

Argyll and Bute Council
Comhairle Earra Ghaidheal agus Bhoid

Customer Services
Executive Director: Douglas Hendry



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2 August 2011

NOTICE OF MEETING

A meeting of the **ARGYLL AND BUTE LOCAL REVIEW BODY** will be held in the **MEMBERS ROOM, KILMORY, LOCHGILPHEAD** on **TUESDAY, 9 AUGUST 2011** at **9:45 AM**, which you are requested to attend.

Douglas Hendry
Executive Director - Customer Services

BUSINESS

1. **APOLOGIES FOR ABSENCE**
2. **DECLARATIONS OF INTEREST (IF ANY)**
3. **CONSIDER NOTICE OF REVIEW: DRUMFORK HOUSE, DRUMFORK ROAD, HELENSBURGH G84 7TS**
 - (a) Notice of Review and Supporting Documents (Pages 1 - 30)
 - (b) Response from Interested Party (Pages 31 - 44)

ARGYLL AND BUTE LOCAL REVIEW BODY

Councillor Roderick McCuish (Chair)
Councillor Neil Mackay

Councillor Bruce Marshall

Contact: Fiona McCallum, Committee Services Officer Tel: 01546 604406

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Planning Services Dalriada House Lochgilphead PA31 8ST

Tel: 01546 604840

Fax: 01546 604822

Email: planning.hq@argyll-bute.gov.uk

Planning Department

Applications cannot be validated until all necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 000023179-001

The online ref number is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the Planning Authority about this application.

Applicant or Agent Details

Are you an applicant, or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:

MH Planning Associates

Ref. Number:

First Name: *

Michael

Last Name: *

Hyde

Telephone Number: *

07816 907203

Extension Number:

Mobile Number:

Fax Number:

Email Address: *

mh@mhplanning.co.uk

You must enter a Building Name or Number, or both:*

Building Name:

The Mews

Building Number:

11B

Address 1 (Street): *

West Abercromby Street

Address 2:

Town/City: *

Helensburgh

Country: *

UK

Postcode: *

G84 9LH

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title: *	<input type="text" value="Mr"/>
Other Title:	<input type="text"/>
First Name: *	<input type="text" value="K"/>
Last Name: *	<input type="text" value="O'Neill"/>
Company/Organisation:	<input type="text"/>
Telephone Number:	<input type="text"/>
Extension Number:	<input type="text"/>
Mobile Number:	<input type="text"/>
Fax Number:	<input type="text"/>
Email Address:	<input type="text"/>

You must enter a Building Name or Number, or both:*

Building Name:	<input type="text" value="Drumfork House"/>
Building Number:	<input type="text"/>
Address 1 (Street): *	<input type="text" value="Drumfork Road"/>
Address 2:	<input type="text"/>
Town/City: *	<input type="text" value="Helensburgh"/>
Country: *	<input type="text" value="Scotland"/>
Postcode: *	<input type="text" value="G84 7TS"/>

Site Address Details

Full postal address of the site (including postcode where available):

Address 1:	<input type="text" value="DRUMFORK HOUSE"/>	Address 5:	<input type="text"/>
Address 2:	<input type="text" value="DRUMFORK ROAD"/>	Town/City/Settlement:	<input type="text" value="HELENSBURGH"/>
Address 3:	<input type="text"/>	Post Code:	<input type="text" value="G84 7TS"/>
Address 4:	<input type="text"/>		

Please identify/describe the location of the site or sites.

Northing	<input type="text" value="681895"/>	Easting	<input type="text" value="231097"/>
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Description of the Proposal

Please provide a description of the proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Repositioning of gates and erection of boundary fence

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time of expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Statement of Case

Have you raised any matters which were not before the appointed officer at the time the determination on your application was made? *

Yes No

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

Statement of Case, Report of Handling, Decision Notice and Refused Plans

Application Details

Please provide details of the application and decision.

What is the application reference number? *

10/01287/PP

What date was the application submitted to the planning authority? *

04/08/10

Has a decision been made by the planning authority? *

Yes No

What date was the decision issued by the planning authority? *

15/04/11

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be conducted by a combination of procedures.

Please select a further procedure *

Inspection of the land subject of the appeal. (Further details below are not required)

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? * (Max 500 characters)

In order for an appropriate assessment of the issues to be made

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

Checklist - Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant? *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare - Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Michael Hyde

Declaration Date: 31/05/2011

Submission Date: 31/05/2011

**REVIEW OF THE REFUSAL OF PLANNING
PERMISSION FOR THE REPOSITIONING OF
GATES AND THE ERECTION OF A
BOUNDARY FENCE, LAND AT DRUMFORK
HOUSE, DRUMFORK ROAD,
HELENSBURGH, G84 7TS**

STATEMENT OF CASE

Submitted on behalf of Mr K O'Neill



MH Planning
Associates

REVIEW OF THE REFUSAL OF PLANNING PERMISSION FOR THE REPOSITIONING OF GATES AND THE ERECTION OF A BOUNDARY FENCE, LAND AT DRUMFORK HOUSE, DRUMFORK ROAD, HELENSBURGH, G84 7TS

STATEMENT OF CASE

1. Background:

Planning permission for the “repositioning of gates and the erection of a boundary fence” at Drumfork House, Helensburgh, was refused on 15 April 2011 for the following reason (Council reference 10/01287/PP):

“The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore, in order to allow the driveway gates to be opened to allow vehicle entry into the property this would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LP TRAN 4 - New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues.

In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, create a less user friendly right of way and introduce a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of Policy LP TRAN 1- Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.”

2. Site Description:

Drumfork House is a Category B listed building, built circa 1720, and believed to be the oldest house in Helensburgh. It sits within a substantial residential curtilage. The fence and gates the subject of the current appeal would help define the boundary of this curtilage. The proposed development does not however require listed building consent, and at no point in time has potential impact upon the setting of the listed building been raised as a planning concern.

3. Relevant Planning History:

A previous planning application for essentially the same development as that the subject of the current review was submitted in December 2009 (Council reference 10/00006/PP). Planning permission was granted on 21 June 2010 subject to 3 conditions including the following:

"The development shall be implemented in accordance with the details specified on the application form dated 04/12/09 and the approved drawing reference numbers 1 off 3, 2169.1 and 2010_0018/1 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."

The plans referred to in this condition indicated that the relocated gates would be in a position 6 metres back from the rear of the footway to Beechgrove Place, and that the approved 1.8 metre high boundary fence would terminate at the relocated gates.

4. Proposed Development:

The development now proposed is the introduction of gates immediately to the rear of the Beechgrove Place footway, and the continuation of the approved boundary fence to terminate at these gates. In this respect it has previously been acknowledged to Planning Officers that, because of a genuine misunderstanding, the approved boundary fence has already been extended to meet the rear of the footway, without the benefit of the necessary planning permission. The gates have however not been relocated as approved under planning permission reference 10/00006/PP, and therefore remain in their original position.

5. Relevant Development Plan Policies:

Section 25 of the Town and County Planning (Scotland) Act 1997 states that "where in making any determination under the planning act regard is to be had to the Development Plan, the determination shall be in accordance with the plan unless material considerations indicate otherwise".

The Development Plan relevant to the current review comprises:

- The Argyll and Bute Structure Plan 2002; and
- The Argyll and Bute Local Plan 2009

The two following policies are referred to in the reason for refusal of planning permission:

Policy LP TRAN 1, which states that development proposals shall safeguard public rights of way, core paths and important public access routes; and

Policy LP TRAN 4, which states where new development will utilise a private access regimes, this should be constructed to incorporate the following minimum standards in order to function effectively and safely:

1. Adequate visibility splays, to the satisfaction of the Area Roads Engineer, shall be provided at the access's junction with the public road network;
2. The access shall be graded to prevent surface water run off onto the public road and be of a minimum width of 4.5 metres for a distance of 10 metres from its junction with the public road; (the first 5 metres of which shall be surfaced in bituminous material); The remaining length of the access shall have a minimum width of 3 metres along its length (minimum of 3.7 width from wall to wall) from the public road to the development site;
3. The access must be formed with dropped kerbs and have a strong physical definition to indicate the nature of the layout to the driver and that it is a private area;
4. A turning head capable of accommodating service and emergency vehicles shall be provided either within the development site or attached to the access in a position no closer to the public road than the development site; and
5. Where appropriate, the provision of intervisible passing places.

6. Grounds of Appeal:

The single reason for the refusal of planning permission expresses two distinct concerns. The first of these relates to the proposed position of the gates immediately adjacent to the heel of the Beechgrove Place footway. It is the opinion of Planning Officers that in such a situation the parking of an approaching vehicle would obstruct the passage of other vehicles using Beechgrove Place, and that this would create a hazard contrary to the provisions of Local Plan Policy LP TRAN 4.

This Policy however relates primarily to circumstances where either new development would utilise an existing private access regime, or where a new private access is being proposed. In respect of the review application no new development that would increase the amount of traffic using the existing private access is being proposed.

The main reason behind the original (and subsequent) application for planning permission is that it is strongly considered that the provision of gates at the back of the Beechgrove Place footway will act as a visible deterrent to indiscriminate parking. In this respect the existing access is blocked on an almost daily basis, particularly during school term times. Although the police attempt to monitor the situation the problem persists, and my client has been verbally abused when requesting that parked vehicles be moved. During a recent occurrence my client's doctor was physically prevented from using this access because of an unattended vehicle having been parked across the entrance to the property.

Beechgrove Place is a short residential cul-de-sac serving only 18 dwellings, and there is a 30 mph speed restriction in place. Traffic speeds are slow because of the configuration of the road, and the risk of an accident is remote. In addition, vehicular access to Drumfork House would be required on only a small number of occasions per day, and the time taken to park an approaching vehicle open the gates would be minimal. Having regard to all of these factors it is considered that the concerns being expressed regarding the possible obstruction to the passage of vehicles using Beechgrove Place are being exaggerated.

Furthermore, there are many other existing situations within the town where new gates have been permitted at the rear of a footway, and where parked vehicles would also obstruct the free flow of pedestrian and/or vehicular traffic. A number of photographs taken to illustrate this point are submitted as **Appendix 1** to this statement. A particular recent example of this is the approval of planning application 09/01785/PP, for the formation of a new access to 129 Sinclair Street, Helensburgh (Photograph 1).

In this instance new access gates have been approved approximately 2.5 metres back from the edge of the carriageway. Any vehicle parking here whilst these gates are being opened blocks not only the entirety of the footway, but also the adjacent cycle lane. In this latter respect in particular, cyclists now have to pull out into the flow of traffic in order to proceed, with potentially significant consequences given that the speed of traffic in this location is often very much in excess of the 30 mph speed limit.

The second concern expressed in the reason for refusal relates to the position of the boundary fence, and the realignment of the adjacent footpath, which it is considered will restrict pedestrian forward visibility, create a less user friendly right of way and introduce a conflict with vehicular traffic at the corner of Beechgrove Place. In reality the opposite is true; the provision of a fence effectively segregates pedestrian and

vehicular traffic, reducing the potential for conflict, and creating a safer walking environment.

Nevertheless, having regard to the Council's concerns regarding users of the footpath, an amendment to the originally submitted proposal was submitted prior to the determination of the review application. This showed:

- The reduction in height of the currently unauthorised length of boundary fence, from 1.8 metres, to 1.0 metre, and
- The installation of new 1.0 metre gates at the rear of the footway, as opposed to the relocation of the existing gates.

It is considered that the reduction in height of the boundary fence will significantly improve the intervisibility between pedestrians and vehicle drivers, whilst continuing to maintain the physical separation of users.

7. Conclusion:

In support of this review, a letter written to the Council by Jackie Baillie MSP, is submitted. In this letter it is noted that the proposed gates must be positioned at the rear of the pavement in order to deter people from parking in front of, and blocking, the driveway and that (without such gates) the access will be regularly blocked. Ms Baillie clearly considers that the amended submission (i.e. showing the lowering of the currently unauthorised length of fence and the installation of new 1.0 metre high gates) is a reasonable and practical solution that addresses the applicant's aim of defining the boundary to his property, whilst also seeking to redress the Council's concerns.

In conclusion it is hoped that Members of the Review Body will, in this instance, also agree that there are insufficient highway safety grounds to warrant the refusal of planning permission, and that on this basis grant planning permission for the lowering of the existing boundary fence and the provision of new entrance gates, subject to the imposition of the following two conditions:

1. Within 3 months of the date of this permission the section of boundary fence running from the position of the gates approved under planning permission reference 10/00006/PP, to the back of the Beechgrove Place footway, shall be lowered to a height not exceeding 1.0 metre above the adjacent ground level.
2. The entrance gates hereby permitted shall not exceed 1.0 metre in height when measured from the adjacent ground level.

APPENDIX 1

Photographs of a selection of gates in Helensburgh, all set less than 6.0 metres from the pavement and/or carriageway



Photograph 1



Photograph 2



Photograph 3



Photograph 4



Photograph 5



Photograph 6



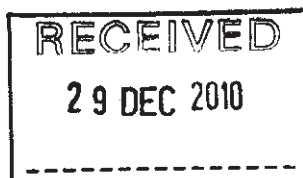
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Howard Young
Team Leader
Development Management
Argyll & Bute Council
Blairvadach
Shandon
By Helensburgh
G84



Our Ref: O'NE01008/01100643

23 December 2010

Dear Mr Young

Mr K. O'Neill, Drumfork House, Drumfork Road, Helensburgh

I have been contacted by Mr O'Neill regarding an ongoing dispute which he has with the Council in relation to fencing.

I understand that fencing was initially erected for the safety of children coming from the footpath across the access road to Drumfork House.

Mr O'Neill first applied for planning permission to erect a boundary fence and reposition his existing gates at the rear of the Beechgrove Place footway. I am advised that the Council raised concerns about the positioning of the gates although this was overcome by amended plans being submitted showing the gates set 6 metres back from the footway. However, Mr O'Neill would like to reposition his gates at the back of the footway and I understand that he applied for planning permission on 3 August 2010 and that the Council has maintained an objection to the proposals.

I am advised that a short section of the boundary fencing which was erected was not approved. This section appears to have been an oversight on the part of Mr O'Neill. To overcome the problems, Mr O'Neill has offered to surface the footpath at his own expense and also to lower the unauthorised section of the fence and to install new gates. These solutions appear to offer a reasonable and practical proposal as it will both achieve Mr O'Neill's aim of defining the boundary of his property whilst seeking to redress the Council's concerns.

The gates require to be positioned right at the pavement to alert people from parking in front of the driveway and blocking the driveway. There is access there. There appears to be a daily problem during the school run period. Although the Police monitor this, the problem persists. Mr O'Neill's access is regularly blocked and he has been verbally abused as people are not aware that it is an access as they can see no gates.

Mr O'Neill advises me that he has submitted these suggestions to the Council.

Mr O'Neill has had an ongoing problem with a neighbour coming in to his property up to five times a day. On some occasions the Police have had to be called. Mr O'Neill was advised by Police that he did not have the power to deter the lady if there were no gates in place to act as a barrier.

I would therefore be grateful if you would consider the reasonable measures presented by Mr O'Neill and work with him to find a solution to the ongoing difficulties which he is experiencing.

Many thanks for your assistance.

Yours sincerely,



Jackie Baine MSP
Dumbarton Constituency

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: 10/01287/PP

Planning Hierarchy: Local

Applicant: Mr and Mrs O'Neill

Proposal: Repositioning of gates and erection of boundary fence

Site Address: Drumfork House, Drumfork Road, Helensburgh G84 7TS

DECISION ROUTE

(i) **Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997**

(A) THE APPLICATION

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

Repositioning of gates and erection of boundary fence

(ii) **Other specified operations**

None

(B) RECOMMENDATION:

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

(C) HISTORY:

09/00903/PP – Erection of timber fence and hardstanding - granted 21.07.2009

10/00006 – Erection of fence and repositioning of gates – granted 21.06. 2010

(D) CONSULTATIONS:

Area Manager Roads (memos dated 13.09.2010, 25.11.2011 and 04.03.2011)

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. As previously intimated I would recommend that the gates are positioned a minimum distance of 6 metres behind the heel of footway.

The position of the fence and the realignment of the footpath will restrict pedestrian forward visibility and creates a less user friendly right of way. This footpath is used by a number of local parents and children taking access to the nearby primary school. A further benefit gained by locating the gates back 6 metres from the heel of the footway would mitigate the requirement to provide a new footway at this location.

I confirm I would not support this amendment and recommend refusal in the interest of road and pedestrian safety.

(E) PUBLICITY: Listed Building/Conservation Advert
Expiry Date: 01/10/2010

(F) REPRESENTATIONS: Representations were received dated 12th September and 11th November 2010 from Mrs Isabel Strain, c/o 8, Leven Avenue, Helensburgh in two letters the second of which included a petition of 38 signatures. The points raised and comments are as follows –

1. The fence has incorporated a part of the pathway used by schoolchildren on way to Colgrain School and it has now become a muddy dirt track.
Comment – See my assessment
2. There is a danger to children from vehicles travelling along Beechgrove Place and entering the driveway as they emerge from behind the high fence at Beechgrove Place.
Comment – See my assessment
3. This is the only pathway that children can use on this side of the main road and should be improved for children's safety.
Comment – See my assessment

A letter dated 11th September 2010 was received from Kenneth J. Yates, 29, Redgauntlet Road which indicated that whilst not objecting to the fence it had in fact been erected.

A letter of support dated 23rd December 2010 was received from Jackie Baillie MSP which indicated that she considers the applicants' offer to lower the height of the fence and gates and to resurface part of the pathway adjacent to the site is a reasonable and practical solution as it achieves the applicants' aims of defining the boundary and protecting security whilst alleviating the parking which blocks the driveway and also addresses the Council's concern.

A supporting statement was submitted which indicated that –

On the basis of these concerns and in order for planning permission for the erection of the proposed boundary fence to be granted quickly, my client reluctantly amended his application to show his existing gates repositioned 6.0 metres back from the back of the Beechgrove Place footway. It was on this basis that planning permission was ultimately granted. In essence this re-submitted application now seeks a variation of Condition 2 of the previous grant of planning permission, in order to permit the repositioning of the existing access gates at the back of the footway of Beechgrove Place (see drawing 2010_0018/1A for details).

The application is made under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997, which permits the submission of applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In determining applications made under Section 42 the planning authority can consider only the question of the conditions subject to which planning permission should be granted, and should consider such applications reasonably having regard to the provisions of the development plan and to any other material considerations.

It is considered that the Councils recent approval of application 09/01785/PP, for the formation of a new access to 129 Sinclair Street, is a material consideration. In this instance new access gates have been approved approximately 2.5 metres back from the edge of the carriageway. Any vehicle parking whilst these gates are being opened therefore blocks not only the entirety of the footway, but also the entirety of the adjacent cycle lane. In this latter respect in particular cyclists now have to pull out into the flow of traffic in order to proceed, with potentially dangerous consequences given that the speed of traffic in this location is often in excess of the 30 mph speed limit.

In contrast to this, Beechgrove Place is a short residential cul-de-sac, where traffic speeds are exceptionally low. It is accepted that twice a day (albeit only during term time) the road can be busy but other than at these times it is not considered that the occasional parking of a vehicle waiting to enter Drumfork House is going to create a particular highway danger given that the proposed gates will be electronically operated. Finally, it is also important to note that Drumfork House benefits from a second point of vehicular access directly onto Redgauntlet Road, which can therefore be used should the necessity arise. The erection of gates at this point of access was the subject of planning approval reference 09/00903/DET dated 21 July 2009. With respect to the Area Road Engineer's second point of concern the submitted drawing No 2010_0018/1A clearly shows that a 1.5 m wide footpath can be maintained along the boundary of the site. In conclusion it is considered that for the above reasons the potential highway safety issues associated with the proposed location of the access gates have been overestimated, and that the concerns of the Area Roads Manager are inconsistent when taken in the context of the approval of planning permission 09/01785/PP. On this basis it is considered that planning permission for the proposal as now submitted should be granted.

It was further contended by the applicant that normally the portion of the fence and gates reduced to 1m. in height would be considered as permitted development. They were however only not considered as permitted development as they were within the curtilage of a Listed Building and that in their position they would not affect the setting or amenity of the Listed Building.

Comment – Each planning application is determined on its own merit and although similarities are alleged between this proposal and application 09/01785/PP the circumstances are such that there is good visibility in both directions at 129 Sinclair Street and the width of the carriageway is satisfactory

It is acknowledged that the fencing and gates due to their position would not materially affect the setting or amenity of the Listed Building and that the overall design and finishing materials are satisfactory.

Notwithstanding the above points it is considered that the proposal would lead to a reduction in forward pedestrian and vehicle visibility to the detriment of overall safety.

(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**

(H) PLANNING OBLIGATIONS

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

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

-
- (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 Plan' 2009

LP ENV 1 – Impact on the General Environment

LP ENV 13a – Development Impact on Listed Buildings

LP ENV 19 – Development Setting, Layout and Design

LP TRAN 1 – Public Access and Rights of Way

LP TRAN 4 – New and Existing Public Roads and Private Access Regimes

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 & Bute Sustainable Design Guidance (2006)

(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): N

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

Planning permission was originally sought for the erection of a 1.8m. high wooden fence, access gates and alterations to the access to this Category B Listed Building. The application is partly retrospective as the 1.8m. high fence has been erected.

Planning consent was previously granted in 2010 for new fencing some 1.8m in height along part of this boundary with new gates located 6m from the junction with Beechgrove Place. The fence has now been extended to the west without planning permission up to the heel of the footway at Beechgrove Place. The gates however have not been moved and remain in their original position.

In the previous application submitted in 2010 the fence and gates were originally shown abutting Beechgrove Place.

The Area Roads Manager however expressed concern with regards to the positioning of the fence and proposed gates which were located on the heel of the footway at the access on a corner of Beechgrove Place for two reasons.

- i. Due to a high level of parking and vehicle movement associated with picking up pupils from the nearby school he was of the opinion that the initial proposal could lead to poor forward visibility and traffic conflict on this corner as vehicles would have to wait on the road whilst opening the gates.
- ii. The position of the proposed fence and gates restricted the forward visibility for pedestrians mainly children using this footpath on route to the local school.

After discussion however, amended plans were received which indicated that the fence would be moved back 6.0m. from Beechgrove Place and the gates repositioned to that point. This was considered acceptable by the Area Roads Manager and the objection

was withdrawn. The application with the amended position of fence and gates was subsequently approved.

The applicant has indicated that the unauthorised continuation of the fence out to Beechgrove Place as constructed and the proposed repositioning of the gates are required for security to the premises. This would prevent conflict with pedestrians and vehicles at the present access as during picking up time from the nearby school and at other times cars often park in front of the access road not realising it is an active access due to the absence of a visible gate.

Amended plans were received showing the fence along the southern boundary of the access road and the gates being reduced to 1m. in height although the fence to the north of the access road would remain at 1.8m. in height.

It was contended by the applicant that normally the portion of the fence and gates reduced to 1m. in height would be considered as permitted development. They were however only not considered as permitted development as they were within the curtilage of a Listed Building and that in their position they would not affect the setting or amenity of the Listed Building.

It is acknowledged that the fencing and gates due to their position would not materially affect the setting or amenity of the Listed Building and that the overall design and finishing materials are satisfactory.

As planning permission is required however, the proposal requires to be evaluated against the relevant policies in the Development Plan as indicated by Section 25 of the Town and Country Planning (Scotland Act 1997.

As such the Network and Environmental Manager was again consulted on traffic implications with regards to the new proposals

The reply indicated that -

'As previously stated in my memo dated 25th November 2010 I acknowledge that the reduction in the height of the proposed fence and gates at the entrance located on Beechgrove Place would assist with the visibility sightlines of both the pedestrians and vehicle movements.

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. As previously intimated I would recommend that the gates are positioned a minimum distance of 6 metres behind the heel of footway.

The position of the fence and the realignment of the footpath will restrict pedestrian forward visibility and creates a less user friendly right of way. This footpath is used by a number of local parents and children taking access to the nearby primary school. A further benefit gained by locating the gates back 6 metres from the heel of the footway would mitigate the requirement to provide a new footway at this location.

I confirm I would not support this amendment and recommend refusal in the interest of road and pedestrian safety.'

I conclude therefore, that the fencing as erected and proposed gates would lead to and contribute to and undesirable development which due to their position could encourage

on street idling and manoeuvring at a bend by stationary vehicles creating a hazard to other road users. The proposal would (notwithstanding the fact that new tarmac contributing to the footway has been laid) also restrict pedestrian forward visibility and create a less user friendly public footpath.

As such, the proposal would be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the proposal would also be contrary to the provisions of Policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

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

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

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, creates a less user friendly right of way and creates a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

(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

Author of Report: Gordon Hotchkiss

Date: 09/03/2011

Reviewing Officer: Howard Young

Date: 31/03/2011

Angus Gilmour
Head of Planning

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 10/01287/PP

1. The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore, in order to allow the driveway gates to be opened to allow vehicle entry into the property this would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, create a less user friendly right of way and introduce a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of Policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

INFORMATIVES

APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application 10/01287/PP

(A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended)?

N

(B) Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing?

N

(C) The reason why planning permission been refused.

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, creates a less user friendly right of way and creates a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND) REGULATIONS 2008

REFUSAL OF PLANNING PERMISSION

REFERENCE NUMBER: 10/01287/PP


Mr and Mrs Kevan O'Neill
Michael Hyde
The Mews
11B West Abercromby Street
Helensburgh
G84 9LH

I refer to your application dated 4th August 2010 for planning permission under the above mentioned Act and Regulations in respect of the following development:

Repositioning of gates and erection of boundary fence at Drumfork House Drumfork Road Helensburgh Argyll And Bute G84 7TS

Argyll and Bute Council in exercise of their powers under the above mentioned Act and Regulations hereby refuse planning permission for the above development for the **reason(s) contained in the attached appendix**

Dated: 15 April 2011



Angus J. Gilmour
Head of Planning and Regulatory Services

REASONS FOR REFUSAL RELATIVE TO APPLICATION NUMBER 10/01287/PP

1. The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore, in order to allow the driveway gates to be opened to allow vehicle entry into the property this would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 - New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, create a less user friendly right of way and introduce a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of Policy LPTRAN 1- Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

NOTES TO APPLICANT (1) RELATIVE TO APPLICATION NUMBER 10/01287/PP

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may require the planning authority to review the case under Section 43A of the Town and Country Planning (Scotland) Act 1997 (as amended) within three months from the date of this notice. The notice of review should be addressed to the Director of Customer Services, Argyll and Bute Council, Kilmory, Lochgilphead, PA31 8RT.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state, and it cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the landowner's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997 (as amended).

For the purpose of clarity it is advised that this decision notice relates to the details specified on the application form dated 3 August 2010 and the refused drawings 2010_0018-01 Revision B.



red line indicates extent of application site

Date	Description	Rev	By
Revision Description			



 michael hyde Planning consultant

the mews
 11b west abercromby street
 helensburgh
 g84 9lh
 01436 675 376
 07816 907 203
 mlkehyde@mhpplanning.co.uk

THIS DRAWING IS COPYRIGHT

Client:
 Mr & Mrs K O'Neill

Project:
 Repositioning of Gates & Erection of Boundary Fence
 Drumfork House, Helensburgh, G84 7TS
 (Amendment to Approval Ref: 10/00006/PP)

Drawing Title:
 Site Plan

Drawing Number:
 2010_0018/00

Revision:
 Date: August 2010
 Scale: 1:2500 @ A4
 Drawn By: KM

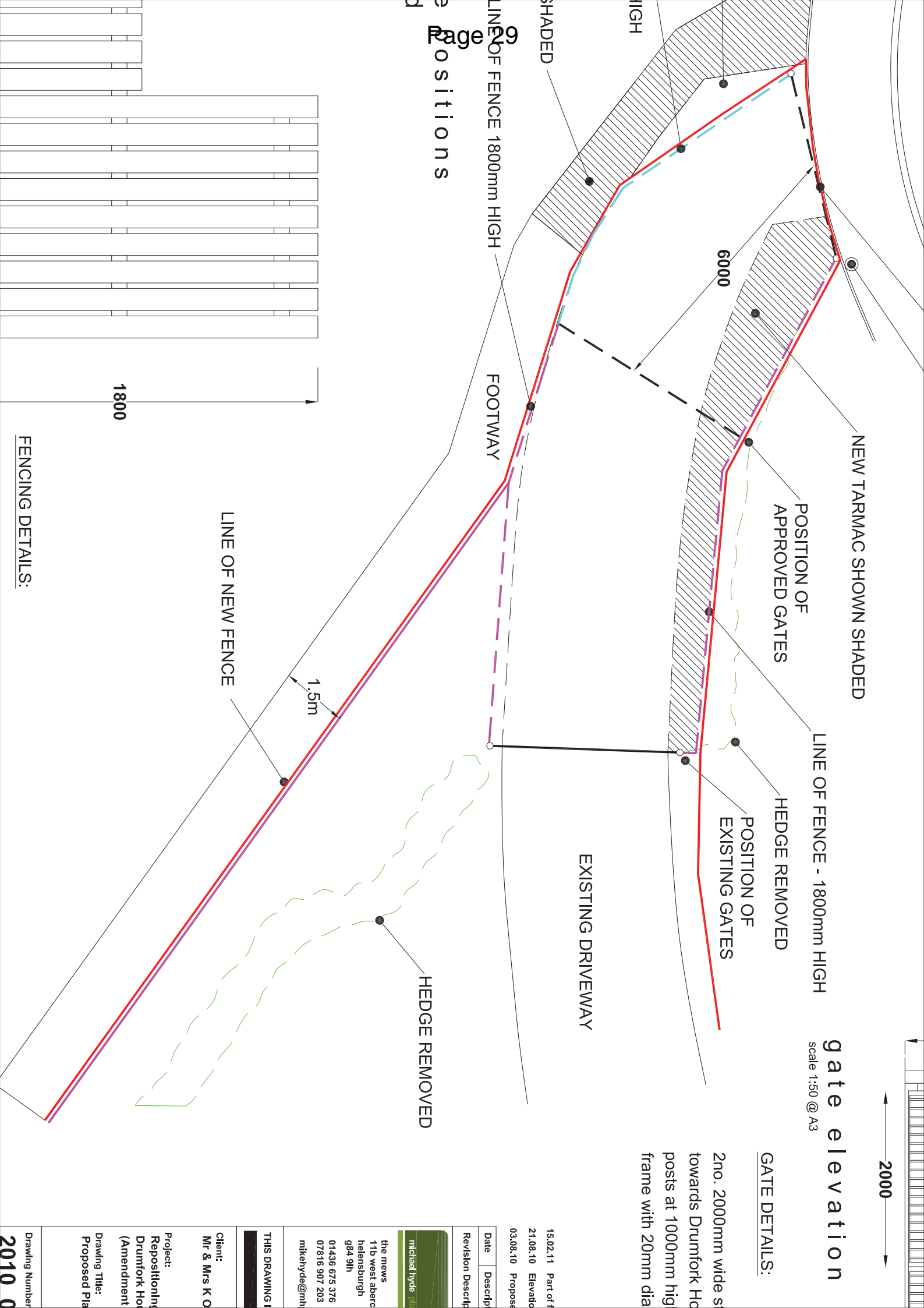
Issue Status:
Planning

2000

gate elevation

scale 1:50 @ A3

GATE DETAILS:
2no. 2000mm wide s
towards Drumfork Hd
posts at 1000mm hig
frame with 20mm dia



Page Positions

FENCING DETAILS:

15.02.11	Part of f
21.08.10	Elevatio
03.08.10	Propose
Date	Descripti
Revision	Descripti
the mews 111b west aberc helensburgh g84 9ln 01436 675 376 07816 907 203 mikehyde@rnh	
THIS DRAWING I	
Client: Mr & Mrs K O	
Project: Repositioning Drumfork Ho (Amendment	
Drawing Title: Proposed Pla	
Drawing Number	
2010 0	

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**STATEMENT OF CASE
FOR
ARGYLL & BUTE COUNCIL
LOCAL REVIEW BODY**

**REFUSAL OF PLANNING PERMISSION FOR THE
REPOSITIONING OF GATES AND ERECTION OF
BOUNDARY FENCE AT DRUMFORK HOUSE,
DRUMFORK ROAD, HELENSBURGH**

PLANNING APPLICATION

REFERENCE NUMBER 10/01287/PP

LOCAL REVIEW BODY REFERENCE 11/0004/LRB

20 June 2011

INTRODUCTION

The Planning Authority is Argyll & Bute Council ('the Council'). The appellant is Mr. K O'Neill ('the appellant').

The detailed planning application, reference number 10/01287/PP, for the repositioning of gates and erection of boundary fence at Drumfork House, Drumfork Road, Helensburgh ('the appeal site') was refused under delegated powers on 15 April 2010. The planning application has been appealed and is subject of referral to a Local Review Body, reference number 11/0004/LRB.

DESCRIPTION OF SITE

The application site is a Category B listed building set back from Drumfork Road, Helensburgh. Historic Scotland defines a Category B listed building as a building of regional or more than local importance, or major examples of some particular period, style or building type which may have been altered.

SITE HISTORY

Erection of timber fence and hardstanding (Retrospective) was granted on 21 July 2009 under reference 09/00903/PP

Erection of fence and repositioning of gates was granted on 21 June 2010 under reference 10/00006/PP

STATUTORY BASIS ON WHICH THE APPEAL SHOULD BE DECIDED

Section 25 of the Town and Country Planning (Scotland) Act 1997 provides that where, in making any determination under the Planning Acts, regard is to be had to the Development Plan and the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

Argyll & Bute Council considers the determining issues in relation to the case are as follows:

- Whether the proposal accords with Development Plan policy and whether there are any material considerations to outweigh these adopted policies. In particular the key issue is road and pedestrian safety

The Report of Handling (Appendix 1) sets out the Council's assessment of the application in terms of Development Plan policy and other material considerations.

COMMENTS ON APPELLANT'S SUBMISSION

With reference to the Local Plan guidance and the road safety concerns relevant to the assessment of this application.

The prime consideration in this instance i.e. the main conflict appears to be around the time the local school pedestrian and vehicular traffic is at its peak. The important issue to

consider is the safety of the school children. The assessment takes into account the recent Council policy to reduce the school bus provision which now encourages walking to school. The proposed development would have a detrimental impact at this location. Colgrain Primary School historically has and continues to experience problems with the number of parents using their cars to drop off or collect their children from this school. A number of meetings have taken place with the school staff, local Ward Members, road officers and walking routes to school officers in an effort to resolve this matter. Therefore the recommendation from the officers to the applicant to position the gates back, takes away the conflict of vehicles trying to pass during the operation of entering/ exiting the property and with the added benefit this maintains the open area to allow the groups of children the opportunity to take position, observe and cross the road safely.

To support these concerns I include comments received from my colleagues with the road safety team responsible for the provision of safer routes to schools.

“Following a site visit to the path at Colgrain, I would have serious concerns if the applicant were to be granted permission to move the gates closer to the footpath entrance.”

Congestion at Colgrain Primary School has been an issue for many years and we work very closely with the school to try and resolve this. In the last year, since the change in the provision of free school transport, there has been an increase in the number of children walking and being dropped off by car at Redgauntlet Road. This path provides a safe route to school for pupils who are both supervised and unsupervised. If the gates were moved and 1 metre fence erected this would be in conflict with these pedestrians. Bearing in mind this is a primary school, therefore a lot of the children are small and not able to see over the fence or potentially not be seen by on coming drivers. The original open area allows for the children to cross with less conflict and I would request the unauthorised fence be removed.”

Specific reference is made by the appellant to a particular application within Helensburgh, Ref No 09/01785/PP, at No 129 Sinclair Street. This location offered as an example was discussed and explained to the applicant's agent during the original planning application submission.

All individual applications are assessed and determined on their merits in accordance with the council policies and the road safety implications. At this particular location the road has good forward sightline visibility and the road width is over 10metres. It is a single carriageway with road markings to delineate two vehicle lanes and two cycle lanes. Any cyclist travelling with the flow of traffic, approaches this entrance whilst travelling up hill (Sinclair Street is a steep gradient).i.e. slow moving. The position of the entrance gates, the width of the existing footway and the width of the cycle lane creates sufficient length to allow any vehicle waiting whilst the gates are opened sufficient distance not to encroach onto the designated vehicular lane. Therefore in this instance the proposals were assessed as not to compromise road safety of other road users.

Regarding the submission of a series of photographs, I am unable to make comment without the knowledge of the specific locations. However, it would appear that these examples show new gates at existing property openings. These openings would appear to be formed prior to the adoption of the Argyll & Bute Local Plan 2009 and not new locations onto the public road network. In this instance the application is for a new location to position the gates not a straight replacement within an existing access onto the road network.

LOCAL PLAN POLICY LP TRAN 1 and LP TRAN 4

The appellant refers to The Argyll & Bute Local Plan 2009 LP TRAN 4 – New and Existing Public Roads and Private Access Regimes, Sections 1 – 5. These sections primarily refer to access roads serving more than one dwelling house not individual driveways. However, referring to L P TRAN 4, the strategy behind the policy i.e. the justification, I would refer to the following sections within “Development and private ways and accesses”

Section e) “Private access regimes where they join the public road network should provide for adequate visibility splay and be constructed in such a manner to not cause undue safety issues”

Section f) “Private access provision should be designed in such a manner for continuous improvement”

Local Plan Policy LP TRAN 1 – Public Access and Rights of Way indicates that development proposals shall safeguard public rights of way, core paths and important public access routes. This development is contrary to both policies.

CONCLUSION

Section 25 of the Town and Country Planning Act 1997 requires that all decisions be made in accordance with the development plan unless material considerations indicate otherwise. The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, creates a less user friendly right of way and creates a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

The applicant has been given professional advice over many months from Council officers with good reasons to support their recommendations. The applicant has chosen to pursue a different approach. In this planning application, road safety and the protection of school children was a key factor in the determination. The guidance given within the Local Plan “not causing undue safety” and “designed in such a manner for continuous improvement” support the decision to refuse this application.

Taking account of the above, it is respectfully requested that the appeal be dismissed.

Appendix 1

Argyll and Bute Council
Development Services

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: 10/01287/PP

Planning Hierarchy: Local

Applicant: Mr and Mrs O'Neill

Proposal: Repositioning of gates and erection of boundary fence

Site Address: Drumfork House, Drumfork Road, Helensburgh G84 7TS

DECISION ROUTE

(i) **Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997**

(A) THE APPLICATION

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

Repositioning of gates and erection of boundary fence

(ii) **Other specified operations**

None

(B) RECOMMENDATION:

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

(C) HISTORY:

09/00903/PP – Erection of timber fence and hard standing - granted 21.07.2009

10/00006 – Erection of fence and repositioning of gates – granted 21.06. 2010

(D) CONSULTATIONS:

Area Manager Roads (memos dated 13.09.2010, 25.11.2011 and 04.03.2011)

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. As previously intimated I would recommend that the gates are positioned a minimum distance of 6 metres behind the heel of footway.

The position of the fence and the realignment of the footpath will restrict pedestrian forward visibility and creates a less user friendly right of way. This footpath is used by a number of local parents and children taking access to the nearby primary school. A further benefit gained by locating the gates back 6 metres from the heel of the footway would mitigate the requirement to provide a new footway at this location.

I confirm I would not support this amendment and recommend refusal in the interest of road and pedestrian safety.

(E) PUBLICITY: Listed Building/Conservation Advert
Expiry Date: 01/10/2010

(F) REPRESENTATIONS: Representations were received dated 12th September and 11th November 2010 from Mrs Isabel Strain, c/o 8, Leven Avenue, Helensburgh in two letters the second of which included a petition of 38 signatures. The points raised and comments are as follows –

1. The fence has incorporated a part of the pathway used by schoolchildren on way to Colgrain School and it has now become a muddy dirt track.
Comment – See my assessment
2. There is a danger to children from vehicles travelling along Beechgrove Place and entering the driveway as they emerge from behind the high fence at Beechgrove Place.
Comment – See my assessment
3. This is the only pathway that children can use on this side of the main road and should be improved for children's safety.
Comment – See my assessment

A letter dated 11th September 2010 was received from Kenneth J. Yates, 29, Redgauntlet Road which indicated that whilst not objecting to the fence it had in fact been erected.

A letter of support dated 23rd December 2010 was received from Jackie Baillie MSP which indicated that she considers the applicants' offer to lower the height of the fence and gates and to resurface part of the pathway adjacent to the site is a reasonable and practical solution as it achieves the applicants' aims of defining the boundary and protecting security whilst alleviating the parking which blocks the driveway and also addresses the Council's concern.

A supporting statement was submitted which indicated that –

On the basis of these concerns and in order for planning permission for the erection of the proposed boundary fence to be granted quickly, my client reluctantly amended his application to show his existing gates repositioned 6.0 metres back from the back of the Beechgrove Place footway. It was on this basis that planning permission was ultimately granted. In essence this re-submitted application now seeks a variation of Condition 2 of the previous grant of planning permission, in order to permit the repositioning of the existing access gates at the back of the footway of Beechgrove Place (see drawing 2010_0018/1A for details).

The application is made under the provisions of Section 42 of the Town and Country Planning (Scotland) Act 1997, which permits the submission of applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In determining applications made under Section 42 the planning authority can consider only the question of the conditions subject to which planning permission should be granted, and should consider such applications reasonably having regard to the provisions of the development plan and to any other material considerations.

It is considered that the Councils recent approval of application 09/01785/PP, for the formation of a new access to 129 Sinclair Street, is a material consideration. In this instance new access gates have been approved approximately 2.5 metres back from the edge of the carriageway. Any vehicle parking whilst these gates are being opened therefore blocks not only the entirety of the footway, but also the entirety of the adjacent cycle lane. In this latter respect in particular cyclists now have to pull out into the flow of traffic in order to proceed, with potentially dangerous consequences given that the speed of traffic in this location is often in excess of the 30 mph speed limit.

In contrast to this, Beechgrove Place is a short residential cul-de-sac, where traffic speeds are exceptionally low. It is accepted that twice a day (albeit only during term time) the road can be busy but other than at these times it is not considered that the occasional parking of a vehicle waiting to enter Drumfork House is going to create a particular highway danger given that the proposed gates will be electronically operated. Finally, it is also important to note that Drumfork House benefits from a second point of vehicular access directly onto Redgauntlet Road, which can therefore be used should the necessity arise. The erection of gates at this point of access was the subject of planning approval reference 09/00903/DET dated 21 July 2009. With respect to the Area Road Engineer's second point of concern the submitted drawing No 2010_0018/1A clearly shows that a 1.5 m wide footpath can be maintained along the boundary of the site. In conclusion it is considered that for the above reasons the potential highway safety issues associated with the proposed location of the access gates have been overestimated, and that the concerns of the Area Roads Manager are inconsistent when taken in the context of the approval of planning permission 09/01785/PP. On this basis it is considered that planning permission for the proposal as now submitted should be granted.

It was further contended by the applicant that normally the portion of the fence and gates reduced to 1m. in height would be considered as permitted development. They were however only not considered as permitted development as they were within the curtilage of a Listed Building and that in their position they would not affect the setting or amenity of the Listed Building.

Comment – Each planning application is determined on its own merit and although similarities are alleged between this proposal and application 09/01785/PP the

circumstances are such that there is good visibility in both directions at 129 Sinclair Street and the width of the carriageway is satisfactory

It is acknowledged that the fencing and gates due to their position would not materially affect the setting or amenity of the Listed Building and that the overall design and finishing materials are satisfactory.

Notwithstanding the above points it is considered that the proposal would lead to a reduction in forward pedestrian and vehicle visibility to the detriment of overall safety.

(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 e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: N**

(H) PLANNING OBLIGATIONS

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

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

-
- (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 Plan' 2009

LP ENV 1 – Impact on the General Environment
LP ENV 13a – Development Impact on Listed Buildings
LP ENV 19 – Development Setting, Layout and Design
LPTRAN 1 – Public Access and Rights of Way
LP TRAN 4 – New and Existing Public Roads and Private Access Regimes

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 & Bute Sustainable Design Guidance (2006)

(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): N

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

Planning permission was originally sought for the erection of a 1.8m. high wooden fence, access gates and alterations to the access to this Category B Listed Building. The application is partly retrospective as the 1.8m. high fence has been erected.

Planning consent was previously granted in 2010 for new fencing some 1.8m in height along part of this boundary with new gates located 6m from the junction with Beechgrove Place. The fence has now been extended to the west without planning permission up to the heel of the footway at Beechgrove Place. The gates however have not been moved and remain in their original position.

In the previous application submitted in 2010 the fence and gates were originally shown abutting Beechgrove Place.

The Area Roads Manager however expressed concern with regards to the positioning of the fence and proposed gates which were located on the heel of the footway at the access on a corner of Beechgrove Place for two reasons.

- i. Due to a high level of parking and vehicle movement associated with picking up pupils from the nearby school he was of the opinion that the initial proposal could lead to poor forward visibility and traffic conflict on this corner as vehicles would have to wait on the road whilst opening the gates.
- ii. The position of the proposed fence and gates restricted the forward visibility for pedestrians mainly children using this footpath on route to the local school.

After discussion however, amended plans were received which indicated that the fence would be moved back 6.0m. from Beechgrove Place and the gates repositioned to that point. This was considered acceptable by the Area Roads Manager and the objection was withdrawn. The application with the amended position of fence and gates was subsequently approved.

The applicant has indicated that the unauthorised continuation of the fence out to Beechgrove Place as constructed and the proposed repositioning of the gates are required for security to the premises. This would prevent conflict with pedestrians and

vehicles at the present access as during picking up time from the nearby school and at other times cars often park in front of the access road not realising it is an active access due to the absence of a visible gate.

Amended plans were received showing the fence along the southern boundary of the access road and the gates being reduced to 1m. in height although the fence to the north of the access road would remain at 1.8m. in height.

It was contended by the applicant that normally the portion of the fence and gates reduced to 1m. in height would be considered as permitted development. They were however only not considered as permitted development as they were within the curtilage of a Listed Building and that in their position they would not affect the setting or amenity of the Listed Building.

It is acknowledged that the fencing and gates due to their position would not materially affect the setting or amenity of the Listed Building and that the overall design and finishing materials are satisfactory.

As planning permission is required however, the proposal requires to be evaluated against the relevant policies in the Development Plan as indicated by Section 25 of the Town and Country Planning (Scotland Act 1997).

As such the Network and Environmental Manager was again consulted on traffic implications with regards to the new proposals

The reply indicated that -

'As previously stated in my memo dated 25th November 2010 I acknowledge that the reduction in the height of the proposed fence and gates at the entrance located on Beechgrove Place would assist with the visibility sightlines of both the pedestrians and vehicle movements.

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. As previously intimated I would recommend that the gates are positioned a minimum distance of 6 metres behind the heel of footway.

The position of the fence and the realignment of the footpath will restrict pedestrian forward visibility and creates a less user friendly right of way. This footpath is used by a number of local parents and children taking access to the nearby primary school. A further benefit gained by locating the gates back 6 metres from the heel of the footway would mitigate the requirement to provide a new footway at this location.

I confirm I would not support this amendment and recommend refusal in the interest of road and pedestrian safety.'

I conclude therefore, that the fencing as erected and proposed gates would lead to and contribute to an undesirable development which due to their position could encourage on street idling and manoeuvring at a bend by stationary vehicles creating a hazard to other road users. The proposal would (notwithstanding the fact that new

tarmac contributing to the footway has been laid) also restrict pedestrian forward visibility and create a less user friendly public footpath.

As such, the proposal would be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the proposal would also be contrary to the provisions of Policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

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

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

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, creates a less user friendly right of way and creates a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

(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

Author of Report: Gordon Hotchkiss

Date: 09/03/2011

Reviewing Officer: Howard Young

Date: 31/03/2011

Angus Gilmour
Head of Planning

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO. 10/01287/PP

1. The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore, in order to allow the driveway gates to be opened to allow vehicle entry into the property this would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, create a less user friendly right of way and introduce a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of Policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.

INFORMATIVES

APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application 10/01287/PP

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- (A)** Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended)?

N

- (B)** Has the application been the subject of any “non-material” amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing?

N

- (C)** The reason why planning permission been refused.

The proposal to re-locate the driveway access gates adjacent to the heel of the footway is not acceptable in the interest of road and pedestrian safety. This road is within a 30 mph speed limit with the location of the existing driveway on the outside of a 90 degree bend. Therefore in order to allow the driveway gates to be opened to allow vehicle entry into the property would create a hazard by obstructing the passage of other vehicles during this process. The proposal would therefore be contrary to the provisions of Policy LPTRAN 4 – New and Existing Public Roads and Private Access Regimes which indicates private access provision should be designed in such a manner to allow for continuous improvement and be constructed in such a manner not to cause undue safety issues. In addition, the position of the fence and the realignment of the footpath will restrict pedestrian forward visibility, creates a less user friendly right of way and creates a conflict with vehicular traffic at the corner of Beechgrove Place. This footpath is used by a number of local parents and children taking access to the nearby primary school. As such, the proposal would also be contrary to the provisions of policy LPTRAN 1 – Public Access and Rights of Way which indicates that development proposals shall safeguard public rights of way, core paths and important public access routes.