

**MINUTES of MEETING of PLANNING, PROTECTIVE SERVICES AND LICENSING COMMITTEE
held in the CLACHAN VILLAGE HALL, CLACHAN
on WEDNESDAY, 30 JANUARY 2013**

Present: Councillor Sandy Taylor (Chair)

Councillor Gordon Blair	Councillor Donald MacMillan
Councillor Rory Colville	Councillor Alex McNaughton
Councillor Robin Currie	Councillor James McQueen
Councillor Mary-Jean Devon	Councillor Richard Trail
Councillor Fred Hall	

Attending: Charles Reppke, Head of Governance and Law
Richard Kerr, Principal Planning Officer
Peter Bain, Area Team Leader
Jolyon Gritton, Access Officer
Ian and Anne Darby, Applicants
Lorraine MacPhail, West Kintyre Community Council
Anne Horn, Objectors' representative

1. APOLOGIES FOR ABSENCE

Apologies for absence were intimated from Councillors George Freeman, David Kinniburgh, Alistair MacDougall and Robert G MacIntyre.

2. DECLARATIONS OF INTEREST

None declared.

3. IAN DARBY NO 1 TRUST: ERECTION OF GATE PILLARS, CAST IRON GATES, FLANK WALLS AND RAILINGS: BALINAKILL COUNTRY HOUSE HOTEL, CLACHAN (REF: 12/01907/PP)

The Chair welcomed everyone to the meeting and introductions were made. Charles Reppke, Head of Governance and Law outlined the procedure that would be followed and invited anyone who wished to speak at the meeting to identify themselves. Once that process had been completed the Chair invited the Planning Officer to set out his recommendations.

PLANNING

Richard Kerr, Principal Planning Officer spoke to the terms of the report advising that this is a local application for planning permission submitted by the owners of the Balinakill Country House Hotel for the erection of gate pillars, cast iron gates, flank walls and railings on the driveway securing the Applicant's premises and other properties in separate ownership at Balinakill, who share the same access, known locally as The Avenue.

He advised that it follows on from a previous application for listed building consent which was granted by Officers under delegated powers for the dismantling of existing gate pillars and their re-erection in an alternative location,

to facilitate the development to which planning permission is sought.

He advised that Balinakill is a late 19th Century Scottish Baronial country house, listed grade C in 1980. Although not specifically recorded in the listing details the gate pillars which stand at the entrance to the driveway become automatically protected as curtilage structures by the effect of the listing of the principal building. Over the years it has been occupied for several purposes, latterly as a private hotel, and it is now rented out as an entity for periods of exclusive use by organisations, families and parties requiring accommodation for short periods within historic surroundings. It is now divorced from subservient buildings within the former estate such as the gate lodge and farm buildings, which are in separate ownerships. The driveway serving the hotel still affords a means of access to some of these buildings, and later buildings, with private servitude rights of access being held by the owners of some of those properties.

Referring to presentation slides he advised that the current extent of the land in the Applicant's control was outlined in red on the plans and comprised the main house, the curtilage incorporating the garden grounds associated with the house, the driveway to a point just beyond the entrance point to the house, the lengths of the drive back down to the A83, and the site of former tennis courts to the north of the drive. He advised that it should be noted that the A83 at this point amounts to a by pass of the village centre of Clachan and that its construction bisected estate land originally associated with the house. At that time the gate pillars which now stand at the junction of the driveway with the main road were dismantled and re-erected in their present position astride a wide bellmouth which did not lend itself to re-use of the gates. The current entrance is therefore flanked by three re-positioned stone pillars, but these do not support operating gates.

He referred to an extract from the Local Plan showing that the settlement of Clachan comprises two distinct and physically separated elements – namely the main part of the village lying principally to the north of the A83, and the separate cluster of buildings around Balinakill to the east. The latter comprises the hotel, a farmstead, a small fish farm and a half dozen residential properties. Access between the two is achieved via the driveway intended to be gated as part of this proposal, although there is a secondary means of access direct from Balinakill to the A83 to the north. This is a less commodious route for a number of reasons which he advised he would describe later on.

He referred to a slide showing the location of the three gate pillars as they exist at the moment and the proposed location. The current width between the carriageway piers is over 6 metres which is uncharacteristically wide apart and would not lend itself to the original intended purpose of the gate pillars, which was clearly for the mounting of gates. Notwithstanding the opening width issue, he advised that there would also be problems presented by the introduction of gates in such close proximity to an A road, given the need to ensure adequate standing space for a range of sizes of vehicles to enable the operation of the gates. For this reason, the Roads Engineer will always require a suitable set back of gates in such circumstances. The intended location is set up the drive so as to not interfere with access to and from a consented house plot, the access point for which lies just inside the existing gate pillars. The alternative location for the pillars would produce a 3.6 metre wide carriageway opening, respecting the existing width of the drive, plus a 1 metre wide pedestrian access

on which is the existing verge to the carriageway.

He referred to a slide showing the intended dispositions of the gate pillars and the intended design of the cast iron gates, the flank walls and the associated railings, along with some photographs extracted from the manufacturer's brochure.

As previously mentioned, he advised that listed building consent has already been granted for the dismantling of the gate pillars and for their re-erection. That application primarily confined itself to the historic environment implications of the development in terms of: 1) consequences for historic fabric in terms of physical works involved in dismantling and re-erecting the stone components of the pillars; 2) the appropriateness of the new location in relation to the setting of the listed house; and 3) the character and design and materials proposed for use in the development relative to the gate pillars, both in relation to the design of the pillars themselves and in the context of the listed house.

He advised that the view was taken at the time of the granting of the listed building consent, that setting gates back from the road was appropriate, and not uncommon in the case of estate style property. The relationship with the main listed building was considered appropriate, as was the design of the gates. In granting listed building consent, the Applicants were advised of the need also to apply for planning permission given: a) the height of the development exceeded 2 metres and b) the development was in the curtilage of a listed building where 'permitted development' rights for walls and gates do not apply, regardless of height.

He advised that this application therefore raises planning matters which extend beyond the historic environment considerations addressed by the listed building consent application.

He advised that the principal matter now raised by this application is the extent to which the proposal would present an unacceptable encumbrance to those with legitimate access rights along the driveway, and in particular, whether the presence of gates would be discriminatory in respect of disadvantaged groups.

He advised that the Applicant has sought to address this by the mechanisation of the gates, which are to be electrically powered by underground control equipment with a back up battery power supply in the event of mains power failure, and as a last resort, by disengagement of the operating mechanism so as to allow the gates to be swung manually. The pedestrian gate would be operated manually only. The control mechanism allows the speed of gate opening to be varied to meet local requirements and in normal operations the gates would close automatically following the passage of a vehicle.

He advised that operation would be free to all by way of post mounted buttons in advance of the gates, to enable operation from within a vehicle. No security mechanism by way of a key pad, key card or other locking mechanism would be introduced. He advised that it was important to remember that the gates lie between the road and the house, so guests, visitors and deliveries to the Applicant's premises, as well as Balinakill residents, would need to access via the gates. The intended purpose of the gates is not to improve security, but to deter unnecessary vehicular access, to slow down traffic using the drive past the

hotel grounds, and to create a more formal entrance to the premises.

The Principal Planning Officer then referred to photographs showing the listed house from the driveway, the gate pillars as they stand at present, the intended location for the re-erection of the pillars and the narrowest part of the drive on the approach to the house. He advised that some preparatory work was commenced but has been halted pending the outcome of this application.

As mentioned earlier he advised that there is a second means of access to the properties at Balinakill which would avoid the use of the proposed gates. He advised that this appears to be less attractive for a number of reasons: 1) unlike the driveway route there is no connection to the footway system to the village so this would not be a favoured route for pedestrians; 2) it entails the use of a timber bridge over a watercourse, so has liability and maintenance implications; 3) the track is unsurfaced and prone to waterlogging in places; and 4) the extent to which the various parties have private legal rights to utilise this route is unknown and in any event private access issues are not material planning considerations.

He advised that in considering this application it was important to understand the access rights which do and do not pertain. Firstly the access is not a road in the terms of the Roads (Scotland) Act 1984 so there is no public right to use it by vehicle to access from one public place to another. If it were a road it could not be gated even if it were privately maintained rather than being a road maintained at public expense. It therefore has the status of a privately owned and maintained access, over which other parties exercise access. Some will have a right to do so by virtue of private servitude rights, whilst others may not and simply take access with the ascendance of the landowner. Private access rights and any disputes between parties are civil matters, rather than planning considerations, which are resolvable at law rather than as part of the planning system, which operates in the public interest rather than to protect private interests. In addition, Land Reform Act access rights are considered by the Council's Access Officer to be applicable in this case, over and above whatever private rights may be exercised legitimately. These do not extend to vehicular use of the driveway but would authorise access by the general public on foot, by bicycle or on horseback for those access purposes which are safeguarded by the provisions of the Act.

He advised that in this case Members should regard the access as providing: 1) access for the owner of the house for purposes associated with the legitimate use of the building including customers, staff, other visitors, deliveries, emergency access and so on, by whatever means; 2) access for property owners both commercial and residential beyond the house, which may include vehicular access rights insofar as they are afforded by servitude rights, including associated access by visitors, deliveries, emergency access and so on; and 3) access by the general public on foot, cycle or horse, but excluding any public access rights by vehicle.

He advised that insofar as the gates are to be freely operable by any of those categories of person wishing to secure access, then the presence of operating gates would not prejudice continual access being taken. The issue does, however, arise as to whether the gates would present such an encumbrance to disadvantaged persons, such as the elderly or the disabled, or whether they

would present an unacceptable impediment to those unfamiliar with their means of operation, or whether they would impose an unacceptable delay either in normal operation or in periods of malfunction, to either residents or to the emergency services, so as to put them at significant disadvantage.

He advised that twenty third party representations have been expressed against this proposal and their opposition has been endorsed by the West Kintyre Community Council. The grounds of objections are summarised at length in the planning reports, but a significant area which has attracted attention has been the avoidable impediment and inconvenience which the gates will present to prospective users, prompting the requirement for Members to be satisfied that undue prejudice will not arise.

He advised that in decision making the Committee is duty bound to consider the equal opportunities implications of its actions, or inactions, in terms of the Equality Act 2010, the Public Sector Equality Duty and the requirements of Local Plan Policy TRAN 3, all of which require the planning authority to discharge its functions in a manner which is non-discriminatory.

He advised that in this case, the installation and means of operation advanced by the Applicant, and the conditions recommended in supplementary report number 1 are such as to safeguard the interests of disadvantaged groups and to ensure that the proposal in its design, installation and operation would be compliant with equality interests, and would not prejudice those minorities and groups which the legislation seeks to protect. Whilst there are conceivable but remote circumstances, where, very exceptionally, prejudice or disadvantage might arise, such as malfunction of the gates in the snow, at night with the first person on the scene being elderly and disabled, it is never possible to eradicate every conceivable scenario. What is important is that due consideration is given as part of the planning process to normal operation and circumstances likely to arise in the day to day operation of the gates. Legislation and associated guidance is clear that scrutiny should be proportionate to the relevance of the decision to equality and that proportionate consideration be given to the consequences of a decision to equal opportunities interests.

He advised that in addition to the need to ensure that the proposal is disability compliant and that other equal opportunity interests are not significantly prejudiced, at the time of the original report to the Committee the Human Rights implications of any decision had been raised by objectors in respect of the particular circumstances of a resident receiving palliative care in her home at Balinakill. Professional medical opinion expressed at the time was that delay associated with at best the operation of the gates, or at worst the malfunction of the gates, could delay the emergency services to a point where life could be put at risk.

Having considered those circumstances he advised that the recommendation to the December meeting was to grant permission but with a condition requiring that the gates once installed should be maintained in a permanently open position, so as to avoid any conflict with the Human Rights of the individual concerned. Unfortunately the person in question has since died and therefore her particular circumstances no longer pertain, thereby removing the Human Rights dimension from this case. Although her circumstances could be replicated in the future should another resident succumb to similar illness,

Human Rights can only be advanced by or on behalf of those persons where the circumstances subsist, and not in anticipation of circumstances where they might present themselves, leaving doubt as to whether they might or might not pertain and whether a development could present a threat in that regard.

He advised that consultation has been carried out in respect of this application beyond that normally associated with a proposal of this nature, in order to ascertain as wide a body of opinion as possible as to the equal opportunities implications of the development. Disability groups based in Kintyre and Oban have been consulted, along with the Fire, Police and Ambulance Services, the Council's Roads Engineer and the Council's Access Officer. Whilst comments have been expressed and suggestions made, no objections have been raised in respect of their particular areas of interest.

He advised that in view of the various duties which apply in this case, and the need to ensure that they are discharged in a manner compliant with the relevant legislative provisions, Legal Services have consulted "Brodies", the Council's legal advisers, to review the circumstances of the case, the content of the reports and the validity of the recommendation to grant permission subject to the conditions listed in supplementary report number 1. They are content with the assessment process through which the application has been scrutinised and the conclusions drawn.

He advised that in the absence of any defensible reason for resisting this proposal, and having regard to the conditions recommended to ensure that: a) the operation of the gates will be as envisaged; b) no significant disadvantage will arise from the operation of the gates; and c) those with legitimate access rights will continue to be able to exercise those rights, then it is recommended that Members should grant planning permission.

In respect of the recommended conditions, Members were asked to note that the list included in the supplementary report was mis-numbered. He advised that to put the matter beyond doubt there is no missing condition 2, simply that the conditions should be renumbered consecutively in the order in which they are set out in the report ie numbers 1 to 5.

APPLICANT

Anne Darby advised that the Planning Officer had covered most of the points. She advised that Balinakill Country House Hotel is a private house and grounds and that they are the second biggest employer in the area next to the fish farm. She advised that they employ local tradesmen and support local businesses and have invested a lot of time and money into the business. She advised that the business was fully compliant with the Health and Safety Act and Disability Act. She advised that it was their aim to be a 4 or 5 star venue in the area and they were at the stage of wishing to install new gates to enhance the location and make it a safe environment for guests, children and pets. She advised that the gates would be closed but not locked. She advised that the drive was a private access and referred to the alternative access which was not maintained. She advised that those that had a right of access would continue to have access rights.

STATUTORY CONSULTEE

Lorraine MacPhail read out a statement on behalf of West Kintyre Community Council in response to the planning application regarding the new gates at the entrance to Balinakill Hotel in Clachan. She advised that the Community Council have real concerns relating to this application. They have been approached by many anxious residents of Balinakill and just as importantly, and perhaps more telling, at the village so the Community Council were speaking for the village as a whole. She advised that everyone of these people feel that these are extremely valid concerns and the Community Council hope that they are taken into consideration when a decision is made on this application.

She advised that the concerns range from community cohesion, psychological barriers; to serious concerns regarding the safety of the residents should an emergency occur. Everyone one of these concerns should be a viable reason for rejecting this application.

She advised that the properties at Balinakill are part of the village and they all benefit from the same community cohesion as all the properties throughout the village. There are lots of examples of casual community visiting: the 'poppy lady', hand delivered invitations from school children to a range of village and school activities are amongst all the other informal personal social visits which take place. These gates would serve as a barrier. People will be deterred as they may believe that the gates are not to be opened. They will not feel welcome or comfortable walking up the drive. The residents at Balinakill will become more isolated living in what would essentially be a gated community. They would have little or no outside interaction as many would see these gates as an official statement of private property and therefore that they are not entitled to enter as they previously did.

The advised that village people and visitors have used the drive for generations to walk up to the forest and the open land behind Clachan. Nowadays this is provided by rights of responsible access in the Land Reform Act. Despite the proposal that there should be a fingerboard sign, for the reasons just given people who want to walk "up country" will be discouraged by the prospect of heavy closed gates at this location. This is not like a stock gate at a field entrance.

She advised that there seems to have been several reasons given by the Applicant as to why these gates should be erected. These range from privacy, as a new plot at the road end has been sold, security, and now safety. It would appear that whenever the application is challenged then a new reason is given.

She advised that all of these reasons are very questionable. In terms of privacy, vehicles and pedestrians can use the drive for different reasons, and the Council's Access Officer has commented on the access and privacy issues. She advised that the Community Council are not sure why security is thought to be an issue in a village like Clachan and that anyway the gates are going to be unlocked. Safety is always paramount in any situation, but using this as an excuse to erect these gates is perhaps a touch dramatic. There seems to be no issue with safety on this short stretch of road which leads to Balinakill. There has never been an accident. There are better ways of ensuring safety on the drive such as speed bumps or passing places. Once again there have been no

incidents of any sort on this stretch of road.

She advised that if there is a total power failure the gates will be locked closed. There was a recommendation by the fire brigade regarding the opening of these gates should there be a power cut. They thought that the hotel employees would be available to open the gates in this scenario. Balinakil Hotel, although licensed as a hotel, is actually run as a self catering holiday let. There is only a handy man and cleaner, both of whom are only on site at certain times during certain days and not through the night or when guests are present. In that situation the residents would be unable to access their homes in their vehicles. A worrying scenario if any of the residents became ill. She asked would they be able to go and open the gates in what could be a very stressful situation. In an emergency it could be the case of Ambulance/Fire Brigade/Police vehicles being impeded because they cannot get through the gates instantly. The implication of any delay due to having to spend time opening the gates is quite disquieting. An ambulance does not carry equipment to force open gates.

She advised that the fact is what is being proposed is a complicated gate mechanism and these things are prone to fail and particularly when they are affected as here by lots of water, snow, ice and power failures.

She advised that the gates will in fact cause traffic problems on the drive. At present vehicles can pass quite safely at the wide bellmouth. They will not be able to do so at the gates or once through the gates. Visibility on the drive is not good and there are no visible passing places despite that being a condition of a previous consent. There may be beech hedging planted all the way along the drive and this will reduce visibility even more. The two so called vehicle standing areas at each side of the gates will be no substitute because they will not be wide enough for two vehicles to pass, particularly large vehicles. This means there will have to be reversing possibly in the dark through a narrower gate entrance. These vehicle standing areas are also the pedestrian access through the pedestrian gates. She asked where the pedestrians, perhaps with a wheelchair, perhaps with children and a pram/buggy to take refuge while the vehicle reversing and manoeuvring is taking place? In addition a driver who has gone through the gates and meets another vehicle and has to reverse back through them will require to exit the vehicle to get round to the other side to push the open button to open the gates and this will not be possible if the person is disabled.

Speaking as Chair of the Community Council, on behalf of the community she asked the Committee to refuse this application. She advised that what is proposed here will have serious adverse effects on the community; it does nothing to benefit the community and it is not supported by the community. It carries real potential dangers. There are good and valid reasons for refusing this application.

She advised that there are plenty of examples of gates to country houses where the gates are just kept open. If the Committee feels that the relocation of the gates posts will enhance the look of the entrance then in the strongest possible terms the community requests that a condition is imposed that would keep the gates locked open so that the social interaction and community cohesion of the village is maintained as far as possible; to remove the potential dangers to unimpeded access by the emergency services; and to enable people to continue

their country pursuits in the hills behind Clachan.

OBJECTORS

Anne Horn advised that she was here to speak on behalf of the residents from throughout the village of Clachan and beyond who have objected to this application. She advised that there are three major concerns for those who live in the village: 1) adverse impact on the community identity, cohesion and inclusiveness of the village; 2) the adverse and potentially dangerous impact the gates will have on unimpeded access for medical and emergency vehicles; and 3) the implications for older people and people with disabilities in terms of access through the gates.

She advised that the first concern is the divisive impact the gates will have on the village community, effectively creating a gated enclosure and inserting a physical and psychological barrier between residents of the village of which they are all an integral part. She advised that Members will have seen what people feel about this in the letters of objection and that it was important that Members be aware that people from all parts of the village are concerned about this application. She advised that it is particularly concerning for the older people who live at Balinakill that the social networking and common village interaction will be disrupted because of the deterrent effect the gates will have particularly on older people who do not like to challenge.

She advised that at election time she canvasses the residents at Balinakill, as do other candidates and that the prospect of heavy iron gates at the bottom of the drive would have made me think twice – is this private property? are there other people living there? why are the gates closed? will someone challenge me beyond the gates? are there dogs? She advised that these are all the things which will go through people's heads and are likely to deter to access.

She advised Members that she was sure in their own constituencies, whether urban or rural, they could think of groups of their constituents who live maybe not just immediately in the centre of the community. She asked Members to think of them for a moment and what it would be like for them if they were penned off. She asked surely is not this Council's wish to gate off, particularly older people, from the communities they are part of. Government policy is that communities should be inclusive, and as far as she was aware, it was the policy of Argyll and Bute Council too. The fact that the local plan refers to "an area of countryside around settlement" was never intended to justify the creation of a barrier between parts of the village.

She advised that she disagreed with the planning officer who in the supplementary report quotes from PAN 78 which gives advice about breaking down barriers and inclusiveness, where he goes on to say, as a reason for allowing this development, that although varying needs of disabled/older etc people must be recognised it may not be possible to meet them all, but she advised it is possible in this case to meet them either by refusing the development or inserting a condition that was previously recommended that the gates are kept locked open. Just because there is recognition that something can not always be achieved is not a reason for not achieving it when it can.

She advised that she also disagreed with what the planning officer says in the

original report when he was referring to common interaction between all the residents of Clachan and said there was no reason to believe the common interaction would be “necessarily curtailed” by the addition of operating gates. She advised that by his choice of words even he acknowledges it as a possibility and yet because he does not think it “necessarily” then he thinks it is acceptable. He is of course only expressing his own purely subjective view. His view is clearly not shared by the people of Clachan and she asked Members to listen to what the community says on this point. The gates will deter access and that is not in the interests of Clachan community.

She advised there has been and still is real concern about emergency access. What is proposed is a complex operating mechanism which is likely to go wrong for one reason or another. The real problem is that when it does go wrong the default position of the gates is locked closed. In their original report the planning service recognised the danger associated with the proposed gates and for that reason recommended a condition they be kept locked open. The fact that Mrs Burke has died has not removed that danger. It is still there. The planning service has interpreted Article 2 right to life as depending on a “real and immediate” threat to life. The Equality Advisory Service has used the words “real and significant” threat to life in respect of persons with a non resuscitation protocol. She advised that there is at least one resident at Balinakill who is currently subject to that same protocol, and as it is increasingly widely used it is likely more of the older people who live there will also become subject to it. Anyone can require an ambulance at any age in life in life threatening circumstances. Two older residents from Balinakill have had to be helicoptered to Glasgow in the very recent past.

She advised that the changes to the ambulance service provision covering Clachan means that in future some evening and overnight services will be provided from Lochgilphead. The 40 minutes or more journeys from Lochgilphead and 40 minutes return back means an ambulance will be at the absolute extremity of bringing certain types of emergency to a successful conclusion. The prospect of an ambulance being delayed by gates which have defaulted to the locked closed position is unthinkable. In these circumstances every minute counts absolutely.

She advised that the local GP surgery was asked by the planning service whether they now had any interest in this application. They were asked a particular question and gave a particular answer. She advised that she has asked them whether the concerns which they expressed in relation to Mrs Burke they would express again in relation to any other person who might fall into similar circumstances requiring rapid vehicular access. She advised that the reply from the surgery is *“it appears obvious to me, that a gate, which could potentially fail to open due to a power cut or other malfunction could be viewed as a hazard to health and possible life, if timely access to the residents of Balinakill in case of accident, medical or surgical emergency would be prevented in such a scenario”*. She advised that by then it would be too late for any other person if the Council has already given permission as recommended. She advised that Members will not be able to take it back. “Brodies” have reminded the Council of the duty to protect life if there is a serious risk to health or a risk to life. In the circumstances of an elderly population with multiple health needs the gates being proposed introduce an unacceptable and avoidable risk.

She asked surely this Council is not saying to local people they might have been prepared to put in a condition to protect Mrs Burke's life but are prepared to take the risk with other local people's lives because they make a distinction between real and immediate and real and significant. She advised that she presumes the Council wish to be positive about trying to keep people in their own homes throughout the entirety of their lives so asked why would the Council wish to say they are prepared to take risks when the risk can be avoided altogether either by refusing the development or inserting the condition that was previously recommended that the gates are kept locked open.

She advised that the gates will deter access and that is not in the interests of this community. It is not in the interest of the daily lives of the people of Clachan and will especially adversely affect those who live at Balinakill. On all the grounds that have been outlined she asked the Committee to refuse this application for the following reasons: 1) the introduction of automated gates to be operated by those requiring access, and the possibility of their malfunction, will present an avoidable delay to emergency services which could prove to be seriously prejudicial now or in the future to the health or life of persons whose circumstances were life threatening; 2) the introduction of gates of this nature at this location normally retained in the closed position will significantly adversely impact on the common interaction of the people of Clachan affecting the community cohesion of the village and a significant adverse impact on the amenity of the residential properties of Balinakill; and 3) the positioning of the gate piers and the introduction of gates at this location will have an adverse safety impact on vehicular and pedestrian traffic using the drive, and does not satisfy the requirements of policy LP TRAN 3.

She advised that if the Committee, despite all that, is disposed to allow the relocation of the gates because they believe it will enhance the entrance setting then she would draw Members' attention to page 15 of the original report where the planning service in recommending the condition that the gates be kept locked open said that "it is not considered that a decision conditioned in this manner should be regarded as being irrational or perverse".

In these circumstances she advised that she would request the Committee if it is to approve the application it applies the following condition in place of the proposed condition which is numbered 3 (although meant to be 2) in the supplementary report – "the two vehicular gates hereby approved shall be permanently secured in an open position and shall not be closed at any time".

MEMBERS' QUESTIONS

Councillor Trail referred to the presentation by Planning and the reasons advanced by the Applicant for this proposal and asked the Applicant if he agreed with these reasons and, if so, what the most important one was.

Ian Darby advised that the most important reason was security for the people using the garden grounds to ensure that, for example, children and pets did not run out onto the main road and that he believed having the gates would prevent that. He referred to controlling the speed of the traffic currently using the access road and advised that he felt the access was being abused as people were using this access across his private land instead of the alternative access because it was not being maintained. He advised that all the reasons were as important as

each other.

Councillor Trail asked the Applicant if he would like the residents of the other houses at Balinakill to use the other access.

Ian Darby advised that this was not a material consideration and that those who had the right to use the access would continue to have this right. He advised that the access was not a public road but a private one and that the volume of traffic on it was unacceptable. He advised that some guests had commented on the amount of traffic using the access. He advised that there was an alternative access to Balinakill that has not been maintained and that maintenance of this access was the responsibility of people who don't have access to his drive but that they have chosen not to do this and to continue using his drive.

Councillor McNaughton asked if the residents have been using the hotel access for a certain number of years did this not allow them the automatic right to continue using it.

Jolyon Gritton advised that if it is shown that a private access connecting two public places had continually been used for 20 years then people could have a right to continue using the private access. He advised that in this case the private access was connected to the public road A83 but that there was doubt whether or not there was another public place that the access road connected to and there would need to be evidence of a public road or building such as a church. He referred to the Land Reform Act giving people access to land by foot, bicycle, horseback or powered vehicle such as a wheelchair. He advised that over time the land around the Balinakill Country House Hotel has been sold off and that the land around it has diminished and that he was fairly confident that the driveway would have full access rights and that the privacy of the house has diminished.

Councillor McNaughton referred to the Applicant's comment that traffic on the access road was getting busier and asked if he was suggesting that people were using the road other than for access to the other houses.

Ann Darby advised that traffic had increased when the hotel changed hands with the previous owner and that a lot of people were using it that did not have access rights.

Councillor Colville referred to the slides showing pictures with gates at entrances to other estates and commented that these gates were all shown as open. He referred to part A of policy LP ENV 19 and in the context of these gates being the entrance to estates asked if it was logistically sensible to move these gates further up the access road.

Richard Kerr advised that the current position of the gate pillars was not their original location and that they were repositioned there when the A83 road was constructed. He advised that at the moment where they stood by the main road they were unable to fulfil their intended purpose to support gates because the bellmouth was very wide and they were too close to the main road. He referred to planning permission granted for a housing plot just up from the gate pillars and because of this there was a need to move the gate pillars further up the driveway beyond this plot of land. He advised that it was not uncommon to have

estate entrances set back from the road and that generally estate entrances were set up a driveway to create an imposing feel when entering the estate and to do what is proposed here would not be irrational.

Councillor Colville referred to consultation with Oban District Disability Forum and the Kintyre Forum on Community Care which Richard mentioned in his presentation and asked why Richard had not referred to the comments by Capability Scotland and the Planning views on these comments as detailed in his report and asked Richard if he had changed his mind in this respect.

Richard Kerr advised that the status of Capability Scotland in planning matters was open to question. He advised that they were a charity with a certain amount of expertise which Members could give consideration to. He advised that they were not a statutory consultee and that they had been approached by a third party and not by Planning.

Councillor Colville referred to policy LP TRAN 4 and asked whether or not a turning head at the proposed gates should be provided.

Richard Kerr advised that policy LP TRAN 4 related to access provision. He advised that as the gates will be free for all to use there would be no reason for users to not continue to use the drive as at present and that operating gates would not inhibit access. He advised that if Members were minded that a turning area was necessary then the intended passing place on the A83 side of the gates could be made wider.

Councillor Colville referred to the Committee being here to consider the planning application in terms of planning matters and asked if this proposal would not deter access.

Richard Kerr advised that the Applicant has advanced reasons for the gates even though he doesn't need to give reasons for the application or justify the need for the gates. He advised that if you have private property you would expect to be able to gate your property.

Councillor MacMillan sought clarification on who the Applicants thought were speeding on the access road.

Ann Darby advised there were no boy racers just people who use the access road. She advised she didn't know who they were but they were deterring her from letting her children out into her garden.

Councillor Currie asked the objectors if they agreed that the main purpose of the gates was to serve as a reminder of the feudal system.

Lorraine MacPhail replied no. She advised that she could appreciate that people have rights and should have rights to gate their properties but that in this case other people will be affected and that there was a need for a compromise and that would be to leave the gates in the open position.

Anne Horn advised that the gates were seen as a deterrent to people's every day lives and if this is seen as a feudal system she was sure this was not the intention of the Applicant but it was still an unacceptable deterrent.

Councillor Currie referred to the 6 metre width between the pillars at their current position and advised he was sure you could get gates big enough. He also referred to the proposed 1 metre width for the pedestrian access and asked Planners if this would comply with disability legislation.

Richard Kerr advised that for gates to fit at the current location of the pillars they would be double the size to what is proposed and would be extra heavy and he was not sure if they would be able to be operated electrically. He confirmed that the proposed width of the pedestrian access did comply with disability legislation and that to increase the width of the pedestrian access would mean increasing the width of the gate which would make it heavier to move.

Councillor Currie advised that he thought Building Standards required more than 1 metre for disabled access. He referred to people getting on well one day and falling out the next and asked if the gates were erected and the Applicants fell out with their neighbours what would prevent them from permanently keeping the gates closed.

Richard Kerr advised that condition 2 (numbered in error as condition 3) in supplementary planning report number one would ensure this would not happen.

Councillor Currie referred to policies LP TRAN 3 and LP HOU 3 and asked if the proposal would have to be consistent with these policies.

Richard Kerr advised that there was an overarching duty on all public bodies to take account of potential discrimination as a result of doing or not doing something and this had to be addressed when considering a planning application and these policies reflect that duty to have regard to special access needs.

Councillor Blair referred to the other gates on the access drive that were not in use. He also referred to the speed of traffic using the drive and referred to other estates he was aware of that had gate pillars but no gates and asked if the Applicant had considered just erecting gate pillars with no gates.

Anne Darby advised that gates would significantly improve the appearance of the property.

Ian Darby advised that if there was power failure the gates would automatically be set in the open position and would not be locked.

Councillor Taylor sought clarification that the gate would be open and not locked.

Ian Darby advised that if the power failed the gates would not lock and there was a mechanism to allow them to be opened manually.

Councillor Blair referred to the concerns raised about the residents of Balinakill being cut off from the rest of the community if the gates were erected.

Lorraine MacPhail advised that the physical presence of the gates would cause a psychological barrier giving the impression of something up there you are not welcome to come to. She advised that the Applicant wants to deter people. She advised that this access led to the open countryside beyond and that she could

not imagine anyone would speed up that drive. She advised that some people could become isolated within what would be essentially a gated community and that this was not necessary in a place like Clachan.

Anne Horn advised that the people of Clachan see this as a deterrent to walkers or people visiting. She advised that she has visited people in Balinakill many times and never come across fast traffic. The objectors have stated that they are not aware of any support for this proposal and that the people see this as a deterrent.

Councillor Blair referred to there being two access routes.

Anne Darby advised that they were not comparable.

Councillor Devon asked if the access to the hills was seen as a tourist attraction and enquired as to how many people per day over the summer months used the access.

Lorraine MacPhail advised that many using the access would be pedestrians and that the weight of the pedestrian gate was a concern. She advised that she was not aware of the area being a designated tourist attraction but the access was used regularly by local people.

Councillor Devon referred to concerns expressed if there was an emergency situation and advised that she was surprised the Ambulance, Fire and Police services had not objected to the proposal and that they were quite happy if they are made aware of the code on a key pad, and asked would that not be sufficient or do the community still see this as a major issue.

Anne Horn advised that the Ambulance service were consulted prior to a change that has been made to ambulance provision in the area whereby every second week ambulances would come from Lochgilphead adding an hour onto the journey. She advised that a minute or a couple of minutes could be life threatening. She advised that very recently there had been two very serious accidents in the area.

Lorraine MacPhail advised that there would not be a key pad just a push button position at the height of people in a normal sized car. She advised that anyone in a Fire Engine would have to leave the vehicle to operate the push button.

Councillor Colville referred to Appendix A of the Local Plan regarding the protection of Agriculture and asked how much weight Members should apply to this given the representation received from the local farmer. He advised he was not sure how many vehicles or farm related traffic such as lorries currently used this access.

Richard Kerr advised that access to both residential and commercial property was a material planning consideration and that it was up to Members how much weight to apply. He advised that there were two issues to consider - the width of the access and the encumbrance of opening the gates. He advised that the width of the access at the proposed gates was the same as the width of the access between the gate pillars further up the drive so this was not an issue. He advised that thought would need to be given on the extent to which the need to

push a button to open gates would impinge upon legitimate access.

Councillor Colville referred to farming traffic and that the gates would be a complete nuisance and that people have a right to access here.

Ian Darby advised that this was a private drive which crossed over his garden. He advised that it would only take 10 – 15 seconds for the gates to open and would not delay him in his working day,

Richard Kerr referred to commercial users and advised that Members should consider whether or not the gates would encumber them in their working day. He advised that most farmers have to routinely open and shut and go through many gates with no electrical mechanism and that using a power operated gate would not be a significant encumbrance. He advised that for the residents of Balinakill it will be an inconvenience. Most of the properties are some distance away and that in his opinion the presence of the gates would not have a significant effect per se and that it was not unreasonable to have to access gates to and from properties and that there was nothing fundamentally prejudicial about using gates. He advised that they could be regarded as an imposition upon people who already live there.

Councillor McNaughton referred to the gates already have listed building consent to be moved and asked if the gates were no more than 2 metres did that not mean they would not require planning permission.

Richard Kerr confirmed that the gates were less than 2 metres and it was the gate pillars which exceeded that height. In normal circumstances they would not require planning permission; however, in this case, as it was a listed building they did require planning permission.

The Chair moved and the Committee agreed to adjourn at 12.15 pm.

The Committee reconvened at 12.25 pm and the Chair invited everyone to sum up.

SUMMING UP

Planning

Richard Kerr advised that it is recognised that this proposal is an unwelcome impediment to community interaction between Balinakill and the main part of the village and that it has raised legitimate concerns on the part of the residents. He advised that he understood that residents feel that there is no need and insufficient justification advanced by the Applicants for a gated access. However, he advised that it is not a requirement that any Applicant seeking permission for walls or gates should have to demonstrate need or provide a justification in support of their proposal. In the event that the planning authority considers that development is unacceptable it must advance sound and clear reasons founded on land use planning considerations as to why the development ought not to be consented.

He advised that in this case, the location, design and means of operation of the gates are relevant considerations, along with the extent to which these elements

will impinge upon disadvantaged groups such as the disabled or the elderly.

He advised that in terms of location, the current gate pillars do not lend themselves to their intended purpose of supporting gates and relocation to a point further set back from the road would be required.

He advised that in terms of design, the ornamental cast iron decorative gates are appropriate to the particular pillars involved and to the historic context of the listed house.

He advised that in terms of means of operation, the intended electrical installation, the battery back up supply, the proposed free to use control mechanism and the surfacing required by way of condition together provide continued access for those exercising servitude access rights or Land Reform Act public access rights.

He advised that in terms of emergency access, the emergency services have expressed satisfaction with the proposed access arrangements and have not raised objections.

He advised that in terms of equal opportunities obligations, proper consideration has been given to the extent to which the development would prejudice or significantly disadvantage users, and whether the installation would be equal opportunities compliant. He advised that planning are content that the installation has been specifically designed to afford access for persons of all abilities and that the operation of the gates as envisaged can be controlled by way of condition, so as to prevent them from being locked or from the electrical operation being discontinued at some point in the future.

Given these circumstances he advised that the application is recommended for approval subject to the conditions listed in supplementary report number 1.

Applicant

Mr and Mrs Darby confirmed they had nothing further to add.

Statutory Consultee

Lorraine MacPhail referred to emergency situations and advised that the Fire Brigade had not objected as they believed a member of staff from the hotel would be available to open the gates if there was an electrical failure. She advised that this was not a hotel and that there were no staff around to open the gates. She advised that the gates were unnecessary and that no harm has come to families with children and pets. She asked the Committee not to disregard the thoughts of the local people and requested that a condition be included to ensure the gates remained open at all times and that no further application be allowed to change that condition.

Objectors

Anne Horn advised that this access has been used as a public right of way for over 20 years whether or not there has been a servitude right of access. She advised that most residents of Balinakill have a servitude right of access and to

highlight the alternative access was erroneous. She advised that objectors had checked with the manufacturers of the gates and they confirmed that the gates would default to the locked close position. She advised that the Applicant has stated he wants to deter access. She advised that the local GP has advised that the gates will be a risk to health and life. She advised that it is the people of Balinakill that will be adversely affected and that consideration should be given to these people who support Argyll and Bute and Clachan and that this application should be refused.

The Chair invited everyone to confirm they had received a fair hearing and they all confirmed this to be the case.

DEBATE

Councillor Colville advised that he was very much aware of the area of Clachan which was special and that he had real concerns that there would be a loss to the sense of place with this division which worried some. He advised that he had tried to visualise other gates at entrances to estates and that he could not think of any that had gates that were shut. He advised that he had sympathy for the Applicant who was trying to improve the site. He advised that at the moment people stayed and worked at Balinakill every day of the year and that gates will be a complete nuisance and as such would be prejudicial. He advised that he would wait to see what the other Members said before coming to a decision.

Councillor Hall advised that the Committee were here to deal with a planning issue and that the right of access was a civil issue. He advised that this was private land and agreed that access should be allowed over the land and that he did not see traffic control being an issue. He advised that security was an issue and that the gates would address security. He advised that he did not agree that this would be a gated community as there were two ways to access.

Councillor Currie advised that this was very much an open and shut case and to him it was very much open. He advised that there were a lot of concerns and that he could not understand why people would want to put up barriers to each other. He advised that he had concerns for disabled people and concerns for children using the push button and advised that the elderly may not find this a simple task. He advised he had concerns for the people living beyond the hotel. He advised that some of the concerns may not be a planning issue but the community have spoken and they do not want the gates.

Councillor Trail advised that he had a great deal of sympathy for the Applicants who wished to put up the gates for security reasons and that they were keen to upgrade their property. He advised they were running a small business in a small community. He referred to the village perspective and that it has come across very strongly that they are against these gates. He referred to the pictures of the gates and that they look intimidating and that there would be psychological barrier to using the gates. He referred to the layout of Clachan being in two parts.

Councillor Devon advised that her sympathies were with the Applicants who were looking to improve their land. She referred to the concerns of the people who may feel the gates are intimidating and a nuisance but the Committee had to look at this application in planning terms and that it fitted the criteria of the

Council's plans and policies.

Councillor McNaughton advised he had sympathy for both the Applicants and the community and agreed with Councillor Devon that this was a planning issue.

Councillor Blair referred to the community concerns about access and advised that if permission were granted he believed that in future years the gates will remain open. He advised that the gates will enhance the economic aspect of the facility and will assist with developing the community and that this was a great opportunity to build on the economic aspect of the community.

Councillor Currie advised that he has nothing against the pillars and that there were a lot of pillars at entrances to grand houses but there was no need to have the gates closed and advised that he would like to move the following motion:-

Motion

The land use planning consequences of the development are so prejudicial to the interests of residents that permission should be refused as the application was contrary to policy LP HOU 3.

Moved by Councillor Currie, seconded by Councillor Colville

On establishing whether or not this Motion was competent, Richard Kerr advised that the Motion did not go far enough. He advised that it was not enough just to say it was prejudicial and that it needed to be clear why it was prejudicial in case the Applicant made an appeal to the Scottish Ministers. It was important to state why the development was prejudicial and in what way it was prejudicial.

The Chair ruled and the Committee agreed to adjourn the meeting at 12.45 pm to allow Members to obtain advice on the terms of their Motion.

The Committee reconvened at 1.15 pm.

Motion

The land use planning consequences of the development are so prejudicial to the interests of residents and their environs that permission should only be granted on the following conditions:-

1. Other than as provided for by the terms of the conditions below, the development shall be implemented in accordance with the details specified on the application form dated 04.09.12 and the approved drawing reference numbers:

G844 LO50A Location Plan
G844 LO50B Site layout
G844 L051 Elevations/details

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.

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

2. Notwithstanding the submitted details the gate shall have no electrical mechanism for operation of the gates which shall be retained in an open position at all times.

Reason: The gates if closed would provide a barrier to the community cohesion by creating an imposing structure that would discourage use and create a nuisance and loss of amenity for residents and visitors to the Balinakill residential community and farm land.

Moved by Councillor Currie, seconded by Councillor Colville

Richard Kerr advised and the Chair ruled that this was a competent Motion.

Amendment

To grant planning permission subject to the conditions and reasons detailed in supplementary planning report number 1.

Moved by Councillor Mary-Jean Devon, seconded by Councillor James McQueen

The Amendment was carried by 6 votes to 4 and the Committee resolved accordingly.

Decision

To grant planning permission subject to the following conditions and reasons:-

1. Other than as provided for by the terms of the conditions below, the development shall be implemented in accordance with the details specified on the application form dated 04.09.12 and the approved drawing reference numbers:

G844 L050A Location Plan;
G844 L050B Site Layout;
G844 L051 Elevations/detail;

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.

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

2. The two vehicular gates hereby approved, shall be operated by means of automated gate control equipment the full details of which shall be submitted to and be approved in writing by the Planning Authority prior to installation. Thereafter installation of any such equipment shall only take place in accordance with the duly approved details and the gates shall remain power operated thereafter.

The equipment shall be designed and installed to provide for:

- a) on-demand access without any security mechanism which shall be either operated by automatic approach control, or be capable of being operated from within a vehicle, with equipment installed and maintained so as to allow the gate to be freely electrically operable thereafter;
- b) in the event of push button operation, the control shall be installed on either side of the gates at a distance of 5.0m from the gates at a height of 1.2m above ground level and the push buttons should be either internally or externally illuminated;
- c) a battery back-up supply which shall be maintained at all times to address any mains power failure;
- d) the ability for intended users to be able to default from the automated mechanism to manual operation on demand in the event of battery power being exhausted, in which case the gates shall be maintained in an open position until such time as electric operation has been restored;
- e) the display of externally illuminated instructions for manual operation in the event of power or equipment failure.

Reason: In order to enable assessment of the installation and its consequences for the character and appearance of the listed structures and to ensure that the gates do not present an unacceptable impediment to disabled or other less able persons.

3. The gate pillars shall be located so as to provide a clear opening width for the pedestrian gate of 1000mm, and the gates shall not be first brought into operation until a pedestrian route connecting the carriageway either side of the pedestrian gate, and of an equivalent width to the gateway opening, has been completed in a bound bituminous material or similar sealed surface. The latch serving the gates shall be capable of being operated by a pedestrian without the user having to turn a wrist

Reason: To enable the pedestrian access to be used by persons of all abilities including the disabled, and to cater for wheelchairs and pushchairs without the need for users to operate carriageway gates

4. The vehicular gates hereby approved shall not be brought into use until hard surfaced passing places of sufficient size to enable a vehicle to stand clear of the carriageway have been constructed on the approach to either side of the gates. These passing places shall be retained available for use thereafter.

Reason: To provide for the passing of opposing vehicles in the vicinity of the gates having regard to the increased likelihood of vehicles meeting each other as a result of the additional delay associated with the operation of gates.

5. Prior to the gates being first brought into use a fingerpost mounted on a post

at least 2.4m high shall be erected on the approach to the pedestrian gate from the A83 to advise of the existence of Land Reform Act access rights. The wording to be used shall be as agreed in advance in writing by the Planning Authority in consultation with the Council's Access Officer. This fingerpost shall be maintained for the purposes of direction thereafter.

Reason: To ensure that the presence of the gates does not deter legitimate public access exercisable under the provisions of the Land Reform Act 2003.

(Reference: Report by Head of Planning and Regulatory Services dated 13 December 2012 and supplementary planning report number 1 dated 25 January 2013, submitted)