

PREFACE ITEM

APPLICATION NO. 20/0577/RET
APPLICANT(S) NAME: Mrs T Parry
PROPOSAL: Retain and complete raised decking area to the rear of dwelling
LOCATION: 1 Kingswood Close Hengoed CF82 7LU

Introduction

This application was reported to Planning Committee on 16th September, 2020 with a recommendation of approval. A copy of the original report is attached as an Appendix. At the meeting, Members resolved to defer a decision to allow officers to draft a reason for refusal that reflected the concerns expressed about the development during the debate.

The following report is, therefore, based on the main concern of Members that, the development would give rise to the perception of overlooking and to an unacceptable overbearing impact which would be detrimental to the residential amenities of the occupier of No. 18 Bryn Terrace. These matters are addressed in the appraisal below.

Appraisal

Notwithstanding the above concerns an amended set of drawings have been submitted indicating a 1.8 metre high privacy screen, the position and relationship of the proposed raised decking to the boundary of No. 18 Bryn Terrace and the relationship of the sun deck previously approved at No. 3 Kingswood Close (See Figure 1 below).

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Figure 1. Revised side section indicating a 1.8 metre privacy screen and relationship of neighbouring sun deck to no. 18 Bryn Terrace

Whilst it is accepted that there is a vast difference in levels between the two properties, Members are advised that the existing situation already provides an opportunity for overlooking and the neighbouring occupier's privacy at No. 18 Bryn Terrace is already affected when standing on the existing patio directly adjacent to the rear of No. 1 Kingswood Close or when looking out from the rear habitable room windows serving the dwelling.

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The introduction of 1.8 metre obscurely glazed privacy screens will inadvertently improve the existing situation in terms of overlooking as shown in Figure 1 above in that any existing overlooking would be impeded as a result of the privacy screens intersecting the existing lines of sight.

Furthermore, the proposed decking will be sited 1.7 metres lower than that of the neighbouring sun decks previously approved whereby there will be no opportunity to overlook the side/rear gardens or the habitable room windows of No. 18 Bryn Terrace.

Whilst the perception of overlooking can be a material planning issue, in this instance, given the reduced level and extent of screening now proposed and the fact that the proposal will also mitigate existing overlooking issues, as illustrated in Figure 1 above, it is not considered that a recommendation of refusal can be justified on this basis.

In addition, the proposed decking and screening will be set back 1.05 metres from the existing boundary fence which, it is considered, will mitigate to an acceptable degree any material overbearing impacts. When viewed from the property and garden at No. 18 Bryn Terrace the existing high boundary fence within this neighbour's garden represents, it is considered, a dominant feature set against the backdrop of the applicant's property which itself stands at a much higher level. In this context it is not considered that the visible areas of the proposed glass screen would materially affect the residential amenities of the occupiers of No. 18 Bryn Terrace to an unacceptable degree sufficient to warrant a recommendation of refusal.

Having regard to the above observations, the proposal is therefore considered to accord with Policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021 – Adopted November 2010 together with advice contained within guidance note 8 of Supplementary Planning Guidance LDP7: Householder Developments (January 2017).

Conclusion

In conclusion, for the reasons outlined in the original officer's report it remains the recommendation that the application be approved.

If Members are minded to refuse planning permission, the reason for refusal is suggested as follows:-

1. By virtue of the difference in levels and proximity to the neighbouring boundary, the proposed development would give rise to a perception of overlooking and an unacceptable overbearing impact which would be detrimental to the residential amenities of the occupier of No. 18 Bryn Terrace. Therefore the proposal is considered to be contrary to policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010."

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RECOMMENDATION: That planning permission is granted subject to the revised drawings received on 28.09.2020 and the conditions as set out in the attached report. However, if Members are minded to refuse permission, it is suggested that they do so on the basis of the reason set out in paragraph 5 above.

Code No. and Date Received	Name and Address of Applicant	Description and Location of Proposed Development
20/0577/RET 14.07.2020	Mrs T Parry 1 Kingswood Close Hengoed CF82 7LU	Retain and complete raised decking area to the rear of dwelling 1 Kingswood Close Hengoed CF82 7LU

APPLICATION TYPE: Retain Development Already Carried Out

SITE AND DEVELOPMENT

Location: The application property is located on the western side of Kingswood Close, Hengoed.

House type: Two storey detached dwelling.

Development: Planning permission is sought to retain and complete raised decking area to the rear of dwelling. The application is being reported to planning committee as the applicant is an elected ward member of this Council.

Dimensions: The raised decking is irregular in shape but has maximum dimensions measuring 9.6 metres in width by 3.6 metres in depth and measures 1.65 metres in height above the concrete retaining wall running parallel to the rear garden boundary of no.1 Kingswood Close and the side garden boundary of no. 18 Bryn Terrace. The finished floor level of the decking would be 0.426 metres below the resultant height of the neighbouring fence line, and would be enclosed by a 0.3 metre high timber plinth with 1.4 metre high obscurely glazed privacy screens and metal posts sited on top. The resulting means of enclosure would measure 1.7 metres in height above the finished floor level of the raised decking.

Materials: Reinforced steelwork, timber decking and obscurely glazed 1.7 metre high privacy screens.

Ancillary development, e.g. parking: Excavation works to reduce the existing ground levels.

PLANNING HISTORY 2010 TO PRESENT

None.

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POLICY

LOCAL DEVELOPMENT PLAN

Site Allocation: The application site is located within settlement limits.

Policies: SP2 (Development in the Northern Connections Corridor), SP5 (Settlement Boundaries), SP6 (Place Making), CW2 (Amenity), CW15 (General Locational Constraints) and advice contained within Supplementary Planning Guidance LDP7: Householder Developments (January 2017).

NATIONAL POLICY Planning Policy Wales Edition 10 (December 2018) and TAN 12: Design (March 2016).

ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? No.

Was an EIA required? Not Applicable.

COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? The site is located within an area of low risk.

CONSULTATION

Senior Arboricultural Officer (Trees) - There is an area TPO to the rear of this property. Given that this application is to retain the work already undertaken, then I do not believe the "planning application" would be defence against any damage to the protected trees.

Gelligaer Community Council - No objection.

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ADVERTISEMENT

Extent of advertisement: A site notice was not required in this instance however two neighbours were consulted.

Response: Four letters of representation have been received of which three letters of representation have been received from the same individual at the time of writing the report.

Summary of observations:

1. The work has commenced without planning permission in the first instance.
2. The decking does not comply with building regulations.
3. The decking exceeds 30 cm in height.
4. It's not reasonable for decking to be higher than a neighbouring fence.
5. The proposal will result in loss of privacy and overlooking providing direct views to a kitchen and bedroom window.
6. The proposal will prevent the neighbouring occupier from enjoying their garden.
7. The proposal will devalue the neighbour's property.
8. Concerns regarding lack of neighbour consultation and lack of consideration for the occupiers of Bryn Terrace.
9. A family member of the main objector concerned that the proposal will look into the bedroom windows of no.1-4 Bryn Terrace.
10. Advice has been sought from a local councillor who has confirmed that the minimum distance for a structure to be erected from a dwelling is 15 metres.
11. There is potential to reduce the decking even further so that any screening will not be visible and privacy won't be compromised.
12. Advises that legal advice and the press will be consulted should planning permission be granted.

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SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area?
There are no specific crime and disorder implications material to the determination of this application.

EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? No.

COMMUNITY INFRASTRUCTURE LEVY (CIL)

Is this development Community Infrastructure Levy liable? No the development is not CIL liable.

ANALYSIS

Policies: The application has been considered in accordance with national policy and guidance, local plan policies and supplementary planning guidance. The main considerations in the determination of this application are the impact upon visual amenity and whether the raised decking will give rise to an unacceptable impact in terms of amenity to the occupier of no. 18 Bryn Terrace and the occupiers of no.1-4 Bryn Terrace.

This application seeks to retain and complete an unauthorised structure erected within the rear garden of 1 Kingswood Close, Hengoed. The applicant has advised that works on site have stopped since being advised by Building Control in June 2020 and the original plans submitted for consideration in July 2020 (that reflect the works constructed on site to date), have subsequently been amended at the request of the Local Planning Authority. The applicant has therefore proposed to lower the resultant height of the raised deck by an additional 0.8 metres and it is the revised drawings received in August 2020 that are for consideration in the determination of this application.

Policy CW2 of the Local Development Plan sets out criteria relating to amenity. Development proposals must ensure that there is no unacceptable impact on the amenity of adjacent properties or land.

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In that respect the rear garden of the application property comprises of a levelled patio area that projects a distance of 4.3 metres from the rear wall of the property and is enclosed by a 0.8 metre high rendered wall. The garden then falls steeply away to meet the ground below by approximately 4.8-4.9 metres. In that the development has already commenced, the reinforced concrete and steel work is already in situ on the sloping ground with timber joists affixed to the steelwork.

Notwithstanding the works undertaken on site to date, this does not reflect the revised drawings submitted to the Local Planning Authority for consideration which include a lower decked area.

The raised decking would have maximum dimensions measuring 9.6 metres in width by 3.6 metres in depth and measures 1.65 metres in height above the concrete retaining wall running parallel to the rear garden boundary of no.1 Kingswood Close and would be set down into the sloping ground from the levelled patio area by 1.8 metres. The raised decking would be set off the northern boundary by 5.94 metres, the southern boundary by 6.24 metres and the western boundary ranging between 0.9 metres and 1.2 metres. The finished floor level of the decking would be 0.426 metres below the resultant height of the neighbouring fence line, and would be enclosed by a 0.3 metre high timber plinth with 1.4 metre high obscurely glazed privacy screens and metal posts sited on top. The resulting means of enclosure would measure 1.7 metres in height above the finished floor level of the raised decking.

Having regard to the above observations the resultant means of enclosure when viewed from the garden of no.18 Bryn Terrace and the public realm would measure 1.275 metres in height above the existing fence line. This would be commensurate with the standard height of a decked balustrade enclosure.

It should be noted that a precedent has previously been set for the erection of decking platforms within the south-facing rear gardens of Kingswood Close and those decked platforms extend outwards from the levelled patio area to the rear of the dwellings. Whilst some of the raised platforms look out onto commercial premises and some are screened by trees and privacy screens, they are located at a much higher level, approx.1.8 metres higher than the proposal for consideration. On this basis, given that only a reduced amount of screening would be visible when viewed from the garden of no.18 Bryn Terrace and the public realm, it is not considered that the proposal will give rise to any adverse impacts to the character of the surrounding area.

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Turning to the impact upon the occupier of no.18 Bryn Terrace, this property is located at a much lower level and there is a timber fence erected adjacent to the common boundary shared by no.1-3 Kingswood Close measuring approximately 3.6 metres in height. The application property looks out onto the side elevation of no.18 Bryn Terrace where there is a ground floor kitchen window and a secondary seating area within the side garden outside of the kitchen. Consequently, as a result of the difference in levels between the two properties, when standing from the existing levelled patio area to the rear of the application property the existing situation already gives rise to a considerable amount of overlooking and impact on the privacy of the occupier of no. 18 Bryn Terrace below. The proposal for consideration would inadvertently mitigate the existing situation in terms of overlooking as the proposed privacy screens would intersect any current overlooking issues and consequently improve privacy for the occupier of no. 18 Bryn Terrace.

In that the raised decking would be located 1.8 metres below that of the existing levelled patio area and would be located between 0.9 metres and 1.2 metres off the common boundary with no.18 Bryn Terrace, the proximity to the neighbouring property would be much closer. In that respect the finished floor level of the decking would be 0.426 metres below the resultant height of the neighbouring fence line, and would be enclosed by a 0.3 metre high timber plinth with 1.4 metre high obscurely glazed privacy screens and metal posts sited on top. The resulting means of enclosure would measure 1.7 metres in height above the finished floor level of the raised decking and would project 1.275 metres in height above the existing fence line. In that respect the impact would be similar to the existing situation when viewed from the rear garden of no. 18 Bryn Terrace looking up towards the privacy screens located to the rear of no. 3 Kingswood Close, albeit the fence height shared between these properties is much taller than that shared with the application property, but it is not considered that the impact would be any worse.

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Finally it is noted that there is a first floor habitable room window in the rear elevation of no. 18 Bryn Terrace that is located in close proximity to the return of the side elevation. Given the difference in levels and proximity to the proposed bedroom, consideration has been given as to whether the occupier of no.18 Bryn Terrace would result in loss of privacy to this habitable room window. In that regard, given that the raised decking is to be sited below the height of the existing fence line together with being enclosed privacy screens, this will prevent the ability for any persons to be standing on the raised decking to be able to look directly into the first floor bedroom window. Furthermore, given the relationship between the raised decking and privacy screens in terms of where it will cease in relation to the first floor bedroom window together with the acute viewing angle, if any, could be achieved, it is not considered that any loss of privacy would occur, and if so this would be to the ceiling only directly above the window lintel, which would be no different to the existing situation had the occupier of no. 1 Kingswood Close wished to stand or sit on the sloping ground previously. Therefore, it is not considered that the proposal will give rise to any adverse impacts to the occupier of no.18 Bryn Terrace significant enough to warrant refusal of the application on this basis.

In terms of the impact to the occupiers of no. 1-4 Bryn Terrace, the decking would be enclosed by a 1.7 metres privacy screen, together with there being a boundary fence located at a much a higher level along the northern boundary facing onto Bryn Terrace. Whilst it is accepted that the fence does not extend the full length of the boundary, the distance from the decking to the first floor habitable room window of no.4 Bryn Terrace, the nearest property to the north, measures 21 metres and this distance increases further in respect of no. 2-4 Bryn Terrace. Furthermore, there is also an intervening public highway between the properties, whereby privacy distances would be reduced much further when viewing these properties from the public realm. On this basis it is not considered that the proposal would give rise to any loss of privacy to the occupiers of no 1-4 Bryn Terrace.

In conclusion subject to the imposition of a condition to ensure that the privacy screens are installed prior to beneficial use of the raised decking and are to remain in place at all times, the proposal is considered to accord with policy CW2 of the Caerphilly County Borough Local Development Plan up to 2021- adopted November 2010.

Comments from consultees: Whilst the Senior Arboricultural Officer has raised concerns regarding the woodland TPO 49/82/RVDC confirmed 21.01.1983 in respect of damage to protected trees, the previous Senior Arboricultural Officer comments in response to consultations to retain other unauthorised raised decking along the rear of Kingswood Close confirmed that there were no significant trees in the area with the trees of amenity value located on site of the former Lewis Girls School.

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Comments from public:

1. The work has commenced without planning permission in the first instance - It is not an offence to undertake development works without applying for planning permission in the first instance. However, it is a risk that any works undertaken may result in abortive works. In this instance following a complaint to the Council's Building Control departing reporting a dangerous structure, the applicant was advised for the need to cease any further works and that they would need to apply for planning permission.
2. The decking does not comply with building regulations - The Building Control Officer who visited the property was content that the structure as built was not dangerous, nor is there a need to apply for building regulations approval.
3. The decking exceeds 30 cm in height - The 30 cm rule applies to householder permitted developments whereby a change to increase the ground levels can occur without the need to apply for planning permission. In that the structure for consideration exceeds 30 cm, planning consent is therefore required.
4. It's not reasonable for decking to be higher than a neighbouring fence - The raised platform measures 0.426 metres lower than the highest point of the neighbour's fence adjacent to the common boundary.
5. The proposal will result in loss of privacy and overlooking providing direct views to a kitchen and bedroom window - These matters have been addressed in the report above.
6. The proposal will prevent the neighbouring occupier from enjoying their garden - Subject to screening, it is not considered that the development would prevent the neighbouring occupier below from enjoying their garden.
7. The proposal will devalue the neighbour's property - Loss of property value is not a material planning consideration.
8. Concerns regarding lack of neighbour consultation and lack of consideration for the occupiers of Bryn Terrace - The Local Planning Authority has a duty to advertise applications for planning permission in accordance with article 12 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012. The necessary publicity requirements have been met.

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9. A family member of the main objector concerned that the proposal will look into the bedroom windows of no.1-4 Bryn Terrace - This has been addressed in the report above.

10. Advice has been sought from a local councillor who has confirmed that the minimum distance for a structure to be erected from a dwelling is allowed is 15 metres -There is no policy or guidance to this effect within national or local planning policies.

11. There is potential to reduce the decking even further so that any screening will not be visible and privacy won't be compromised - As stated in the above report, the applicant has amended their original submission to reduce the overall height of the raised platform by 0.8 metres.

12. Advises that legal advice and the press will be consulted should planning permission be granted - This is not a material planning consideration.

Other material considerations: None.

The duty to improve the economic, social, environmental and cultural well-being of Wales, has been considered in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015. In reaching the recommendation below, the ways of working set out at section 5 of that Act have been taken into account, and it is considered that the recommendation is consistent with the sustainable development principle as required by section 8 of that Act.

RECOMMENDATION that Permission be GRANTED

This permission is subject to the following condition(s)

- 01) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.
REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.

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- 02) The development shall be carried out in accordance with the following approved plans and documents:
Site Location Plan received on 14.07.2020;
Dwg No. 1 of 6 Proposed Block Plan received on 11.08.2020;
Dwg No. 3 of 6 Proposed Rear Elevation received on 11.08.2020;
Dwg No. 4 of 6 Proposed Rear View Showing Obscure Glazed Privacy Screens received on 11.08.2020; and
Dwg No. 6 of 6 Proposed Block Plan received on 11.08.2020.
REASON: To ensure that the development is carried out only as approved by the Local Planning Authority.
- 03) The proposed obscure privacy screens shall be installed prior to beneficial use of the development hereby approved. Thereafter, the privacy screens shall remain in perpetuity and any replacement or repair shall only be with obscure glass.
REASON: To prevent a loss of privacy in accordance with policy CW2 of the adopted Caerphilly County Borough Local Development Plan up to 2021.

Advisory Note(s)

The following policy(ies) of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010 is/are relevant to the conditions of this permission: CW2.

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority.

Planning Committee 16.09.2020

Deferred – Reasons for refusal.

