

**STATEMENT OF CASE**

**FOR**

**ARGYLL AND BUTE COUNCIL  
LOCAL REVIEW BODY**

**ERECTION OF FENCE (PART RETROSPECTIVE)**

**30<sup>TH</sup> JANUARY 2023**

## STATEMENT OF CASE

The Planning Authority is Argyll and Bute Council ('the Council'). The appellant is Mr Christina Kane ('the appellant').

Part retrospective planning permission 22/01939/PP for Erection of fence (part retrospective) at Kilkivan, Drumore, Campbeltown PA28 6NW ('the appeal site') was granted under delegate powers subject to conditions on 22.12.22.

The planning application has been appealed and is subject of referral to a Local Review Body.

### DESCRIPTION OF PROPOSAL

The erection of a fence (part retrospective) was granted planning permission on 22.12.22 following an enforcement investigation in respect of the unauthorised erection of the fence which was also subject to an enforcement complaint.

Due to the unacceptable current height of the fence in the interests of visual amenity Condition 2 of the part retrospective planning permission required the fence to be reduced to 1.5m as identified on the submitted plan within 3 months from the date of the permission, requiring the fence to be reduced in height by 22.03.23. Condition no.2 states:

*Within 3 months from the date of this permission the section of the fence highlighted with a blue line on the approved site plan 1303/P/1-A shall be reduced to a minimum height of 1.5m as identified on the plan to the satisfaction of the Council as Planning Authority.*

*Reason: In order to help integrate the development into its surroundings and reduce the visual impact.*

The application subject of review sought to amend the timescale of this condition from 3 months to 1 year.

### 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, the determination shall be made in accordance with the plan unless material considerations indicate otherwise. This is the test for this application.

### STATEMENT OF CASE

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

- *Whether the request by the appellant are sufficient to outweigh the fact that the current fence is unauthorised and unacceptable at its current height for it*

*to remain at this height for an extra 9 months from the 3 month time frame given by condition no.2.*

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.

## **REQUIREMENT FOR ADDITIONAL INFORMATION AND A HEARING**

It is not considered that any additional information is required in light of the appellant's submission. The concerns raised in respect of the existing fence at a current height of approx. 2m were assessed in the Report of Handling which is contained in Appendix 1. As such it is considered that Members have all the information they need to determine the case. Given the above and that the proposal has no complex or challenging issues, and has not been the subject of any significant public representation, it is not considered that a Hearing is required.

## **COMMENT ON APPELLANT'S SUBMISSION**

In summary, the appellant contends that he cannot get the work carried out by a contractor to comply with the timescale of the condition (3 months) and that an extended time period of one year is required.

*Comment: As detailed in the Report of Handling the element of the fence at 2 metres in height is not considered acceptable in terms of visual amenity resulting in a detrimental visual impact on the existing streetscape and therefore it is not considered acceptable to extend the time period to one year.*

## **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.

In the consideration of this review regard has to be given to the detrimental visual impact the fence is having on the existing streetscape and that it is not in keeping with the existing streetscape and garden enclosures.

Taking account of the above, it is respectfully requested that the application for review be dismissed.

# APPENDIX 1

Argyll and Bute Council  
Development & Economic Growth

Delegated Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

---

**Reference No:** 22/01939/PP  
**Planning Hierarchy:** Local  
**Applicant:** Mr Christian Kane  
**Proposal:** Erection of fence (part retrospective)  
**Site Address:** Kilkivan, Drumore, Campbeltown

---

## DECISION ROUTE

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

---

### (A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
    - Erection of fence (part retrospective)
  - (ii) **Other specified operations**
    - Reduction in height of rear fence
- 

### (B) RECOMMENDATION:

Recommend that part retrospective planning permission be granted subject to the conditions and reasons within the report.

---

### (C) CONSULTATIONS:

Area Roads Engineer – no objection – report dated 24.11.22  
Transport Scotland – no objection – report dated 18.10.22

---

### (D) HISTORY:

02/00771/DET - Erection of 1.5m high timber fence – granted 24.06.02

---

### (E) PUBLICITY:

Not required

---

**(F) REPRESENTATIONS:**

**(i) Representations received from:**

Two emails of representation has been received:  
Malcolm McFadyen – emails dated 28.10.22 and 25.11.22

**(ii) Summary of issues raised:**

- Road Safety – loss of sightlines from the driveway, the new fence renders them blind to other road users;  
*Comment: The roads Department have raised no concerns.*
  - Previous planning permission was granted for a 1.5m fence around this property which was previously reduced to 1m in height along the roadside. Permitted development should be adhered to in the ground of safety to other road users.  
*Comment: The fence is not considered to be a road safety issue; following this email the applicant has submitted an amended plan showing the fence to the rear reduced to 1.5m and in light of the previous permission for a 1.5m high fence this amended proposal is considered acceptable.*
  - Streetscape – object to the fence on ground of appearance, visual amenity and impact on the built environment.  
*Comment: The fence in its current form of approx. 2m high at the rear is not considered acceptable in terms of its visual appearance in respect of the surrounding streetscape. The applicant has submitted an amended plan showing the fence to the rear reduced to 1.5m and in light of the previous permission for a 1.5m high fence this amended proposal is considered acceptable.*
  - Whilst the reduction in height to 1.5m will improve the visual aspect this will have little impact on road safety; returning the rear fence to the hit and miss style fencing originally consented would improve visibility.  
*Comment: The roads department have raised no concerns to the proposal and it is not considered to be a road safety concern.*
- 

**(G) SUPPORTING INFORMATION**

**Has the application been the subject of:**

- |   |    |
|---|----|
| <b>(i) Environmental Statement:</b>   | No |
| <b>(ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994:</b> | No |
| <b>(iii) A design or design/access statement:</b>   | No |

- (iv) A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: No

---

**(H) PLANNING OBLIGATIONS**

Is a Section 75 agreement required: No

---

- (I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**
- 

- (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 Development Plan' Adopted March 2015**

LDP STRAT 1 – Sustainable Development  
LDP DM 1 – Development within the Development Management Zones  
LDP 9 – Development Setting, Layout and Design

Local Development Plan Schedules

**'Supplementary Guidance to the Argyll and Bute Local Plan 2015' (Adopted March 2016)**

**Enforcement Action**

SG LDP ENF – Enforcement Action

**Sustainable Siting and Design**

SG LDP Sustainable – 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 3/2013.**

- Scottish Planning Policy
- Representation
- Planning History

*Argyll and Bute proposed Local Development Plan 2 (November 2019) – The unchallenged policies and proposals within pLDP2 may be afforded significant material weighting in the determination of planning applications at this time as the settled and unopposed view of the Council. Elements of the pLDP2 which have been identified as being subject to unresolved*

*objections still require to be subject of Examination by a Scottish Government appointed Reporter and cannot be afforded significant material weighting at this time. The provisions of pLDP2 that may be afforded significant weighting in the determination of this application are listed below:*

- None

---

**(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No**

---

**(L) Has the application been the subject of statutory pre-application consultation (PAC): No**

---

**(M) Has a sustainability check list been submitted: No**

---

**(N) Does the Council have an interest in the site: No**

---

**(O) Requirement for a hearing: No**

---

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

Part retrospective planning permission is sought for a timber fence erected at Kilkivan, Drumore, Campbeltown. This application has been submitted as the result of an enforcement investigation following a complaint in respect of the unauthorised fence.

A vertical close boarded timber fence has been erected to the front, side and rear of the detached property known as Kilkivan, Drumore; the site lies within the 'Settlement' area of Campbeltown as defined by the Local Development Plan.

The fence to the front of the property is adjacent to the A83(T); whilst 2m is considered a high fence next to a public road this property and neighbouring property have had fences erected along this front boundary for a number of years (this property has always had the higher fence of the two properties); the previous fence for this property which was similar in height along this rear boundary but of a picket style hit and miss fence design and was removed and replaced by this 2m high close boarded timber fence. This fence has continued along the side elevation to the rear boundary and along approx. half of the rear boundary (apart from the parking area).

Whilst the 2m high fencing is considered acceptable at the front and along the side boundary of the dwellinghouse (to the rear elevation of the dwellinghouse) it is not considered acceptable further forward of the rear elevation of the dwellinghouse at the rear garden upto the unclassified road. The fence at approx. 2m in height is not considered to be in keeping with neighbouring surrounding properties which all have walls and fence enclosures of around 1m in height and is not in keeping with the existing character of the streetscape. The fence in its current form as erected could not be supported.



Previous planning permission was granted in 2002 for a fence to be erected around the boundary of the property at 1.5m in height of a picket style hit and miss fence; in light of this previous permission it was not considered appropriate to request the fence be lower in height to this previous approval; however the applicant was advised to reduce the height of the fence to a minimum of 1.5m to the rear of the dwellinghouse. In light of this advice an amended plan was submitted identifying this rear boundary fence being reduced to 1.5m in height which is considered acceptable in light of previous planning permission granted. A condition will be attached requiring this element of the fence to be reduced to 1.5m within 3 months from the date of the permission.

With the fence at 2m in height to the front and reduced in height to 1.5m to the rear the proposal is considered acceptable in terms of Development Plan Policies LDP DM1, LDP STRAT 1 and LDP 9.

---

**(Q) Is the proposal consistent with the Development Plan: Yes**

---

**(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:**

With the fence at 2m in height to the front and reduced in height to 1.5m to the rear the proposal is considered acceptable in terms of Development Plan Policies LDP DM1, LDP STRAT 1 and LDP 9.

---

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

None

---

**(T) Need for notification to Scottish Ministers or Historic Environment Scotland:**  
No

---

**Author of Report:** Kim MacKay **Date:** 28.11.22

**Reviewing Officer:** Peter Bain **Date:** 22.12.2022

**Fergus Murray**  
**Head of Development and Economic Growth**

## CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 22/01939/PP

The development to which this permission relates must be begun not later than three years from the date of this permission.

Reason: In accordance with Section 58 of the Town and Country Planning (Scotland) Act 1997.

### 1. **PP - Approved Details & Standard Notes – Non EIA Development**

The development shall be implemented in accordance with the details specified on the application form dated 22.09.22; supporting information and, the approved drawings listed in the table below unless the prior written approval of the planning authority is obtained for an amendment to the approved details under Section 64 of the Town and Country Planning (Scotland) Act 1997.

Plan Title.	Plan Ref. No.	Version	Date Received
Location Plan	-	-	23.09.22
Site Plan	1303/P/1-A	A	23.11.22

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

2. Within 3 months from the date of this permission the section of the fence highlighted with a blue line on the approved site plan 1303/P/1-A shall be reduced to a minimum height of 1.5m as identified on the plan to the satisfaction of the Council as Planning Authority.

Reason: In order to help integrate the development into its surroundings and reduce the visual impact.

3. The fence hereby granted permission shall remain a dark recessive colour in perpetuity to the satisfaction of the Council as Planning Authority.

Reason: In order to help integrate the development into its surroundings and reduce the visual impact.

## APPENDIX TO DECISION APPROVAL NOTICE

Appendix relative to application **22/01939/PP**

- (A) Has the application required an obligation under Section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended): **Yes – amended plan showing a reduction in height of the fence at the rear to 1.5m**

**If Yes: The terms of the Section 75 obligation may be viewed on the Council’s website at [www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk) by recalling the application reference number on the Council’s Public Access Module and then by “Clicking” Section 75 Obligation under the attached correspondence or by viewing the Public Planning register located at Planning Services, 1A Manse Brae, Lochgilphead, Argyll, PA31 8RD.**

- (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. **No**
- (C) Is the proposal consistent with the Development Plan? **No**
- (D) Summary justification statement for approval of planning permission

With the fence at 2m in height to the front and reduced in height to 1.5m to the rear the proposal is considered acceptable in terms of Development Plan Policies LDP DM1, LDP STRAT 1 and LDP 9.