

## **PLANNING & DEVELOPMENT COMMITTEE**

**08 June 2023**

### **REPORT OF: DIRECTOR PROSPERITY AND DEVELOPMENT**

#### **PURPOSE OF THE REPORT**

Members are asked to determine the planning application outlined below:

**APPLICATION NO:** 23/0044/10 (JE)  
**APPLICANT:** Mrs Pike  
**DEVELOPMENT:** Retrospective retention of steps and middle decking  
(Resubmission of 22/0783/10)  
**LOCATION:** 3 PLEASANT HEIGHTS, PORTH, CF39 0LZ  
**DATE REGISTERED:** 19/01/2023  
**ELECTORAL DIVISION:** Porth

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#### **RECOMMENDATION: REFUSE DUE TO THE FOLLOWING:**

**REASONS:** The development as constructed, by virtue of its scale, design and elevated height results in an unneighbourly form of development which directly overlooks and adversely impacts upon the amenity and privacy of neighbouring occupiers. As such, the application is considered contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan and the Council's Supplementary Planning Guidance 'A Design Guide for Householder Development'.

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#### **REASON APPLICATION REPORTED TO COMMITTEE**

- A request has been received from Councillor Ros Davis so that members can consider the impact of the development upon the amenities of surrounding residents.

#### **APPLICATION DETAILS**

Full planning permission is sought for the retention of works to the rear garden that include a raised decking and associated development.

Members are advised that this application follows two similar applications at the site, one for the retention of two areas of raised decking in the rear garden – a raised deck at the centre of the garden and a further, higher deck at the rear of the garden (21/0923); and a second application for the retention of the central/middle deck only (22/0783) following refusal of the first application. Both previous applications were refused because it was considered the areas of raised decking resulted in unneighbourly forms of development that directly overlook and significantly adversely impact upon the amenity and privacy of neighbouring occupiers.

An appeal was submitted to PEDW in respect of the first application to retain both raised decks but was dismissed due to overlooking and neighbour amenity issues. No appeal has been submitted to date in respect of the second application to retain the middle section of decking only.

The area of raised decking and associated outbuilding located to the rear of the garden at a higher level, subject of the first planning application, does not form part of this application. Members are advised that this area is subject to a separate enforcement investigation following the refusal of the original application and the associated dismissed appeal.

This current planning application has been submitted with amendments to the previous in an attempt to overcome the earlier concerns. It seeks permission for retention of the middle raised deck within the rear garden area only. The scale and siting of the deck remains unchanged from the previous application, however the applicant has now erected 2 metre high boundary fencing at either side in an attempt to overcome the previous concerns. Specifically, this application seeks consent for the following:

Retention of the area of raised decking at the centre of the rear garden. The deck spans the full width of the garden measuring 12 metres in width by a maximum depth of 4 metres. The decking varies in height above the adjacent ground level, extending to a maximum height of 1.1 metres at its front elevation. The decking is enclosed by a 1 metre high timber balustrade, however the plans indicate that this would be replaced with a glass balustrade with timber posts. The development also includes 2 metre timber feather edge fencing at either side. No measurement is given in respect to the height of the decking in relation to the ground level of the application dwelling and neighbouring properties, however the deck appears to be located roughly in line with the eaves levels of these properties given the rise in levels away from the house.

## **SITE APPRAISAL**

The application property is a late 20<sup>th</sup> Century detached dwelling located in a residential area of Porth. The dwelling is set back from the highway to the front by an open amenity space which accommodates a driveway providing off street parking and an area of garden. To the rear of the property is a large, enclosed amenity space bounded on both sides by neighbouring properties and open hillside to the rear. The rear garden rises steeply away from the back of the dwelling resulting in a significant increase in levels between the dwelling and the rear boundary, which is elevated over the ridge level of the dwelling. A raised patio is sited directly to the rear of the dwelling with a steeply sloping embankment beyond where the development subject of this application has been erected. At the time of the Officer's site visit works were nearly complete with only finishing works and the creation of the new access paths yet to be installed.

Neighbouring properties comprise detached and semi-detached dwellings of a similar scale and design. Similar raised deck structures have been erected at the adjacent property, No.2 Pleasant Heights, however they do not benefit from planning permission and are subject of a separate, current enforcement investigation.

## **PLANNING HISTORY**

The most recent planning applications on record associated with this site are:

**21/0923/10:** 3 PLEASANT HEIGHTS, PORTH, CF39 0LZ

Proposed rear garden alterations.

Decision: 14/04/2022, Refuse

Appeal: CAS-01999-C0Z3Z9, Dismissed

**22/0783/10:** 3 PLEASANT HEIGHTS, PORTH, CF39 0LZ

Retention of existing rear garden alterations (steps and middle decking)

Resubmission of 21/0923/10.

Decision: 09/11/2022, Refuse

## **PUBLICITY**

The application has been advertised by direct notification to 5 neighbouring properties. 3 letters of objection have been received from neighbouring occupiers following consultation. The points raised have been summarised below:

- Overlooking areas of rear garden and windows in the rear elevations of neighbouring properties.
- Overbearing impact of the development.
- No measurements set out on plans.
- Noise and disturbance created by the proposed use.
- Odour from fires lit whilst using deck area prevents opening of windows.
- Can be seen from highway to front of property.
- Development process is being dragged out following refusal of previous applications.

## **CONSULTATION**

None undertaken.

## **POLICY CONTEXT**

### **Rhondda Cynon Taf Local Development Plan**

The current LDP's lifespan was 2011 to 2021. It has been reviewed and a replacement is in the process of being produced. The Planning (Wales) Act 2015 introduced provisions specifying the period to which a plan has effect and providing that it shall

cease to be the LDP at the end of the specified period. These provisions were commenced on 4<sup>th</sup> January 2016 but do not have retrospective effect. Therefore, the provisions do not apply to LDPs adopted prior to this date and plans adopted before 4<sup>th</sup> January 2016 will remain the LDP for determining planning applications until replaced by a further LDP. This was clarified in guidance published by the Minister on 24<sup>th</sup> September 2020. Subsequently, the existing Plan remains the development plan for consideration when determining this planning application.

The application site lies within the settlement boundary for Porth but is not allocated for any specific purpose.

**Policy AW5** - sets out criteria for new development in relation to amenity and accessibility.

**Policy AW6** - requires development to involve a high quality design and to make a positive contribution to placemaking, including landscaping.

#### Supplementary Planning Guidance

- A design guide for householder development

#### National Guidance

*In the determination of planning applications regard should also be given to the requirements of national planning policy which are not duplicated in the Local Development Plan, particularly where national planning policy provides a more up to date and comprehensive policy on certain topics.*

Planning Policy Wales (Edition 11) (PPW) sets out the Welsh Government's (WG) current position on planning policy. The document incorporates the objectives of the Well-being of Future Generations (Wales) Act into town and country planning and sets out WG's policy on planning issues relevant to the determination of all planning applications. Future Wales: The National Plan 2040 (FW2040) sets out guidance for development at both regional and national level within Wales, with the thrust and general context also aimed at sustainable development.

It is not considered that the proposed development is consistent with the key principles and requirements for placemaking set out in PPW; or the Well-being of Future Generations (Wales) Act's sustainable development principles. It is also considered the proposed development is not compliant with FW2040.

Other national policy guidance considered:

PPW Technical Advice Note 12 - Design

#### **REASONS FOR REACHING THE RECOMMENDATION**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Furthermore, applications that are not in accordance with relevant policies in the plan should not be allowed, unless material considerations justify the grant of planning permission.

## **Main Issues:**

### **Principle of the proposed development**

The application relates to works within the curtilage of an existing residential dwelling to improve living conditions. Ordinarily the principle of such development could be considered acceptable, however, in this instance it is considered the works have a significant determinantal impact upon the amenities of surrounding residents.

### **Impact on residential amenity and privacy**

This resubmission has included new 2 metre high feather edge timber fencing along the sides of the area of decking in an attempt to address the concerns previously raised. While this gesture is acknowledged and would remove a degree of overlooking immediately either side, it is not considered the fencing would fully overcome the original concerns with direct views of the rears of the adjacent properties, at first floor level, still remaining. As such, despite the inclusion of side screening, the development is still considered unacceptable in respect of its impact upon the amenities of the adjacent neighbours.

Although the provision of fencing on both sides of the decking partially reduces the extent of overlooking, users of the decking could still look over the balustrades and directly into the amenity area and rear elevations of neighbouring properties when standing at different points on the platform.

Whilst it appears that the area where the decking is sited may have historically accommodated a level area, this would have been smaller than that of the current deck and unlikely suitable as a seating area. Given its scale and siting, the decking allows for a number of people to be sat on top for extended periods of time, having direct views towards the rear elevations and amenity spaces of the adjacent dwellings No. 2 and No. 4 due to its elevated height, an impact the new screens do not overcome. Consequently, it is considered the siting and elevated position of the decking results in an un-neighbourly form of development that forms a source of nuisance and disturbance, resulting in an unacceptable loss of privacy and amenity to the adjacent neighbouring properties.

Whilst it is noted that the neighbouring property, 2 Pleasant Heights, benefits from an area of raised decking of a similar design and scale, it does not benefit from planning permission and has therefore been given limited weight during the consideration process. These works are also under separate investigation by the Council's Planning Enforcement section.

Taking the above into account, the proposal is considered unacceptable in this regard, contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan and the Council's SPG on householder development.

### **Impact on the character and appearance of the area**

Whilst the area of decking forms a significant addition to the rear of the property and inevitably forms a visible feature from both adjacent properties, it is generally considered to be of an acceptable domestic appearance and scale and is not considered to dominate the overall character and appearance of the site.

In addition, whilst the points raised by the objector around the works being visible from the front of the property are noted, views of the rear garden are limited to the gaps between properties and the works are not widely visible outside of the immediate vicinity. As such, it is considered that the structure does not detract from the character or appearance of the area.

Taking the above into account, the works are considered acceptable in this regard.

### **Other points raised by the objectors**

The objectors raise concerns with regard to noise and disturbance and odour from the use of outdoor fire pits by the occupiers of the application property. Although these concerns are appreciated, occupiers could use the existing amenity space for such purposes. Therefore it is not considered the decking would result in any additional impact over that which could already occur.

### **Community Infrastructure Levy (CIL) Liability**

The Community Infrastructure Levy (CIL) was introduced in Rhondda Cynon Taf from 31 December 2014.

The application is for development of a kind that is not CIL liable under the CIL Regulations 2010 (as amended).

### **Conclusion**

It is considered the decking as constructed, by virtue of its scale, design and elevated height results in an unneighbourly form of development that adversely impacts upon the amenity and privacy of neighbouring occupiers. An impact that has not been

overcome through the erection of side screens. The application is therefore considered contrary to Policy AW5 of the Local Development Plan and the Council's SPG on householder development.

**RECOMMENDATION: REFUSE DUE TO THE FOLLOWING:**

1. The development as constructed, by virtue of its scale, design and elevated height results in an unneighbourly form of development which directly overlooks and adversely impacts upon the amenity and privacy of neighbouring occupiers. As such, the application is contrary to Policy AW5 of the Rhondda Cynon Taf Local Development Plan and the Council's Supplementary Planning Guidance 'A Design Guide for Householder Development'.