

REPORT TO: Planning Committee
MEETING DATE: 3 December 2024
BY: Executive Director for Place
SUBJECT: Application for Planning Permission for Consideration

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Application No. **24/00730/P**

Proposal Change of levels in rear garden, formation raised hardstanding area and erection of fence (Part Retrospective)

Location **10 Suthren Yett
Prestonpans
EH32 9GL**

Applicant Mr J Morrice

Per Chris Rhodes Architect

RECOMMENDATION Grant Permission Retrospectively

REPORT OF HANDLING

PROPOSALS

The property to which this application relates is a two-storey, detached house and its garden located within a modern housing development in Prestonpans, and as such is located in a predominantly residential area.

The property is bounded to the north by the public road of Suthren Yett, to the east and west by neighbouring residential properties, and to the south by a public footpath.

In July 2020, planning permission (ref: 20/00605/P) was granted for the change of use of public open space to domestic garden ground and the erection of fencing to enclose this area. Planning permission 20/00605/P has been implemented.

In August 2021, an enforcement case (ref: 21/00247/COM) was opened to investigate an alleged breach of planning control in relation to a raised deck platform that had been constructed within the rear garden. It was concluded that the raised deck platform did not

constitute permitted development and a breach of planning control had occurred. However, the applicant undertook works to rectify this breach of planning control and the enforcement case was closed in November 2021.

In May 2024, a further enforcement case (ref: 24/00176/COM) was opened to investigate an alleged breach of planning control in relation to another raised platform that had been constructed in the applicant's rear garden. It was concluded that the raised platform did not constitute permitted development and a breach of planning control has occurred. However, rather than rectify the breach of planning control, the applicant has submitted this retrospective planning application for the works carried out.

Planning permission is therefore now sought retrospectively for alterations to the rear garden ground of the house, to re-grade and to create a raised, level area within it. Additionally, planning permission is also sought for the heightening of part of the existing fence that encloses the east boundary of the rear garden.

Prior to the re-grading of the garden being carried out it sloped gently upwards from the rear elevation of the house towards the rear boundary fence of the garden. As a result of the re-grading of the garden, a two-tier garden has been created. To create the higher-level component of the garden, a 0.9m high retaining wall has been erected across the width of the garden and a level platform formed between that retaining wall and the rear boundary fence of the garden. The raised platform measures some 0.75 metres in height when measured from the lower ground level of the applicant's rear garden.

Through the previous planning application (ref: 20/00605/P), permission was granted for the erection of fencing to enclose the area subject of the change of use. This included a 1.8-metre-tall fence, when measured from the applicant's rear garden, along the eastern boundary for some 2.9 metres.

It is proposed to now heighten a length of the existing 1.8m high fence that encloses the east boundary of the lower level of the rear garden to a height of some 2.1 metres. It is then proposed to increase the height of another length of the existing fence to some 2.55 metres in height for a further 2.5 metres. The proposed lengths of heightened fencing would be of timber construction and would match the existing fence in design and appearance.

DEVELOPMENT PLAN

Section 25 of the Town and Country Planning (Scotland) Act 1997 requires that the application be determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan is the adopted National Planning Framework 4 (NPF4) and the adopted East Lothian Local Development Plan 2018.

Policies 14 (Design, Quality and Place) and 16 (Quality Homes) of NPF4 are relevant to the determination of this application. Policy DP2 (Design) of the East Lothian Local Development Plan 2018 is relevant to the determination of this application.

REPRESENTATIONS

Two written objections have been received in relation to the application, both of which were from the same person. The main grounds of objection are:

- (i) The platform has been significantly brought forward from the previous breach of

planning control;

- (ii) The new platform has not taken previous requirements into consideration and the same outcome to remove the platform should apply;
- (iii) The platform clearly exceeds permitted development laws and the measurement of the walls and platform have not taken measurements from the lowest point of the ground;
- (iv) The height of the wall is incorrect and exceeds one metre in height;
- (v) The platform constitutes over 50% of the rear garden and exceeds the UK law threshold;
- (vi) The platform gives a view into the objector's property which is further enhanced by the trampoline positioned on the platform;
- (vii) The overlooking from the platform restricts the objector's use of their garden as well as overlooking into the windows of the objector's property;
- (viii) The proposed solution of a 2.5 metre fence is not acceptable in terms of structure and cosmetic appearance;
- (ix) The application states that the applicant was unaware planning permission was required despite previous enforcement for a platform, this shows disregard to the rules and the objector;
- (x) The architect has used measurements and drawings from a rear extension some years ago, which questions the legitimacy of the drawings and the amended drawings offer little to no change;
- (xi) Any fence construction should fall within the objector's expectations but would also still not give the objector privacy;
- (xii) The previous enforcement case should be revisited as it has a significant bearing on this case; and
- (xiii) In the amended drawing it states "line to show extent of existing rear garden slope (grass surface)", this is irrelevant and has no bearing on the justification of the platform height.

Subsequent to the registration of the application, the applicant's agent submitted amended drawings and confirmed that the measurements were correct.

An overlooking assessment has been undertaken and is detailed within this report of handling.

Whether or not the applicant was aware that planning permission was required for the works does not prevent the Council as Planning Authority from determining this planning application. The Town and Country Planning (Scotland) Act 1997 allows for the determination of applications for works that have already been carried out. Therefore, the Council as Planning Authority cannot decline to determine an application that has been submitted retrospectively.

PLANNING ASSESSMENT

All the works that have been carried out to re-grade the levels of the garden are contained within the rear garden of the applicant's house. Due to the positioning of the rear garden in relation to the applicant's house and to the neighbouring houses, the rear garden is not visible from the public road of Suthren Yett. Such works to level off and re-grade part of the rear garden and the erection of retaining walls are not harmful to the character and appearance of the house, the modern housing development of which it is a part, or to the character and appearance of the wider area.

The heightening of the existing eastern boundary fence would increase the height of the existing fence to some 2.55 metres at its tallest point. The heightening of the fence in the manner proposed would not harm the setting of the house or the character and

appearance of the area. By virtue of its physical form, height, and position, the heightened fencing would be appropriate to its place and well integrated into its surroundings. It would not, at either 2.1 metres or 2.55 metres in height, be so high to appear as a harmfully dominant, intrusive or incongruous feature and would not harm the setting of the house, the neighbouring house, or the character and appearance of the area. It would not be of such a height to have a harmfully overbearing effect on any neighbouring properties.

In assessing whether or not a proposed new development would result in harmful overlooking and therefore loss of privacy to existing neighbouring residential properties, it is the practice of the Council, as a planning authority, to apply the general rule of a 9 metres separation distance between new development and the garden boundaries of neighbouring residential properties, and an 18 metres separation distance between directly facing windows of the proposed new building and the windows of existing neighbouring residential properties.

The altered ground levels of the applicant's rear garden allow anyone standing on the levelled off higher platform of the rear garden to look into the adjacent neighbouring garden to the east and allow limited views onto windows in the ground floor of the neighbouring house to the east. However, if the boundary fence enclosing the east boundary of the applicant's rear garden is heightened to 2.1 and 2.55 metres in accordance with the drawings, then this would be sufficient to prevent harmful overlooking of the neighbouring property to the east from the re-graded garden. Therefore, the heightened fence would mitigate overlooking from any parts of the applicant's rear garden within 9 metres of it. Therefore, provided the fences are heightened within one month of the grant of any grant of planning permission which can be made a condition of any grant of planning permission, the works to re-grade the garden would not allow for harmful overlooking of the neighbouring property to the east.

Due to the boundary treatments and ground levels of the neighbouring property to the west, the altered ground level of the applicant's rear garden does not allow for any harmful overlooking of this neighbouring residential property.

Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice by P.J. Littlefair gives guidance on the impact of a proposed development on the daylight and sunlight received by neighbouring properties.

Application of the sunlight test demonstrates that there would be a small increase in overshadowing of the rear garden of 11 Suthren Yett from the heightened fence. However, the increase in overshadowing would not be for such a length of time or for such an extent that would harmfully impact on the residential amenity of the neighbouring residential property to the east. Therefore, owing to its size, form and positioning, the proposed heightening of the existing fence would not give rise to a harmful loss of sunlight or daylight to any neighbouring residential properties.

The proposals are consistent with Policies 14 and 16 of NPF4 and Policy DP2 of the adopted East Lothian Local Development Plan 2018. In conclusion, the proposals are considered to be in accordance with the provisions of the stated relevant Development Plan policies and there are no material considerations which outweigh the proposal's accordance with the Development Plan.

CONDITION:

- 1 Within one month of the date of this decision notice the fence enclosing the east boundary of the rear garden shall be heightened in accordance with the details shown on the docketed drawings. Thereafter, the fencing as so approved shall be retained in situ and

maintained in that position and at that height unless otherwise approved in writing by the Planning Authority.

Reason:

To prevent harmful overlooking of the neighbouring house and garden to the east in the interests of safeguarding the privacy and amenity of that neighbouring property.