
NORTH AYRSHIRE COUNCIL

5th December 2018

Planning Committee

Title:	Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997: 6 Kames Bay, Millport, Isle Of Cumbrae KA28 0EA
Purpose:	To seek authority to serve a notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 in relation to 6 Kames Bay, Millport, Isle Of Cumbrae, KA28 0EA
Recommendation:	Agree that authority be given to serve a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 requiring that the fence erected without Planning Permission be removed and the original stone wall be reinstated.

1. Executive Summary

- 1.1 A section of stone boundary wall separating the gardens of numbers 6 and 6A Kames Bay, Millport has been demolished and a timber horizontal slatted fence of approximately 1.2-1.5 metres in height has been erected.
- 1.2 The site is located within the settlement boundary of Millport, as identified in the Adopted North Ayrshire Local Plan ("the LDP"). The site lies within the Millport Conservation Area. The wall was demolished and the fence erected at some point prior to the 7th of August 2018.
- 1.3 The demolition of the wall and erection of the fence would have required Planning Permission as the designation of a conservation area brings all development involving the erection or alteration of gates, fences and walls under planning control. Furthermore the fence is in excess of one metre in height in the front curtilage of a dwellinghouse and would have therefore required Planning Permission under Class 3E of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 as amended regardless of the conservation area designation. The development is considered to have an adverse impact on the conservation area by way of its height, design and appearance.
- 1.4 The development is therefore held to be contrary to Policy HE 1 of the LDP and, given the above, it is recommended that authority for the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997, as amended, (an "Enforcement Notice") be approved. An Enforcement Notice would require removal of the fence. The Enforcement Notice would take effect not less than 35

days from the date on which it is served, unless an appeal is lodged before it takes effect. The Enforcement Notice would require to be fully complied within 6 weeks of the date that it takes effect. There is a right of appeal against an Enforcement Notice, but not on the grounds that planning permission ought to be granted.

2. Background

- 2.1 It is relevant that in June 2003, Planning Permission for the demolition of the front boundary wall of 6A Kames Bay to facilitate the formation of a driveway was refused on the basis that 'The character and appearance of this part of the Millport and the outstanding conservation area are characterised by the boundary walls and pedestrian gates, running along the frontage of Kames Bay...' and that 'Approval of the proposal (the demolition of the front boundary wall) would set a damaging precedent which would undermine the character of the Outstanding Conservation Area.'
- 2.2 At some point prior to the 7th of August 2018 part of the existing stone boundary wall which separates 6 Kames Bay from 6A Kames Bay was demolished and a timber fence erected. The new fence was erected to the west of the wall, closer to 6 Kames Bay.
- 2.3 On the 16th of August a letter was sent by the Council to the owner of 6 Kames Bay stating that the works would have required Planning Permission but that it was unlikely that Planning Officers would support the erection of the existing timber fence. On the 21st of August, the Case Officer received a phone call from the agent of the owner of 6 Kames Bay stating that the wall does not belong to 6 Kames Bay and was entirely within the ownership of 6A Kames Bay. A letter was then sent to 6A Kames Bay. On the 4th of September the Case Officer received a further phone call from the owner of 6 Kames Bay stating that the wall blew over in a storm and was replaced with a fence by the owner of 6A Kames Bay. According to the owner of 6 Kames Bay the new fence has been erected entirely on her land. No response has been received to the letter sent to 6A Kames Bay.
- 2.4 Being located within Millport Conservation Area the partial demolition of the wall would require Conservation Area Consent with the proposed fence requiring planning permission. It is noted that neither of the applications have been made, to date, and as noted above, such applications would not receive support from the Council. Furthermore the unauthorised demolition of a wall in a conservation area is an offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.
- 2.5 Given the above, it is recommended that the enforcement notice be served on both the land owner, 6 Kames Bay and the developer, 6A Kames Bay.

3. Proposals

3.1 In the interest of preserving the character of the conservation area it is recommended that Committee approves the service of a Notice under Section 127 of the Town and Country Planning (Scotland) Act 1997 to require the following:-

- i) Removal of the timber fence, and
- ii) Erection of a replacement stone wall to match the remaining boundary in height, design and materials.

4. Implications

Financial:	The Council can take direct action against non-compliance with an enforcement notice and seek any costs incurred from the land owner or lessee.
Human Resources:	N/A
Legal:	The proposed Enforcement Notice is in accordance with Statutory Regulations. Non-compliance with such a Notice is an offence and the Council, as Planning Authority, could report such an offence to the Procurator Fiscal.
Equality:	N/A
Children and Young People:	
Environmental & Sustainability:	N/A
Key Priorities:	The proposed Enforcement Notice supports the Council Plan priority - "Protecting and enhancing the environment for future generations."
Community Benefits:	N/A

5. Consultation

5.1 None



Karen Yeomans

Executive Director

Economy & Communities

For further information please contact **John Mack, Planning Officer** on **01294 324794**

Background Papers

N/A

**Notice under Section 127 of the Town and Country Planning
(Scotland) Act 1997: 6 Kames Bay, Millport,
Isle Of Cumbrae KA28 0EA**



North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

"This map is reproduced from the OS map by North Ayrshire Council with the permission of the Controller of Her Majesty's Stationery Office, © Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Licence Number: 100023393."

1:1250 SCALE

