

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Housing, Environmental and Economic Development

Planning Committee: 28 August 2013

**DC13/168 Erection of a Rear Garden Fence and Access Gate
(Retrospective), 81 Kirk Crescent, Old Kilpatrick by Ms M.
Irwin**

1. REASON FOR REPORT

- 1.1** This application has been subject to a significant number of objections including one from a community council, and relates in part to land in which the Council has an ownership interest. Under the approved Scheme of Delegation it therefore requires to be determined by the Planning Committee.

2. RECOMMENDATION

- 2.1** **Grant** full planning permission subject to the conditions set out in Section 9.

3. DEVELOPMENT DETAILS

- 3.1** The development relates to the rear garden boundary of a house which backs onto a lane which leads from Old Kilpatrick Cemetery to Dumbarton Road, and which forms the main public access into the cemetery. The lane is enclosed by green painted iron railings along its western side (bordering the back gardens of houses on Kirk Crescent), and by a low stone wall with similar railings on top along the eastern side (bordering back gardens at Kirkton). At the north end of the lane, just before a dog-leg into the cemetery itself, there is a set of tall stone gate pillars, one of which is adjacent to the garden of 81 Kirk Crescent, and to the north of these the railings give way to a high stone boundary wall.
- 3.2** Planning permission is sought for a 2m high close boarded timber fence containing a pedestrian gate. Approximately 2 years ago the applicant removed the metal railings from the short section of their rear garden boundary and replaced it by a fence. A concrete step has been installed leading up from the lane into the rear garden.

4. CONSULTATIONS

- 4.1** West Dunbartonshire Council Roads and Estates Services have no objections to the proposal.
- 4.2** West Dunbartonshire Council Greenspace Service has provided background information about the fence (see Section 7 below).

5. REPRESENTATIONS

5.1 Nine representations have been received in relation to the application, one of which did not state an opinion about the development. The other eight, including representations from Councillor Hendrie and Old Kilpatrick Community Council, object to the application on the following grounds:

- the cemetery pre-dates the adjacent houses, and the original boundary railings were provided in order to maintain a suitable character for the access lane;
- it is understood that title restrictions on the houses do not allow garden sheds to be visible from the cemetery lane, in order to protect its character;
- the fence is unsightly and out of keeping with the existing boundary treatments;
- the gate may obstruct vehicular access to the cemetery, and any vehicle parked there may interfere with a funeral procession;
- it is understood that some years ago a similar application elsewhere on the lane was refused;
- the fence and gate should be removed and the original railings should be reinstated;
- Noise disturbance for other residents as a result of coming and going through the gate and children being able to play in the lane/cemetery;
- Proposal sets a precedent for use of the cemetery lane for private access to houses;
- Residents understood that access into the lane and damage to the railings has always been prohibited, and notices have recently been put up by the Council stating this fact;
- Residents understood that the railings belonged to the Council; and
- Possible use of cemetery lane for bin access or access for a motorcycle would not be appropriate.

6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN

6.1 West Dunbartonshire Council Local Plan 2010.

The site lies within an Existing Residential Area which is covered by Policy H5. Within such areas the impact of development proposals upon the character and amenity of the surrounding area will be considered. In this case the development comprises replacement of a short section of railings with a timber fence and gate. The site is not prominent and the fence is of an ordinary domestic character. Overall it is considered that the proposal would not adversely affect the character or amenity of the residential area and that accordingly the proposal is consistent with Policy H5.

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

West Dunbartonshire Local Development Plan (Proposed Plan)

7.1 The site is within an area defined as Existing Neighbourhood in the proposed plan. The development is consistent with all relevant policies.

Background

- 7.2** The fence and gate were erected approximately two years ago. The applicant apparently believed that the railings belonged to them, and removed them in order to create an access into their back garden as due to the building of a side extension there is no longer an access at the side of the house. This came to the attention of the Council's Greenspace Section as managers of the cemetery. Although it was understood that the railings belonged to the Council, following discussions with Legal Services it was considered that the status of the railings was not sufficiently clear to enable the Council to require their reinstatement. The matter was subsequently brought to the Planning Service's attention by the Community Council and the applicant was invited to apply for retrospective planning permission.

Visual Impact of Fence

- 7.3** The lane behind the houses forms the main access into Old Kilpatrick cemetery and it is important that it should have a suitable appearance and character befitting its function. It would not be appropriate for this lane to develop a "service lane" type character, with driveways, sheds or a multitude of different boundary treatments, as this would adversely impact upon the setting and entrance to the cemetery. The original iron railings provided a consistent and attractive form of boundary treatment along the western side of the lane, and the removal of any section of these railings would not generally be supported.
- 7.4** However, the application property is unusual in that only a small part of its rear boundary was enclosed by the old railings, with the larger part of the boundary being marked by the stone gate pillars and high stone wall, which have not been altered. The section of fence which has been erected is therefore relatively short, and it is located right at the end of the railings next to the gate pillars. This serves to reduce the visual impact of the fence, and it has far less of a visual impact than would be the case were any of the other houses backing onto the lane to do likewise. The fence itself is of a relatively simple neat design. On balance, it is not considered that the short section of fence which has been erected has had a significant impact on the character of the cemetery lane. It is also not considered that allowing its retention would set a precedent for similar development at any of the other houses, where replacement of the railings would be likely to have a far greater visual impact.

Use of Lane for Domestic Access

- 7.5** As noted above it is not considered desirable that the lane should develop into a service lane for the houses, and it would not be acceptable for any of the houses to form driveways onto it. However, this application relates only to a pedestrian gate. Whilst one of the representations refers to the possibility of its use by a motorcycle, the design of the gate (with high steps into the garden) would make any such use extremely difficult and it is clear that the gate has not been designed for this purpose. The gate may be used for bicycles or for wheeling bins out to Dumbarton Road, but it is not wide enough for two cars to pass and it is therefore very unlikely that the lane would be used for parking. Overall, although it would not be desirable to see a proliferation of private pedestrian accesses, it is considered that the impact of

this one access upon the lane is minimal. Reference has been made by objectors to noise and disturbance from children playing in the lane, but it is not considered that any such noise would be any greater than that arising from normal use of domestic gardens.

Other Issues

- 7.6** It should be noted that the Council has no powers under the Planning Acts to require the applicant to reinstate the metal railings, and that the fence only required planning permission because it exceeds 1metre in height. Replacing it with a lower fence, or indeed removing it and leaving the boundary open, would not require an application for planning permission. Issues concerning title restrictions, the ownership of the former railings and whether the applicant has any legal entitlement to take access over the lane are not material planning considerations, and would all be private legal matters for the Council to pursue as a landowner.

8. CONCLUSION

- 8.1** Whilst the removal of the railings and the formation of alternative types of fences and new private accesses onto the lane is in principle undesirable, in this particular case it is considered that the fence and gate are relatively minor in their impact and that they do not significantly affect the character or appearance of the lane. Although such a decision should not be seen as a precedent for any similar development at nearby houses, it is considered that, in the particular circumstances described above, the fence and gate would be both consistent with local plan policy H5 and otherwise acceptable.

9. CONDITIONS

- 1. No physical alterations to the design or dimensions of the fence or gate shall be carried out without the prior written approval of the Planning Authority. In particular, the gate shall not be altered in such a way as would permit its use for vehicular access.**

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and Economic Development
Date: 7th August 2013

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Appendix: None.

Background Papers:

1. Planning application and plans
2. Consultation responses
3. West Dunbartonshire Local Plan 2010

Wards affected: Ward 6 (Clydebank Waterfront)