

KEY INFORMATION

Ward The Ferry

Proposal

Erection of gates to Davidson Street and erection of fence and gate to Ballinard Gardens, repairs and relocation of driveway to dwelling with infilling of part of existing driveway area to form garden ground. Extension of existing fence to garden boundary and erection of wall and fence to match adjacent wall and fence.

Address

3 Davidson Street
Broughty Ferry, Dundee

Applicant

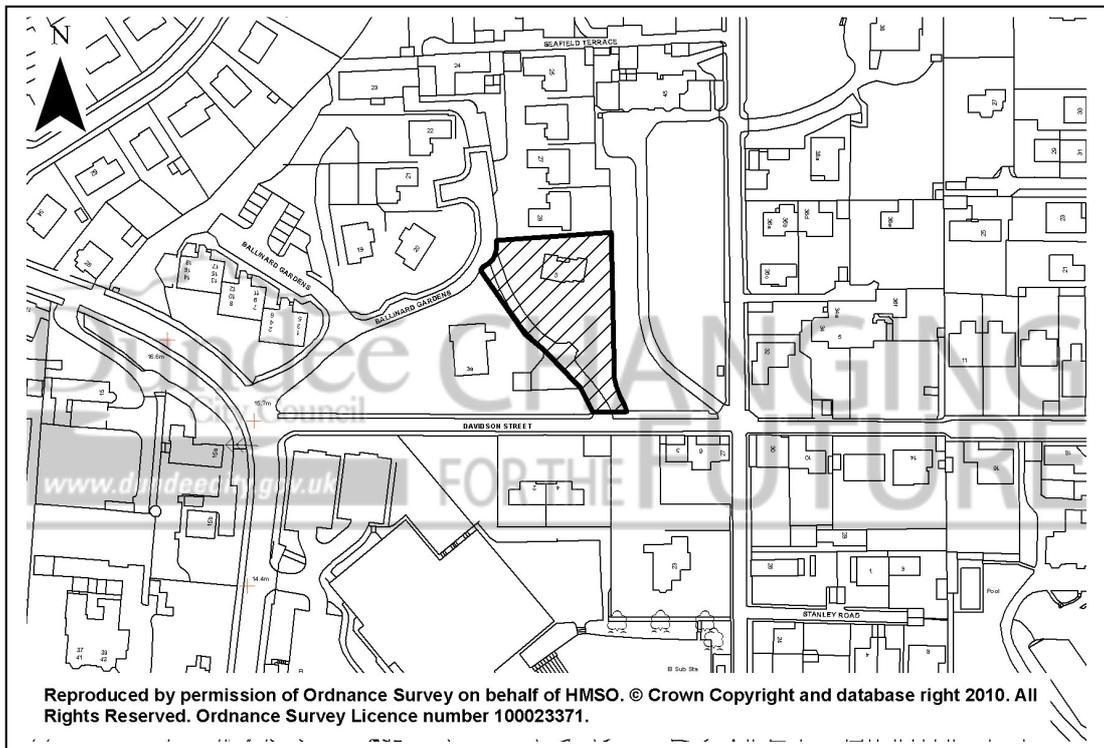
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Agent

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Registered 19 Aug 2010

Case Officer



Fence and Gates Proposed at Davidson Street

The Erection of gates to Davidson Street and erection of fence and gate to Ballinard Gardens, repairs and relocation of driveway to dwelling with infilling of part of existing driveway area to form garden ground. Extension of existing fence to garden boundary and erection of wall and fence to match adjacent wall and fence is **RECOMMENDED FOR APPROVAL** subject to conditions. Report by Director of City Development.

SUMMARY OF REPORT

- The application seeks permission for the erection of gates at either end of a private road and alterations associated with the realignment of the existing short driveway.
- The application is being referred to Committee as a result of the number of objections that have been received.
- Several of the objections raised concerns with the closing up of what they consider to be a public access route.
- Taking into consideration the site history Legal Services have advised that the route is likely to form a private road over which a "Public Right of Passage" exists and which may possibly also form a "Public Right of Way".
- It is considered that the application complies with Policy 61 of the Dundee Local Plan Review 2005 and discharges the statutory duties set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. Most of the views of the objectors are not supported in this instance and the probable right of passage will not be restricted by approving this development. Therefore the application is recommended for approval subject to appropriate conditions

RECOMMENDATION

It is concluded from the foregoing that the application is acceptable and will not detract visually from the surrounding area or the existing property. It is considered that there will be no significant impacts upon neighbouring properties and the application is therefore recommended for **APPROVAL** subject to conditions.

DESCRIPTION OF PROPOSAL

The application proposes the erection of gates to Davidson Street and the erection of a fence and gate to Ballinard Gardens. A part of the private road will be used and a new driveway will be created closer to the dwelling. The existing fence to the garden boundary is to be extended to a height of 2,250mm. In addition, the application proposes the erection of a wall and fence to match adjacent wall and fence to a height of 2,250mm in the area where the existing drive leads to the dwelling. The works will involve the removal of some small self seeded trees at the north of the site. The applicants have indicated that they would be willing to plant replacement trees within the grounds of the property.

The applicants have indicated that the long driveway that opens to Davidson Street to the south and Ballinard Gardens to the rear is under their ownership. The site history suggests that the strip of ground has been used as an entrance point to houses at Ballinard Gardens and on balance it would appear that this is therefore a private road over which this is likely to be a right of passage.

SITE DESCRIPTION

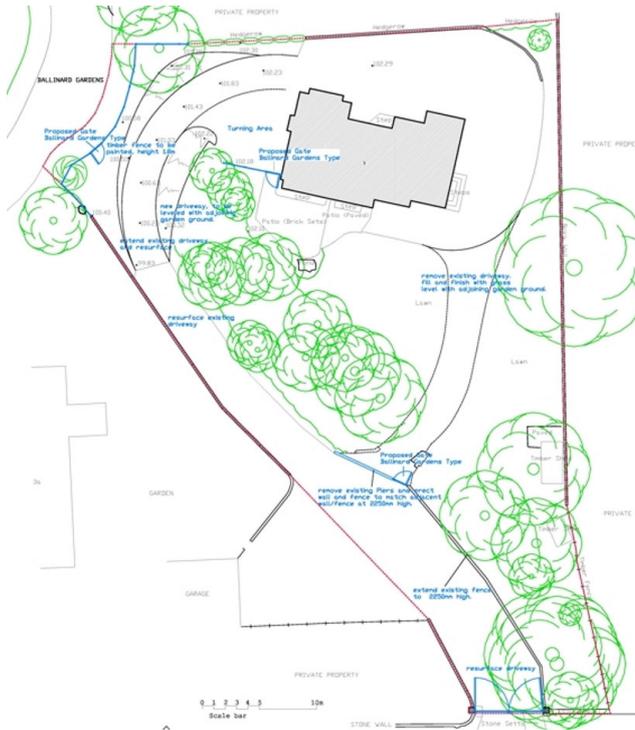
The application site is located on the northern side of Davidson Street and comprises a detached 2 storey dwelling set within mature garden grounds.

The application site is set back from Davidson Street and bound by mature hedging, trees and shrubbery. The boundaries of the application site are reinforced by walls and timber fencing. The application site slopes from north to south.

The application site is accessed from a private road which serves 3 and 3A Davidson Street. The individual driveway serving the application property sweeps along the southern, eastern and northern boundaries of the application site. This provides a vast area of hard standing for parking and turning to the north and east of the existing house. The remainder of the application site is

landscaped with hedging and mature trees delineating the boundaries of the site.

The trees to the south end of the property are of a large size and scale and provide a strong architectural feature to the driveway entrance and are therefore of great value to the conservation area, providing a strong sense of character.



POLICY BACKGROUND

Dundee and Angus Structure Plan 2001-2016

There are no policies relevant to the determination of this application.

Dundee Local Plan 2005

The following policies are of relevance:

Policy 61 (Development in Conservation Areas) is supportive of proposals that will enhance or preserve the character and setting of conservation areas.

Scottish Planning Policies, Planning Advice Notes and Circulars

There are no statements of Government policy relevant to the determination of this application.

Non Statutory Statements of Council Policy

Breaches in Boundary Walls guidance document - although no new breaches are being proposed this document also provides guidance for the repairs and alterations to existing openings and is therefore considered to be relevant.

SUSTAINABILITY ISSUES

There are no specific sustainability policy implications arising from this application.

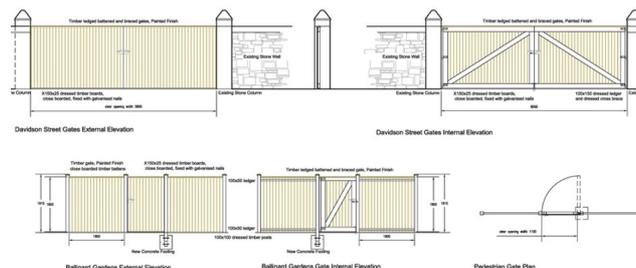
SITE HISTORY

01/30377/FUL - erection of 10 houses approved 27 May 2002.

04/00438/FUL - erection of double garage approved 24 June 2004.

09/00372/FUL - renewal of Planning Permission approved 28 July 2009.

The site was originally occupied by the private Ballinard House. For these purposes there were two access points, once from Claypotts Road and one from Davidson Street. It subsequently operated as a hotel and the principal and signposted access to the hotel was via the Claypotts Road route. In 2002 a planning application for the erection of 10 houses was approved for land to the rear of the current application property and subsequently in 2003, the hotel was demolished. Building warrant records indicate that the dwellings were not completed on site until 2005. The planning permission for these 10 houses (01/30377/FUL) included a condition that the existing road from Davidson Street shall not be used as a means of access/egress to the proposed development. This condition could not affect the status of the road as a means of a public right of passage or public right of way.



PUBLIC PARTICIPATION

The Statutory Neighbour Notification procedure was carried out and there was a total of 10 letters of objection received. The following concerns were raised:

- the vehicle would have to stop on Davidson Street to open gates and this is a hazard to the driver of the vehicle;
- The openness of the development at Ballinard Gardens development makes mutual observation easy. Enclosing gates and walls would not allow this;
- The properties in the area benefit from open gardens which promote community interaction;
- The proposed wooden structure at the Ballinard Gardens end of the path would be visually unappealing, would disrupt the pleasing countryside image afforded by the current blend of trees, grass and shrubs;
- trees will be required to be removed. If this is case then some replanting should occur;
- the existing route is convenient to residents and provides a route for children going to and from school;
- the route is also safe and by providing high walls and gates users of the route would be out of sight and would have limited options for escape;
- the alternative pedestrian route is the subject of heavy traffic at peak travel times; and
- the style of gates will be difficult for some to open.

Members will already have had access to the objection letters and it is intended to comment on them in the Observations Section of the report below.

Some of the objectors have also raised the issue that their own title deeds state that there is access along the route. This issue is not material to the planning application and cannot be taken into consideration.

CONSULTATIONS

No adverse comments were received from any of the consultees.

OBSERVATIONS

Statutory Requirements

Section 25 of the Act provides that an application for planning permission (other than for a national development) shall be determined in accordance with the development plan unless material considerations indicate otherwise.



In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.



The Development Plan

The provisions of the development plan relevant to the determination of this application are specified in the Policy background section above

It is the aim of Policy 61 (Development in Conservation Areas) to support proposals that will enhance or preserve the character and setting of conservation areas.

The proposed gates are to be approximately 2 metres in height to Davidson Street and will take the form of a double gate with single opening point. They are to be finished in timber boards and to be provided with a painted finish.

The gates to Ballinard Gardens are to be approximately 1.9 metres in height and will take the form of two separate panel sections with a single central pedestrian gate. They shall also be finished in timber boards with a painted finish.

They are simple in design and are similar in appearance and style to other examples in the vicinity of the site. Timber is considered to be an appropriate choice for use within the conservation area and a painted finish as has been proposed is encouraged in most situations. A condition can be attached to any grant of permission to seek agreement on the colour finish

to ensure it does not detract from the character and appearance of the surrounding area. It is considered that the gates being proposed shall have a neutral effect upon the conservation area.

Furthermore, it is proposed to carry out re-surfacing works to the private road to improve the quality of the surface.

It is to be finished in asphalt and this will match the surfaces of other adjoining streets. It is considered to be acceptable and will not detract from the appearance of the conservation area.

The application also seeks permission to infill the existing short driveway from the edge of the private road which runs from Ballinard Gardens to Davidson Street to form a useable garden area. In this respect, the application will relocate the drive to the dwelling from the

northern end of the private road in order that it relates to the main front entrance to the application dwelling which is in fact to the north of the property. It is considered that these works are acceptable and once the

garden has had the time to grow and re-establish the effect upon the conservation area shall be neutral.

This realignment of the driveway area shall require the removal of trees from the north of the site. The applicant has provided a plan to indicate the trees proposed to be removed to facilitate the works being proposed. Whilst it is regrettable that some trees will be required to be removed the varieties of trees to be removed do not contribute to the setting of the conservation area in the way that the larger trees to the south of the garden do. In addition, the applicants have indicated that they are willing to consider replacement planting elsewhere on the site. Taking into consideration the above, it is considered to be acceptable provided that a condition be attached to any grant of permission to require replacement planting of a type and location to be agreed prior to any works on site.

The closing up of the existing entrance to the existing driveway will involve the extension of the existing wall and fence to match the existing in height and design. These works are considered to be acceptable and the effect on the conservation area is minimal.

The proposals comply with the requirements of Policy 61 (Development in Conservation Areas) of the Dundee Local Plan Review 2005.

Statutory Duty

In accordance with Section 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 the Council is required to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The proposed works as discussed above in relation to the Development Plan are considered to be acceptable as the impact upon the conservation area will be neutral. The gates will be the most prominent aspect of the works due to their location and these are of natural materials and are proposed to be finished in an appropriate manner. The replanting of trees will ensure that any visual impact can be mitigated.

It is considered that the proposals will therefore preserve the character and appearance of the Forthill

Conservation Area. The proposals satisfy the requirements of Section 64.

Other Material Considerations

Breaches in Boundary Walls Document

This document has been prepared by the Council and acts as supplementary guidance in relation to applications and proposals involving the breach of a boundary wall in a conservation area of affecting a Listed Building. Although this is not the case in this instance the document also provides information as to the types of gates and



fences that are considered to be appropriate in such sensitive areas. It states that close boarded timber preferably with a painted finish is a traditional method. The gates to either end of the private route along with the fence panels in these locations are to be of boarded timber with a painted finish. The proposal is therefore in accordance with the suggested methods to preserve the character and appearance of the conservation area. They are therefore considered to be acceptable under the terms of this particular piece of Council guidance.

The Existence of Right of Passage or Public Right of Way On Site

As discussed above, it is considered to be likely that the existing route meets the necessary tests to form a 'Right of Passage' and it is possible that it may form a 'Public Right of Way', although at this time there have been no requests from members of the Public for this to be vindicated by the Council.

Against this background and the fact that there is likely to be a 'Right of Passage' existing over this route, it is

considered that it would be unreasonable to grant planning permission for proposals that would prevent such access.

It is therefore intended to apply a condition to any grant of permission to ensure that the gates for which planning permission is sought remain unlocked at all times such as to ensure access to pedestrians.

Views of the Objectors

- The vehicle would have to stop on Davidson Street to open gates and this is a hazard to the driver of the vehicle.

It is considered that taking consideration the location of the proposal and the likely volume of traffic, there are no road safety issues in relation to the proposal.

- The openness of the development at Ballinard Gardens development makes mutual observation easy. Enclosing gates and walls would not allow this.

- The properties in the area benefit from open gardens which promote community interaction

The gates and boundary enclosures shall enclose the property of the applicant and there will be no impact upon the views available between other properties.

- The proposed wooden structure at the Ballinard Gardens end of the path would be visually unappealing, would disrupt the pleasing countryside image afforded by the current blend of trees, grass and shrubs.

As discussed above, timber is one of the recommended materials for use in conservation areas. The colour of paint finish can be the subject of a condition to ensure it is appropriate for the conservation area. It is relatively small in size and the effect upon the surrounding area will be minimal.

- Trees will be required to be removed. If this is case then some replanting should occur

This issue has already been discussed above where it was stated that the applicants have indicated willingness to plant replacement trees in the curtilage of the property and this can be the subject of a condition attached to any grant of permission.

- The style of gates will be difficult for some to open.

There is nothing unusual about the design of the gates which are to be of timber construction. They are of a standard appearance and style and therefore the views of the objectors in this regard cannot be supported.

- The existing route is convenient to residents and provides a route for children going to and from school.
- The route is also safe and by providing high walls and gates users of the route would be out of sight and would have limited options for escape.
- The alternative pedestrian route is the subject of heavy traffic at peak travel times

With the imposition of a condition discussed above in the section in relation to the existence of Right of Passage or Public Right of Way on site it is considered that these concerns in relation to other routes are addressed.

Applicants Supporting Information

The applicants have provided additional information in relation to the concerns raised by objectors and can be summarised as follows:

- "We consider that it is a material planning consideration that the proposal aims to improve pedestrian safety. The provision of gates will hopefully reduce the number of general pedestrians cutting through our land and the repair of the existing drive will make it safer to use".

The above comments are noted and it is considered that the proposal will have no significant impacts upon the safety of pedestrians.

- "The legal right to use our land is a civil matter and not a material planning consideration. The safety of other routes is not a material issue related to this application."

This matter has been discussed above in the Public Participation Section of the Report. It is considered that in the event that planning permission is granted it shall be for the works as listed in the description of the application only, including the erection of the gates. The grant of planning permission does not give permission for closure of any right of way or right of passage where that can be established. However, as discussed above it is considered to be likely that a Right of Passage exists along the driveway and it would not be reasonable to grant planning permission for proposals that would prevent such access. A condition shall therefore be applied to any grant of permission as discussed above.

- "When approving Planning Consent 01/30377/FUL for the Ballinard Gardens development, Dundee City Council specifically imposed a Condition (3) which stated that "the existing road from Davidson Street shall not be used as a means of access/egress to the proposed development". By using our driveway the residents of Ballinard Gardens are in breach of Condition 3 of the planning permission for their houses.

This condition was attached to restrict vehicles accessing Ballinard Gardens from Davidson Street. The bollards that are in place have achieved this. This condition could not affect the status of the road as a means of a public right of passage or public right of way.

- In relation to objections regarding the appearance of the gates the applicants have responded as follows; "The proposal relates to the replacement of gates on the Davidson Street frontage. There are a large number of precedents of similar gates in the Forthill Conservation Area which front onto the rear of footpath. Davidson Street is one-way and

there is sufficient width along Davidson Street to pass a parked car. We therefore do not consider the provision of replacement gates will impact upon highway safety".

The views of the applicant in this regard are supported.

- "Mutual observation of the subject land by any property in Ballinard Gardens seems to be very limited, if it exists at all. It is our property and 3a which border and overlook this land and we are very concerned regarding our safety, security and privacy. We do not believe that the orientation of the properties in Ballinards Gardens provides for the natural surveillance of our land. In fact, the properties in Ballinard Gardens have been designed to face each other and not our land."
- "Our proposal does not impact on the current open plan garden arrangement in Ballinard Garden and as a result we do not feel that this concern over community interaction is a material planning consideration applicable to our application"

It is considered that due to the significant tree and vegetation coverage surrounding the application property there are limited views offered at the present time from the properties to the rear. In addition, the gates and fences do not impede views between the existing properties at the rear of the site in Ballinard Gardens.

- In relation to objections that the gates would be difficult for some to open and close the applicants have advised as follows. "In applying for and providing new and replacement gates we would clearly ensure they are capable of being opened."

This issue has been discussed in relation to the Objections were it was concluded that the design of the gates is standard and there are no unusual features proposed.

- "The design and scale of the proposed fence and gate has had regard to the Council's Guidance and reflects the design of existing gates and fences common

throughout the Forthill Conservation Area. Properties in Ballinard Gardens also have such fences and pedestrian gates visible from the street. Dundee City Council's guidance, "Breaches in Boundary Wall", confirms, in relation to fences and gates, that typically "They are constructed of close boarded timber, stained or (preferably) painted, or of cast or wrought iron, and usually to the same height as the wall". This application proposes close boarded timber painted gates and fencing in accordance with this advice."

These issues have been discussed in the Observations Section of the Report above and the views of the applicant are fully supported in this regard.

- In terms of the "countryside image" it is noted that this is in fact a suburban setting and whilst a few domestic scale trees/shrubs will be removed, due to the difference in levels, i.e. the trees sit at a higher level than the proposed fence and gate, the integrity and character of the area of trees will be retained and clearly visible behind the proposed gate and fence."

The views of the applicant are supported in this regard and it is considered that the impact upon the conservation area and its setting will be neutral and the replanting will sufficiently mitigate any loss of amenity due to the removal of trees.

- In relation to the issue of loss of trees the applicants have advised that "it is proposed to remove only a limited number of domestic scale trees, we have already confirmed that we would be happy to plant further trees."

This has been discussed in the report above and the replanting is considered to be acceptable.

It is concluded from the foregoing that insufficient weight can be attached to any of the material considerations such as to justify a decision contrary to the Development Plan. The application is therefore recommended for approval subject to conditions.

Design

The proposals are of a scale, massing, design and finish that will maintain the appearance of the existing house and surrounding Forthill Conservation Area. This matter has been discussed in relation to the Development Plan and the Statutory duties set out in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

CONCLUSION

It is concluded from the foregoing that the application is acceptable and will not detract visually from the surrounding area or the existing property. It is considered that there will be no significant impacts upon neighbouring properties as a result of the proposals and the character and appearance of the conservation area will be preserved.

RECOMMENDATION

It is recommended that consent be GRANTED subject to the following conditions:

- 1 Before work starts on site full details of the colour of paint finish to the gates shall be submitted to the Council and agreed in writing. The works shall be implemented in full accordance with the agreed details.
- 2 Prior to the commencement of development, details of replacement trees shall be submitted to the Council including details of including location, size and species and timescales for planting to be agreed in writing with the Council. The development shall be carried out in full accordance with the agreed details
- 3 Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within 5 years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted in terms of this condition.
- 4 The gates hereby approved fronting Davidson Street and those fronting Ballinard Gardens shall remain unlocked at all times.

Reasons

- 1 In order to ensure that the finish does not detract from the character and setting of the Conservation Area.
- 2 In order to preserve the character and setting of the conservation area.
- 3 In order to ensure any species lost shall be replaced in order to preserve the appearance and setting of the conservation area.
- 4 In order to ensure that the probable Right of Passage is not obstructed.