

Report To: The Planning Board

Date 3 August 2022

Report By: Interim Director
Environment and Regeneration

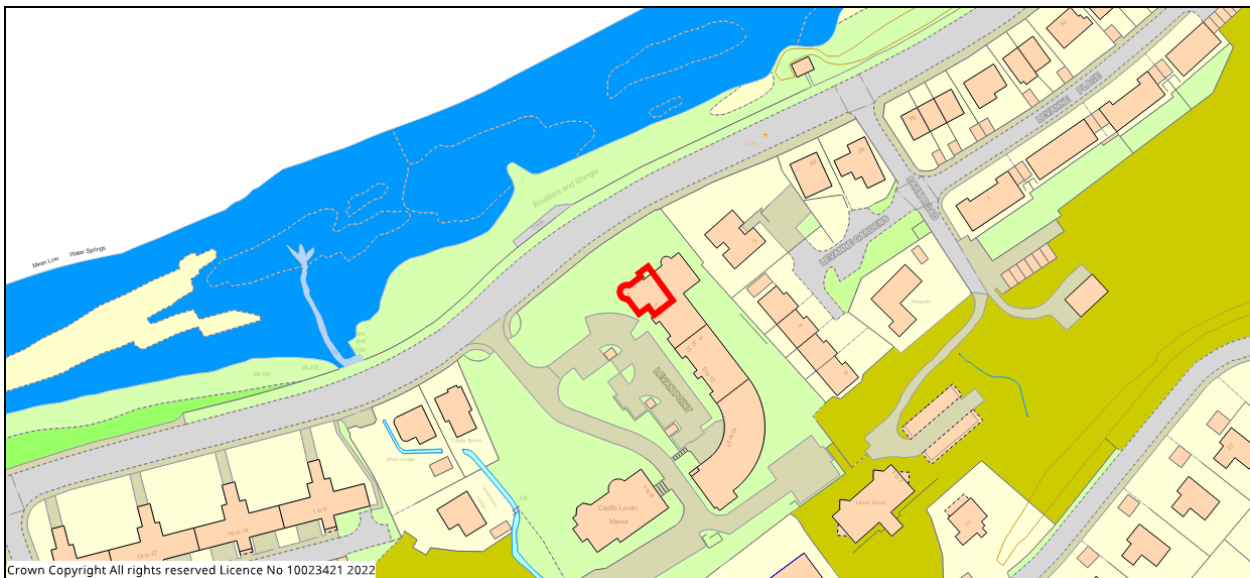
Report No: 22/0111/IC
Plan 08/22

Local Application
Development

Contact Officer: David Sinclair

Date: 01475 712436

Subject: Proposed formation of patio (in retrospect) at
1 Levan Point, Gourock.



SUMMARY

- The proposal complies with the adopted and proposed Inverclyde Local Development Plan.
- Twenty objections have been received raising concerns over impacts on amenity, design and impacts on communal garden grounds.
- The recommendation is to GRANT PLANNING PERMISSION.

Drawings may be viewed at:

<https://planning.inverclyde.gov.uk/Online/applicationDetails.do?activeTab=documents&keyVal=RB9DKRIMM6500>

SITE DESCRIPTION

The application site comprises a ground floor flatted property and an adjoining area of garden ground on the north side of the property, located in the north-west corner of a 'J' shaped residential building on the south side of Cloch Road, Gourrock. Built around 2000, the building is three storeys in height and split into three blocks, with each block being one storey taller than the adjoining block to the north. The building is finished with a grey slate roof; a mixture of buff stone and white render walls; white timber sash and case windows with buff stone sills, lintels and mullions; and black uPVC rainwater goods. Each apartment in the building contains a small balcony framed with a white metal balustrade, accessed from a white uPVC door paired with a fixed single pane window. The building contains a set of French doors on the north elevation which provide access between the ground floor flat and the garden area, which was granted planning permission in November 2021 under application 21/0281/IC.

The adjoining garden ground between the building and Cloch Road is raised relative to Cloch Road by approximately 0.4 metres and sits on a gentle north facing slope. The site is set back from Cloch Road by approximately 13 metres.

PROPOSAL

Retrospective planning permission is sought for the installation of a patio on the north-west elevation of the property. The patio has been constructed in front of the French doors approved under planning permission 21/0281/IC, measuring approximately 3.3 metres across and extending outwards from the building by around 3.1 metres.

ADOPTED 2019 LOCAL DEVELOPMENT PLAN POLICIES

Policy 1 – Creating Successful Places

Inverclyde Council requires all development to have regard to the six qualities of successful places. In preparing development proposals, consideration must be given to the factors set out in Figure 3. Where relevant, applications will also be assessed against the Planning Application Advice Notes Supplementary Guidance.

Planning Application Advice Note (PAAN) 5 on “Outdoor Seating Areas” applies.

PROPOSED 2021 LOCAL DEVELOPMENT PLAN POLICIES

Policy 1 – Creating Successful Places

Inverclyde Council requires all development to have regard to the six qualities of successful places. In preparing and assessing development proposals, consideration must be given to the factors set out in Figure 2 and demonstrated in a design-led approach. Where relevant, applications will also be assessed against the Planning Application Advice Notes and Design Guidance for New Residential Development Supplementary Guidance. When assessing proposals for the development opportunities identified by this Plan, regard will also be had to the mitigation and enhancement measures set out in the Strategic Environmental Assessment Environmental Report.

Policy 20 – Residential Areas

Proposals for development within residential areas will be assessed with regard to their impact on the amenity, character and appearance of the area. Where relevant, assessment will include reference to the Council’s Planning Application Advice Notes Supplementary Guidance.

Draft Planning Application Advice Note (PAAN) 5 on “Outdoor Seating Areas” applies.

CONSULTATIONS

None required.

PUBLICITY

The nature of the proposal did not require advertisement.

SITE NOTICES

The nature of the proposal did not require a site notice.

PUBLIC PARTICIPATION

The application was the subject of neighbour notification. 20 representations were received from 25 individuals objecting to the proposal. The grounds of objection are as follows:

Amenity Concerns

- By replacing grass and soil with slabs the proposal has altered the water drainage into the surrounding area.
- The proposal has altered the ecosystem of this small area.
- The patio is directly under bedroom windows raising possible problems with noise and smoke.
- Each flat already has allocated personal patio/balcony space giving an aesthetically pleasing view of the property, no bedrooms are affected by activity on the existing balconies.
- Concerns over the future impact on residential amenity by the potential use of this patio by the applicant for gatherings, barbeques etc. as the patio is situated directly below neighbouring balconies and bedrooms.

Design and Visual Impact

- The patio in question is a permanent and substantial construction and it is suggested that the Council enforce its removal and also the reinstatement of a considerable amount of turf which was also removed.
- A lack of understanding for the whole aesthetic of this development has been demonstrated by additions around this particular flat.
- Shrubs have been moved from the surrounding area and rearranged to shield the patio area.
- Garden foliage has already been replanted without consultation.
- The patio is out of place compared to other blocks of flats in the area e.g. Cameron Court, Balmoral and The Gantocks, none of which have patios in front of their buildings.

Land Ownership Concerns

- The works carried out are contrary to title deeds regarding common grounds. This patio is on common ground but not for common use.
- One owner has commandeered the front lawn area, which is part of the "Common Ground" owned by all of the twenty six houses, for personal purposes. This has been done without consultation or thought for neighbours and any consideration for their rights to privacy.
- The applicant does not own the land at the front of this property it is communal gardens owned and maintained by all 26 owner residents and not as previously stated on application no 21/0281/IC.
- The formation of the patio comes under the Deed of Conditions of the development in respect to the Common Ground. Approval cannot be considered in relation to a patio, patio furniture and access paths without the approval by a majority of the proprietors as per deed of conditions of the development.

Procedural Concerns

- A former proposal for patio doors at the rear of the development was turned down. This should be considered with this application, to ensure consistency with decision making.
- The patio has already been installed without seeking permission from Inverclyde Council Regeneration and Planning Department or the property factor and residents at Levan Point.
- In the letter from Planning dated 3rd Nov 2021, detailing the reasons for allowing French Doors at this property, it clearly states that “patio would likely be restricted under planning legislation and would require to be assessed under a separate application”. The applicant ignored these comments from Planning and went ahead and installed a patio. He also reconfigured the garden layout on ground that is common to all residents.
- The planning letter also says that altering windows in flatted accommodation requires planning consent. After installing the patio the applicant replaced their windows with a different window design.
- The applicant has changed the use of the ground from a communal garden to a fairly big private patio area by re-landscaping an area of the commonly owned gardens and surrounding it with shrubs. This change of use has not been mentioned in the application description and we request that this matter is looked into by the planning department, as this omission may affect the decision making. By not declaring the change of use, the planning application as it stands may be invalid.

Other Concerns

- Patio work was carried out contrary to information given in a letter sent by the applicant to all Levan Point residents.
- Inconvenience caused in the construction of this patio by using the common access road and car parking by construction vehicles and equipment.
- Objections to other works by the applicant including laying slabs from the balcony to his car; cutting his balcony to make a gate then removing brick work to make a step; replacing windows with ones of a different type.
- Objections to the applicant putting garden seating out with slabs in front as if the ground belongs to his flat and is no longer communal ground.
- The applicant has built a pathway from his patio to a paved area for a garden seat. The garden seat contains storage space, is out of keeping and is intrusive.
- On the application form, it is suggested that the immediate neighbour’s patio was built without having received the appropriate planning permission. The neighbour’s patio was constructed when the Levan Point development was erected. It was built as it is the sole outdoor space for that house; all other homes at Levan Point having a balcony as an outdoor space.
- Concerns over any future expansion of this area and if planning permission were granted, creating a precedent which could adversely impact on the character and appearance of the development at Levan Point.
- The development provides no benefits to any other owners in the complex.

ASSESSMENT

The material considerations in determination of this application are the adopted Inverclyde Local Development Plan (LDP); the proposed Inverclyde Local Development Plan; Planning Application Advice Note (PAAN) 5 on “Outdoor Seating Areas”; Draft Planning Application Advice Note (PAAN) 5 on “Outdoor Seating Areas”; and the representations received.

The application site is located within an established residential area where Policy 1 of the adopted Local Development Plan (LDP) and Policies 1 and 20 of the proposed Local Development Plan apply. Policy 1 of both LDPs requires all development to have regard to the six qualities of successful places and the relevant Planning Application Advice Notes Supplementary Guidance, of which the adopted and draft PAAN 5s are applicable. The relevant qualities in Policy 1 of both LDPs are being ‘Distinctive’ and ‘Safe and Pleasant’. In the adopted Plan, the relevant factor for being considered ‘Distinctive’ is whether the proposal reflects local architecture and urban form. In the proposed Plan, the relevant factors are whether the

proposal respects landscape setting and character, and urban form; and reflects local vernacular/materials. To meet the quality of being 'Safe and Pleasant', the proposal should avoid conflict between adjacent uses by having regard to adverse impacts that may be created by noise; smell; vibration; dust; air quality; flooding; invasion of privacy; or overshadowing. Policy 20 requires the proposal to be assessed with regard to potential impacts on the amenity, character and appearance of the area.

The development is located towards the front of the property, being positioned between Cloch Road and the flatted building. Firstly, in considering impacts on urban form and the streetscape, the patio sits forwards of the established building line, has been constructed at ground level and is not raised relative to the adjoining grassed front area. Whilst being set forward of the building, the patio is set back from the front boundary with Cloch Road by approximately 13 metres and from the road has been screened behind a low hedge, so that it is not prominently visible from the public realm. I note that the patio is viewed in context with the neighbouring patio at 2 Levan Point, which was installed as part of the original development and also sits between the main building and Cloch Road. It is considered that the patio does not impact on the streetscape or urban form of the area.



View of the front of the property from Cloch Road. The patio sits in front of the French doors in the position indicated.

In considering the impacts of the proposal on the character and appearance of the building and on neighbouring amenity (Policy 20 of the proposed LDP), the impacts primarily relate to the appearance of the construction, possible activity and noise, and any implications for privacy. In considering these, I turn to the guidance given in both PAAN 5s on "Outdoor Seating Areas".

Firstly, in considering the appearance of the patio, both PAAN 5s state that the design and position shall be appropriate to the architectural design of the house. The patio is located on the principal elevation of the building, however is not raised above the external ground level and is mostly surrounded by low planting. The patio does not obstruct or impact on any architectural features on the building and forms a feature which is commonly seen within the curtilage of residential buildings. Furthermore, I note that there is an existing patio on this elevation of the building in front of the neighbouring property at 2 Levan Point, which formed part of the original design and that there are upper level balconies on the main elevation of the building. As such, I

consider the patio in question to be visually acceptable and appropriate to the architectural design and character of the building.

In considering the choice of materials and finishes provided, the natural stone paving design which utilises different sizes of paving stones reflects the finish on the neighbouring patio at 2 Levan Point and can be considered acceptable within the context of a high quality, modern development. It stands that the proposal reflects local architecture, respects landscape setting and uses appropriate materials and as such, I consider the proposal to comply with all relevant factors with regard to meeting the quality of being 'Distinctive' in Policy 1 of both LDPs.



The patio which is subject to the planning application.

With regard to possible activity and noise, both PAAN 5s state that if raised more than 0.5 metres above the original ground levels, decking should not be of a size that will afford residents the opportunity of undertaking a wide range of activities over extensive periods of day and evening to the extent that regular activity may impinge upon the enjoyment of neighbouring gardens. I note the concerns raised over the patio potentially being used for gatherings and barbecues, which could cause problems in terms of noise, activity and smoke nuisance and that the patio is situated directly below neighbouring balconies and bedrooms. The patio covers approximately 10.2 square metres which is considered to be an acceptable size for a flatted property and not excessively large for the surrounding context. I consider the patio to be of a scale which is unlikely to result in undue noise and disturbance to residents occupying the balconies and bedrooms directly above. As the patio is not raised more than 0.5 metres above the original ground levels and is an acceptable size, it stands to be in accordance with both PAAN 5s in this regard. In considering whether the proposal will create conflict in terms of odours by allowing occupants to use portable barbecues on the patio, this activity would be done for the enjoyment of the residents of the flat and will not be undertaken on a commercial scale. Domestic barbecues are a common feature in residential areas which are generally used infrequently throughout the warmer months of the year when occupants can enjoy good weather and are not used on a daily basis. I am therefore satisfied that the proposal will not create any conflict with neighbouring properties in terms of odours.

In considering impacts on neighbouring privacy, both PAAN 5s state that where positioned within 9 metres of the garden boundary and where it will result in an increased view of the neighbouring private/rear garden area, the erection of screening, either at the decking/platform edge or the garden boundary shall generally be required. The patio is set at ground level and affords exactly the same views which were afforded standing on the grass previously on the site. It is positioned to the front of the building and does not afford views into any private/rear garden areas, or any areas which cannot be viewed from the public realm. It stands that the development raises no concerns over impacts on neighbouring privacy and accords with both PAAN 5s in this regard. Taking the above assessment into consideration, I consider the proposal to be in accordance with all relevant guidance given in both PAAN 5s.

I note the concerns raised in the representation regarding drainage impacts and the potential for the development to impact on the area's ecosystem. In considering this, I note that the area covered by the development is considerably smaller than the surrounding area which is soft landscaped and is unlikely to cause conflict with adjacent uses in terms of flooding. The site formerly contained an area of well-maintained grass and is within the curtilage of an established residential development. Any impacts on the surrounding ecosystem can be considered to be minimal in terms of ecological impact.

Based on the above, I consider that the proposal is unlikely to create conflict with adjacent uses in terms of noise; smell; vibration; dust; air quality; flooding; invasion of privacy; or overshadowing, therefore it can be considered to meet the quality of being 'Safe and Pleasant' in Policy 1 of both LDPs.

Turning to the points raised in the objections not yet addressed, with regard to other works carried out, the relocation of garden foliage and planting of shrubs on communal grounds are civil matters to be discussed and resolved between the parties involved. The relocation of soft landscaping including shrubs and the other garden foliage which has been installed in front of the patio is not considered to constitute as development in planning terms and would not require consideration as part of this application.

I note the concerns raised over alterations to the existing ground floor level balcony handrail and the replacement of the windows on the property with ones of a different design. The works carried out to remove part of the existing balcony handrail and the replacement of existing windows in the property without altering the size of any window openings are considered as permitted development in planning terms and are therefore irrelevant to the assessment of this application. The laying of individual paving slabs between the side balcony and parking space and the garden seat provided in front of the building are considered to be 'de minimis' and not of a scale that would require planning permission.

Turning to other comments received relating to previous applications, having investigated the planning history of the building, I can confirm that the adjoining patio at 2 Levan Point formed part of the original development. Regarding the comments pertaining to a former proposal for patio doors at the rear of the property being turned down, each planning application is required to be assessed on its own merits, however, I note that there has been no history of any planning applications being refused for patio doors at the rear of the property. Two separate applications were previously granted planning permission in 2004 for the installation of French doors at 17 and 22 Levan Point respectively. I note the concerns raised over any future expansion of the patio and this application setting a precedence which is harmful to character and appearance of the area. The application is to be assessed as submitted and any further expansion would require to be considered under a separate application. The fact that the proposal has been submitted in retrospect is not a material planning consideration. Matters relating to any inconvenience caused by construction vehicles and equipment are to be discussed and resolved by the parties involved and are also not a material planning consideration, however it was noted at the time of visiting the site that no construction vehicles or equipment remain on site.

Regarding land ownership disputes and issues related to title deeds and the use of communal grounds for personal use, these are civil matters to be discussed between the parties involved and are not planning related considerations, however it is noted that the proposal is located on

communally owned grounds and the applicant has acknowledged they do not have full ownership of the site. Procedurally, I am satisfied that the information provided in the ownership certificate acknowledges this and does not prevent the application from being considered on this basis. I note the concerns raised that a possible change of use has occurred on the site from a communal garden to a private patio area. The development in question is located within the grounds of a flatted property and in terms of planning, is considered to form part of a site containing flats. Flats can contain a variety of garden grounds, both communal and subdivided and any changes in this regard would not result in a change to the use of the site as a flatted property. As such, I do not consider that a change of use has occurred in this instance.

In conclusion, the proposal is in accordance with Policy 1 of the adopted LDP and Policies 1 and 20 of the proposed LDP. Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that planning applications be determined in accordance with the Local Development Plan unless material considerations indicate otherwise. As the proposal accords with all relevant Plan Policies and there are no material considerations which would warrant refusal of this application, planning permission should therefore be granted.

RECOMMENDATION

That the application be granted.

Stuart W Jamieson
Interim Director
Environment & Regeneration

Local Government (Access to Information) Act 1985 – Background Papers. For further information please contact David Sinclair on 01475 712436.