

# Supplementary Agenda

## Planning Committee

**Date:** Wednesday, 15 November 2017

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**Time:** 10.00

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**Venue:** Council Chambers,  
Clydebank Town Hall, Dumbarton Road, Clydebank

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**Contact:** Craig Stewart, Committee Officer  
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Dear Member

### Item to Follow

I refer to the agenda for the above meeting of the **Planning Committee** which was issued on 3 November 2017 and now enclose a copy of the undernoted item which was not available for issue at that time.

Yours faithfully

**JOYCE WHITE**

Chief Executive

Undernote:-

### Item to Follow

5 (a) /

- 5(a) DC17/205 – Erection of 2.5 storey dwellinghouse and installation of associated driveway and access (Without complying with Condition 9 of Permission DC14/096 requiring upgrading of a road to adoptable standard) at land adjacent to Stirling Road, Glenpath, Dumbarton by Mr Nazir **47 - 57**

**Note:** Members are asked to note that the above is an appeal against non-determination and, accordingly, the Committee is requested to agree the Council's position on the application.

Distribution:-

Councillor Jim Finn (Chair)  
Bailie Denis Agnew  
Councillor Jim Brown  
Councillor Gail Casey  
Councillor Karen Conaghan  
Councillor Diane Docherty (Vice Chair)  
Councillor Douglas McAllister  
Councillor Marie McNair  
Councillor John Mooney  
Councillor Lawrence O'Neill

All other Councillors for information

Date of Issue: 9 November 2017

## WEST DUNBARTONSHIRE COUNCIL

### Report by Strategic Lead – Regulatory

Planning Committee: 14 November 2017

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**DC17/205: Erection of 2½ storey dwellinghouse and installation of associated driveway and access (without complying with condition 9 of permission DC14/096, requiring upgrading of road to adoptable standard), at land adjacent to Stirling Road, Glenpath, Dumbarton by Mr Sajad Nazir**

#### 1. REASON FOR REPORT

- 1.1 This report relates to an application seeking to vary a condition of a planning permission granted by the Planning Committee. Under the Council's approved Scheme of Delegation such applications require to be determined by the Planning Committee. However, in this case the applicant has submitted an appeal against the Council's failure to determine the application within the statutory two-month period, and the application will accordingly be determined by a Reporter appointed by the Scottish Ministers and not by the Council as planning authority. The Council is, however, entitled to express its views on the application as part of the appeal proceedings.
- 1.2 This report therefore informs the Committee of the submission of the appeal, and seeks to agree the Council's response to it.

#### 2. RECOMMENDATION

- 2.1 That the Committee (a) **notes the submission of this appeal**, and (b) **expresses the view that the application should be refused** for the reason set out in Section 9 below.

#### 3. DEVELOPMENT DETAILS

- 3.1 The application relates to part of a substantial strip of land between the A82(T) Stirling Road and Glenpath, at the north-eastern edge of Dumbarton. Glenpath is a single-track privately owned and maintained cul-de-sac which runs parallel to Stirling Road further up the hillside, and it currently contains twelve houses along with vehicular access to the rear of another three properties. Most of the houses are large detached

properties with sizeable plots, located along the north-east side of the street opposite the application site. The application site is on the south-west side of Glenpath which is a belt of undeveloped land which slopes down towards Stirling Road, from which it is separated by a low stone retaining wall and palisade type railings. This land was previously entirely overgrown with trees and shrubs, and although the applicant undertook clearance of much of the vegetation from the centre of site several years ago there is still a significant growth of trees and shrubs around most of its boundaries. The appellant owns all of the land to the south of Glenpath, extending to around 0.71ha, however the proposed house and its curtilage would only occupy around 0.205ha, located in the centre of the land.

- 3.2** Planning permission was granted in September 2015 (decision DC14/096) for the erection of a 2½ storey dwellinghouse and installation of associated driveway and access. As most of Glenpath is a private road which already serves a larger number of houses than the adopted Roads Development Guide specifies, permission was granted subject to a condition that the road be upgraded to an adoptable standard as far as the access into the new house. There were several objections to application DC14/096 from existing residents in Glenpath who disputed the applicant's rights to use or alter the private road, but that was a private legal matter for the applicant to resolve and at the time the appellant's previous agent expressed confidence that it would be possible to do so. The relevant condition was worded as follows:

*"9. The dwelling shall not be occupied until such time as the section of Glenpath between the site access and the junction with Barnhill Road (as marked on the approved plan) has been upgraded to the standard required by the Council's adopted Roads Development Guideline (or such other standard as might first be approved in writing by the Planning Authority). Details of the works to be carried out shall be submitted to and approved by the Planning Authority prior to any works on site and implemented as approved."*

- 3.3** The current application seeks to implement the development without complying with the requirements of condition 9 (i.e. without upgrading any more of Glenpath to an adoptable standard). It is understood that the appellant has not been able to reach agreement with other landowners who have an interest in the private road. A supporting statement submitted by the appellant now argues that the requirements of condition 9 are unduly onerous and that the condition is not required,.
- 3.4** The appellant has submitted two contradictory site plans, one corresponding with the previous permission (as described in paragraph 3.1 above), and also an amended location plan which shows the whole of the 0.71ha site as being within the application site boundary, and the

access onto Glenpath being relocated to the far northern corner of the land (outwith the original application site boundary). However, it is not possible to make such a significant alteration to the site boundary as part of a Section 42 application. This issue is discussed in paragraph 7.9 below.

#### **4. CONSULTATIONS**

- 4.1** West Dunbartonshire Council Roads Service has recommended a refusal to this application. They do not accept the appellant's arguments against the condition, and they continue to consider that the road requires to be upgraded to an adoptable standard as per the requirements of the adopted National Roads Development Guide.

#### **5. REPRESENTATIONS**

- 5.1** Two representations have been received from residents of Glenpath, one of the representations is a petition signed by residents of five houses. They object to the proposal and raise the following concerns:
- The condition should be retained and strengthened to require that the upgrading take place before construction of the house in order to accommodate the construction traffic;
  - Appellant's argument that Glenpath is not a road is absurd;
  - Appellant has bought a piece of land with no right of access and is attempting to circumvent the rights of property owners;
  - Impact upon existing parking areas along the Glenpath Road;
  - There is a current legal dispute regarding boundaries along Glenpath, and the appellant keeps amending the boundaries of his planning application in ways which do not correspond to title deeds;
  - Previous issues with appellant having blocked Glenpath;
  - Dispute over whether there is a pedestrian right of way through the site between Glenpath and Stirling Road.

Some of these matters are private legal issues which are not material planning considerations. Those concerns which are material are addressed in Section 7 below.

#### **6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN**

##### West Dunbartonshire Local Plan 2010

- 6.1** The application site lies within an Existing Residential Area. The principle of developing the site as a house plot and the design of the proposed development were considered against the relevant policy H5 at the time of

the previous application and found to be acceptable. The present application is concerned only with the access arrangements and the relevant policy is GD1. This sets out general requirements for all new development proposals, including that they should meet the roads, parking and access requirements of the Council (particularly for disabled people and the emergency services) reflecting national guidance where appropriate. The proposed removal of the requirement to upgrade Glenpath is considered to be contrary to this policy for the reasons discussed in Section 7 below.

## **7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS**

### West Dunbartonshire Local Development Plan (LDP) Proposed Plan

- 7.1** On 27 April 2016, the Planning Committee took a final decision not to accept the Local Development Plan Examination Report recommended modification in respect of including the Duntiglennan Fields site in Clydebank as a housing development opportunity, and therefore, as a result of the Scottish Ministers' Direction, the Local Development Plan will remain unadopted. All other recommended modifications of the Examination Report have been incorporated into West Dunbartonshire Local Development Plan, which will retain Proposed Plan status. The Council has received legal opinion that the Proposed Plan including the accepted modifications and the Examination Report continue to be a material consideration in the determination of planning applications.

- 7.2** The site is within an Existing Neighbourhood. The principle of developing the site as a house plot and the design of the proposed development were considered against the relevant policy BC4 at the time of the previous application and found to be acceptable. The present application is concerned only with the access arrangements and the relevant policy is SD1. This indicates that development should avoid adversely affecting the road network, and should therefore comply with relevant Roads Development Guidelines and provide improvements to the transport network which are necessary as a result of the development. The proposed removal of the requirement to upgrade Glenpath is considered to be contrary to this policy as discussed below.

### Relevant Planning History

- 7.3** The application site has never been developed, despite a number of planning permissions having been granted for 8-12 houses in 1960 (decision 31/60), 1962 (8/62), 1996 (DB2371) and 2000 (WP00/155). It is understood that none of these permissions was implemented because of access difficulties. Permission DB2371 was subject to a condition requiring that Glenpath be upgraded to an adoptable standard, and application WP00/155 sought to have that condition removed in the course

of renewing the permission. However, the Council declined to remove the requirement and the condition was carried forward on permission WP00/155.

- 7.4** Over the same period five new houses have been built on Glenpath as either subdivisions of existing gardens. Two of these (15a and 14 Glenpath) were approved in 1983 and 1988 prior to adoption of the previous roads design standards (decisions DB891 and DB1425). One house (16 Glenpath) was approved in 1994 contrary to a recommendation from the Roads Service (decision DB2199), and the other two (31 and 32 Glenpath) were approved in 2002 as a replacement for an existing bungalow fronting the adopted section of Glenpath (decision DC02/189). The access issues at Glenpath have therefore been known for many years, and the previous permissions for individual houses does not establish a precedent for allowing further such development.

#### Roads Development Guidelines

- 7.5** When permission DC14/096 was granted the Council's roads development standards specified that a maximum of three houses could be served by a private access, but these standards were superseded the the Council's adoption in 2015 of the National Roads Development Guide. These specify that six or more individual dwellings should normally be served by a road. The guidelines do not specify that the road must be adopted, but even a private road must be of an adoptable standard, which Glenpath currently is not. The guidelines do provide for some flexibility in relation to the figure of six houses, especially in relation to brownfield development such as steading conversions where a private access may be permissible for a larger number of dwellings.
- 7.6** Whilst the current standards are more flexible than those which were in use at the time of the previous application, it is nevertheless considered that it would not be appropriate to permit additional housing without bringing Glenpath up to an appropriate standard. There are already ten houses accessed from the private section of Glenpath, and the nature of the road is not such as would justify a relaxation of the normal maximum of five. The road is a relatively conventional linear cul-de-sac with detached and semi-detached houses arranged along the whole frontage of the north side of the street. There is no formal turning area and none of the traffic calming features which would normally be appropriate for a shared-surface residential street. The appeal proposal would add an eleventh house, increasing the extent to which Glenpath is substandard, especially in view of the fact that the new house would be an extremely large property intended for occupation by an extended family (and thus giving rise to more traffic than a more typically sized property). Furthermore, the proposal would introduce housing on the south side of Glenpath beyond the current limit of adoption, and in view of the very large

plot and its lengthy driveway the potential for future subdivision applications is obvious. It is therefore not considered appropriate to allow a relaxation of the standard in this case.

#### Appellant's Arguments

- 7.7** The appellant has advanced various arguments that the condition is unduly onerous and unworkable, which are summarised as follows:
- (a) Glenpath is a “private access” not a “private road”;
  - (b) The Council could not adopt the “private access” even if it was upgraded to an adoptable standard;
  - (c) The Roads Development Guide does not require an adoptable access road unless at least 3 new dwellings are proposed, regardless of how many existing houses already use it;
  - (d) There is no need for the condition because there are no road safety concerns;
  - (e) The desire to upgrade and adopt Glenpath is not relevant to planning;
  - (f) The desire to upgrade and adopt Glenpath is not related to the proposed development because it is already substandard;
  - (g) The condition is unenforceable because it requires works to third party land;
  - (h) The condition is not reasonable because it places all of the obligation to upgrade Glenpath upon the appellant and not on any of the ten existing houses
- 7.8** All of these arguments are either confused understanding of the law or the Council’s position. Briefly, the response to each point is as follows:
- (a) Glenpath is a “private road” in terms of the Roads (Scotland) Act, and the appellant’s argument appears to be based on misunderstood correspondence about an unrelated path;
  - (b) Even if point (a) was correct, there would be no legal obstacle to its adoption were it to be upgraded to an adoptable standard as required by the condition;
  - (c) The previous Roads Development Guide required accesses serving 3 or more houses to be adoptable, regardless of whether the houses were built together or separately. The current RDG raises the threshold to 6 houses, with some scope for flexibility. However, the appellant’s interpretation that an unlimited number of individual houses can be built without triggering the requirement for an adopted road is incorrect;
  - (d) The standards are concerned with other issues besides road safety, including the convenience of road users. It is not in the public interest to have a significant number of houses accessible only by a substandard private road;



- (e) The proposal would increase the amount of traffic using Glenpath and therefore the condition and status of Glenpath are relevant to the planning application;
- (f) Although Glenpath is already substandard, the proposal would exacerbate the situation so it is reasonable to require upgrading;
- (g) The fact that the condition requires the co-operation of a third party does not invalidate it or make it unenforceable. The appeal situation is in fact similar to the example used in Circular 4/1998 which the appellant's statement draws attention to;
- (h) The existing houses on Glenpath are a historic situation which is not subject to the Council's control, whereas the appellant's proposal would exacerbate the situation and is subject to planning control. The status of the access ought to have been known to the appellant when purchasing the site, and the costs and difficulties arising from it taken into account in determining its value.

**7.9** The appellant has provided an alternative plan showing a much larger application site than was previously approved, and with the point of access onto Glenpath relocated to the corner closest to the adopted road. It is not considered competent to consider such a significantly amended proposal in the context of a Section 42 application (i.e. one which is concerned only with the conditions of the permission), but should the appellant wish to pursue this option it could be pursued as a separate application including full details of the changes to the site layout. Were such an application to be successful the amount of Glenpath which would require to be upgraded to an adoptable standard would be significantly reduced compared to permission DC14/096, and may reduce the number of other landowners involved. However, the appellant would however still need to obtain the agreement of the Ministry of Defence (owner of the opposite half of Glenpath at this location), and it is understood that he has not been able to reach such an agreement.

#### Representations

**7.10** A number of the points raised in the objection are not material planning considerations, including private legal disputes about property boundaries and the rights of the various property owners to use and park on Glenpath. The condition was worded to require completion of the upgrading work prior to occupation of the new house, but it is accepted that a stronger wording to require that this take place prior to commencement of development would be consistent with the guidance of Circular 4/1998 in relation to the use of conditions in such circumstances. However, the appellant now indicates that there is no likelihood of reaching agreement with the other landowners and therefore it would be more appropriate to refuse the application than to apply a modified condition.

- 7.11** In relation to the right of way issue, this relates to a footpath running through the appellant's land between Glenpath and Stirling Road, which is outwith the application site. There is a dispute about the status of this path which is being handled by the Council's Access Officer, but the matter is not relevant to the current application.

## **8. CONCLUSION**

- 8.1** Condition 9 was imposed because Glenpath is a substandard private road which is in poor condition and which already serves a larger number of houses than the adopted standard allows. Any additional houses accessed from Glenpath would increase the traffic using the substandard road, and this is particularly true of the proposed house because it would be such a large property intended to be occupied by an extended family and would therefore be likely to generate more vehicle movements than would typically be expected of a single dwelling. It is recognised that the appellant may have difficulty complying with the condition due to the need to reach agreement with other landowners, but this does not negate the necessity of the condition. The arguments which the appellant has advanced in favour of deleting the requirement to upgrade the road to an adoptable standard do not provide a clear rationale for departing from the roads development standards in a situation where the road is already substandard, and whilst the appellant has indicated a willingness to carry out some form of alternative upgrading work it is not clear what this might entail or how it could be achieved without the agreement of the other landowners.
- 8.2** Overall, it is considered that the proposal to delete the requirements of condition 9 would be contrary to policy GD1 of the adopted local plan and SD1 of the proposed LDP, and that it would further detract from the safety and convenience of road users on Glenpath. The condition was therefore serving an important and necessary purpose. However, as the appellant now indicates that there is no likelihood of reaching the agreement with third party landowners necessary to comply with the condition, it would be more appropriate to refuse the application than to grant planning permission subject to repetition of condition 9. For these reasons it is recommended that the Council should express its view to the Scottish Ministers that the appeal should be dismissed and planning permission refused for the reason below.

## **9. REASON FOR REFUSAL (SUGGESTED)**

- 01. The applicant has failed to demonstrate that an appropriate means of access to the site can be provided in accordance**

with the adopted National Roads Development Guide. Accordingly, the proposal is contrary to policy GD1 of the adopted West Dunbartonshire Local Plan 2010 and policy SD1 of the West Dunbartonshire Local Development Plan (Proposed Plan).

**Peter Hessett**  
**Strategic Lead- Regulatory**  
**Date: 7 November 2017**

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**Person to Contact:** Pamela Clifford, Planning & Building Standards Manager  
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**Appendix:** 1. Location Plan

**Background Papers:** 1. Application forms and plans  
2. West Dunbartonshire Local Plan 2010  
3. West Dunbartonshire Local Development Plan Proposed Plan  
4. Representations  
5. Planning consent no: DC14/096

**Wards affected:** Ward 3 (Dumbarton East and Central)



DC17/205

Erection of 2 1/2 storey  
dwellinghouse and  
installation of associated  
driveway and access  
(Without complying with  
Condition 9 of Permission  
DC14/096 requiring  
upgrading of road to  
adoptable standard)

Land Adjacent To Stirling Road  
Glenpath  
Dumbarton

