



Development and Infrastructure Services

Director: Sandy Mactaggart

22 December 2011

Our Ref: 11/01506/PP and 11/00013/REFPLA
Contact: Martin Hannah
Direct Line: 01369 708621

Hazel Kelly MacInnes
Committee Services Officer
Argyll and Bute Council
Kilmory
Lochgilphead
PA31 8RT

Dear Sirs,

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 AND THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL REVIEW PROCEDURES (SCOTLAND) REGULATIONS 2008: G/F, 4 MONTFORD TERRACE, ROTHESAY, BUTE

I acknowledge receipt of copy of Notice of Review submitted by Mr James Wilson (agent) on behalf of Mr Robert McBride. I set out below the response of the Planning Service with regard to the matters now raised by the appellant.

The application under appeal was submitted retrospectively by the appellant following challenge by the Planning Service. A complaint was received from a neighbouring proprietor about new decking which was constructed without benefit of planning permission.

The complainant alleged that the new decking was elevated, prominent, and unattractive and breached the privacy of neighbouring garden and ground floor flatted property. Following investigation it was concluded the works required express permission under legislation and the unauthorised decking was a breach of planning control that should be regularised through either removal or reinstatement or by grant of express planning permission with conditions.

Accordingly, the appellant instructed his agent Mr Wilson to prepare drawings and seek retrospective planning permission although the Planning Service explained to both the appellant and Mr Wilson before the submission that the property is located in a Conservation Area and officers had misgivings about the design, appearance and in particular the raised height of the deck and balustrade.

The subsequent planning application was then assessed under the Town and Country Planning (Development Management Procedures) (Scotland) Regulations 2008 and determined by officers under the Council's Scheme of Delegation.

The application was refused on policy grounds due to the visual impact the height and appearance of the deck would have locally and on the wider Conservation Area and also the direct impact a raised deck could have on the adjoining residential property.



The Planning Service is required under legislation to determine the application having regard to the policies set out in the approved Development Plan unless material considerations indicate otherwise. The Development Plan in this case is the Argyll and Bute Structure Plan 2002 and the Argyll and Bute Local Plan, adopted August 2009.

The Council is under a general statutory duty to preserve and enhance the character and appearance of designated Conservation Areas and planning policies generally advocate strict controls over development and removal of trees in Conservation Areas. The planning restrictions affecting Conservation Areas are widely known and generally residents, businesses and developers are conscious of the need to consult the Planning Service before embarking upon works that may require planning permission.

The Report on Handling (Production 1) summarises the key determining issues. The application was, in my opinion, correctly assessed against the policies of the Structure Plan and Local Plan. In this case it was concluded that the deck construction and height fails to comply with Policies LP ENV 1, LP ENV 14, and LP ENV 19 and the design principles as set out in Appendix A of the adopted Local Plan.

The decision to refuse planning permission is appealed on a number of grounds. Some possible measures have also been suggested by the appellant that might mitigate the visual impact of the development and allow the deck to be retained in a modified form.

The appellant argues that because the site is located at end of an unadopted cul-de-sac and enclosed by walling the visual impact of the development is limited. Although the street may not be adopted for public maintenance this is irrelevant to the determination of the application and appeal. There is a right of public thoroughfare across a private road. It is not disputed by the appellant that the application site is located in a Conservation Area and is subject to planning controls and therefore should be assessed in the normal way.

The decking is sited to the front and public face of the property. It is accepted that the question of visual impact is a matter of judgement and the effect is very much in the eye of the beholder. A number of photographs were taken of the site from various vantage points and these are attached as Production 2 (a) – (j). The planning application attracted 6 objections and most of these objectors expressed concern about the visual appearance of the development.

It is also not disputed that the visual impact is relatively localised but given the number of adverse comments from the near neighbours the local effect as perceived by those most directly affected by the development is significant.

None of the adjoining terraced or flatted properties have decking, balustrade or railings to the front gardens. The gardens of adjoining terraced properties have been soft landscaped and are relatively mature and attractive. The visual impact of the development under appeal on the street scene is therefore more pronounced.

The appellant alludes to the possibility of other examples and precedents of similar decking in the Conservation Area but cites no specific examples. It is not possible here to comment upon the circumstances or planning history of the examples the appellant has in mind. It is legitimate to highlight that if planning permission is granted at appeal this would help to establish a precedent that might encourage other property owners living in Montford Terrace or elsewhere in the Conservation Area to consider decking or tarring over the front gardens perhaps to create car parking or simply for easy maintenance.

This is precisely why more stringent planning controls apply in Conservation Areas and also the reason why in a designated Conservation Area normal Permitted Development Rights have been removed by the Council as Planning Authority – to discourage incremental and unsympathetic changes that left unchallenged over time will cumulatively erode the special and historic character.

While the appellant now appears willing to accept modifications to make the development under appeal more acceptable, the modifications should be made the subject of a fresh application to allow the proposal to be reassessed and to allow for consultation with affected neighbouring proprietors.

While removal of the balustrade would help to mitigate the visual impact of this development as viewed from the street the decking remains unusually elevated. As will be apparent from the Productions 2 (i) and 2 (j) the finished level of the deck sits virtually at the sill level of the adjoining flatted property. Anticipated use of a raised deck as an outdoor sitting and play area is likely to have a detrimental impact on the privacy of the adjoining property as the bay window serving the front public room will be overlooked unacceptably.

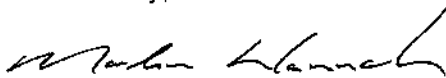
As a minimum the Planning Service would expect the decking to be reduced in surface area and also lowered in height so that the finished deck level does not exceed 150mm above natural ground level.

The timber balustrade above the existing walls is not appropriate and should be removed altogether. Staining or painting of the deck boards a green colour is not a substitute for grass or shrub or hedge planting abutting the common access footpath serving the flats and also the front boundary wall.

The appellant has unfortunately invested time and money in a project without first checking the relevant standards with the Planning Service. Officers are **not** opposed to the appellant's reasonable enjoyment or improvement of the front garden involving some element of hard landscaping to provide space for a table or play. The appellant should be encouraged to consult with the Planning Service and agree remedial works, soft landscaping and planting to address specific concerns about visual impact and the impact on the adjoining property.

The current submission under appeal is not acceptable visually and is considered contrary to policies designed to protect and enhance the wider Conservation Area. The raised deck level is also not acceptable as this unreasonably impacts upon the amenity and privacy of the adjoining property. There are no material considerations of sufficient weight to justify overturning the adopted policies of the Development Plan and accordingly the appeal should be dismissed.

Yours faithfully,



Martin Hannah MRTPI
Planning Enforcement Officer
Development Management
Bute and Cowal

Argyll and Bute Council
Development & Infrastructure Services

Delegated or Committee Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 11/01506/PP

Planning Hierarchy: Local Application.

Applicant: Mr Robert McBride

Proposal: Formation of timber deck area (Retrospective)

Site Address: 4 Montford Terrace, Rothesay

DECISION ROUTE

(i) Sect 43 (A) of the Town and Country Planning (Scotland) Act 1997

(A) THE APPLICATION

- (i) **Development Requiring Express Planning Permission**
- Retrospective approval sought for formation of timber deck area
-

(B) RECOMMENDATION:

It is recommended that planning permission be refused.

(C) HISTORY:

No relevant history.

(D) CONSULTATIONS:

None.

(E) PUBLICITY:

Regulation 20 (1) advertisement was placed in The Buteman on 26 August 2011 in accordance with Town and Country Planning Development Management (Scotland) Procedures 2008. Expiry 16 September 2011

A site notice was displayed at the application address on 12/08/2011 in accordance with section 65 of the Planning (Listed Buildings and Conservation Areas (Scotland) Act 1997 (publicity for applications affecting Conservation Areas).

(F) REPRESENTATIONS:

6 letters of objection has been received from .

- Jacqueline E Reynolds Flat 1 3 Montford Terrace Rothesay PA20 9ER
- Mr & Mrs N Barclay Flat 2 1 Montford Terrace Rothesay PA20 9ER
- W L Peers 1 Montford Terrace Rothesay Isle Of Bute PA20 9ER
- Mrs Jane Macfie 3 Montford Terrace Ascog Isle of Bute PA20 9ER
- Mrs Eileen Thurman 17 Mountstuart Road Rothesay PA20 9DY
- William J S Blair Flat 2 2 Montford Terrace Rothesay Isle Of Bute PA20 9ER

(i) Summary of issues raised

- Loss of privacy
 - Not in keeping with surrounding properties and Conservation Area
 - Precedent
-

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- (i) Environmental Statement: No**
 - (ii) An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: No**
 - (iii) A design or design/access statement: No**
 - (iv) A report on the impact of the proposed development e.g. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: No**
-

(H) PLANNING OBLIGATIONS

- (i) Is a Section 75 agreement required: No**
-

- (i) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No**
-

- (J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application.**

- (i) List of all Development Plan Policy considerations taken into account in assessment of the application.**

Argyll and Bute Structure Plan 2002

POLICY STRAT DC9 - Historic Environment and Development Control

Argyll and Bute Local Plan

Policy LP ENV 1- Development Impact on the General Environment

Policy ENV 14 Development in Conservation Areas and Special Built Environment Areas

Policy LP ENV 19 Development Setting, Layout and Design including Appendix A Sustainable Siting and Design Principles

Policy LP ENF 1 – Enforcement Action

- (ii) **List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 4/2009.**

(K) **Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No**

(L) **Has the application been the subject of statutory pre-application consultation (PAC): No**

(M) **Has a sustainability check list been submitted: No**

(N) **Does the Council have an interest in the site: No**

(O) **Requirement for a hearing (PAN41 or other): No**

(P) **Assessment and summary of determining issues and material considerations**

The determining issues are:

Compliance with the adopted development plan.

Assessment of benefits of development against likely visual impact.

In the Argyll and Bute Local Plan the application site is located within the settlement of Rothesay in the Isle of Bute.

The development is attached to a ground floor flatted dwellinghouse that forms part of a terrace of similar sandstone built traditional properties. The flat has exclusive access and use of the front garden. In July this year the Enforcement Officer received a written complaint about unauthorised development of a raised timber deck in the front garden of a flatted property. The works require planning permission as the property is a flat. The householder was advised in writing on 18 July 2011 that the works represent a breach of planning control and he has now sought to regularise the breach through the current application.

The deck is constructed in treated timber (unstained) and covers the full extent of the front garden. The deck is elevated and surrounded by a timber balustrade. The finished floor level of the deck is parallel with the top entrance step to the flat, just over 1m above existing ground level.

The applicant has explained that the deck was constructed to create a private sitting and outdoor dining area for his family. The garden was previously in a poor

condition. As the garden can be shaded due to nearby trees and he has found it difficult to maintain and he feels that the deck is low maintenance and attractive alternative to a lawn or shrubbery.

The application site is the only garden in the terrace that has been decked over in this way. Although an end terraced block at the head of a cul-de-sac the effect is still incongruous. At the front of the property and at the main entrance the raised deck level and balustrade (required to comply with Building Standards Regulations) extends well above the existing stone and brick built walls and the effect is jarring. The application has attracted 6 written objections and all cite the visual appearance and raised height as grounds for objection. The raised height of the deck also reduces the privacy of the neighbouring residential property on the ground floor left as the deck floor level is now virtually level with the window cill of this flat's bay window. Persons using the deck can look into the adjoining property's lounge at a distance of approx. 4 metres and this has a detrimental impact on privacy and amenity of the adjoining occupiers.

It is likely that a timber deck built to the side or rear of the property may not have attracted the same level of public objection. If the applicant had cleared the garden and introduced a smaller area of decking or hard landscape surfacing without altering ground levels it might also be held visually acceptable in the Conservation Area. The Council is required to promote better design and achieve a generally higher standard of development to protect areas with a Conservation Area designation. The Development Plan policies require new development to either enhance or preserve the character of the Conservation Area and the extensive decking coverage and its raised height regrettably does not satisfy the higher design standards required.

The proposed development does not comply with Local Plan Policy LP ENV 14 and accordingly this application should be refused.

(Q) Is the proposal consistent with the Development Plan: No

(R) Reasons why Planning Permission should be granted: Not applicable

(S) Reasoned justification for a departure from the provisions of the Development Plan: Not applicable

(T) Need for notification to Scottish Ministers or Historic Scotland: No

Author of Report: Martin Hannah
Reviewing Officer: David Eaglesham

Date: 10 November 2011
Date: 14 November 2011

Angus Gilmour
Head of Planning & Regulatory Services

REASONS FOR REFUSAL RELATIVE TO APPLICATION REF. NO: 11/01506/PP

1. The decking, by virtue of its scale, design and materials, is considered to be a prominent and incongruous feature which is substantially out of character with the character, scale and appearance of the terraced properties in Montford Terrace and as such is considered to have a significant detrimental impact upon the visual amenity of this part of the Rothesay Conservation Area. The development is therefore considered contrary to policies LP ENV 1, LP ENV 14, and LP ENV 19 and to the design principles as set out in Appendix A of the adopted Local Plan Local Plan.
2. The decking, by virtue of its elevated position in the front garden, is considered to be detrimental to the amenities of neighbouring properties by reason of overlooking and consequent loss of privacy.

APPENDIX TO DECISION REFUSAL NOTICE

Appendix relative to application **11/01506/PP**

A. Submitted Drawings

For the purpose of clarity it is advised that this decision notice relates to the following refused drawings:

4MT/LP; 4MT/SP; 4MT/FE; 4MT/P; 4MT/EE; 4MT/WE

B. Has the application been the subject of any "non-material" amendment in terms of Section 32A of the Town and Country Planning (Scotland) Act 1997 (as amended) to the initial submitted plans during its processing.

No

C. The reason why planning permission has been refused.

The proposal is contrary to Development Plan policy for the reasons for refusal detailed above.

2(a)



PRODUCTION 2(a)

2(b)



PRODUCTION 2(b)

2(c)



PRODUCTION 2(c)

2(d)



PRODUCTION 2(d)

2(e)



PRODUCTION 2(e)

2(f)



PRODUCTION 2(f)

2(g)



PRODUCTION 2(g)

2(4)



PRODUCTION 2(4)

2(i)



PRODUCTION 2(i)

2 (j)



PRODUCTION 2(j)