

Report

Report to:	Planning Committee
Date of Meeting:	15 February 2022
Report by:	Interim Executive Director (Community and Enterprise Resources)

Application no.	P/21/1053
Planning proposal:	Erection of fence within front garden of dwellinghouse (retrospective)

1. Summary application information

Application type: Detailed planning application

Applicant: Miss Nicola Gray
Location: 74 Kirkhill Gardens
Cambuslang
G72 8EZ

2. Recommendation(s)

2.1 The Committee is asked to approve the following recommendation(s):-

- (1) Grant detailed planning permission (subject to conditions) based on conditions attached.

2.2 Other actions/notes

- (1) The Planning Committee has delegated powers to determine this application.

3. Other information

- ◆ Applicant's Agent: None
- ◆ Council Area/Ward: 13 – Cambuslang West
- ◆ Policy Reference(s): South Lanarkshire Local Development Plan 2 (adopted 2021)
Policy 3 – General Urban Areas and Settlements
Policy 5 – Development Management and Placemaking
Policy DM1 – New Development Design

◆ Representation(s):

◆ ▶	6	Objection Letters
◆ ▶	1	Support Letters
◆ ▶	0	Comment Letters

- ◆ Consultation(s): Roads and Transportation Services

Planning Application Report

1. Application Summary

- 1.1 The application relates to a semi-detached dwellinghouse at 74 Kirkhill Gardens in Cambuslang. This property is attached to 72 Kirkhill Gardens, the opposite side of which is a public footpath leading to an open space behind the properties. The property sits within a cul-de-sac and is in an established residential area. The building line of no. 74 (and 72) is set back by approximately 7m in comparison to the neighbouring properties at no's 76 and 78 to the south. The cul de sac has a continuous footway to the front of all the properties in it.

2. Proposal(s)

- 2.1 The application seeks detailed retrospective permission for the erection of a fence that has been erected on the boundary between 74 and 76 Kirkhill Gardens. The fence has an approximate height of 1.97m which then drops to 1.26m at the point it adjoins the front elevation of the adjoining property at 76 Kirkhill Gardens. It is a double sided slatted fence with vertical timber panels. The fence is of a traditional design and appearance.
- 2.2 The applicant erected the fence under the impression that it benefitted from permitted development rights under Class 3E of Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011. This class allows fences to be erected up to 1m in height where they sit forward of the building line of principal elevation of a house without needing planning permission.

3. Background

3.1 Development Plan Status

- 3.1.1 The application site is on land identified as General Urban Area within the adopted South Lanarkshire Local Development Plan 2 (SLLDP2) 2021 and contains the following policies against which the proposal should be assessed. Policy 3 – General Urban Areas and Settlements, Policy 5 – Development Management and Placemaking and Policy DM1 – New Development Design.

3.2 Planning Background

- 3.2.1 There have been no previous planning applications submitted at this site.

4. Consultation(s)

- 4.1 **Roads Development Management Team** – advised that the location of the fence, and the fact that 74 Kirkhill Gardens is located within a cul-de-sac, mean that forward visibility is unlikely to be impacted and the fence is not likely to be a hazard for those driving along Kirkhill Gardens. The height of the fence does, however, mean that there may be an impact on the achievable visibility of vehicles exiting the driveways of both 74 and 76 Kirkhill Gardens. The visibility splay requirements of each driveway is 2m x 35m measured from the channel of the carriageway for vehicles and 2.4m x 2.4m measured from the heel of the footway for pedestrians. The maximum height of any object within these visibility splays should be 0.9m. The applicant has submitted sketches plotting the visibility splays which found that, should the fence be no more than 0.9m in height for the first 1.18m behind the heel of the footway the required visibility would be achievable. The applicant is proposing to reduce the first 1.92m of the fence behind the rear of the footway to 0.9m in height which is in excess of the found requirements and would be acceptable. Roads and Transportation Services have no objections to the development so long as the fence is reduced in height to 0.9m for the first 1.92m of fencing behind the rear of the footway.

Response: Noted. A condition would be attached to the planning permission if granted to require the height of the fence to be reduced within one month of the date of the consent.

5. Representation(s)

5.1 Following the carrying out of statutory neighbour notification six letters of objection and one letter of support have been received. The grounds of representation are summarised below.

a) The land register certificate states that “there shall be no walls or fences in front of the building line of any nature other than where screen fence adjoined a public footpath and are erect by us” ie. the original developer. The housing estate was never designed to have fences around the front gardens, the layout isn’t conducive to fencing at the front and has always been open plan for a very good reason.

Response: The contents of title deeds are a separate civil matter and are not a material consideration for the assessment of the planning application. In addition, there is evidence that a condition was attached to the original planning permission for the estate preventing the erection of fences at the front of properties. Notwithstanding the applicant has lodged this planning application for such a proposal and the development’s impact on the estate’s design and layout requires to be assessed. This matter will be fully considered in the Assessment and Conclusion section below.

b) This application goes against the natural environment of the cul-de-sac and undermines its established character. The fence looks horrific and doesn’t fit in with the look of the houses.

Response: The impact on the character of the area will be fully considered in the Assessment and Conclusion section below.

c) The view from the side and front window of number 76 is ghastly as it looks directly onto a 2 metre high fence.

Response: The highest part of the fence does not directly face the front elevation of 76 Kirkhill Gardens as it sits behind the building line of that property. It does face the side of this property where views of the fence can be seen directly from a side ground floor window. However, the right to a view is not a material planning consideration and is not grounds to refuse a planning application. In any event this kind of relationship is common within housing estates.

d) The occupiers of 76 Kirkhill Gardens are unable to use their driveway as they can no longer open car doors. This has resulted in cars being parked on the street. It is not only a nuisance to neighbours but extremely unsafe. and makes parking cars in respective driveways difficult for residents and creates general congestion in the street.

Response: The general nature of adjoining driveways means it is often the ‘air space’ of the neighbouring driveway that is utilised in order to get in and out of vehicles by allowing car doors to open. Walking on an adjoining driveway is not uncommon when manoeuvring in and out of vehicles. The introduction of the fence has caused difficulties for the occupants of 76 Kirkhill Gardens in using their driveway as they are now unable to properly open car doors. The objectors have not indicated that the fence has been erected outwith the title of the applicant’s ground and it is noted that prior to the erection of the fence a monoblock edging stone acted as a visual marker between the two driveways. The fence has been erected on the same line as the edging stone and therefore wholly within their ownership. While cars associated with 76 Kirkhill Gardens are parking on the road

instead of the driveway there are no parking restrictions in place on the street. Roads and Transportation Services have raised no objection to this impact. It is therefore considered that it would not be reasonable to refuse the planning application for this reason.

- e) **Visibility is poor for reversing out of the driveway. It is a danger to both the public who may be using the pavement to push a pram or small child/adult who are out walking.**

Response: Roads and Transportation Services were consulted on the application and advised that they have no objections to the application as long as part of the fence is reduced to 0.9m. The applicant has agreed to carry out this work and should planning permission be granted, an appropriate planning condition will be imposed to control this matter.

- f) **This application would appear to be at odds with the basic principle of Scottish Government policy namely “Designing Streets: A policy statement for Scotland” more specifically “Public fronts, private backs”. By allowing a 2 metre high fence in the front garden of this cul-de-sac, the Local Authority would in effect be giving the green light for householders to turn their front garden in this housing estate into a concrete ghetto.**

Response: The fence runs parallel to the side of the house and does not enclose the front garden or property. The document referenced does not prevent fencing in front gardens. The impact of the retrospective development on the design of the estate will be fully considered in the assessment and conclusion section below.

- g) **This should have been sorted out by the planning office right at the beginning of the dispute instead of wasting tax paying money and causing stress to all the neighbours.**

Response: Permitted development rights enable a fence to be erected within the front curtilage of a house up to a maximum height of 1m when measured from ground level. Following a complaint being received in March 2021, a site visit determined a breach of planning control had occurred as the fence was higher than 1m. To address this breach, a retrospective planning application was submitted by the applicant. As is standard practice until a decision is made on the application, enforcement action will not be taken.

- h) **Many children use the lane next to no 72 to access the grass park area and the children are having to cross between parked cars. This is dangerous**

Response: There are no on street parking restrictions that prevent parking within the street. Furthermore, after consultation Roads and Transportation Services have no objection to the planning application. In addition, there is a continuous footpath within the cul de sac to prevent the general public having to walk on the road.

- i) **If other home owners see this being acceptable and start erecting these fences it will cause further chaos, imposing an immense road safety risk for all living in the estate.**

Response: Fences (and other means of enclosure), are generally, of varying designs and do not all have the same impact. In circumstances where fences are erected which exceed permitted development rights and require planning permission, their impact on amenity and road safety would be assessed on a case by case basis. The impact of this development will be fully considered in the Assessment and Conclusion section below.

6. Assessment and Conclusions

- 6.1 The application seeks detailed retrospective planning permission for the erection of a fence within the front curtilage of a dwellinghouse at 74 Kirkhill Gardens, Cambuslang. The main issues in determining the application are whether the proposals comply with planning policy, in particular in relation to the impact on the character and amenity of the area and on road safety.
- 6.2 In assessing the application, consideration must be given to the policies and guidance within the South Lanarkshire Local Development Plan 2 (SLLDP2). The application site is designated as being within a general urban area within which Policy 3 advises developments which would be detrimental to the amenity of residents and the wider community or to the character of the surrounding area will not be permitted. Each proposal is to be judged on its own merits. Policy 5 - Development management and placemaking of SLLDP2 states that proposals should be well designed and integrated with the local area. New development should have no unacceptable significant adverse impacts on the local community and the environment. Further guidance is provided within Policy DM1 – New Development Design.
- 6.3 In assessment of the above policies with regard to this planning application it is noted that adjoining driveways within the estate are generally free from such fencing along the mutual boundary. The erection of the fence to the side of 74 Kirkhill Gardens therefore does not appear to be part of the estate's original design. However, it is noted that there are other properties located in Kirkhill Gardens and also the wider residential area that have erected fences and walls to visually and physically separate driveways. A precedent for this type of development has therefore already occurred. Furthermore, the placement of the fence – running parallel to the house and not the pavement – has meant an enclosing effect to the property or its front garden has not been created. Therefore, it is not considered that the open-plan nature of the street has been adversely affected.
- 6.4 In terms of impact on streetscene, it is not considered that the fence has a dominant impact largely due to its reduced height when forward of 76 Kirkhill Gardens. The visual impact of the fence is most noticeable when viewed from properties north of 74 Kirkhill Gardens (those that are located next to the turning head of the cul-de-sac). Due to the recessed building line of houses adjacent to the application site, a greater extent of fence is visible when 'looking up the street' than when looking down. In any event number 76 acts as a backdrop to the fence which further reduces the impact. A planning condition will therefore be imposed requiring the fence to be stained in order to soften its impact on the streetscape, should planning permission be granted. The fence is well constructed being double sided with vertical slats. Timber is a common material for this type of development and is an acceptable boundary treatment for the development. The suggested planning condition requiring the fence to be stained will also ensure it has a finished appearance.
- 6.5 It is recognised that the occupants of 76 Kirkhill Gardens have been most affected by the development. It has made the use of their driveway difficult as they are unable to open car doors properly. This has resulted in their cars parking on the street and a number of concerns have been lodged in terms of impact on safety. However, under permitted development rights a fence up to 1m in height could be erected without the need for planning permission which would have resulted in this scenario. There are no restrictions preventing on street parking. In addition, Roads and Transportation Services had no objection to the development subject to a reduction in height of the fence to 0.9m in height for the first 1.92m of length of fence from the back of the footpath to ensure appropriate sightlines are achieved. An appropriate planning condition has been attached to control this matter. On this basis, whilst the objectors'

concerns are noted, it is not considered that the planning application can be refused on these grounds.

- 6.6 Based on the above, it is considered that, subject to the attached planning conditions, the application conforms to the policies of the South Lanarkshire Local Development Plan 2 and does not have a significant adverse impact on residential amenity or public safety. The letters of representation are noted, however, the matters raised are not considered to be sufficient to justify refusal of the planning application for the reasons outlined above. It is therefore recommended that planning permission is granted.

7. Reason for Decision

- 7.1 The proposal is in compliance with Policies 3, 5 and DM1 of the South Lanarkshire Local Development Plan 2 and would not be detrimental to public safety or have a significant adverse effect on amenity. There are no other additional material considerations which would justify refusing planning permission.

Alistair McKinnon

Interim Executive Director (Community and Enterprise Resources)

Date: 20 January 2022

Previous references

- ◆ None

List of background papers

- ▶ Application Form
- ▶ Application Plans
- ▶ South Lanarkshire Local Development Plan 2 (adopted 2021)
- ▶ Neighbour notification letter dated 09.06.2021
- ▶ Consultations

Roads and Transportation Services

Dated:
23.08.2021
28.09.2021
16.11.2021

▶ Representations

John Mair, 58 Kirkhill Gardens, Cambuslang, Glasgow, South Lanarkshire, G72 8EZ

Dated:
30.06.2021

Mr G McNiven, 78 Kirkhill Gardens, Cambuslang, Glasgow, South Lanarkshire, G72 8EZ

Dated:
25.06.2021

Harry McCarroll, 76 Kirkhill Gardens, Cambuslang, Glasgow, South Lanarkshire, G72 8EZ

Dated:
30.06.2021

John Smith, 72 Kirkhill Gardens, Cambuslang, Glasgow, South Lanarkshire, G72 8EZ

Dated:
29.06.2021

Miss Melissa McCarroll, 76 Kirkhill Gardens, Glasgow, G72 8EZ

Dated:
01.07.2021

John Smith, 72 Kirkhill Gardens, Cambuslang, Glasgow, South
Lanarkshire, G72 8EZ

Dated:
11.01.2022

Deborah Stevenson, 7 Kirkhill Terrace Glasgow

Dated:
30.06.2021

Contact for further information

If you would like to inspect the background papers or want further information, please
contact:-

Holly Brown, Planning Officer, Montrose House, 154 Montrose Crescent, Hamilton, ML3
6LB

Phone: 01698 455060

Email: holly.brown@southlanarkshire.gov.uk

Planning Application**Application number:** P/21/1053**Conditions and reasons**

01. That within 1 month of the date of the consent the applicant shall reduce the height of the fence to 0.9m for the first 1.92m of the fence behind the heel of the footway of Kirkhill Gardens to the satisfaction of the Council as Planning Authority.

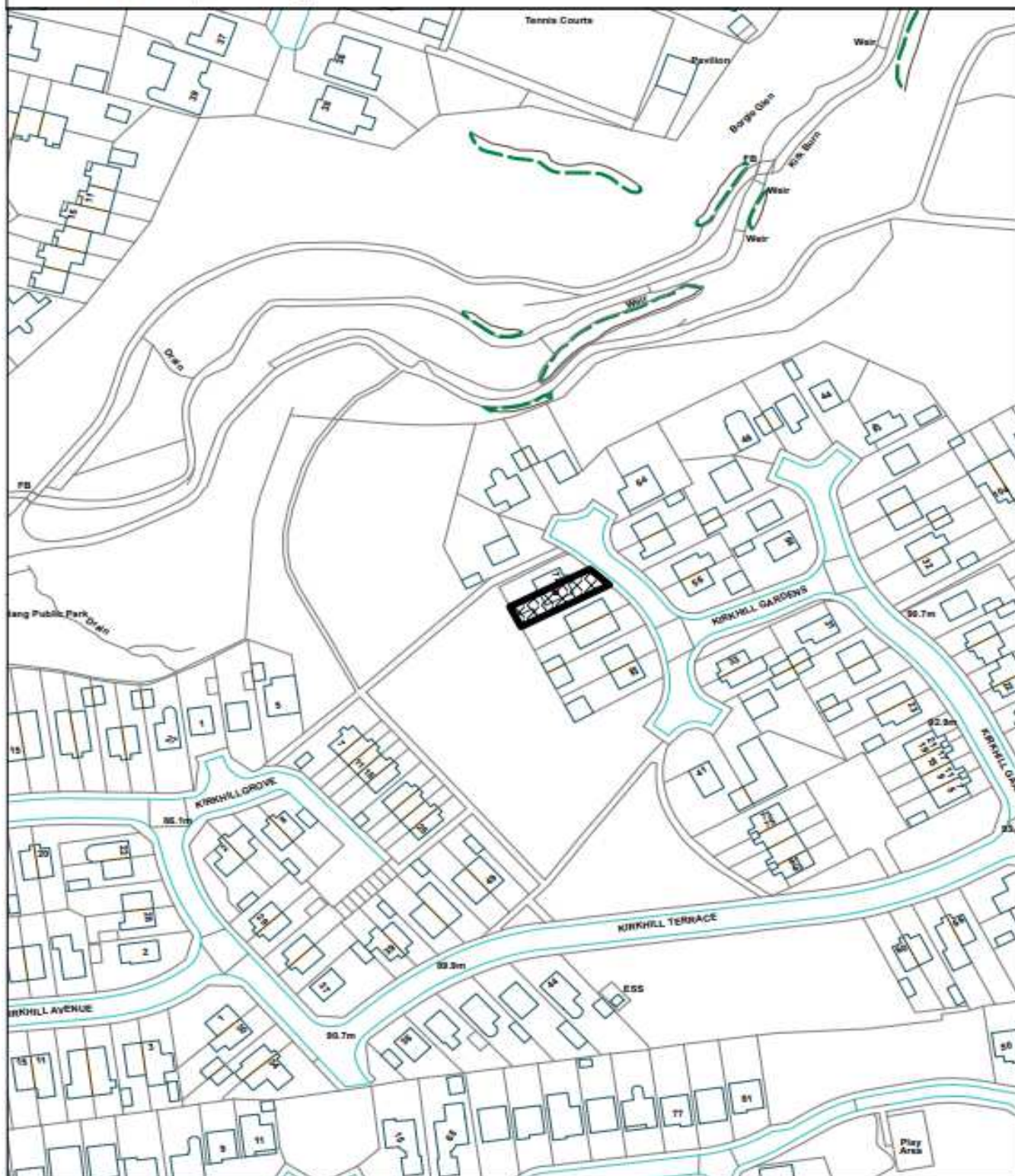
Reason: In the interests of traffic and public safety

02. That within 1 month of the date of this consent the applicant shall agree in writing the finished colour/stain of the fence hereby approved. For the avoidance of doubt the paint/stain will be a dark colour such as brown or dark grey. Thereafter, unless otherwise agreed in writing, within 3 months of the date of this consent, the applicant shall paint/stain the fencing using the agreed colour/stain to the satisfaction of the Council as Planning Authority.

Reason: To safeguard the residential amenity of the area.

P/21/1053

74 Kirkhill Gardens, Cambuslang



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Scale:
1:1,550
Date:
14/01/2022



South Lanarkshire Council
Community and Enterprise Resources
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