

Application No: 2008/747	Application Type: Full
Proposal: Reconfiguration, retention and erection of decking area at side and rear of garden	Location: 2 Penny Lodge Lane, Rawtenstall
Report of: Planning Unit Manager	Status: For Publication
Report to: Development Control Committee	Date: 20 January 2009
Applicant: Mr & Mrs May	Determination Expiry Date: 2 February 2009
Agent:	

REASON FOR REPORTING **Tick Box**

Outside Officer Scheme of Delegation **X**

The application has been submitted by Councillor May. Therefore, consideration of the application is outside the officer scheme of delegation.

Member Call-In

Name of Member:
Reason for Call-In:

More than 3 objections received

Other (please state)

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights: -

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

APPLICATION DETAILS

1. The Site

This application relates to a detached stone and slate house, which has been extended by adding a single storey rear extension with a hipped-roof.

The site has a good sized paved and grassed area to the rear and is bounded by a fence of approximately 2m in height. The rear garden gradually slopes uphill towards the rear boundary fence. To the south, within the rear garden, is an embankment which is approximately 4m higher the level of the main garden area. There are a number of mature trees and a 2m high fence along the top of the embankment.

There are also changes in levels between the rear garden of the application site and the rear gardens of the neighbouring properties, which gradually slope away from the shared fence line.

The site is located within the Countryside as defined by the Rossendale Local Plan.

2. Relevant Planning History

2006/373

In August 2006 planning permission was granted for the erection of single storey extension to rear. This extension has been implemented.

2007/673

In January 2008 an application for the retention of decking to the rear was withdrawn by the applicant.

2008/259

In May 2008 an application for the retention of a deck area in the side and rear garden was refused. The reason for refusal states:

The location of the decking due to its height, size and position has a detrimental impact upon the visual and residential amenities of the neighbouring residents and has a detrimental impact on the existing conditions in the surrounding area. The proposal is therefore contrary to saved Policy DC1 (Development Criteria) of the Rossendale District Local Plan.

3. The Current Proposal

There is presently an unauthorised decking structure within the rear garden of the property. Since Application 2008/259 was refused the applicant has been in dialogue with Officers in order to resolve the situation through a revised planning application.

The current scheme proposes reduction in the size of the decking by 4.5m in length (1.2m more than the refused scheme) and 1m in width, re-orientate the stairs through 90 degrees so that they front the embankment to the side of the property and then to re-use the removed section of the decking alongside the northern gable of the house.

If completed the re-constructed decking would project to the rear of the original house by 7.5m, 3.5m beyond the applicants rear extension. The amended position of the decking would be 6.2m from the close-boarded timber fence on the rear boundary with 4 Loveclough Park at its closest point, increasing to 7m. The height of the decking at the point furthest from the house would be 1.34m when measured from ground level adjacent to the grassed area and would decrease in height to 0.07m adjacent to the embankment as the decking effectively straddles the lower element of the embankment. The amended position of the decking would be 7.2m from the party-boundary with 4 Penny Lodge Lane at its closest point.

The new area of decking would be alongside the gable of the house and would be positioned above the existing stone retaining wall. This portion of decking would measure 7m in length and 2.74m in width. The height of the decking remains unchanged from that already constructed. At this point the retaining wall is approximately 2.2m in height. Each element of decking is linked at the same level and would appear as one structure wrapping around the gable of the house.

Whilst elements would be removed, re-positioned and reconfigured, the height of the decking would be retained together with the wooden handrail and balustrade, which is 1m higher than the decking.

4. POLICY CONTEXT

National

PPS1 - Delivering Sustainable Development

PPS3 – Housing

Development Plan

Regional Spatial Strategy for the NW of England (2008).

DP1-9 - Spatial Principles

RDF1 - Spatial Priorities

EM1 - Environmental Assets

Rossendale District Local Plan (1995)

DS1 – Urban Boundary

DC1 – Development Criteria

DC4 – Materials

Other Material Planning Considerations

RBC Alterations and Extensions to Residential Properties SPD

5. CONSULTATIONS

LCC (Highways)

No response although raised no objection previously

6. REPRESENTATIONS

A site notice was posted (17/12/08) and letters were sent to neighbours (16/12/08).

One letter of objection has been received, raising the following issues :

- Quality of the submitted plans
- Questions the need for a fence to screen the decking from the road to afford privacy
- Loss of privacy
- Overlooking
- Scheme has been amended but the height has not been changed
- Do not agree with elements of the supporting information which states that the neighbouring properties can be scene into whether of not the applicant is on the decking
- Other examples of raised decking within the locality should not be considered
- Concern raised over the length of time the decking has been in situ without planning permission
- The details are misleading

7. ASSESSMENT

It is clear from the earlier planning refusal that the principle of decking within the rear garden is acceptable. It was the impacts upon visual and neighbour amenity of the decking, by reason of its siting and size, which prompted refusal of Application 2008/259.

The main issues for consideration in respect of the current application, therefore, are :

1. whether the further reduction in the length of decking to the rear of the garden is sufficient to overcome the previous reason for refusal; and
2. whether the additional decking adjacent to the gable of the house is acceptable.

PPS1 sets out the Government's national policies on different aspects of land use planning, including overarching policies on the delivery of sustainable development through the planning system. Amongst its 'key principles' is that "*planning policies should promote high quality inclusive design in the layout of new developments and individual buildings in terms of function and impact, not just for the short-term but over the lifetime of the development. Design which fails to take the opportunities available for improving the character and quality of an area should not be accepted*".

Paragraphs 33-39 of PPS1 amplify upon this, indicating that "...*Good design is indivisible from good planning.....High quality and inclusive design should be the aim of all those involved in the development process.....*".

PPS3 has as its key goal ensuring that "*everyone has the opportunity of living in a decent home*" and speaks of "*desirability of achieving high quality, well-designed housing*".

In similar vein, Policy DP7 and EM1 of the RSS (amongst other things) seek to promote environmental quality, and Policy DC1 of the Rossendale District Local Plan remains relevant to the determination of this application. It states that all applications for planning permission will be considered on the basis of :

- a) location and nature of proposed development,
- b) size and intensity of proposed development;
- c) relationship to existing services and community facilities,
- d) relationship to road and public transport network,
- e) likely scale and type of traffic generation,
- f) pollution,
- g) impact upon trees and other natural features,
- h) arrangements for servicing and access,
- i) car parking provision,
- j) sun lighting, and day lighting and privacy provided,
- k) density layout and relationship between buildings,
- l) visual appearance and relation to surroundings,
- m) landscaping and open space provision,
- n) watercourses, &
- o) impact upon man-made or other features of local importance.

Since the previous scheme was refused the Council has adopted the Alterations and Extensions to Residential Properties SPD, which seeks to encourage 'good design'.

Whether the application is of satisfactory design is addressed below in relation, firstly, to the amenities of neighbours and, secondly, to the character & appearance of the area.

Neighbour Amenity

The assessment of the previous report concluded that a smaller amount of decking from that which has been erected would result in a detrimental impact upon residential amenity and was refused. Therefore, the main aspect to consider in relation to neighbour amenity is whether the further reduction in the length of the decking by 1.2m would safeguard residential amenity to the neighbouring properties.

It is worthy of note that the changes to the Town & Country Planning General Permitted Development Order which came into force on 1 October 2008 mean it now refers specifically to 'raised structures'. It states that "raised" in relation to platforms (which includes decking) over 0.30m in height require consideration through the submission of an application for planning permission.

It is also worthy of note that the changes to the Town & Country Planning General Permitted Development Order which came into force on 1 October 2008 specifically preclude from being 'permitted development' the erection to the rear of a house of an extension of more than one storey which would project to the rear of the original house by more than 3m or be within 7m of any of its boundaries. These criterion are intended to preclude undue detriment to neighbours by reason of loss of light, outlook, privacy, overbearing, etc from rear extensions that would otherwise be 'permitted development'.

It is relevant to consider the proposal within the context of the Council's Alterations and Extensions to Residential Properties Supplementary Planning Document, adopted in June 2008. Whilst the document is a material planning consideration the majority of the document provides general principles of design and separation distances in relation to extensions and alterations to houses. There is no specific section within the SPD which provides advice on the use of decking. However, the principles contained within the SPD are relevant and can be used in the assessment of the impact the proposal will have upon occupiers of neighbouring residential properties by reason of loss of light, outlook, privacy, overbearing, etc.

The '*General Guidance for All Domestic Extensions*' section of the Council's SPD provides a number of general points that residential extension proposals should accord with. Of most relevance to the provision of decking on this site are that development :

- 'Does not invade privacy through direct overlooking from windows or balconies'
- 'Does not significantly reduce the amount of usable amenity space for the property or adjacent property to an unacceptable degree'

In terms of separation distances the SPD advocates that a minimum distance of 20m should be provided/maintained between habitable room windows in properties that are directly facing each other and 13m between a principal window to a habitable room in one property and a two storey blank wall.

The neighbouring property to the rear of the application site (4 Loveclough Park) is 16m from the shared boundary fence. Due to the orientation of the decking to this neighbouring property, the closest corner of the decking to the party-boundary would be 6.2m. Therefore, in a straight line from the neighbouring house to the closest corner of the decking there would be a separation distance in excess of 20m. It is clear that this distance exceeds the minimum distance for two facing habitable room windows. Accordingly, it is not considered that the proposed position of the decking would result in an undue loss of privacy within the house at 4 Loveclough Park.

In relation to the neighbouring property to the side (4 Penny Lodge Lane) it is not considered that the position of the decking would result in a detrimental loss of privacy within the house, given the angle of the property to the decking and the position of the applicants existing single-storey rear extension.

However, it is necessary to consider the impact of the decking upon the rear garden areas of both these neighbouring properties. The adopted SDP does not provide advice upon the distance any habitable windows in the rear elevation of an extension of more than one storey should maintain to the party-boundary with the property to the rear. However, it is reasonable to consider that extensions should maintain approximately half of the minimum window-to-window separation distance of 20m to the common boundary to safeguard the amenities of the neighbouring gardens in terms of privacy, light, outlook, overbearing, etc.

In this particular case the deck level is elevated to a height of 1.6m above the general height of the garden and 2.6m to the top of the hand rail. The level of deck is approximately 0.20m below the height of the surrounding boundary fences. As such a separation distance of approximately 10m from the party-boundary with neighbours rear gardens might be considered appropriate to safeguard the privacy of neighbours when within their rear gardens, and certainly no less than 7m.

At its closest point the decking for which permission is sought would be 6.2m from the boundary with the neighbouring property to the rear and 7.2m at its closest to the adjoining boundary fence to the side. Both distances are considerably less than 10m. As such, it is considered that the proposed decking would still result in significant overlooking of the garden areas of the neighbouring properties, due to its position / elevation.

Whilst it is accepted that most residential properties and their gardens within an urban area are overlooked to some degree, it is considered that the elevated nature of the decking would adversely affect the level of amenity which the neighbouring residents could reasonably expect to enjoy, most particularly in terms of privacy.

It is also accepted that the applicant could landscape the embankment without the need to first obtain planning permission and provide here a seat which would result in overlooking to the neighbouring properties. The applicant has already planted a conifer hedge along the fence line with the neighbouring property to the rear. However, it is not considered that the existing planting, or what may be undertaken without planning permission, to be a sufficient material planning consideration to justify the approval of the decking for which permission is now sought. Additional planting now undertaken would not, within a reasonable period of time, adequately act as a screen between the decking (and persons upon it) and the neighbouring gardens. Nor would a seat upon the embankment result in so great a feeling of being overlooked as will result from the decking proposed.

The applicant has considered a reduction in the height of the decking during discussions with officers to seek to overcome the impact upon privacy to the neighbouring gardens. However, the applicant is concerned that the reduction in height would require the removal of parts of the embankment and that problems relating to culverts are such that this is not a viable option.

In conclusion, it is considered that the decking for which permission is now sought will detract unacceptably from the amenities neighbours could reasonably expect to enjoy, most particularly by reason of loss of privacy within the rear gardens of the neighbouring properties, due to its size in an elevated position.

Visual Amenity

The majority of the decking would be located to the rear of the site. The new decking alongside the gable of the property would be at the height of the existing retaining wall. At present there is a close-boarded timber fence along the embankment adjacent to the front elevation. The decking would not be visible from the highway and therefore it is not considered that the proposal would be unduly detrimental in visual terms from the public domain.

Other Issues

The applicant has been in close dialog with officers in order to seek to resolve the current position without the need for enforcement action. This is normal procedure and is encouraged by the Planning Inspectorate rather than an unnecessary appeal procedure.

Whilst the plans have been annotated by hand it is not considered that the submitted information and the revised plans are in anyway misleading. The submitted information is clear and portrays the decking as erected together with the smaller proposal upon which decision is now sought.

9. RECOMMENDATION

That planning permission be refused for the decking now proposed and that enforcement action be commenced in respect of the decking as erected.

10. REASONS FOR REFUSAL

The proposed decking, due to its height, size and position, would detract to an unacceptable extent from the amenities residents of neighbouring properties could reasonably expect to enjoy, most particularly by reason of loss of privacy within the rear gardens of the neighbouring properties. The proposal is therefore contrary to the criteria of saved Policy DC1 of the Rossendale District Local Plan (1995) and the Council's adopted Alterations and Extensions to Residential Properties Supplementary Planning Document (June 2008).

Contact Officer	
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Location Plan 2008/0747



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6 JAN 2009

AMENDED PLANS RECEIVED

TO BE REMOVED AS WELL AS PART OF ORIGINAL - SEE SITE PLAN

1.6m to deck
2.6m to top of handrail

LINE OF EXTENSION

3.2m

Side Elevation

Front Elevation

2.5m

6.2m

3.2m

TO BE REMOVED AS WELL AS PART OF ORIGINAL - SEE SITE PLAN

3.2m

AREA TO BE REMOVED

Side Elevation

Floor Plan

5m at 1:50

2008/747

Notes:

All work is to be carried out to the latest current British standards Codes of Practice and recognised working practices.

All work and materials should comply with Health and Safety legislation.

All work and materials to be approved by the District Authority Building Control Officer.

All dimensions are in millimetres unless where explicitly shown otherwise.

The contractor should check and certify all dimensions as work proceeds and notify the architect of any discrepancies.

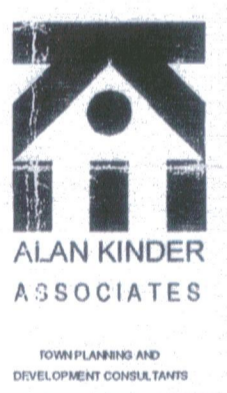
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Amendment B: Relocation of decking to run along side the property.

Amendment A: Relocation of stairs, Dark grey concrete tile cladding to external surface of balustrade

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Title: 2 Penny Lane, Loveclough
 PROPOSED PLANS AND ELEVATIONS

Project No: BARNE/13 - Dwg 02B **Drawn:** HJ

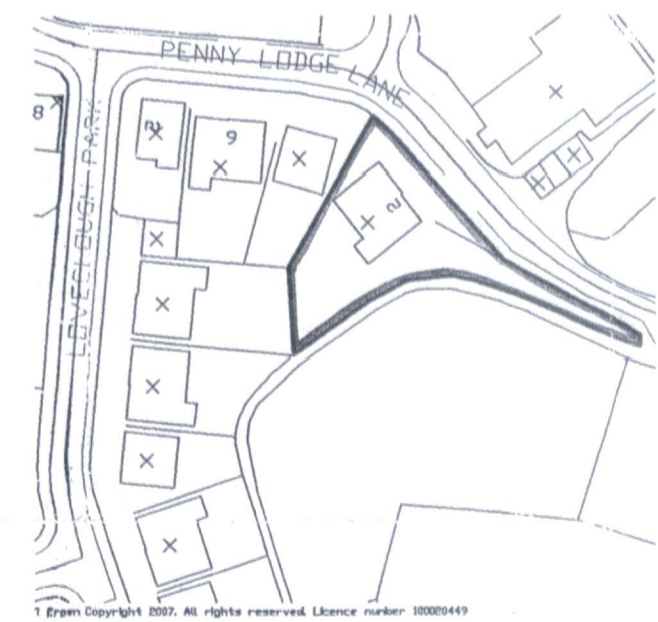
Client: Barnett Construction

Date: 25.03.08 **Scale:** Various

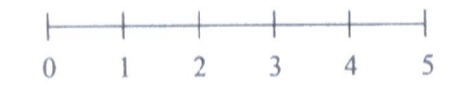
Amendments: A B



Site Plan 1:200



Location Plan 1:1250



Rossendale Borough Council
 COMMUNITY DEVELOPMENT

1:200