



Further Submission on behalf of

Dawn Anderson

in respect of

App Ref: 23/01046/PP

LRB Ref: 24/0005/LRB

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Ref: AND0724.0001/CUD

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1. Introduction

- 1.1. We act on behalf of Ms Dawn Anderson (“**the Appellant**”).
- 1.2. The Appellant has appealed Decision Notice 23/01046/PP for proposed alterations to widen driveway (the “**Application**”) at 50 Charlotte Street, Helensburgh (“**the Property**”).
- 1.3. Planning Permission was sought on the 30 May 2023 and Argyll & Bute Council’s resultant refusal is dated 11 December 2023.
- 1.4. This document forms the response to the submissions that have been made by the Planning Authority and the interested party.

2. Response to submission made by Planning Authority

- 2.1. The Appellant does not consider that the Planning Authority’s submission raises anything that is new and that has not already been substantively addressed in the Appellant’s grounds of appeal. The Appellant does, however, draw the LRB’s attention to the below matters (taken in the order in which they appear in the Planning Authority’s submission). Where the Appellant does not address any matter noted in the Planning Authority’s submission, that is not to say that the submissions made by the Planning Authority are accepted. Rather, it is to say that the Appellant considers that the grounds of appeal sufficiently deal with those matters and the Appellant has nothing further to add.

General comments

- 2.2. The Planning Authority considers that the determining issues in this review are:
 - 2.2.1. Whether alterations to widen the driveway would cause a road safety issue.
 - 2.2.2. Whether alterations to widen the driveway would cause a pedestrian safety issue.
 - 2.2.3. Whether alterations to widen the driveway harm the Upper Helensburgh Conservation Area.
 - 2.2.4. Whether alterations to widen the driveway harm the sense of place and character of the place.
- 2.3. We consider that the Appellant’s grounds of appeal address the above matters in detail. The Appellant has nothing further to add to the above.

Procedure

- 2.4. The Planning Authority does not consider that a hearing is necessary. The Appellant agrees with that position. However, the Appellant did request that a site visit is undertaken by Members. The Planning Authority is silent in respect of that request and therefore is considered by the Appellant not to object to a site visit being undertaken by Members. The Appellant respectfully makes that request again and encourages Members to carry out a site visit. This is with particular reference to determining the impact of the proposed development on the conservation area.

Parking on grass verge (item numbers 3 and 4)

- 2.5. Item 3 in the Planning Authority's submission suggests that the character of the conservation area would somehow be negatively affected by the proposed development due to encouraging parking on the grass verge. The Appellant challenged the Planning Authority that no evidence had been produced that the proposed development would encourage parking on the grass verge at this location. The Planning Authority in its submission has not produced any such evidence. Further, it is difficult to understand how the proposed development would have such an impact. As is shown in the comparison in the grounds of appeal between the existing and the proposed layout (see para 2.2 of grounds of appeal), the overall width remains 6.3m except that a modest amount of grass verge on either side to 'square off' the area will be taken. In legalese one might refer to this as *de minimis*, i.e. so minor as not to be noticeable or material.
- 2.6. The above applies also in respect of item 4 in the Planning Authority's submission regarding the sense and quality of place. The Planning Authority's position suggests that the proposed development will "facilitate and encourage parking on the verge", thereby affecting the sense and quality of place. Once again, no evidence at all is presented to substantiate that claim.
- 2.7. It is clear that parking remains an issue for the Council. This is despite there being no material change in the use of the land by virtue of the planning application. The works are essentially works of renewal.
- 2.8. The Appellant's firm position is that the proposed development is not of any such significance as to encourage parking on the grass verge. This is a driveway that traverses the verge. In the Appellant's grounds of appeal it was stated that our understanding of the verge at this location is that it forms part of the road as that term is defined in the Roads (Scotland) Act 1984. Neither the Planning Authority nor the Roads Authority has challenged that understanding.
- 2.9. Proceeding on the basis of the above, there is no footway or footpath (as those terms are defined in the Roads (Scotland) Act 1984) at this location. That being the case, it remains the Appellant's position that, in the absence of parking restrictions at this location (whether by Traffic Regulation Order or under the Transport (Scotland) Act 2019), there is no legal mechanism to prevent parking. Any vehicle could park at this location at this time without penalty, and the position should the proposed development be granted planning permission is entirely neutral in that regard – it does not change. It is notable that no challenge to this position has been made by the Council in its submission to the LRB. No evidence has been provided of a TRO or other such mechanism to prohibit parking at this location. There are no single or double yellow lines. There are no road signs *per* the Traffic Signs Regulations and General Directions 2016.
- 2.10. To clarify the legal position as to verges (as defined in the Roads (Scotland) Act 1984), it was previously the case that parking on verges was prohibited under law. This was the position in accordance with section 19A of the Road Traffic Act 1988. However, that provision (section 19A) was repealed by the Road Traffic Act 1991. Consequently, provisions restricting parking on road verges apply only to HGVs under section 19 of the 1988 Act. There is no blanket prohibition on such parking for ordinary domestic vehicles. Consequently, where the verge forms part of the adopted road, the position adopted by the Roads Authority is incongruous because its opposition to the proposed development is based on something that the Appellant (and any other road user) may lawfully do at this location. As noted above, we are not aware of any TRO or other legal mechanism put in place by the Council to restrict parking at this location.

- 2.11. The Roads Authority argues (in part) that planning permission should be refused on the basis that parking would be encouraged on the verge, but this is something that bears to be lawful in any event. No submissions have been made by the Planning Authority disputing this indicating that it would **not** be lawful.
- 2.12. In the event that the verge is entirely private, and therefore not part of the publicly adopted road and not being a way over which there is a public right of passage, we again note that absolutely no evidence has been submitted to substantiate the claim that the proposed development would encourage parking on the grass verge. Further, where the grass verge is private, such parking on the grass verge may therefore constitute a change of use and would be separately enforceable by the Council under the Town and Country Planning (Scotland) Act 1997. The redline boundary of the planning application does not include the grass verge beyond what is necessary to 'square off' the existing access.

3. Response to submission made by interested party

- 3.1. We address a number of points raised by the submission of the interested party.

General observations as to submission of interested party

- 3.2. The LRB will be aware that its role is to consider the terms of the planning application *de novo* (*Carroll v Scottish Borders Council* [2015] CSIH 73). That is to say, the review is not an appraisal of the merits of the appointed officer's decision but rather the LRB is to look at the terms of the planning application afresh. The submission of the interested party does not provide any appraisal of the proposed development against planning policy contained in the development plan, and whether any material considerations may be relevant. The standard section 25/37 appraisal of the planning application, *per* the Town and Country Planning (Scotland) Act 1997, is the correct basis on which this review must be determined.

Dishonesty etc. (page 1 of submission)

- 3.3. The interested party has alleged that the Appellant has been dishonest in terms of the planning application process, and that the process perhaps has been "abused and held in contempt". Those are serious allegations without any evidence provided to substantiate them. The Appellant disputes those allegations in the strongest possible terms.
- 3.4. The appeal before the LRB is confined to its four corners. That is to say, should planning permission be granted then what the Appellant can and cannot do will be restricted to the development description of the planning permission and any associated planning conditions and/or planning obligation. There has not been any dishonesty or abuse of the system. Simply, a planning application has been made and, if granted and implemented, any deviation from the terms of the planning permission could be enforced against.

Revocation of previous planning permissions

- 3.5. The interested party suggests that planning permission 22/00599/PP and listed building consent 22/00600/LIB should be revoked. That is entirely irrelevant to the decision before the LRB in this matter. The LRB will be aware that it does not have any agency or jurisdiction in this review to revoke these extant permissions.

Previous enforcement notices

- 3.6. Previous enforcement action in connection with this planning application is not considered relevant as a material consideration to the LRB's decision. As noted above, the LRB must decide whether planning permission should be granted in terms of the application before it by reference to the development plan and any other applicable material considerations.

Appropriation of house name

- 3.7. The alleged appropriation of a house name is not a planning matter and is not relevant to the determination of the LRB.

4. Conclusions

- 4.1. Pursuant to the above, it is submitted that neither the appointed officer nor the interested party has made any substantive point that necessitates refusal of the planning application. The Planning Application is consistent with the LDP, there are a number of material considerations in its favour, and therefore should be granted.

5. Documents

- 5.1. No further documents are lodged with this submission.

Anderson Strathern LLP

10 April 2024