

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Infrastructure and Regeneration

Planning Committee: 26 February 2014

Subject: Appeal Decision DC13/168 – retrospective erection of rear garden fence and access gate at 81 Kirk Crescent, Old Kilpatrick

1. Purpose

- 1.1** To inform the Committee of the outcome of a planning appeal.

2. Recommendations

- 2.1** That the Committee notes the outcome of the appeal, and agrees the service of a planning enforcement notice requiring removal of the fence and reinstatement of metal railings and hedge.

3. Background

- 3.1** Retrospective planning permission for the formation of a 2m high close boarded boundary fence and pedestrian gate at a house backing onto the access lane for Old Kilpatrick cemetery was refused by the Planning Committee on 28 August 2013. The reasons for refusal related to the impact of the development upon the cemetery access lane, in terms of the appearance of the fence, the impact of creating domestic access, and the precedent this would set.

4. Main Issues

- 4.1** The applicant lodged an appeal against the refusal of planning permission, which was determined by a Scottish Government Reporter following written submissions and a site visit.
- 4.2** The Reporter agreed with the Council's view that the replacement of the original iron railings and hedge had detracted from the character and appearance of the lane. He further agreed that the impact of a domestic access onto the lane was detrimental, and that it would be difficult to avoid setting a precedent were permission to be granted. Accordingly, the Reporter dismissed the appeal and refused retrospective planning permission for the fence and gate. The Reporter did not express any opinion as to how these detrimental impacts might best be remedied.
- 4.3** In the report to the August 2013 Committee it was indicated that the cemetery access lane was owned by the Council, and that whilst the ownership of the original railings was not clear it was understood that these also belonged to the Council. However, following further research by Legal Services it now

appears that the lane, and the railings, are in the ownership of the Church of Scotland.

4.4 The replacement of the railings with a fence and gate has had a detrimental impact on the amenity of the cemetery lane, and it would be highly desirable for the fence and gate to be removed and replaced by replica metal railings, preferably with a hedge behind them. As the Reporter took into account the detrimental impact of the removal of the railings and the hedge in his decision, and as the removal of these was very closely related to the unauthorised erection of the fence and gate, it would be appropriate that a planning enforcement notice be issued to require the removal of the fence and access gate and require the reinstatement of the railings and hedge.

4.5 Officers will also raise the issue with the Church of Scotland to explore whether they are able to take action to reinstate the railings as landowner.

5. People Implications

5.1 There are no people implications.

6. Financial Implications

6.1 In the event of an appeal against a planning enforcement notice, there would be a risk of an award of costs against the Council if it was considered that the Council had acted unreasonably.

7. Risk Analysis

7.1 No risks have been identified.

8. Equalities Impact Assessment (EQIA)

8.1 No equalities impact assessment is required.

9. Consultation

9.1 No consultation is required.

10. Strategic Assessment

10.1 There are no strategic issues.

Richard Cairns

Executive Director of Infrastructure and Regeneration

Date: 7 February 2014

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Appendices:

None.

Background Papers:

1. Report to 28 August 2013 Planning Committee
2. Appeal decision letter dated 20 January 2014

Wards Affected:

Ward 6 (Clydebank Waterfront)