



Local Review Board
Committee Services
Kilmory
Lochgilphead
Argyll
PA31 8RT

Dear sir/madam,

NOTICE OF REVIEW
SUB DIVISION OF GARDEN GROUND & ERECTION OF NEW DWELLING HOUSE
6 STEWART STREET, KIRN, DUNOON, ARGYLL, PA23 8DS
APP REF : 13/00594/PP

Further to receipt of a copy of the further submission made by Argyll & Bute Council Planning Department (Statement of Case) dated 03/07/13 received by us on 08/07/13 we note all that is said and would comment as follows using the Argyll & Bute Council Planning references for clarity.

In writing we would dispute the statement made within that document that No new information has been forwarded and that any issues raised were covered fully in the "Report of Handling". We would also take issue with the suggestion that as "the proposal is small scale" that a further hearing is not required. The matter may well be small scale to Argyll & Bute Council Planning Department however it is of grave significance to my client who is entitled to have her reservations heard over the handling of this application and the fact that her property has been blighted by previous planning decisions associated with adjacent properties and the ongoing bias against granting consent for her property.

In the "Statement of Case" Argyll & Bute Council Planning Department have reiterated their 4no reasons for refusal (in italics below) and picked certain elements of our comments to further clarify their opinions and the decision in this case. We have added their comments in blue with our further observations in blue italics :

1.0 *"Having regard to the siting and scale of the proposed two-storey dwellinghouse situated in such close proximity to an adjacent bungalow at 8 Stewart Street (2.6 metres). An adjacent semi-detached property at 12 Stewart Street (13 metres), the donor property at 6 Stewart Street (5 metres) and the private rear garden of the adjacent semi-detached dwellinghouse at 1 Kirn Place (4.8 metres), it is considered that the proposed dwelling house would lack sufficient separation distances and would overlook and visually dominate these properties to the detriment of their amenities, inconsistent with the character of the surrounding townscape".*

* **The building at 8 Stewart Street is situated 1.3m from the mutual property and our proposal is to locate the new property no closer to the mutual boundary than the existing situation - on this basis we consider that it is incorrect to state that the proposed house would lack sufficient separation space as it will match that of the adjacent property.**

1.1

The agent comments that it is proposed to erect the dwelling house no closer to the boundary than the adjacent bungalow at 8 Stewart Street. The adjacent dwelling house is a traditional bungalow which was built prior to planning legislation coming into force. The proposed dwelling house must be assessed against current adopted Development Plan Policies, which the agent makes no reference to whatsoever in his statement. If anything, current Development Plan policies now contain more detailed technical guidance on acceptable infill development and offer better protection for existing dwellings. Given the proposal to erect a two-storey dwelling house within 2.6m from the adjacent bungalow (which has a habitable bedroom window on the east facing side elevation), the department feels that an acceptable separation distance cannot be achieved to avoid potential impacts of loss of daylight, loss of aspect and visual dominance to the existing bungalow.

The planners response takes no account of the other points raised – the application is in outline only and all of the matters raised by the requirements of the stated plan policies could in our opinion and with some willingness on the part of the planning department be prioritized and adequately dealt with in a detailed planning application – it appears that no such protection was offered to our clients property when planning consents were granted for adjacent sites and there seems to be a presumption against the development of our clients site.

- * **It is accepted that the property at 8 Stewart Street is single storey however it sits in an elevated position uphill from our clients site and the floor level will remain app' 1.5m above the ground floor level of the proposed house – on this basis we consider that it is overstated to say that the proposed new house will visually dominate this adjacent property.**

1.2 The agent comments that the bungalow uphill would not be dominated by the new property.

The submitted drawings do not indicate any element of excavation where the proposed dwelling house would sit very close and tall in relation to the existing adjacent bungalow. Photographs in Production No. 9 indicate the relation of application site and streetscape in terms of limited dimensions of the site and relation to existing dwellings. An aerial photograph also helps to demonstrate the limited nature of the application site within its surroundings. (Production No. 8).

In this instance the planning department seem to expect a higher level of information than can reasonably be expected from an outline planning application however it is clear from our submitted photographs and those mentioned above that the adjacent bungalow clearly sits in an elevated position above the application site and that on this basis there must be some scope for off setting the height of any new building by building it into the slope to avoid its dominating the bungalow especially if as we have suggested that part of the new building closest to the adjacent property were to be single storey. Clearly the opportunity to develop a detailed design would provide the proper vehicle to explore this issue.

- * **The donor property at 6 Stewart Street will generally be 8.5m from the proposed new dwelling with only a blank gable to a utility room will be within the 5.0m of the new property stated – such separation is well within the limits required. Indeed 1Kirn Place was granted planning consent and is situated less than 4.0m from our client property. On this basis we believe that adequate separation would be maintained and that the new property would not visually dominate the donor property.**

1.3 The agent comments that the donor property will generally be 8.5m from the proposed new dwelling and that adequate separation is achieved, better than 1 Kirn Place adjacent.

In this instance it is not the separation distance itself which warranted refusal but the impact that the new dwelling would have on the donor property by significantly reducing its back garden area.

The reason, 1.0 given by the planning department for refusal was that the new building was “in such close Proximity” to “the donor property”.

The Planning Department now state that refusal was due to the perceived impact that the new dwelling would have on the donor properties back garden area. We would suggest that as there is no clear “back” garden to the donor property it could be argued that as the main entrance to the donor property is on the West side facing the application site that the application site is in fact the front garden. The argument also falls with regard to the fact that the donor site will still be bigger than every adjacent site, except the bungalow at No 8 and the ratio of building to site area will be the lowest of all adjacent properties. Again detailed design could, we believe resolve this matter

- * **12 Stewart Street is more than 45 metres away from the location of the proposed new house and Occupies in an elevated position uphill from the application site – on this basis the property cannot be visually dominated by the proposed new house or be said to be in danger of being overlooked by it.**

1.4 The department acknowledges that the original report refers to a semi detached property at 12 Stewart Street, Narnain which should have been referred to as Narnain, Stewart Street. Whilst the reasons for refusal mention 12 Stewart Street, the original Report of Handling refers to this property as Narnain. Notwithstanding this typographical error, the adjacent property Narnain is 13m from the proposed dwellinghouse with potential privacy issues due to the close proximity between habitable room windows on the main front elevation of the proposed dwelling house.

The typographical error is accepted however it appears that the planning department are now suggesting that the 13.0m distance between the property at Narnain (for which Argyll & Bute Council Granted planning consent) and the proposed new dwelling is insufficient. The fact that the property at Narnain/Mossgail is LESS than 13.0m from our clients property did not prevent development on that site. It should also be noted that the properties at No.8 and No. 9 Kirn Place which were granted planning consent in 2005 are also closer than 13.0m from the residential properties on the other side of Stewart Street. On this basis we find this reason for refusal to be inconsistent with past approvals and would argue that any perceived issue could be dealt with at detailed planning stage..

- * **The proposed new house will be a minimum of 7.5m from the adjacent property at 1 Kirn Place and not 4.8m as stated. The two storey terraced property at 1 Kirn Place was recently approved by Argyll & Bute council to be built less than 4.0m from the applicants property and with it's garden overlooking the application site. It is of deep concern that it would appear that the planning authority did not apply the same interpretation of the planning policies when considering the merits of the adjacent development which could be said to lack sufficient separation (less than 4.0m) and would overlook (adjacent to our clients garden) and visually dominate (Kirn Place is two storey while our clients property is 1 ½ storey). If our clients proposals are inconsistent with the surrounding townscape how could it be therefore stated that the approved scheme at Kirn Place are not.**

1.5 The agent incorrectly states that the planning report refers to a separation distance of 4.8m from the proposed dwelling house to the adjacent property at 1 Kirn Place. The report clearly states that the proposed dwelling house would be 4.8m distant from the mutual rear boundary fence of the property at 1 Kirn Place where there is potential to adversely affect the rear amenity space of that dwelling.

Blank side elevations of dwellings close to or overlooking private gardens do not generally result in a significant loss of privacy and amenity compared to a rear elevation directly overlooking private amenity space in close proximity as proposed.

The planning department's point is accepted however it should also be noted that the consent given for the new dwellings at Kirn Place have created the situation where not only were new houses erected within 4.0m of our clients property but that they were also erected with views over the gardens to both the front and the rear. It should also be noted that the new dwelling at 3 Kirn Place was approved to be erected no more than 4.8m from the boundary of and overlooking the gardens of nos 4 & 5 Kirn Place. It would again appear that the planning department have not applied the same rigour to that application as is now being applied in this case to the detriment of our client and her property.

2.0 *"Having regard to the siting and scale of the proposed two storey dwelling house situated in such close proximity to an adjacent bungalow at 8 Stewart Street (2.6 metres), the proposed dwellinghouse would result in a significant loss of daylight and aspect to the sole bedroom window on the East facing side elevation of this property. Furthermore the scale and siting of the proposed dwelling house in such close proximity to the Western boundary of the site would visually dominate and overwhelm this bungalow to the detriment of existing amenity and inconsistent with the character of the surrounding townscape".*

- * **The building at 8 Stewart Street is situated 1.3m from the mutual property and our proposal is to locate the new property no closer to the mutual boundary than the existing situation to maintain an overall separation distance of 2.6m. In addition the floor level of the proposed new house will be app' 1.5m below the level of existing house - on this basis we consider that it is overstating the impact of the proposals to state that the proposed house would visually dominate or "overwhelm" the existing bungalow.**

2.1 The agent considers that the adjacent bungalow at 8 Stewart Street is sufficient distance away to avoid visual dominance.

This issue has already been addressed in 1.1 and 1.2 above.

We would again argue that given the manner in which the development policies quoted by the planning department were interpreted on the sites adjacent to our clients property and given that the application is for consent in principal only that the application should be approved and the detailed matters of proximity and overlooking are considered more fully in the detailed application for approval of reserved matters.

- * **In the interests of maintaining the amenity of the adjacent property our client would consider revising the proposed scheme such that the proposed new building be located further from the adjacent house (say 4.0m which was acceptable in the case of 1 Kirn Place) and to reduce the height of the new house to single storey adjacent to the mutual western boundary. No opportunity was given to us/our client to consider any such variation to the scheme however it is considered that conditions could be applied to the consent to be resolved at the detail design stage .**

2.2 The agent suggests that in the interests of amenity, his client would be willing to relocate the new dwelling further away from the bungalow at 8 Stewart Street and to reduce the height to single storey. The agent comments that no opportunity was given to his client to consider any variation to the scheme but conditions could be applied to the consent to be resolved at the detailed design stage.

Given the historical enquiries and current policy guidance on infill development, it is considered that that there would have been no merit in advising the applicant to submit an alternative scheme. The application is in outline at this stage with indicative footprint but it is difficult to see where a single dwelling house could be located within this small application site to also include off-street parking provision without having a significant impact on surrounding dwellings. In any event, relocating the footprint of the dwelling and altering the site layout would have been regarded as a 'material' amendment requiring the submission of a fresh revised application which would have been judged on it's individual merits. It has, and still is the departments view, that the application site as submitted is too small to accommodate a single dwelling house of this footprint and in this location.

The department may not however be against the idea of demolishing the dwelling house at 6 Stewart Street and the erection of one or more dwelling houses with front elevations facing Stewart Street. Any such proposal would have to respect habitable window to window distances and proximity to the existing electricity sub station at the eastern end of the site. This may allow better development of the entire curtilage of 6 Stewart Street but any proposal would be judged on its individual merits.

The historical enquiries were made by the now deceased former owner and bear no relevance to this application other than to point to a continued intransigence on the part of the planning department in this matter. This application deserves to be dealt with on it's own merits and not be pre determined by those past comments.

There must be merit in giving advice as this we understood is part of the role of the planning department in considering any application – indeed no such application had been previously submitted and it seems at odds with the planning departments role to simply refer to previous letters as a reason for refusal. It should also be pointed out that the application is in principle only and that all detailed matters relating to siting and proximity to boundaries and other properties should be capable of being resolved in a detailed planning application.

We would also point out that the application site is not 'small' by comparison to it's neighbours being larger than at least half of the properties listed and has a better site to footprint ratio than all but three of those adjacent sites. On this basis we would argue that it is so 'difficult' to see how the site could be developed.

Indeed the planning departments own suggestion that the site could be developed by demolition and wholesale redevelopment seems at odds with their reasons for refusal – if the point made in 1.4 by the planning department referring to the cross street separating distance is a reason for the refusal of this application how do they consider that it could be resolved by a new development. If that issue can be overcome for the whole site how can it not be resolved for the application site? Again it would be our opinion that this could be resolved at detailed design stage.

- 3.0 *“The removal of such a significant amount of private amenity space from the donor dwelling house at 6 Stewart Street is considered unacceptable and would result in a serious reduction in meaningful amenity space expected for that dwelling. The introduction of a new dwelling house with enlarged driveway on the existing rear garden area would result in an unacceptable separation distance of 1.5m between the rear of the existing dwelling house and the new plot boundary which would be detrimental to the enjoyment of the existing dwellinghouse. Additionally, such a reduction in amenity space would be contrary to the surrounding character where properties benefit from sufficient rear garden private amenity spaces”.*

- * The retained house will have just over 367.5sqm of amenity space spread over a mix of private amenity, drying, patio, footpath and open garden with sufficient space for parking and turning within the plot – it is therefore quite incorrect and misleading to state that the retained space is insufficient for the property. Indeed the retained plot will have more meaningful amenity space than ALL of the immediately adjacent properties (except 8 Stewart Street) and that includes the adjacent Kirn Place development recently given planning consent by Argyll & Bute Council. On this basis we consider that it is incorrect to state that the retained dwelling would be contrary to the surrounding settlement character. If this stance is maintained we would question why this was not applied during consideration of the adjacent Kirn Place development where amenity the spaces provided are generally less than those proposed in this application.
- * The properties which have been recently developed (Mossgail & Narnain) on the site opposite the application site comprise two storey, semi detached family homes which were given planning consent with amenity areas (127.0sqm each) significantly less than that proposed by our clients for either property (367.5 & 160.0sqm). If the amenity space permitted by Argyll & Bute Council for development on the adjacent site were sufficient for those much larger family houses which extend to app' 150.0sqm each over two floors it is incongruous to state that the reduction in amenity space proposed by our clients proposal should be so serious as to merit refusal of the application.
- * It is stated that the 1.5m between the rear of the existing property and the “new” boundary is unacceptable and would be detrimental to the enjoyment of the retained property however we disagree. The distance stated is only over a short distance behind the blank wall of the single storey utility space. Generally the retained building will be 5.0m from the new boundary fence and 8.5m from the new house. These distances are more than was afforded our clients property when the Kirn Place was recently developed in that 1 Kirn Place was approved for construction less than 4.0m from our clients property.
- * The retained property will occupy just 19.2% of the retained plot which is significantly less than ALL of the properties within the immediate surrounding area (except 8 Stewart Street – 17%). Indeed ALL of the properties in the Kirn Place development which was recently given planning consent by Argyll & Bute Council occupy a significantly larger (30-45%) amount of plot space (except 3 Kirn Place – 22.2%).
- * The statement that the “reduction” in amenity space is “contrary” to the surrounding character is not in our opinion based on fact. The following table of immediately adjacent properties illustrates :

Address	Site Area(m2)	Build' Footprint(m2)	%of Build/Site	Amenity Space (per dwelling)
6 Stewart Street	455	87.5	19.2	367.5
6a Stewart Street	225	65.0	28.8	160.0
8 Stewart Street	450	80.0	17.0	370.0
Mossgail	202	75.0	37.0	127.0
Narnain	202	75.0	37.0	127.0
7 Stewart Street	333	118.0	35.0	107.5
7 Queens Gardens	218	86.0	39.5	132.0
8 Queens Gardens	240	86.0	35.8	154.0
1 Kirn Place	243	73.0	30.0	170.0
2 Kirn Place	225	73.0	32.4	152.0
3 Kirn Place	250	50.0	22.2	200.0
4/5 Kirn Place	187	82.0	43.8	52.5
6/7 Kirn Place	187	82.0	43.8	52.5
8/9 Kirn Place	198	90.0	45.5	54.0
10/11 Kirn Place	302	90.0	29.8	106.0

- * Only 2no of the immediately adjacent properties occupy less of their site area than those proposed by our client.
- * Only 3no out of the 17no immediately adjacent properties offer more amenity space than those proposed by our client.
- * The majority of the immediately adjacent properties (13no out of 17no) have been granted planning consent in recent years by Argyll & Bute Council.

3.1 to 3.8 The agent has provided supporting information on corresponding amenity space for a variety of dwellings surrounding the application site. All applications are assessed against the provisions of the Development Plan but are also based on their individual merits. For this reason, there are no strict policies on garden sizes where accepted habitable window to window separation distance tends to result in minimum separation distances of 18m and therefore a min of 9m back gardens. The amount and type of amenity space required depends however on the proposed development, nature of development, topography and combined amenity spaces with adequate and private amenity space. Front gardens are often disregarded as 'setback' areas as they do not offer meaningful private spaces. The provision of adequate amenity space is only one determining factor in an assessment of new housing proposals, where smaller garden areas have been accepted if all other criteria have been satisfied. What cannot be argued is that the rear boundary of the donor property at 6 Stewart Street would be reduced from 17m from the rear of the projecting extension on its rear elevation to 1.5m which is considered to be unacceptable for a dwelling of its scale.

The planning departments points with regard to the need for adequate combined amenity spaces are noted however we would argue that both the donor property and the proposed new dwelling house can pass these tests.

The rear garden of the proposed house sits at right angles to the new garden of 1 Kirn Place which obviates the need for the 18m distance between windows of habitable rooms and the necessity to create a 9m back garden. The garden is also deeper than the rear gardens of the two houses opposite, Narnain & Mossgail which also face another plot at right angles but which were granted planning consent. We would accept however that the proportion of private amenity space associated with the back garden of the proposed house could be higher however again we would argue that this could be resolved at the detailed design stage.

The point regarding the "back" garden of No. 6 Stewart Street, the donor property is disputed – the topography of the site with a long street frontage is unusual and the norms of housing layout do not necessarily apply however as stated above the Main entrance to the donor dwelling is on the West side therefore this could be argued to be the front and that the garden to the east is in fact the back garden. In any case the overall site area and % percentage of amenity space which remains with the donor house will be larger than all but No. 8 Stewart Street and again detailed design could resolve the issues created for the garden space of the donor house by the layout and design of the adjacent Kirn Place development.

4.0 *"The applicant has failed to provide any information in respect of surface water drainage proposals (SuDS) for the application site".*

* **As the application is for planning consent in principle such a requirement can easily be dealt with by condition to avoid the applicant in incurring additional costs at this early stage.**

4.1 While the agent suggest that a suspensive condition could address the lack of any SuDS information, indicative surface water drainage proposals should be submitted even at this in-principle stage to establish that a surface water connection could be achieved. If the principle of a surface water scheme or connection is accepted , then a suspensive condition could require full details of the surface water drainage system (including SuDS) to be submitted as part of a detailed proposal at a later stage.

On the bass of the foregoing we would suggest that the proposed new dwelling house will be connected to the main surface water outfall via a surface water retention system the details of which will be presented at detailed design stage.

On the basis of the foregoing our client considers that :

* **The planning policies quoted as reasons for refusal have not been consistently applied to this application in comparison with previous decisions taken by Argyll & Bute Council.**

* **That notwithstanding the foregoing our clients application does comply with the stated policies or could be by the minor adjustments stated be made to comply.**

* **That by not applying the policies being stated as reasons for the refusal of this application equally to previous applications (specifically that for the development of Kirn Place) our client has suffered loss and as a result is being refused consent to develop her property (6 Stewart Street).**

* **That in addition to the above by refusing planning consent without preamble or discussion the Local Authority has further rendered our clients property unsaleable.**

We have not re written the conclusion sections of the Statement of Case in full but would respond as follows :

*In response to the planning departments conclusion we note and agree that the continued unwillingness to consider any development of **this** site has been consistent however we would again suggest that this is not consistent with the approach taken on other, adjacent sites such as the development at Kim Place.*

We also note the planning departments version of events surrounding that development and the previous now deceased owners involvement in that process however we would disagree that his lack of comment on the issues we have now raised in any way changes the facts we have presented or the fact that the site could with judicious negotiation be rendered developable.

We would further point out that only 2no letters of objection were raised against this application and it remains our opinion that the points raised in those letters can be satisfactorily resolved. Indeed the planning department share this view with respect to the objections raised by the owners of Narnain – see their point 2.2.

The planning department state that the prime reason for refusal is that the application has not successfully demonstrated the technical requirements of the stated policies with respect to the proximity and amenity spaces of surrounding houses, separation distances, provision of meaningful amenity space loss of daylight to adjacent property and visual dominance however we would again reiterate that this application is for approval in principle only and that it remains our opinion that all of such matters can be dealt with to the satisfaction of objecting neighbours and within the spirit of the stated policies during the detailed design stage

Our client therefore calls upon the Review Board to disagree with the decision of Argyll & Bute Council Planning Department and grant planning consent with the following conditions :

- a). **That the detail design will address any potential loss of daylight to the window on the east gable of no 8 Stewart Street.**
- b). **That the detail design will provide information in respect of surface water drainage proposals (SuDS) for the application site.**
- c). **That the detail design will address any potential overlooking of the property at Narnain.**
- d). **That the detail design will address the issue of private amenity space associated with the donor dwelling.**

We trust this is in order and that our Notice of Request for Review will be considered on this basis.

**Yours sincerely
Bob Craig**

**Bob Craig BscBarch RIBA RIAS
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