

**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.

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**

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

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- (J) **Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application**

- (i) **List of all Development Plan Policy considerations taken into account in assessment of the application.**

'Argyll and Bute 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.