



Strategic Place Planning

Report of Handling

Site Address:	27 Birkhall Place, Aberdeen, AB16 5RL,
Application Description:	Formation of timber decking with external steps to rear (retrospective)
Application Ref:	201317/DPP
Application Type:	Detailed Planning Permission
Application Date:	2 November 2020
Applicant:	Ms Cara Paterson
Ward:	Northfield/Mastrick North
Community Council:	Mastrick, Sheddocksley And Summerhill
Case Officer:	Jamie Leadbeater

RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

The application site is the residential curtilage of a two storey mid-terraced dwellinghouse on the southern side of Birkhall Place in Mastrick.

The rear curtilage comprises a split-level decking and artificial grass area with an outbuilding (not requiring planning permission in itself as it constitutes Permitted Development) at the far end. Decking nearest to the rear of the dwellinghouse is set c. 1.6m above ground level whilst the largest decking area comprising the artificial grass is set 435mm above ground level, the outbuilding is set at ground level. Side garden boundaries are treated by c 1.6m high timber fencing set at ground level, although the highest part of the decking nearest the house includes additional 930mm high fencing above its 1.6m deck level.

In terms of the wider site context, the application site and wider terrace it sits within is located perpendicular to the rear of properties on Upper Mastrick Way to the west and Cairnwell Drive to the east. Subsequently, the rear gardens of three residential streets (including Birkhall Place) converge, and views from the application property and rear garden area look out over a number of properties on different streets to varying degrees.

Relevant Planning History

None

APPLICATION DESCRIPTION

Description of Proposal

Retrospective planning consent is sought for the erection of raised timber decking in rear garden

area with associated steps and 0.93m high fencing above deck level along both side boundaries.

The decking sits c. 1.6m above ground level and at c.5.8m, spans nearly the full width of the rear garden area, leaving a gap of c.0.6m to the boundary with the neighbouring property at No. 25 Birkhall Place, projecting c.3.5m out from the rear elevation of the dwellinghouse, and covering a total area of c.20m².

Supporting Documents

All drawings can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QIX5T4BZLMB00> .

CONSULTATIONS

Mastrick, Sheddocksley And Summerhill Community Council – No response received.

REPRESENTATIONS

Three representations have been received (2 objections and 1 in support). The letter in support provides no reasoning for supporting the proposal, whilst the following material matters are raised in the objections which can be summarised as follows and are addressed in the evaluation below:

- Raised decking invades the privacy of No. 25 Birkhall Place, allowing the neighbours to be able to see directly into neighbours living space; and
- Raised decking results in a loss of privacy into the garden of No. 163 Cairnwell Drive.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, regard is to be had to the provisions of the Development Plan and that determination shall be made in accordance with the plan, so far as material to the application unless material considerations indicate otherwise.

Aberdeen Local Development Plan (ALDP) 2017

- Policy H1 – Residential Areas
- Policy D1 – Quality Placemaking by Design

Supplementary Guidance (SG)

- Householder Development Guide

Proposed Aberdeen Local Development Plan (2020)

The Proposed Aberdeen Local Development Plan (Proposed ALDP) was approved at the Council meeting of 2 March 2020. The Proposed ALDP constitutes the Council's settled view as to what the final content of the next adopted ALDP should be, and is now a material consideration in the determination of planning applications. The Aberdeen Local Development Plan 2017 will continue to be the primary document against which applications are considered. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether –

- these matters have been subject to public consultation through the Main Issues Report; and,
- the level of objection raised in relation these matters as part of the Main Issues Report; and,
- the relevance of these matters to the application under consideration.

The foregoing can only be assessed on a case by case basis. The following policies in the Proposed Plan are considered to be of relevance to this proposal:

- Policy D1 – Quality Placemaking
- Policy D2 – Amenity
- Policy H1 – Residential Areas

EVALUATION

Principle of Development

The site falls within a “Residential Area” designation on the ALDP Proposals Map to which Policy H1 in the Aberdeen Local Development Plan (ALDP) applies. Policy H1 supports new residential development within such areas providing it satisfies the following criteria:

- 1) Does not constitute “overdevelopment”;
- 2) Does not have an unacceptable impact on the character and amenity of the surrounding area;
- 3) Does not result in the loss of valuable and valued open space; and,
- 4) Complies with supplementary guidance (the Householder Development Guide in this case).

Overdevelopment

The proposal would not entail an extension to the dwellinghouse, so it could not more than double its existing footprint, and although the proposed decking and outbuilding would develop the entirety of the rear curtilage – which poses a tension with the Householder Development Guide SG general principles – the split-level decking areas do provide more than 50% of the rear garden ground for recreational use. Mindful of the latter, the proposal does not give rise to ‘overdevelopment’ of the site.

Impact on Character and Amenity to surrounding area

Character

Given the decking is located within the rear curtilage, it is screened from view from the front of the application property and the wider terrace it sits within. However, photographs from the applicant and others suggest that there is not a prevalence of raised decking, certainly of the proposed scale and dominance, within the rear garden spaces to properties in the immediate surrounding area. It is noted that the adjacent neighbour, No. 29 Birkhall Place, has unauthorised raised decking but this structure is not considered to be as visually imposing. Although the neighbours decking exists and is unauthorised, it is not known how long it has been in existence for and therefore may be immune to enforcement action. Notwithstanding the above, the neighbours decking does not set a precedent to justify support for the decking proposed under this application.

Amenity

In its ‘General Principles’, the Householder Development Guide SG sets out that no development should result in a situation where the amenity of any neighbouring properties would be adversely affected, and significant adverse impact on privacy, daylight and general amenity will count against a development proposal. Furthermore, section 3.1.10 of the Householder Development Guide SG states that raised decking proposals should not result in an adverse impact upon the amenity of adjacent dwellings, including internal accommodation and external private amenity space. Upon review of the proposals, site photos from both the applicant and objectors, as well as

use of other information sources, it is considered the proposed decking impacts on other properties which stray beyond merely the adjoining properties Nos. 25 and 29 Birkhall Place. Subsequently, the assessment set out below addresses each property in descending relevance:

Impact on adjoining properties – Nos. 25 and 27 Birkhall Place.

The proposed decking sits c. 1.6m above ground level – similar in height to the existing historic fencing running along the shared boundary with No. 25 Birkhall Place. Additional fencing has been erected on the proposed raised deck area which sits 0.93m above deck level and 0.6m in from the mutual boundary with No. 25 Birkhall Place. Similar height fencing has been erected above deck level but along the mutual boundary with the other adjacent neighbour No. 29 Birkhall Place. The minimal height normally required to be erected above deck level to satisfy the Planning Authority that overlooking can be mitigated/privacy is maintained between garden areas is 1.8m. The existing screening is circa half this height.

Photographic information provided by the applicant demonstrates that the height of the decking above ground level coupled with the low-rise fencing along and near to shared mutual side boundaries presents a situation whereby the applicants can clearly see into both adjacent neighbours' gardens which would result in an unacceptable increase of overlooking of these properties. Furthermore, it should also be noted that the decking does adversely harm the sense of privacy in the living room of No. 25 Birkhall Place based on photographic evidence they have provided the Planning Service, as there are clear views across from the deck towards the windows of this main habitable room, which significantly and unacceptably erodes their privacy inside their main living space. It is noted that whilst the applicant has set the existing 0.93m high fence in 0.6m from the mutual boundary, it still presents an oppressive outlook from No. 25's rear living room window and their privacy within their house would be compromised on days that the proposed decking is used. As such, the concerns raised by the adjacent neighbour No. 25 Birkhall Place are considered valid. Although the other adjacent neighbour residing in No. 29 Birkhall Place has submitted a representation in support of the application, the Planning Service considers that the raised decking does, without doubt, adversely harm their private amenity in their rear garden ground and most likely could harm their privacy within their rear ground floor rooms.

It has been considered whether the overlooking issues created by the proposed decking could be mitigated by introducing higher fencing (1.8m above deck level) along the shared side boundaries with Nos. 25 and 29. However, it is considered this would not be feasible without appearing an oppressively high when viewed from the garden of No. 25 Birkhall Place - based on the photographic information they have supplied in support of their objection. Subsequently, it would conflict with section 3.1.10 in the Householder Development Guide SG which states that boundary enclosures will not be permitted where they would result in an unacceptable impact upon the amenity of neighbouring properties.

Impact on No. 31 Birkhall Place

Photographic evidence provided by the applicant demonstrates that the proposed decking enables views into the garden ground of this neighbouring property situated on the end of the terrace that the application property sits within.

This appears to be a result of the lack of screening above deck level along the mutual boundary with No. 29 Birkhall Place – as discussed above – coupled with height of the shared fence between Nos. 29 and 31 Birkhall Place. Privacy within the rear garden ground of mo. 31 Birkhall Place is therefore harmed by the development, which is an unacceptable impact. Therefore, the proposal is considered to be at odds with General Principle 2 in Section 3.1.4 of the Householder Development Guide. For the avoidance of doubt, the proposed decking would have no undue daylighting or overshadowing impacts on this property.

Impact on No. 74 Upper Mastrick Way

The level of impact on this property would be similar to, but not quite as severe, as the loss of privacy to No. 31 Birkhall Place. The proposed raised decking area sits as close as 10m to the rear boundary with the garden ground with this property and given the lack of intermittent screening along property boundaries in-between, would be too short a separation distance to mitigate overlooking. Subsequently, the proposed/existing decking has an unacceptable impact on the privacy of residents No. 74 Upper Mastrick Way in their garden ground. Furthermore, the decking lies as close as 17.7m away from the rear window of this property believed to serve habitable living space. The Planning Service is concerned this distance arrangement likely harms the privacy inside this dwellinghouse to a certain degree.

Impact on Nos. 165 and 167 Cairnwell Drive

The proposed decking area sits at a height above ground level which is similar to the height of intermittent boundary treatments (including those serving the rear garden of No. 25 Birkhall Place). As such, the proposed decking provides an elevated and imposing platform to peer into the rear garden ground and windows of these properties. Photographs from the applicant demonstrate that seating is located as close as c.12m away from windows within the rear of No. 167 and c.15m away from No. 165, an arrangement which adversely harms the privacy of these two properties situated perpendicular to the east both in their respective garden grounds but also within their respect internal living spaces. This is unacceptable.

Impact on No. 163 Cairnwell Drive

The concerns raised by the resident of No. 163 Cairnwell Drive, which adjoins the far end of the application property's rear garden area at 90 degrees, are understood given the raised deck is as close as 13m from the far end of the neighbour garden and there is an impact, but the impact is not as severe as those on the other properties and therefore is considered acceptable.

Loss of Open Space

The site falls within a defined residential curtilage and therefore the proposal would not give rise to a loss of valued open space.

Compliance with Householder Development Guide SG and Policy H1

As set out above, the proposal would fail to accord with all the General Principles of the SG set out in Section 3.1.4 of the SG, and more specifically, the relevant requirements of Section 3.1.10 in the SG as the raised decking significantly harms the private amenity of the adjacent dwellinghouses in both their respective rear garden area and internally. Subsequently, the proposal fails to comply with Policy H1 in the ALDP 2017. Furthermore, given the siting, scale and design of the proposal clearly causes significant harm to the residential amenity of surrounding residents, it is considered the proposal has not been appropriately designed to suit the site's context and therefore is considered to be of inadequate quality of design. Subsequently, it is considered that the proposal fails to accord with Policy D1 in the ALDP 2017.

Proposed Aberdeen Local Development Plan

In relation to this particular application, the policies in the Proposed Aberdeen Local Development Plan 2020 (ALDP) substantively reiterate those in the adopted Local Development Plan. Should the Proposed Plan be adopted, it would entail the adoption of a policy D2 which focuses on amenity which proposal would be in conflict with along with other relevant policies H1 and D1.

Conclusion

Overall, the proposed height of the raised decking relative to the height of mutual rear garden

boundaries adversely harm the private amenity of both adjacent properties, both in their rear garden ground and living spaces served by ground floor windows in the rear of their properties. Furthermore, site photos from the applicant also demonstrate that the adverse private amenity impact strays beyond adjacent garden areas and into the rear garden areas of properties 165 and 167 Cairnwell Drive, 31 Birkhall Place, and 74 Upper Mastrick Way. No satisfactory mitigation is considered feasible to implement without giving rise to other adverse amenity impacts on adjacent dwellinghouses. Subsequently, the proposal is considered to be at odds with policies H1 and D1 in the Aberdeen Local Development Plan 2017, including relevant guidance set out in attendant SG the Householder Development Guide. In the absence of any other overriding material considerations, the application is recommended for refusal.

RECOMMENDATION

Refuse

REASON FOR RECOMMENDATION

The proposed raised decking has far-ranging adverse impacts on the private amenity of both immediate adjoining properties (no. 25 and 29 Birkhall Place) and other neighbouring properties (no. 31 Birkhall Place, 74 Upper Mastrick Way and properties 165 and 167 Cairnwell Drive) in their garden areas within the immediate surrounding area, due to the height the decking sits relative to the height of neighbours garden boundaries. Furthermore, the height and proximity of the decking to neighbours windows has a very imposing/oppressive impact on no. 25 Birkhall Place, both within the neighbour's rear garden space and also within their habitable living room and does result in a significant loss of privacy/increased overlooking to this property. This said unacceptable impact on neighbours windows and internal living space is also felt by the residents of no. 167 and 165 Cairnwell Drive, although the impact would not be quite as severe due to the lesser proximity to the proposed decking area.

Taking these considerations into account, the proposal is considered to be in conflict with the requirements of Policy H1 (Residential Areas) and relevant provisions of Policy D1 (Quality Placemaking by Design) and both the relevant "general principles" and guidance set out in Section 3.1.10 of their attendant supplementary guidance the Householder Development in the Aberdeen Local Development Plan 2017. The proposal would also be in conflict with policies D1, D2 and H1 in the Proposed Aberdeen Local Development Plan. In the absence of any other overriding material considerations, the proposal is considered worthy of refusal.