

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

Reference No: 14/00885/PP

Planning Hierarchy: Local Application

Applicant: Mr Thomas Paterson and Mrs Margery Osborne

Proposal: Erection of 1.8 metre high fence and gates (retrospective)

Site Address: Land opposite 21 To 25 Cumberland Avenue, Helensburgh

DECISION ROUTE

(i) Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Erection of 1.8 metre high fence and gates (retrospective)

(ii) Other specified operations

- None
-

(B) RECOMMENDATION:

It is recommended that planning permission be refused for the reasons listed overleaf.

(C) HISTORY: Y

05/00514/DET – Erection of 7 dwellinghouses (refused 7 December 2005).

06/01317/DET - Erection of 6 dwellinghouses, formation of private way and new access (refused 8 September 2006)

06/02621/TPO - Application to fell trees in a TPO area (refused 28 February 2007)

The two latter applications were subject of an appeal dealt with by means of a conjoined Public Local Inquiry (PLI). A separate claim for an award of expenses against the Council in both cases was also made. The Reporter dismissed both the appeal and the claim of expenses.

(D) CONSULTATIONS:

Area Roads Manager (memo dated 24/04/2014 – No objections subject to conditions

Helensburgh Community Council (letter received 04/05/2014)

We wish to object strongly to this planning application. This is a much valued open space in west Helensburgh and HCC is in full support of A&BC's clear and commendable aim of restoring the amenity value of this land.

This site is designated in the A&BC 2009 Local Plan as an Open Space Protection Area (OSPA) and to protect it has a Tree Preservation Order (TPO) placed on it. A Tree Planting Notice was served – subsequently upheld on appeal by a Scottish Government on Appeal (Ref: DPEA Ref TENA: 130 2000). Subsequently, A&BC served an Enforcement Order on the owners to replace 28 trees already cut down to bring back their much loved amenity value temporarily lost by the felling of the protected trees on the site. HCC backs this action by the Council

The 1.8 M high fence and gates have been built without planning permission. As a result they are the subject of an A&BC Enforcement Order as they are:

“..... an alien and formal boundary treatment which undermines the previously attractive context of the street merging with an open space and which added considerably to the street at this point.”

HCC gives its full backing to this Order and regards the fence as totally inappropriate and alien. There is no other fence of this kind in Cumberland Avenue. It is a hard barrier and screen separating this piece of restored woodland from the surrounding streets. It is ugly and unattractive, and is totally unsympathetic to its surroundings. It undermines (deliberately or not) A&BC's determination to re-open this site and restore its Open Space designation for the value it gives to local residents for the open appearance and amenity value of this piece of land. Of course if the land is restored to Open Space HCC would expect the owners to remove the fence from the site along with all felled wood and equipment.

Granting retrospective planning permission in this instance would set a bad precedent for the town as a whole indicating that it could be much more easily obtained in similar situations in future. If this application is (hopefully) refused HCC gives its full support to the Helensburgh Community Woodland Group's long term objective of purchasing the site at Open Market Value from the owners and turning it into a Community Woodland open to all. This would bring an end to the long running battle between the parties involved over the development of this site. Hopefully our local Councillors would lend their weight to convincing the applicant to bring this about as the only viable and sustainable option.

(E) PUBLICITY: N

(F) REPRESENTATIONS: Y

16 letters and e-mails of objection and 3 letters of support have been received in connection with this application. The points of representation, both for and against the proposal, and my comments on them are summarised below:

Objectors

David Adams, 12 Cumberland Avenue, Helensburgh (e-mail dated 12/04/14)
Catriona Malan, 36A James Street, Helensburgh (letters dated 13/04/14)
David Robertson, 3, Flat 5 Achray Avenue, Alexandria (e-mail dated 17/04/14)
Tom Adam, 19 Cumberland Avenue, Helensburgh (letter dated 23/04/14)
James Crawford, 18 Loch Drive, Helensburgh (e-mail dated 22/04/14)
Heather Sykes, 16 Dalmore Crescent, Helensburgh (e-mail dated 29/04/14)
Ian Reed, 16 Fraser Avenue, Helensburgh (e-mail dated 29/04/14)
Pat Reed, 16 Fraser Avenue, Helensburgh (e-mail dated 29/04/14)
Michael Board, 1 Empress Drive, Helensburgh (e-mail dated 01/05/14)
John Christie, 10 Cumberland Avenue, Helensburgh (e-mail dated 30/04/14)
Catherine Grout, 18A Upper Glenfinlas Street, Helensburgh (e-mail dated 14/05/14)
Lorna Masterton, 8 Fraser Avenue, Helensburgh (e-mail dated 30/04/14)
Kathleen Siddle, 12 Duchess Park, Helensburgh (letter dated 15/04/14)
Steve Kirby, 8 Edward Drive, Helensburgh (e-mail dated 20/05/14)
Gordon Greig, Ardencaple Drive, Helensburgh (e-mail dated 20/05/14)
Dr I. E. Reay, 25 Strathclyde Court, Helensburgh (letter r'd 2/6/14)

Points of Objection

This 1.8 metre high fence is the subject of a formal Enforcement Notice which requires its removal and which was served by Argyll and Bute Council some considerable time ago. The reason the Council gave for the Enforcement Notice was that the fence “represents an alien and formal boundary treatment which undermines the previously attractive context of the street merging with the open space and which added considerable quality to the street at this point”. It is “alien” in that there is no other tall fence of this type in Cumberland Avenue. It is too high and looks hard, unattractive and unsympathetic to its surrounding.

Comment: See my assessment.

The land it borders is the subject of a Tree Preservation Order (TPO). The Council's admirable objective for this land is to restore its amenity value which was temporarily lost by the unauthorised felling of the protected trees there. The land was subject to a TPO and a subsequent Tree Replanting Notice has been upheld by a Scottish Government Reporter at Appeal (DPEA Ref TENA – 130 – 2000). If the fence were allowed to remain, it would act as a screen separating the restored land from the street and would therefore undermine the Council's objectives of giving the residents of Helensburgh back the appearance and amenity value of the green trees and open space of the land. And it would be in contradiction to the objectives of Policy LP ENV 1 of the adopted Local Plan.

Comment: See my assessment.

The site, being an OSPA, should not be restricted, as it has for some time. It is cynical in the utmost that the developers have trashed the ground and left it in such an unpleasant and unapproachable condition, then used this hazardous state as an excuse to continue to fence off the area, in spite of the order to remove the fence.

Comment: See my assessment.

It is good to see that the Council are taking control to re-instate this area for the public benefit by carrying out the replanting of 28 illegally felled trees. This together with removing the fence and gate will help restore this area to an accessible OSPA.

Comment: These points are noted.

The fence is a barrier to an area that historically was open to the public and under current Scottish Access Woodlands legislation should not be blocked-off to the public.

Comment: This point is noted and is being looked at under separate legislation. The fence and gates are assessed on their planning merits against development plan policy and other material considerations.

Supporters

Allan Jones, 23 Cumberland Avenue, Helensburgh (e-mail dated 16/04/14)
Eileen MacKay, 21 Cumberland Avenue, Helensburgh (e-mail dated 27/04/14)
Mr and Mrs James Barlas (e-mail dated 01/05/14)

Points of Support

Whilst it is a great shame that the destruction of the trees in the area has already taken place, it has taken place, and we now have to move on. I see the land as an obvious building plot, shouting out for the construction of houses. Unfortunately, as I live opposite this land, I realise that I would have to endure the greatest level of disruption should construction be given the go ahead. But despite that I still believe it would be the right decision in the long term to build.

Comment: This point is noted. The site has been the subject of a number of previous applications for housing development which have been refused and subsequently dismissed on appeal. The current proposal is a retrospective application for a fence and gates and is assessed on its planning merits against development plan policy and other material considerations.

The fence may be ugly but it does have a purpose. I believe that if it is taken down the land will be used as a tipping ground by all and sundry and would therefore be both an eyesore to residents and a danger to health and safety for people living within the vicinity. If the Council can unequivocally and 100% guarantee that they will both regularly clean up the plot and accept liability for any injuries, then, and only then, will I change my opinion. In the meantime the fence should remain.

Comment: The owners have responsibility for keeping the site clean and tidy and for safety. Under the Town and Country Planning (Scotland) Act 1997, if it appears to a planning authority that the amenity of any part of their area, or an adjoining one, is adversely affected by the condition of land in their area, they may serve a Notice on the owner or occupier requiring them to remedy its condition within a certain time. In addition, there is also other legislation to control fly tipping. See also my assessment.

(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

(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 Structure Plan' 2002

STRAT DC 1 – Development within the Settlements

'Argyll and Bute Local Plan' 2009

LP ENV 1 – Impact on the General Environment

LP ENV 19 – Development Setting, Layout and Design

LP REC 2 – Safeguarding of Recreational Land and Important Open Spaces

Appendix A – Sustainable Siting and Design Principles

- (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 and Bute Proposed Local Development Plan

Representations

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: N

(L) Has the application been the subject of statutory pre-application consultation (PAC): N

(M) Has a sustainability check list been submitted: N

(N) Does the Council have an interest in the site: N

(O) Requirement for a hearing (PAN41 or other): No. 15 letters and e-mails of objection and 3 e-mails of support have been received in connection with this application. However, the site has been the subject to previous applications some of which have been to appeal. This is a retrospective application for a fence and gates and it is not considered that there would be any added value by having a pre-determination Hearing.

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

Planning permission is sought retrospectively for the erection of a 1.8 metre high fence and gates on land at Cumberland Avenue, Helensburgh. The site is located in the west of the town and has a complex planning history. There are 3 enforcement cases relating to this site: - (1) Implementation of Tree Replacement Notice (2) Removal of Builders Materials (3) Removal of fence.

A meeting was held on the 4 March 2014 with the landowners to discuss various enforcement issues and other matters regarding this site. They have previously been advised that the fence required planning permission. The landowners were advised that an Enforcement Notice would be served the week beginning 17th March requiring the removal of the unauthorised wooden fence. This notice was to give the minimum 28 days before becoming effective and allowing 28 days for the required steps to be complied with. Should a Planning Application be submitted and made valid either before or during the Notice period then the appellants were advised that Enforcement activity would be withdrawn pending determination of the application. Should the fence be reduced in height at any time to 1m or below then it would be permitted development.

Subsequently, the Enforcement Notice was served on 26th March 2014 allowing 28 days before becoming effective and a further 28 days for the required steps to be complied with. This was a reasonable timescale which had already been flagged up to the landowners who understood the sequence of action the Council would take. An

application has now been submitted and, as such, the Enforcement Notice has been withdrawn pending its determination.

On Cumberland Avenue the boundary treatments are characterised by low walls and hedges. The only other, similar fence is directly opposite on the applicants' site where they have built 3 houses. Even here the fence is to the side and rear and the front of the properties retain their open aspect. Assessed on its merits against development plan policy and other material considerations, the wooden fence erected along the boundary of the land to Cumberland Avenue represents an alien and formal boundary treatment which undermines the previously attractive context of the street merging with the open space and which added considerable quality to the street scene at this point. The retention the fence also undermines the Council's objectives to seek to restore the amenity value of the site caused by the unauthorised felling of protected trees on land subject to a Tree Preservation Order and where a Tree Replanting Notice has been upheld by a Reporter at appeal (DPEA Reference TENA-130-2000). The retention of the fence would therefore screen the site separating it from the street scene and undermine the Council's objectives of restoring the appearance and associated amenity value of the land to the locality contrary to the objectives of Policy LP ENV 1 of the adopted local plan.

(Q) Is the proposal consistent with the Development Plan: N

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

On Cumberland Avenue the boundary treatments are characterised by low walls and hedges. The only other, similar fence is directly opposite on the applicants' site where they have built 3 houses. Even here the fence is to the side and rear and the front of the properties retain their open aspect. Assessed on its merits against development plan policy and other material considerations the wooden fence erected along the boundary of the land to Cumberland Avenue represents an alien and formal boundary treatment which undermines the previously attractive context of the street merging with the open space and which added considerable quality to the street scene at this point. The retention the fence also undermines the Council's objectives to seek to restore the amenity value of the site caused by the unauthorised felling of protected trees on land subject to a Tree Preservation Order and where a Tree Replanting Notice has been upheld by a Reporter at appeal (DPEA Reference TENA-130-2000). The retention of the fence would therefore screen the site separating it from the street scene and undermine the Council's objectives of restoring the appearance and associated amenity value of the land to the locality contrary to the objectives of Policy LP ENV 1 of the adopted Local Plan.

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

N/A

(T) Need for notification to Scottish Ministers or Historic Scotland: N

Reviewing Officer: Ross McLaughlin

Date: 5/6/14

Angus Gilmour
Head of Planning

GROUND OF REFUSAL RELATIVE TO APPLICATION REF. NO. (14/00885/PP)

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NOTES TO APPLICANT

For the purpose of clarity it is advised that this decision notice relates to the details specified on the application form dated 1 April 2014 and the refused drawing reference numbers 2279..01 and 2279..02.