reasonable and in any event is outwith the Planning Authority's remit.*

- Archaeological remains

*Comment: The Council's archaeological advisers have advised that it is possible that remains are located on coastal areas. However as the site is between 250m and 400m from the coast and they do not consider that there is evidence to suggest that the site has any archaeological importance.*

- The application fee should not have been waived

*Comment: The application fee was waived due to the significant processing time taken by the local planning authority on a previous application (which had attracted a larger fee than required here as it was based on a development of six dwellings). If the issue of 'bad neighbour in reverse' had been identified earlier in the processing of the previous application, the applicant would have been able to have withdrawn the application and re-submitted without the requirement for a further planning application fee, as per the concession in planning fee regulations. In the circumstances, it was considered that the applicant had been prejudiced by the stance taken late in the day on the original application, hence the decision to waive the fee for the resubmission of a lesser scaled proposal.*

- Size of the plots is insufficient.

*Comment: The plot sizes are of a significant size and will easily be able to accommodate a dwelling houses of suitable scale and design without impacting adversely on the character of the area.*

- Junction of the access track with the public road is dangerous.

*Comment: The Council's roads engineers have indicated that the access will be safe with commensurate improvements as detailed above.*

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**(G) SUPPORTING INFORMATION**

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

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| (i)   | <b>Environmental Statement:</b>  | No  |
| (ii)  | <b>An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b> | No  |
| (iii) | <b>A design or design/access statement:</b>  | Yes |

A design statement has been submitted confirming how the proposed houses should be designed and their appearance in light of their setting, giving details on landscaping, details of proposed foul and surface water drainage, water supply and habitat (references two further reports) and details on road access improvements as discussed with the Council's roads engineers

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| (iv) | <b>A report on the impact of the proposed development e.g. retail impact, transport impact, noise impact, flood risk, drainage impact etc:</b> | Yes |
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Ecological Assessment  
Hydrological Assessment for Water Supply

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

Ecological Assessment

Provides an ecological survey of the site and also the entire area designated as a Potential Development Area (PDA) within which the site is located. The report outlines which areas of the larger PDA site are classed as low, medium and high sensitive areas. These two plots are outwith areas of medium and high sensitivity. The report also demonstrates why these areas are so graded. The report also details species found on the site and potential disturbances due to the construction works, along with a range of habitats and their importance to the local area in terms of international, national and local importance. The report confirms the presence of otters within the PDA and, as these are European protected species, outlines suitable mitigation measures as appropriate.

Hydrological Assessment for Water Supply

This report outlines the hydrology of the area and the potential impact on the existing water supply to the current houses located adjacent the site. The report demonstrates that the site has sufficient water to service the proposal without adverse impact on the supply serving the existing properties. The report states that there is a maximum daily consumption capacity of 3,750litres in the water supply and based on UK average water use figures 150litres per day then there is sufficient water supply to service these two additional units. The report also describes the method for water filtration for the proposal, although water quality is controlled under separate legislation.

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**(H) PLANNING OBLIGATIONS**

(i) **Is a Section 75 agreement required:** No

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

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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 Structure Plan 2002

STRAT DC 1 – Development within the Settlements  
STRAT DC 4 – Development in Rural Opportunity Areas  
STRAT DC 7 – Nature Conservation and Development Control  
STRAT DC 8 – Landscape and Development Control

Argyll and Bute Local Plan 2009

LP ENV 1 – Impact on the General Environment  
LP ENV 2 – Impact on Biodiversity  
LP ENV 6 – Impact on Habitats and Species  
  
LP ENV 19 – Development Setting, Layout and Design  
  
LP CST 1 – Coastal Development on the Developed Coast  
  
LP BAD 2 – Bad Neighbour Development in Reverse  
  
LP HOU 1 – General Housing Development  
  
LP SERV 1 – Private Sewage Treatment Plants and Wastewater Systems  
  
LP SERV 4 – Water Supply  
  
LP TRAN 4 – New and Existing Public Roads and Private Access Regimes  
  
LP P/PDA1 – The Proposed Potential Development Areas  
  
Appendix A – Sustainable Siting and Design Principles  
Appendix E – Allocations, Potential Development Area Schedules and Areas for Action Schedules

(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.**

Argyll & Bute Sustainable Design Guidance (2006)

The Town & Country Planning Act (Scotland) 1997

The Planning etc. (Scotland) Act, 2006

SPP, Scottish Planning Policy, 2010

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<b>(K)</b>	<b>Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment:</b>	No
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<b>(L)</b>	<b>Has the application been the subject of statutory pre-application consultation (PAC):</b>	No
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<b>(M)</b>	<b>Has a sustainability check list been submitted:</b>	No
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<b>(N)</b>	<b>Does the Council have an interest in the site:</b>	No
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<b>(O)</b>	<b>Requirement for a hearing:</b> Twelve individuals and the community council have objected to the application which is a significant number of representations in the context of the small community at Kames. Accordingly, it is considered that a discretionary local hearing would be appropriate in this case.	
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**(P) Assessment and summary of determining issues and material considerations**

The proposal lies within a Potential Development Area (PDA) site within the settlement zone of Kames (P/PDA 5/156). With this in mind, the principle of development is accepted by the development plan subject to overcoming issues outlined in the PDA description. The issues to address in respect of this PDA are: water supply, waste water drainage and the need for a master-planned approach.

A preceding application for six dwellings was withdrawn in favour of this reduced proposal due to identified conflict with nature conservation considerations and between proposed dwellings within the remainder of the PDA and the fish farm operations at a nearby pier and the hatchery building on the other side of the main road. Those 'bad neighbour in reverse' considerations do not pertain in respect of the surviving two plots which are the subject of this application due to the local landform, as there are significant land undulations, a knoll and planting to the east between the site and the pier.

An ecological assessment has been submitted which confirms that this reduced scale of development avoids the more ecologically important areas of the PDA. The applicant has also submitted details of the proposed water supply and also a detailed Design Statement. Public Protection are satisfied that sufficient water is available to serve this limited development of two dwellings, although addition detail is still to be required by condition. Waste water drainage details have been submitted sufficient for planning purposes and will be further assessed at the Building Warrant stage.

The proposal is within a settlement boundary and a PDA and the principle of development is therefore established. The proposal is acceptable in layout terms as it forms a natural infill between the East Kames and the southernmost houses on the west side of the access track. Access issues have been addressed and verified by Area Roads. Sufficient detail is available to allow the determination of this application for two dwellings on the basis of an application for planning permission in principle. In the event that these two dwellings are approved, it is considered that the development capacity of PDA will have been reached.

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**(Q) Is the proposal consistent with the Development Plan:** Yes

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

The applicant has sufficiently addressed the issues outlined in the PDA schedule, within the local plan. The proposal has been developed so as to avoid areas of visual and habitat sensitivity. The issue of 'bad neighbour in reverse' has been addressed and will continue to be addressed at the detailed stage of the planning process. The proposal conforms to the relevant development plan policies and there are no other material considerations, including issues raised by third parties, which warrant anything other than the application being determined in accordance with the provisions of the development plan.

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

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**Author of Report:** David Love **Date:** 27.01.11

**Reviewing Officer:** Stephen Fair **Date:** 27.01.11

**Angus Gilmour**  
**Head of Planning**

## CONDITIONS AND REASONS RELATIVE TO APPLICATION REFERENCE 10/02048/PPP

1. That the development to which this permission relates must be begun within three years from the date of this permission.

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

2. Prior to the commencement of works at the site, details shall be submitted for the approval of the Planning Authority in respect of the undermentioned matters:
  - a. The siting, design and external appearance of the proposed development;
  - b. The boundary treatment of the site of the proposed development, including proposed tree planting utilising native species;
  - c. Details of the access arrangements;
  - d. Details of the proposed surface water drainage arrangements;

which shall be consistent with the provisions set out within the submitted Design Statement dated December 2010.

*Reason: To comply with Section 59 of the Town and Country Planning (Scotland) Act 1997 and ensure the proposed dwellings are consistent with the character of the surrounding natural and built environment.*

3. Prior to the development commencing a full appraisal to demonstrate the wholesomeness and sufficiency of the private water supply to serve the development shall be submitted to and approved in writing by the Planning Authority. This assessment shall be carried out by a qualified and competent person(s). Such appraisal shall include a risk assessment having regard to the requirements of Schedule 4 of the Private Water Supplies (Scotland) Regulations 2006 and shall on the basis of such risk assessment specify the means by which a wholesome and sufficient water supply shall be provided and thereafter maintained to the development. Such appraisal shall also demonstrate that the wholesomeness and sufficiency of any other supply in the vicinity of the development, or any other person utilising the same source or supply, shall not be compromised by the proposed development. Furthermore, the development itself shall not be brought into use or occupied until the required supply has been installed in accordance with the agreed specification.

*Reason: In the interests of public health and in order to ensure that an adequate private water supply in terms of both wholesomeness and sufficiency can be provided to meet the requirements of the proposed development and without compromising the interests of other users of the same or nearby private water supplies.*

4. The development shall be implemented in accordance with the details specified on the application form dated 2<sup>nd</sup> December 2010 and the approved drawing reference numbers:

- Plan 1 of 8 (Location Plan at scale of 1:10000)
- Plan 2 of 8 (Site Plan at scale of 1:500)
- Plan 3 of 8 (Site Plan at scale of 1:1000)
- Plan 4 of 8 (Site Plan at scale of 1:2000)
- Plan 5 of 8 (New Turning Head at scale of 1:100)
- Plan 6 of 8 (Proposed Junction to A816 at scale of 1:100)
- Plan 7 of 8 (Location Plan at scale of 1:5000)
- Plan 8 of 8 (Site Plan – Habitat at scale of 1:1000)

unless the prior written approval of the planning authority is obtained for other materials/finishes/for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997 (as amended).

*Reason: For the purpose of clarity, to ensure that the development is implemented in accordance with the approved details.*

5. No development shall commence until on site until a scheme incorporating the following access details have been submitted to and has been agreed in writing by the local planning authority in consultation with the Council's roads engineers.

- Access at junction to public road to be constructed with 4.5m radii and a 5.5m width for first 10m;
- No walls, hedges, fences etc to be permitted within 2m from the channel line of the public road.
- Visibility splays measuring 160.0m x 2.4m to be cleared in advance of development and maintained clear of all obstruction in excess of 1.0m in height;.
- Carriageway width to be 3.5m to beyond access to dwellings
- 2m wide footway to be provided at radius of access road;
- Turning head to diagram 5.24 of the Council's Guidelines for Developments at the access to the dwellings;
- 2m wide verge required on both sides of the access road.

The duly approved scheme shall be implemented in full prior to the occupation of either dwelling

*Reason: In the interests of road safety to ensure the proposed development is served by a safe means of vehicular access.*

6. Proposals subject to application for matters specified in condition and implementation of the development shall have regard to and be carried out in full compliance with the mitigation measures outlined within the submitted '*Ecological Assessment of Kames Farm Proposed Development*' dated November 2009 by Quadrat Scotland.

*Reason: In the interests of ecological and habitat preservation.*

## **APPENDIX A – RELATIVE TO APPLICATION NUMBER: 10/02048/PPP**

### **PLANNING LAND USE AND POLICY ASSESSMENT**

#### **A. Settlement Strategy**

This application relates to land within the Local Plan 'settlement' boundary for Kames subject to the operation of Structure Plan policy STRAT DC 1 and Local Plan policy LP HOU 1. It also forms part of PDA 5/156 which is identified as being suitable for low density housing development. An original proposal for the development of the whole of the PDA for residential purposes (six plots) was withdrawn in the face of conflict with established commercial activities in the local vicinity and due to localised habitat considerations. The applicant has now applied for an alternative reduced proposal for two dwellings in a bid to overcome the shortcomings of the original proposal. The issues identified in respect of this PDA are water supply, waste water drainage and a master-planned approach, all of which have been adequately addressed in the light of what has turned out to be a limited proposal for just two dwellings. .

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

The site is located to the south of Kilmelford along the A816 towards Lochgilphead. The site itself is accessed off a single track private road which is bounded by mature vegetation to either side and provides access to 6 existing houses facing west along the shore. The site is overgrown with scrub and sits between the property known as East Kames and opposite the first two of the six existing houses along the single track road. Houses in this area are generally single storey, sited comfortably in large plots within trees.

The proposal includes two large plots commensurate in size with other properties in the area. Although the application is for planning permission in principle, the Design Statement provides information on how the houses should appear in terms of massing and detailing. The Design Statement sets out to encourage single storey properties with accommodation in attic space and suggests that typical one and a half storey properties with dormers should be discouraged. Finishing materials should be natural timber and/or stone or a recessive coloured render. With this in mind, the properties should be similar in appearance to those already in the area and the local planning authority will attach conditions ensuring that the properties are appropriate in terms of design to the immediate built and natural environment.

It should be noted that a narrow strip of land has been left between the south side of plot 1 and East Kames. This strip is to allow access to the remainder of the PDA site for maintenance. It is not considered wide enough nor suitable for vehicular access. Additionally, it will provide a buffer between plot 1 and East Kames. The west of the plots has also been kept clear of the main access track in order to provide a buffer and ensure development is kept away from sensitive habitat areas. This will allow natural plant growth and will result in the proposals being set within existing vegetation which is more in-keeping with the existing properties.

Given the recent history of the site, the identification of conflicts with nature conservation interests and local commercial activities and the fact that the remainder of the PDA does not share the same habitat and topographical advantages as these two plots, it is unlikely that there would proved to be any residual development capacity within the remainder of the PDA.

**C. Natural Environment**

The applicant has submitted a habitat survey of the site which has been verified by the Council's Biodiversity Officer. The survey identifies areas of low, medium and high sensitivity within the entire PDA site. The application avoids areas of medium and high sensitivity. The Habitat Survey states that there is no evidence of otters within the development site.

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

The applicant intends to carry out improvements to the junction of the private road and the A816. The Council's roads engineers have verified that improvements are necessary and achievable and have responded to the application with conditions to be attached to any consent ensuring the works are carried out. To comply with Local Plan policy LP TRAN 4 the initial section of the private road serving the application properties will require to be constructed to adoption standard.

**E. Infrastructure**

The applicant intends to provide a private water supply as detailed in the hydrological report submitted to Public Protection in respect of the original proposal for six dwellings. The report provides sufficient comfort that two properties can be served without prejudicing existing users, although additional detail is being required by condition. Waste and surface water drainage is to be provided on-site with waste water being dealt with on site via a septic tank and soakaway system.