

**Report To:** The Planning Board

**Date:** 3 November 2021

**Report By:** Interim Service Director,  
Environment & Economic Recovery

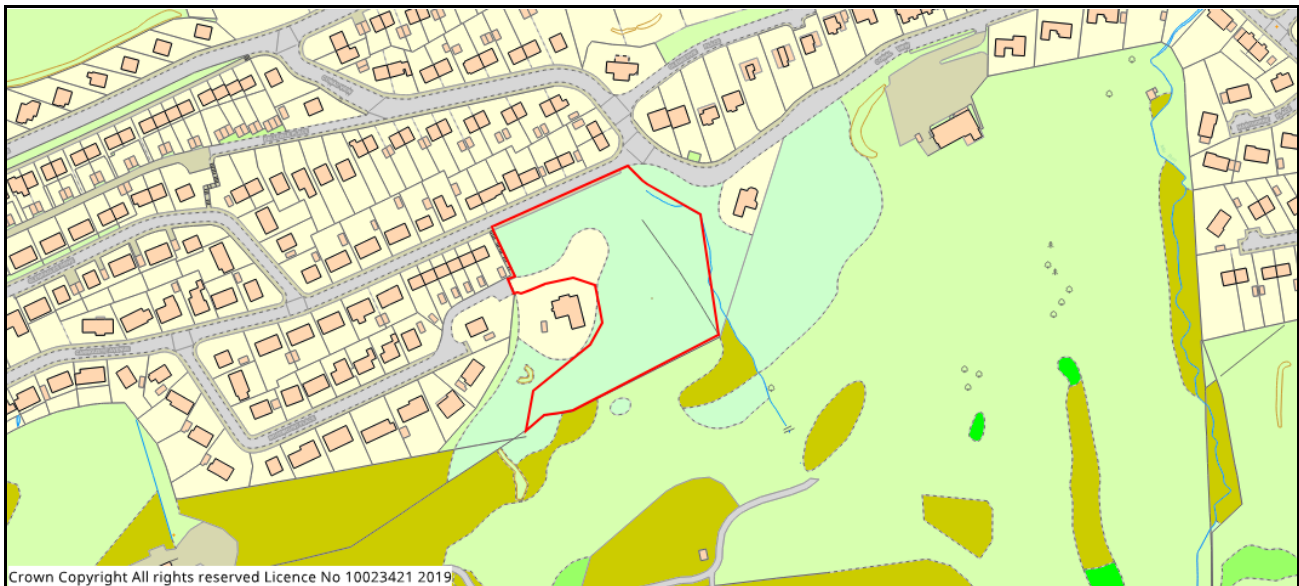
**Report No:** 20/0186/IC

**Local Application  
Development**

**Contact  
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**Subject:** Notification of Appeal Decision by Scottish Ministers: erection of six detached dwellinghouses/house plots (planning permission in principle) at Land adjacent to 24 Rosemount Place, Gourrock



## SUMMARY

- Planning permission was refused by the Planning Board at its meeting in May 2021.
- The applicant appealed the decision to the Scottish Ministers and sought an award of costs.
- The appeal has been UPHELD and costs AWARDED to the appellants.

The appeal and costs decision letters may be viewed at:  
<https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=121686>

## **INTRODUCTION**

In May 2021 the Planning Board, following a site visit, decided to refuse planning permission for the erection of six detached dwellinghouses/house plots (planning permission in principle) for the following reasons:

1. The proposed development fails to protect the historic Gourock Golf Club (established 1896) which borders the site and whose layout threatens to be compromised in contradiction to Scottish Planning Policy 2014. Paragraphs 135 and 136 state that the historic environment is a key cultural and economic asset and a source of inspiration and should be seen as integral in creating successful places and that planning has an important role to play in maintaining and enhancing the distinctive and high quality irreplaceable historic places which enrich our lives, contribute to our sense of identity and are important resources for our tourism and leisure industry. Paragraph 151 goes on to state that there is a range of non-designated historic assets, which do not have statutory protection and these resources are an important part of Scotland's heritage and should be protected and preserved as far as possible in situ wherever feasible.
2. The amount of additional traffic generated by the proposed development on the shared surface narrow access route with poor visibility splays could prove a danger to pedestrians and vehicles in contradiction to Local Plan Policy 1, Successful Places - Easy to move around - Be well connected, with good path links to the wider path network and public transport nodes and neighbouring developments. As well as contradicting the Roads Development Guide that considers the needs of pedestrians first when considering the design of any road layout. "2.2.4 Street Structure. b Connections to wider networks," states that - "The existing road network must be capable of coping with the existing as well as levels of all types of traffic generated by the development. The road and paths created within the development must connect into the existing road and other user networks in a logical and progressive manner."

The Planning Board was advised at its meeting in August 2021 that an appeal against the refusal of planning permission had been submitted to the Scottish Ministers and that expenses were being sought on the grounds that the Council had not determined the application on legitimate planning grounds.

## **NOTIFICATION OF THE APPEAL DECISION**

Mike Croft was the Reporter appointed by the Scottish Ministers to determine the appeal.

In his decision the Reporter considers that having regard to the provisions of the development plan and all the other matters raised, the main issues are whether the appeal project would (a) unreasonably harm the nearby Gourock Golf Club and (b) result in danger for local road users.

The Reporter sees no basis for regarding the golf club or its course as historic assets as it is not within the ambit of SPP as it is not a conservation area, listed building, scheduled monument and archaeological site or garden and designed landscape. The Reporter concludes that no such asset would be affected by the appeal project. In terms of stray golf balls the Reporter agrees with the golf club that the prospect exists of balls being hit into the site however that is a prospect that exists now as well as at some time in the future when the appeal project might come to fruition. It is for the golf club, and not neighbouring residents or the appellant, to address the safety issue. The Reporter considers that there is scope for further planting within the golf course land that could eliminate, or at least very substantially reduce, the risk of balls being hit into the appeal site.

In terms of danger to road users the Reporter observed the existing shared surface part of Rosemount Place, which is an adopted road is about 4.8 metres wide. This means that two cars, proceeding slowly, should be able to pass each other. Problems arise at the moment from parking on the road, and from visibility around the bend about 30 metres from the appeal site boundary. If

the first problem amounts to obstruction it can be dealt with through standard traffic enforcement procedures. The second problem is not assisted by a hedge which overhangs the road, but that is something the roads authority is in a position to deal with if it wishes.

In his assessment, the fundamental point about the existing shared surface section of Rosemount Place is one where motorists are expected to adapt their behaviour to that of other road users. The bend has the potential to act as a natural traffic calming feature. The extension of Rosemount Place into the appeal site would allow for a hammer-head turning area which would accommodate bin lorries and this would improve existing circumstances. Being at the end of a cul-de-sac, the existing shared surface section of Rosemount Place has low traffic levels. The additional four houses within the appeal project that would be accessed from this direction would undoubtedly add to traffic here, but the amount of extra traffic from four houses would be limited. A substantial degree of control can arise from the imposition of conditions and of particular relevance here is a condition that would prevent access for construction vehicles via Rosemount Place (condition 5). With that in mind he is satisfied with the project's access proposals.

He therefore concludes that the proposed development accords overall with the relevant provisions of the development plan and that there are no material considerations which would justify refusing to grant planning permission. The appeal is upheld with 19 conditions as follows:

1. Plans and particulars of the matters listed below shall be submitted for consideration by the planning authority, in accordance with the timescales and other limitations in section 59 of the Town and Country Planning (Scotland) Act 1997 (as amended). No work shall begin until the written approval of the planning authority has been given, and the development shall be carried out in accordance with that approval.

*Reason: to ensure that the matters referred to are given full consideration and to accord with section 59 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.*

2. Details of the proposed layout are required to accord with condition 1 above. These shall be shown on a plan at a scale of 1:500 showing the position of all buildings, roads, means of access, footpaths, parking areas (distinguishing, where appropriate, between private and public spaces), and vehicular turning areas. The position of the houses in each plot shall be within the "POTENTIAL EXTENT OF PLOT BUILD ZONE" coloured pink on drawing AL(0)005 Rev A. The details shall allow for the following:

- (i) parking (including garages if not less than 3.0 metres by 7.0 metres in size) to be provided in accordance with the National Guidelines of one parking space for a 1-bedroom house, 2 parking spaces for a 2- or 3-bedroom house, and 3 parking spaces for a 4-bedroom house;
- (ii) visitor parking shall be at a standard of 0.25 space per house;
- (iii) the minimum dimensions of driveways shall be 3 metres wide by 5.5 metres long per bay and the driveway gradients shall not exceed 10%;
- (iv) any visitor parking spaces shall be a minimum of 2.5 metres by 5.0 metres in size and shall be located central to the site;
- (v) all roads within the site shall be a minimum of 4.8 metres wide;
- (vi) all footways within the site shall be a minimum of 2.0 metres wide; and
- (vii) all roads shall have a gradient of 8% or less.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants, the proper functioning of the development, and the appearance of the locality.*

3. The proposed floor plans and elevations of all buildings are required to accord with condition 1 above, including dimensions and type and colour of all external materials.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants and the appearance of the locality.*

4. Details are required to accord with condition 1 above of the type and colour of all hard surfacing materials.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants and the appearance of the locality.*

5. Details are required to accord with condition 1 above of the phasing of the development. The phasing details shall provide for construction of the houses on neither plot 4 or plot 5 (as identified on page 18 of the submitted Residential Design Guide) to start until construction of the houses on plots 1, 2 and 3 (as so identified) have been completed ready for occupation. The delivery of construction materials into the site for all phases of the development shall be taken from Carnoustie Avenue or Cowal View only.

*Reason: in the interests of safety on local roads.*

6. As soon as possible after each of the phases of the development approved under condition 5 above is completed (except for the last or final phase, for which notice shall be given under section 27B(1) of the Act) the person who has completed any phase shall give written notice of the completion of that phase to the planning authority.

*Reason: to accord with section 27B(2) of the 1997 Act, as amended by the Planning etc (Scotland) Act 2006.*

7. Details are required to accord with condition 1 above of the proposed ground levels throughout the site and proposed finished floor levels, in relation to a fixed datum point. The details shall include existing ground levels taken from the same fixed datum point. The details shall allow for the rear garden slopes of each plot to not exceed a maximum of 20 degrees.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants.*

8. Details are required to accord with condition 1 above of the proposed landscaping at the site. These details shall include
  - (i) details of any earth mounding, hard landscaping, grass seeding and turfing;
  - (ii) a scheme of tree and shrub planting, incorporating details of the number, variety and size of trees and shrubs to be planted as well as identifying trees that are to be retained or removed;
  - (iii) details of the phasing of these works; and
  - (iv) proposed levels for the landscaping.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants and the appearance of the locality.*

9. Details are required to accord with condition 1 above of surface water management and Sustainable Urban Drainage Systems proposals. Land drains shall be incorporated into the proposals for each plot (as identified in the recommendation of the Flood Risk Assessment by Cundall, 18 December 2020). The discharge rate shall be at predevelopment greenfield run-off rates.

*Reason: in the interests of satisfactory flood control for the site and the locality.*

10. Details are required to accord with condition 1 above of all walls (including any retaining walls) and fences to be erected on the site.

*Reason: to ensure a precise and acceptable form of development in the interests of future occupants and the appearance of the locality.*

11. Details are required to accord with condition 1 above of the visibility splays to be provided in both directions at the junction of the new access with Carnoustie Avenue. The visibility splays shall be a minimum of 2.4 metres x 43.0 metres x 1.05 metres.

*Reason: in the interests of road safety at and near that access.*

12. Details are required to accord with condition 1 above of how the existing footpath from Carnoustie Avenue to Rosemount Place is to be connected to the development site. No house shall be occupied until the approved connection has been fully implemented as approved.

*Reason: in the interests of local pedestrian circulation.*

13. Details are required to accord with condition 1 above of low and zero carbon generating technologies to be installed in each house. Each house shall be designed to ensure that at least 15% of the carbon dioxide emissions reduction standard set by Scottish Building Standards (rising to at least 20% by the end of 2022) is met through the installation and operation of low and zero carbon generating technologies. No house shall be occupied until the approved details for that house have been fully implemented as approved.

*Reason: in the interests of minimising carbon emissions.*

14. Following approval of the matters referred to in condition 7 above, development shall not commence or continue until the trees to be retained have been protected by suitable fencing. Fencing shall be erected under at least the full extent of the canopy of broadleaf trees and at half the height of conifer trees as set out in BS5837/2012. Development shall not commence until details of the location and type of fencing have been submitted to and approved in writing by the planning authority.

*Reason to ensure that trees to be retained are fully protected during construction.*

15. Any site clearance work shall be undertaken outwith the bird breeding season (March to August inclusive) unless otherwise agreed in advance in writing by the planning authority. Any request to carry out site clearance works during the bird breeding season shall be accompanied with a pre-construction bird breeding survey.

*Reason: to ensure the protection of birds within the site.*

16. Details are required to accord with condition 1 above of an electric vehicle charging point for each house. No house shall be occupied before its charging point has been installed as approved.

*Reason: in the interests of minimising carbon emissions.*

17. No house shall be occupied until the existing bridge/crossing structure in the northeast part of the site over the watercourse (identified in appendix E photograph 3 of the Flood Risk Assessment by Cundall, 18 December 2020) has been completely removed.

*Reason: to prevent flooding.*

18. Details are required to accord with condition 1 above of a bank erosion prevention scheme along the watercourse running through the site. The details shall include any proposed

changes in ground levels in relation to a fixed datum point as well as any proposed structures.

*Reason: to prevent flooding.*

19. Details are required to accord with condition 1 above of the new grille at the outfall (as identified in the recommendation of the Flood Risk Assessment by Cundall, 18 December 2020) before the watercourse goes under the road. The details shall include details of the maintenance and cleaning of the grille. No house shall be occupied until the approved details have been implemented.

*Reason: to prevent flooding.*

With regard to the expenses claim he accepts as a generality that a decision on a planning application contrary to the advice of a planning authority's officers is not necessarily unreasonable. The test is whether there are sound planning reasons for that different stance.

He explains in relation to the first refusal reason the Council's contention that Gourock Golf Club is a historic asset of the sort protected by various planning policies is simply not substantiated by any evidence at all. The Council's argument arising from the potential for golf balls to be sliced from the 10th tee on the course into the appeal site ignores an important starting point in a proper argument on the matter. That starting point is the fact that that the site consists of residential garden ground already. If danger from sliced balls exists, it is a matter for the golf club to deal with, not a proper reason for refusing residential development on the appeal site. He finds the Council's stance on this wholly unreasonable.

He further explains that part of the Council's second reason for refusal depended on its assessment that if the appeal project were implemented the end-result would be a two-way road with footways at both ends, including a new section within the appeal site, with a narrow, shared surface, single lane in the centre. This is not what is proposed and to ignore what is clearly shown on the application plans and the professional advice on those plans were unreasonable. Similarly, all the points made by third parties in objecting to the access arrangements were dealt with fully in the professional advice before the Council. The Council had no proper basis to reach a different conclusion and the different conclusion it did reach indicates unreasonableness in his assessment.

He concludes that the Council has acted unreasonably causing the appellant to incur unnecessary expense because it should not have been necessary for the case to come before Scottish Ministers for determination.

Stuart Jamieson  
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Local Government (Access to Information) Act 1985 – Background Papers. For further information please contact Sean Mc Daid on 01475 712412