



## Garioch Area Committee Report – 31 October 2017

Reference No: APP/2017/0858

**Full Planning Permission for Erection of Deck (Retrospective) at 40 Dawson Drive, Westhill, Aberdeenshire, AB32 6NS**

**Applicant: Mrs Kathryn Dahl**

Grid Ref:	E381853, N807411
Ward No. and Name:	W13 - Westhill And District
Application Type:	Full Planning Permission
Representations:	2 (Objections)
Consultations:	None
Relevant Proposals Map Designations:	Within Westhill Settlement
Complies with Development Plans:	No
Main Recommendation:	Refuse



**NOT TO SCALE**

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## **1. Reason for Report**

- 1.1. The Committee is able to consider and take a decision on this item in terms of Section B.9.1 of Part 2A List of Committee Powers and Section C.3.1i of Part 2C Planning Delegations of the Scheme of Governance as the application is recommended for refusal but at least two Local Ward Members in the Ward in which the development is proposed, have requested that the application be referred to the Area Committee.
- Cllr Aitchison did not respond to consultation with Local Ward Members.
  - Cllr McKail refers the application to Committee to allow discussion on the impact on neighbouring properties.
  - Cllr McKelvie refers the application to Committee to discuss the privacy issues as highlighted in the report.
  - Cllr Walker refers the application to Committee to consider the aspect of overlooking and general impact.
- 1.2. The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## **2. Background and Proposal**

- 2.1. This application seeks Full Planning Permission retrospectively for the erection of raised decking in the rear garden of 40 Dawson Drive, Westhill.
- 2.2. The Committee is reminded that this application was previously referred to Local Ward Members with a recommendation of refusal; the application was subsequently due to be presented to the Garioch Area Committee meeting of 5 September 2017. The application was then withdrawn from that meeting's agenda after it was drawn to the attention of the Planning Service that the applicant had erected additional screen fencing along the deck's southern edge. This screen fencing was considered by the Planning Service to have materially changed the nature of the application and in this case required a further period for public comments. It was withdrawn from Garioch Area Committee so that neighbours could be re-notified, to allow for their consideration of the application with knowledge of this change.
- 2.3. Decking has been erected in the south of the rear curtilage of a dwellinghouse on ground which slopes steeply downwards from north to south. The rear curtilage of 40 Dawson Drive consists of garden space and it is understood that the decking was erected in 2014 as part of a scheme of extensive landscaping works throughout the front and rear curtilages of the dwellinghouse.
- 2.4. The floor level of the decking sits approximately 2.3m above ground level at the foot of the slope, with a timber balustrade around the decking. At the eastern and western sides of the balcony, the decking sits at a maximum height of 3.15m above ground level. At the southern edge of the decking, accounting for the additional screen fencing erected by the applicant during the consideration of the application, the decking sits at a maximum of 3.9m above ground level.

- 2.5. The southern site boundary is shared with 20 Spring Tyne, where the ground level of that neighbour's rear garden space lies approximately 3.1m below the floor level of the decking.
- 2.6. The decking is 15.4m wide and is sited within 0.7m of the eastern site boundary, shared with 42 Dawson Drive, and within 2.0m of the western site, shared with 38 Dawson Drive. Between this western boundary and the decking there are steps which lead from the northern, level area of the garden down to the foot of the slope in the south of the garden.
- 2.7. Boundary treatments along each of these shared boundaries consist of approximately 1.8m high timber fencing which follows the sloped land gradient. There is some mature planting, comprising trees and shrubs, adjacent to the shared southern boundary and located within rear curtilages of numbers 20 and 22 Spring Tyne, south and south-west of the site respectively.
- 2.8. 40 Dawson Drive is one of several residential plots which line the southern, eventually downward-sloping side of the street in what is a predominantly residential area of Westhill. Over the southern boundaries of the rear garden spaces on Dawson Drive lie the opposing rear garden spaces of dwellings which line the northern side of Spring Tyne, namely numbers 20 and 22. The site is located within the central-north-west of the settlement, in a residential area located to the immediate west of Westhill Golf Course.
- 2.9. No alterations to existing access or servicing arrangement are proposed. As stated, the decking forms part of a scheme of landscaping, although the other landscaping works in this case do not require planning permission. Alterations to existing boundary treatments are not proposed.
- 2.10. The following supporting information has been submitted in conjunction with the applications:

*Supporting Statement, Mr Erik Dahl, 09 May 2017*

- 2.11. In terms of relevant planning history the following should be noted:

COMP/2014/1150: Complaint made to the Planning Enforcement Team in August 2014 in which the current applicant was advised that retrospective full planning permission would be required. An application was not subsequently submitted.

COMP/2016/0413: Complaint made to the Planning Enforcement Team in October 2016 which gave rise to the submission of the application which is currently being considered.

### **3. Representations**

- 3.1. A total of two valid representations (all objections) have been received as defined in the Scheme of Governance. This does not include multiple representations from the same household which equate to five letters in total. All material issues raised have been considered. The representations raise the following material issues:

- *Overlooking of usable private garden space and into dwellinghouse;*

- *Loss of privacy; and*
- *Adverse impact on residential amenity.*

#### **4. Consultations**

4.1. None

#### **5. Relevant Planning Policies**

##### **5.1. Scottish Planning Policy**

The aim of the Scottish Planning Policies is to ensure that development and changes in land use occur in suitable locations and are sustainable. The planning system must also provide protection from inappropriate development. Its primary objectives are:

- to set the land use framework for promoting sustainable economic development;
- to encourage and support regeneration; and
- to maintain and enhance the quality of the natural heritage and built environment.

Development and conservation are not mutually exclusive objectives; the aim is to resolve conflicts between the objectives set out above and to manage change. Planning policies and decisions should not prevent or inhibit development unless there are sound reasons for doing so. The planning system guides the future development and use of land in cities, towns and rural areas in the long term public interest. The goal is a prosperous and socially just Scotland with a strong economy, homes, jobs and a good living environment for everyone.

##### **5.2. Aberdeen City and Shire Strategic Development Plan 2014**

The purpose of this Strategic Development Plan is to set a clear direction for the future development of the North East. It promotes a spatial strategy. All parts of the Strategic Development Plan area will fall within either a strategic growth area or a local growth and diversification area. Some areas are also identified as regeneration priority areas. There are also general objectives identified. In summary, these cover promoting economic growth, promoting sustainable economic development which will reduce carbon dioxide production, adapt to the effects of climate change and limit the amount of non-renewable resources used, encouraging population growth, maintaining and improving the region's built, natural and cultural assets, promoting sustainable communities and improving accessibility in developments.

##### **5.3. Aberdeenshire Local Development Plan 2017**

Policy P3 Infill and Householder Development within Settlements (Including Home and Work Proposals)

##### **5.4. Other Material Considerations**

None.

## 6. Discussion

- 6.1. The main planning considerations in the determination of this application are the impact of the decking on the privacy and amenities of neighbouring properties, and whether the decking reflects the character the existing dwellinghouse and its neighbours. The fact the development has been undertaken and the application is retrospective must not be a key determining factor for or against the proposal.
- 6.2. Policy P3 of the Aberdeenshire Local Development Plan 2017 allows for householder developments if they respect both the character of the surrounding area and the design/scale of the existing house, and do not significantly reduce the amenity of neighbouring residents.
- 6.3. The decking largely corresponds with the character of the existing dwellinghouse and its surroundings. The decking is of suitable quality and has been erected for purposes incidental to the enjoyment of that dwellinghouse as part of a scheme of domestic landscaping works. Also the area is of established residential character and amenity. Its appearance is not dissimilar to decking which one might reasonably expect to find with the rear gardens of other, similarly designed dwellinghouses elsewhere in Aberdeenshire.
- 6.4. For clarity, it is noted that similar decking may have been erected in the neighbouring gardens to the east and west without planning permission. At the time of writing, this information has been referred to the Planning Enforcement Team. Any prospective planning application for those decks would be assessed on their own merits.
- 6.5. It is noted that the orientation and distance of the decking relative to the immediate neighbouring properties is such that it would be unlikely to significantly obstruct the passage of sunlight or ambient light into neighbouring gardens or their associated dwellinghouses. It is also not considered that the decking would be likely to appear unduly overbearing upon neighbouring properties. However, it is acknowledged that there may now be some loss of ambient light and perception of overbearing of the neighbouring dwelling and rear garden space to the south at 20 Spring Tyne. This is caused by the additional screen fencing erected by the applicant along the southern edge of the deck.
- 6.6. As noted in Section 1 of this report, the afore-mentioned additional fencing had been erected while the application was being considered and the Planning Service was not aware of its presence until it was noted during a further inspection of the site prior to the Garioch Area Committee meeting of 5 September 2017.
- 6.7. It is noted that the rear garden space of 20 Spring Tyne may experience long periods of overshadowing and limited ambient light as existing due it being sited north of its associated dwellinghouse, however, the deck and additional fencing would not present an unacceptable impact in terms of overshadowing or loss of light. Also, the deck and fencing would not be overbearing due to their limited height above the fenceline on the shared boundary and their recessed siting in relation to that boundary. In respect of the latter observation, it is noted that the southern edge of the balcony, including its additional screen fencing, would only be visible intermittently between mature shrubs and the canopies of mature trees present along the shared boundary

between 40 Dawson Drive and 20 Spring Tyne. For clarity, the height of the balcony's southern edge would project approximately 2.0m above the existing fencing present along the shared boundary, at a point approximately 1.4m north thereof.

- 6.8. In terms of overlooking and a potential loss of privacy, the Planning Service had significant concerns over the impact on both 20 Spring Tyne to the south and 38 Dawson Drive to the west. For clarity, mature planting (trees and hedges) in the rear garden space to the east at 42 Dawson Drive and to the south-west at 22 Spring Tyne largely prevent overlooking from the decking into the majority of usable space within those neighbouring gardens, whereby there are no concerns in respect of overlooking and resultant loss of existing privacy.
- 6.9. There were previously significant concerns raised with regards to the overlooking of the dwellinghouse and rear garden ground of 20 Spring Tyne to the south, at the time when Local Ward Members were previously consulted on the application with a recommendation for refusal. For information, the recommendation for refusal was previously as follows:

*The proposal would not comply with Policy P3 Infill and Householder Development Within Settlements (Including Home and Work Proposals) of the Aberdeenshire Local Development Plan 2017 due to the decking resulting in an unacceptable loss of privacy for the neighbouring properties of 20 Spring Tyne and 38 Dawson Drive, which would be unduly overlooked. As such, the proposed development would be detrimental to the amenity of the neighbouring properties, which its occupiers might otherwise reasonably expect to enjoy.*

- 6.10. It is considered, as confirmed upon a further visit to the site by the Planning Service, that the additional fencing along the southern edge of the balcony effectively screens views from the deck into the dwellinghouse and garden at 20 Spring Tyne. While it is accepted that views would be possible if one were to look around the additional screen fencing, overlooking would not be feasible from regular standing or seated positions on the deck. It is therefore no longer considered that the deck as proposed would cause an unacceptable loss of privacy and amenity for the occupiers of 20 Spring Tyne. This would only be the case if it could be ensured that the retention of the screen fencing around the edges of the balcony were retained in perpetuity.
- 6.11. With regards to the overlooking of 38 Dawson Drive, the southerly projection of the raised decking over the sloped southern section of the application site allows for views to be taken over the top of 1.8m high timber fencing present along the western site boundary, where the fence-line follows the gradient of the slope. Such concerns were raised previously when Local Ward Members were consulted on the application with a recommendation for refusal. As such, when positioned in the west or south-west corner of the decking it is possible to view the majority of usable space within the south of the rear garden space at 38 Dawson Drive from some height.
- 6.12. As outlined in a previous supporting statement from the applicant, the steep land gradient and differences in topographical heights have resulted in an existing situation whereby the dwellings on the southern side of Dawson Drive look upon dwellings on the northern side of Spring Tyne. It is also alleged that the decking, namely its safety fencing, provides an element of screening

between 20 Spring Tyne and the area of grass lawn within the rear garden of 40 Dawson Drive.

- 6.13. The main concern in terms of overlooking were the potential impact on the privacy and amenity of 20 Spring Tyne to the south, which is now considered to have been addressed. However, concern over a potential loss of existing privacy and amenity within the rear garden space of 38 Dawson Drive remains. For this reason, disregarding the retrospective nature of the application, were this a new proposal it is considered that the Planning Service would not support it.
- 6.14. The Planning Service accepts that previously there was a situation of overlooking caused by differences in topographical heights and steep land gradients. Nevertheless, it is considered that the current decking provides a further and unnecessary potential for overlooking of the rear garden space of 38 Dawson Drive.
- 6.15. To elaborate, before the decking was in-situ, if positioned at the top of the slope within the garden of 40 Dawson Drive, one would be positioned approximately 8.9m away from the southern site boundary shared with 20 Spring Tyne. Overlooking into the neighbouring southern garden space from that position would have been limited due to the angle of view provided, due to the presence of 1.8m high timber fencing along the southern site boundary and as mature trees/hedges line that boundary which exceed the height of the fence-line to some extent. Views into the rear garden spaces of 42 and 38 Dawson Drive would only have been into marginal spaces in the southernmost areas of those gardens. While the decking is not considered to provide significant potential for the overlooking of the rear garden of 42 Dawson Drive to the east for reasons already discussed, the impact on the privacy and amenity of the rear garden space of 38 Dawson Drive is considered to be undue and is thereby unacceptable.
- 6.16. While it is appreciated that the current occupants of 40 Dawson Drive may not seek to overlook their neighbours or have the intent to do so, the Planning Service must consider different scenarios including the long term use of this area and possibilities of change of ownership. While the Planning Service recognises the existing overlooking situation, the additional impact presented by the decking is considered to be undue and unacceptable. While the Planning Service acknowledges that the decking may have been erected to provide additional usable garden space, in the form of an additional level surface, for use by the occupants of 40 Dawson Drive, it is considered that issues of overlooking are caused by the sheer extent of the decking and its subsequent proximity to shared boundaries.
- 6.17. Two valid representations have been received as defined in the Scheme of Governance, which object to the application. This does not include multiple representations from the same household which equate to five letters in total. All material issues raised in the representations have been considered in the paragraphs above.
- 6.18. If the applicant wishes to retain decking in a similar position then it is considered that options should be explored as to reduce the height and surface area of the decking, thereby reducing its proximity to and visibility over shared boundaries. However, if alternative options cannot be explored then it

is advised that the decking be removed and the garden revert to its original level.

- 6.19. To conclude, the Planning Service must determine the application as lodged (and in this case varied). While there are no technical issues or other material considerations to suggest that permission should be refused, the proposal does not comply Policy P3 of the Aberdeenshire Local Development Plan 2017 for the reasons discussed. It is therefore recommended that Full Planning Permission should be refused.

## **7. Area Implications**

- 7.1. In the specific circumstances of this application there is no direct connection with the currently specified objectives and identified actions of the Local Community Plan.

## **8. Implications and Risk**

- 8.1 An equality impact assessment is not required because the grant of permission in this case does not have a differential impact on any of the protected characteristics.
- 8.2 There are no staffing and financial implications.
- 8.3 There are no Risks identified in respect of this matter in terms of the Corporate and Directorate Risk Registers as the Committee is considering the application as the planning authority in a quasi-judicial role and must determine the application on its own merits in accordance with the Local Development Plan unless material considerations justify a departure.

## **9. Sustainability Implications**

- 9.1 No separate consideration of the current proposal's degree of sustainability is required as the concept is implicit to and wholly integral with the planning process against the policies of which it has been measured.

## **10. Departures, Notifications and Referrals**

### **10.1 Strategic Development Plan Departures**

None

### **10.2 Local Development Plan Departures**

Policy P3 Infill and Householder Developments within Settlements (including Home and Work Proposals)

- 10.3 The application is a Departure from the valid the Local Development Plan and has been advertised as such. Any representations received have been circulated as part of the agenda and taken into account in recommending a decision. The period for receiving representations has expired.
- 10.4 The application does not fall within any of the categories contained in the Schedule of the Town and Country Planning (Notification of Applications)

(Scotland) Direction 2009 and the application is not required to be notified to the Scottish Ministers prior to determination.

- 10.5 The application would not have to be referred to the Infrastructure Services Committee in the event of the Area Committee wishing to grant permission for the application.

## **11. Recommendation**

### **11.1 REFUSE Full Planning Permission for the following reason:-**

01. The proposal would not comply with Policy P3 Infill and Householder Development within Settlements (including Home and Work Proposals) of the Aberdeenshire Local Development Plan 2017 due to the decking resulting in an unacceptable loss of privacy for the neighbouring property of 38 Dawson Drive, which would be unduly overlooked. As such, the proposed development would be detrimental to the amenity of that neighbouring property, which its occupiers might otherwise reasonably expect to enjoy.

**Stephen Archer**  
**Director of Infrastructure Services**  
**Author: Ian Scott (Planner)**  
**Date: 12/10/2017**