

ANGUS COUNCIL

DEVELOPMENT MANAGEMENT REVIEW COMMITTEE – 15 MAY 2018

FERN COTTAGE, KIRKTON OF AUCHTERHOUSE

REPORT BY THE SERVICE LEADER – LEGAL AND DEMOCRATIC

ABSTRACT:

The Committee is asked to consider an application for a review of the decision taken by the planning authority in respect of the refusal of planning permission for retrospective raised decking and raise section of existing boundary fence, application No 17/00771/FULL, at Fern Cottage, Kirkton of Auchterhouse.

1. RECOMMENDATIONS

It is recommended that the Committee:-

- (i) review the case submitted by the Planning Authority (**Appendix 1**);
- (ii) review the case submitted by the Applicant (**Appendix 2**);
- (iii) consider the further lodged representations (**Appendix 3**); and
- (iv) consider the applicant's response to further representations (**Appendix 4**).

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN

This Report contributes to the following local outcomes contained within the Angus Local Outcomes Improvement Plan 2017-2030:

- Safe, secure, vibrant and sustainable communities
- An enhanced, protected and enjoyed natural and built environment

3. CURRENT POSITION

The Development Management Review Committee is required to determine if they have sufficient information from the Applicant and the Planning Authority to review the case. Members may also wish to inspect the site before full consideration of the appeal.

4. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from the recommendations in the Report.

5. CONSULTATION

In accordance with Standing Order 48(4), this Report falls within an approved category that has been confirmed as exempt from the consultation process.

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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E-Mail: LEGDEM@angus.gov.uk

List of Appendices:

Appendix 1 – Submission by Planning Authority

Appendix 2 – Submission by Applicant

Appendix 3 – Further Lodged Representations

Appendix 4 – Applicant's Response to Further Representations

ANGUS COUNCIL'S SUBMISSION ON GROUNDS OF REFUSAL**APPLICATION NUMBER – 17/00771/FULL****APPLICANT- MR IAN MCNAUGHTON & MS IRENE GRANT****RETROSPECTIVE RAISED DECKING AND RAISE SECTION OF EXISTING BOUNDARY
FENCE AT FERN COTTAGE KIRKTON OF AUCHTERHOUSE DUNDEE DD3 0QS****CONTENTS**

AC1	Report of Handling	
	Policy Tests (Angus Local Development Plan 2016)	
	Policy DS4 & TC4 – Please click on the link below: - https://www.angus.gov.uk/directories/document_category/development_plan https://www.angus.gov.uk/media/householder_development_planning_advice_note	
	Consultation Responses	
AC2	Roads – Traffic 18.08.17	
AC3	Community Council – 17.10.17	
	Letters of Representations	
AC4	Objector Wright – 04.10.17	
AC5	Objector Bateman – 05.10.17	
AC6	Objector Bircham – 05.10.17	
AC7	Objector Neil Paterson 05.10.17	
AC8	Objector Leonie Paterson 05.10.17	
AC9	Objector Ryden for Mr and Mrs Paterson Blanerne, containing drawings & photos 06.10.17	

AC10	Objector Malcolm Paterson – Further Comments 06.10.17	
AC11	Objector Wiltosz – 06.10.17	
AC12	Objector email from Mr Paterson – Soil Levels 30.10.17	
AC13	Objector Supporting Info - Mr Paterson – Soil Levels – 30.10.17	
AC14	Email from M. Paterson – Timeline of Works	
AC15	Photomontage of Neighbours Garden from Mr Paterson	
AC16	Photos of Original Rear Garden – From Mr Paterson	
	Application Drawings	
AC17	Refused Location Plan	
AC18	Refused Drawings	
	Further Information Relevant to Assessment	
AC19	Site Photographs	
AC20	Decision Notice	
AC21	Email from Agent – Dimension Info Responding to Neighbours	
AC22	Email from Applicant – Works Carried Out	
	Supporting information	
AC23	Photomontage of Fence from Applicant	
AC24	Photos from Agent – Dimension info	

Angus Council

Application Number:	17/00771/FULL
Description of Development:	Retrospective Raised Decking and Raise Section of Existing Boundary Fence
Site Address:	Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS
Grid Ref:	334341 : 738169
Applicant Name:	Mr & Ms Ian & Irene McNaughton & Grant

Report of Handling**Site Description**

The detached 1½ storey property is positioned within a 599 square metre (sqm) site that descends gradually parallel with the rear elevation of the house to the north boundary. The applicant is in the process of redeveloping the rear garden and has carried out minor works comprising of the removal of flower beds and grass and laying a layer of soil along the north boundary. The retrospective deck sits upon an area of the raised area of soil. The site is within a residential area on the east edge of Kirkton of Auchterhouse and bound by the public road to the west, residential properties to the north and south and a field to the east.

Proposal

The proposal comprises of a retrospective 890mm high decking, access steps and 480mm lower section of decking and a proposed raised section of fence parallel with the highest section of the deck. The raised section of fence would measure 900mm high and 2.9 metres long- the resulting fence above the highest section of decking would be 1780mm high which is beside the north boundary stone wall. The existing decking sits upon a layer of soil, it is level with original ground to the southern edge of the newly laid soil and would be about 410mm at its deepest point near the north boundary. Only the decking and raised section of fence is required to be considered within this application as there are aspects shown in the application that are deemed to be permitted development such as the area of soil raising this area of garden measures some 410mm at its deepest point which is of a height that would meet with the criteria of Class 3B and the patio doors which would be permitted development under Class 2B of The General Permitted Development (Scotland) Order 1992 (amended). However, there are other aspects that are merely gardening work.

Amendments

The agent has supplied revised drawings which show revisions to the drawings to show the existing site, proposed scheme and the neighbour's garden in greater detail.

Publicity

The application was subject to normal neighbour notification procedures.

The nature of the proposal did not require that the application be the subject of press advertisement.

The nature of the proposal did not require a site notice to be posted.

Planning History

None.

17/00167/PREAPP- Proposed Rear Boundary Fence- closed.

17/00753/PREAPP- New Monoblocked Area with Aqua Channel- closed.

Applicant's Case

The applicant and agent have supplied various height and level information and amended plans. This was in response to the correspondences from an objector indicating that the information on the drawings did not show the original and existing ground levels, the existing height of the stone north boundary wall and the immediate ground level of the northerly neighbour's garden.

Consultations

Community Council - The Auchterhouse Community Council has not objected to the decking but has asked that the original and proposed ground levels be depicted correctly on the proposed elevation drawing so that the true height of the decking and raised fence can be determined.

Angus Council - Roads - Offered no objection to the proposal.

Scottish Water - There was no response from this consultee at the time of report preparation.

Representations

8 letters of representation were received, of which 1 offered comments which neither supported nor objected to the proposal, 7 objected to the proposal and 0 supported the proposal.

The main points of concern were as follows:

- o Overlooking from the decking
- o Timber fence would be overbearing and not in keeping with the environment and heritage of area.

The above points are assessed in the Assessment section of this report.

Other points have been raised and have been summarised as follows:

- o Ground levels, original and proposed, the north boundary stone wall and the ground level of the northerly neighbour's garden are not depicted correctly. Response- the agent has extensively re-measured the site, stone boundary wall and the ground level of the northerly neighbour's garden and has shown extensive measurements and all points raised have been depicted more clearly on revised drawings.
- o Noise from building works- Whilst additional noise can be frustrating for neighbours, this would not be a material planning consideration.
- o May impact on value of properties: Response- this is not a material planning consideration.
- o Discussions and decisions between the applicant and neighbours have been ignored. Response- discussions between neighbours are not binding agreements and are not relevant.
- o Proposal is harming the structural stability of the stone wall. Response- there is no evidence to suggest that the condition of the boundary wall is anything other than wear and tear.
- o The high level of soil will cause damage to the wall.- Response- the laying of soil is not required to be considered as part of this application as it meets with the permitted development regulations, any potential damage to the stone boundary wall is a civil matter.

Development Plan Policies

Angus Local Development Plan 2016

Policy DS4: Amenity

Policy TC4: Householder / Domestic Development

TAYplan Strategic Development Plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

Policy TC4: Householder/Domestic Development relates to proposals for house and flat alterations/extensions and development within the curtilage of houses and flats. Development will be supported where the siting, design, scale or massing of the proposal do not:

- (1) adversely affect the residential amenity enjoyed by the dwelling and adjoining households,
- (2) detrimentally impact on the character and appearance of the dwelling, site and surrounding area;
- (3) result in overdevelopment of the site or a loss of garden ground, parking or bin storage.

Policy TC4 indicates that further guidance will be set out in the Householder Development Planning Advice Note. The advice notes general design principles indicate that alterations to existing residential properties should be designed to avoid over dominating or overwhelming the existing residential property or neighbouring properties.

Policy DS4 indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or amenity of neighbouring properties.

The general layout of the street and immediate surrounding area is a medium density area that consists of mostly detached houses that are of varying eras, from traditional to modern types of houses which are on comfortable plots with large back gardens.

In terms of test (1) of Policy TC4 and the amenity criteria of Policy DS4 which relates to impacts on the residential amenity of neighbouring houses, there is a ground level difference between the application site and the northerly lower neighbour measuring some 670mm. The retrospective decking stands 790mm below the top of the existing fence would be level with the stone boundary wall and there is a difference in height of 1765mm between the highest point of the decking and the neighbour's garden. There would also be a difference in height of 3.5 metres between the top of the raised fence and the ground level of the neighbour's garden. It is recognised that the fence is an attempt to counteract a degree of overlooking, nevertheless, taking into account the raised fence, the close proximity of the decking to the boundary and revised drawing indicating precise measurements, it is considered that the 3.5 metre height difference between the top of the proposed fence and the neighbours ground would introduce overbearing impacts upon the neighbours garden that would be unreasonable and would be detrimental to their residential amenity. Although there was previously a hedge on the north boundary which was similarly high as the proposed raised section of fence, the hedge is softer in appearance beside the boundary than a solid and stark fence of a similar height. Furthermore, it is recognised that there would be a degree of overshadowing midday but I do not consider that this would be significantly detrimental as the existing lower 1.8 metre high fence and the raised section have replaced the previous high hedge that would have cast a shadow consistently into the neighbour's garden. Additionally, although the immediate area is a built up residential area, the close proximity of the decking and raised fence to the boundary is considered excessive in height and would go beyond what is considered reasonable within the residential. The deck would allow a degree of overlooking into the neighbouring garden that goes beyond that which would normally be expected and would have a detrimental impact on the neighbours privacy and the enjoyment of their garden. As previously indicated, whilst it is considered that the proposed raised fence section could counteract some overlooking, the fence in itself would result in an amenity impact.

The proposal would be unacceptable in terms of test (1) of Policy TC4, the amenity criteria of Policy DS4 and the guidance within the Householder Development Planning Advice Note.

In terms of test (2) of Policy TC4; it is very common for decking to be sited within rear gardens and the general design is considered to be acceptable notwithstanding its amenity impact. The principle of a fence within the rear garden, beside the boundary is not considered to be detrimental to the character or appearance of the village as it is noted there are fences elsewhere within the village. However, the position and height of the decking and the height of the fence to counteract overlooking that would be overbearing in height would have such a detrimental impact on the neighbour's residential and visual amenity as indicated above which would ultimately be the determining factor in the assessment of this application.

In assessing the proposal against test (3), the proposal would not result in overdevelopment and an acceptable level of garden ground would be retained. Bin storage would be unaltered as would parking to the side of the dwelling, The Roads Service has confirmed no objection to the proposal. It is considered that the proposal would not accord with test (3) of Policy TC4.

In conclusion, the proposal is contrary to the provisions of Policy TC4: Householder/Domestic Development and DS4: Amenity of The Angus Local Development Plan or the Householder Development Planning Advice Note. There are no material considerations which carry sufficient weight to override the development plan position and as such the application is recommended for refusal of planning permission.

Given the retrospective nature of the application and the refusal of planning permission due to the demonstrable harm to the residential amenity of the northerly neighbour, enforcement action is required to remedy the situation. Enforcement action for alterations to the decking and potentially a re-application for an altered decking will be instigated on expiry of the 3 month period but prior to the expiry of this time the applicant can submit a review of this planning decision to the Development Management Review Committee.

Legal agreement not required.

Human Rights Implications

The decision to refuse this application has potential implications for the applicant in terms of his entitlement to peaceful enjoyment of his possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying the decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. Any interference with the applicant's right to peaceful enjoyment of his possessions by refusal of the present application is in compliance with the Council's legal duties to determine this planning application under the Planning Acts and such refusal constitutes a justified and proportionate control of the use of property in accordance with the general interest and is necessary in the public interest with reference to the Development Plan and other material planning considerations as referred to in the report.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

Decision

The application is Refused

Reason(s) for Decision:

1. That the proposed development by virtue of the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north.

Notes:

Case Officer: Pauline Chalmers
Date: 14 December 2017

Appendix 1 - Development Plan Policies

Angus Local Development Plan 2016

Policy DS4: Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC4 : Householder / Domestic Development

Proposals for householder development (including alterations/extensions to houses and flats, development within the curtilage of houses and flats, means of enclosure, satellite antenna and domestic scale microgeneration) will be supported where the siting, design, scale or massing of the proposal, does not:

- adversely affect the residential amenity enjoyed by the house or surrounding domestic properties including, in the case of microgeneration, through noise or shadow flicker;
- detrimentally affect the character and/or appearance of the building, site or surrounding area; and
- result in the overdevelopment of the plot or a loss of garden ground, parking or bin storage.

Further guidance on householder development will be set out in a Householder Development Planning Advice Note.

TAYplan Strategic Development plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

ANGUS COUNCIL

COMMUNITIES PLANNING

CONSULTATION SHEET

PLANNING APPLICATION NO

17/00771/FULL

Tick boxes as appropriate

ROADS

No Objection

Interest

(Comments to follow within 14 days)

Date

18	08	17
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**PLEASE DO NOT TAKE AWAY THE LAST SET OF PLANS WHERE POSSIBLE COPIES
WILL BE PROVIDED ON REQUEST**

ELECTRONIC SUBMISSION DRAWINGS TO BE VIEWED VIA IDOX

LeslieIA

From: DownieKM on behalf of PLANNING
Sent: 17 October 2017 14:15
To: PLNProcessing
Subject: FW: 7/00771/FULL | Retrospective Raised Decking and Raise Section of Existing Boundary Fence | Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS
Attachments: 17_00771_FULL-PROPOSED_ELEVATIONS_GROUND_LEVELS__SECTIONS_AA__BB-2793493.pdf; 17_00771_FULL-RYDEN_FOR_MR_AND_MRS_PATERSON_BLANERNE-2794413.pdf

Sent: 09 October 2017 14:08

To: PLANNING

Cc: Shiona Baird; Garry Stewart; John Forster; Helen Smith; John Forster; Aileen M Baird; Ian Clark; Liam Yule; Linda Cockram; Kieran Forster

Subject: 7/00771/FULL | Retrospective Raised Decking and Raise Section of Existing Boundary Fence | Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

FAO Pauline Chalmers

Good Afternoon Pauline,

There would appear to be a clear error in the elevation drawing submitted with this application - see attached below. The original ground level does not match the level shown in Photograph 1 in the Ryden doc - also attached, which is a 2016 photograph.

The original (2016) level should be shown so that the true height of the current decking and fencing above ground level can be determined. To base these heights on raised ground levels would be wrong and lead to bad planning decisions especially if the ground has been raised significantly.

Can you please determine the original ground level and ask the applicant to amend the drawing accordingly.

Garry Stewart

Secretary

Auchterhouse Community Council

Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Mrs Rosemary Wright

Address: Tiree Main Street Kirkton of Auchterhouse

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: *There was some discussion before all this work started and some agreement appeared to be reached but in actual fact Mr McNaughton just went ahead and would appear to have done what he wanted, disregarding any agreement on what was proposed. And it would appear he wants to raise the fence further!

*The dry stane dyke has stood for well over 100 years and has recently been checked and stabilised. It is in keeping with the Auchterhouse environment and heritage - it will stand the test of time - but a wooden fence?

*Each and every day the noise from his works has travelled from 7/8 am to me across the road. Electric motors of some sort, I think.

*This may impact on the value of our properties.

*Mr McNaughton has one-way privacy it would appear.

I am objecting to this development as a concerned neighbour.

Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Mrs Lorna Bateman

Address: Manderley Leoch Road Kirkton of Auchterhouse

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Having lived in Auchterhouse village for 57 years I have grown to love the community spirit. Unfortunately, some of that spirit has gone. Several years ago a representative of Forfar council instructed me to rebuild a dry stane dyke because it was part of our heritage and should not be knocked down. My objection is that the aforementioned development is jeopardising the structural stability of the dry stane dykes by loading earth against them. He has tried to conceal the walls with a wooden fence, which also takes away the walls' character.

Why was I instructed thus and a blind eye turned to others.

Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Dr Abigail Bircham

Address: Portland medical practice Lincoln

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I am writing to confirm my strong objection to the raised ground level, decking and fence that has already occurred and the plans to raise them further. I frequently visit the neighbouring property and it has changed the "village" character of the stone dyke wall and is very overbearing for the Patersons who live next door. The stone dyke wall is also not a retaining wall and is starting to move with the extra pressure from the raised ground level. The raised level of the decking means that the fence is at waist level and the occupants of Fern cottage loom over the Paterson's garden—they have privacy but the Paterson's certainly don't. As a doctor, I would also like to mention the effect this is having on the mental well-being. They are very anxious and stressed about the effect this is having on their back garden to the point that they no longer enjoy being there. If you visit their property you would be able to see how much they have enjoyed gardening in the past. I hope that you will seriously consider the implications of this decision, not only for the safe future of the characteristic stone wall but also for the well-being of the occupants next door who have lived there for almost 40 years.

Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Mr Neil Paterson

Address: 23 Queen Street Gourdon Near Montrose

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Having lived in Kirkton of Auchterhouse from the 70s to 2009, I object to the current unapproved construction (fence, deck, soil level changes) and I certainly object to the further extensions being requested in the rough "plans" that have been submitted as part of this application.

Approaching the village from the Tealing road this already high wooden fence stands out like a sore thumb relative to all the other properties visible. The village has managed thus far to retain a lot of the character visible in photographs and paintings from the early 20th century, and this is so polar opposite to the character of the village, its stone dyke walls, old church yard etc.

A common route to the local park used throughout my childhood and amongst others who live on the northside of the village would be along the edge of the farmers field on the east side of this property. I would not allow my own child to use this route as the stone dyke wall on the east side of this property has been damaged from the earthworks to the extent that I strongly believe it will collapse under the weight of snow this winter if not before, sections of it are now leaning 10 inches off plumb.

From the neighbours property the deck and fence has been constructed at such a height and directly on the border it feels like a bird hide, it is so overbearing, and creates a one way relationship where one side may peer over and down at the other whilst themselves enjoying an extreme level of constructed privacy.

The decks construction has also led to a constant reminder of its presence as it resonates like a drum, even from their dogs running around on it.

From the neighbours garden, due to a large percentage of it not having altered soil levels this fence will be on its way to be 3 meters and casts a large shadow particularly during our springs / autumns where the sun can be relatively low. There are flower beds and fruit trees along this southern boundary which will be lost.

Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Miss Leonie Paterson

Address: Frogston Gardens Edinburgh

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment:- My main objection is the effect these changes to Fern Cottage are having & have already had on the adjoining property, Blanerne, & its occupants. The changes & the way in which they have been handled are having a detrimental effect on their health, their being in a constant state of stress & anxiety. Efforts have been made to come up with compromises using verbal communication, but then frustratingly, decisions have been ignored.

- The ground level at Fern Cottage has been raised meaning a fence of reasonable height on that side is intolerably high on Blanerne's side- to raise it higher to at least 10ft on Blanerne's side will only exacerbate this & it is unclear if this will solve the problem of the occupants of Fern Cottage retaining their privacy whilst taking it from Blanerne's.

- The current fence already extends over the existing heritage drystone wall - it doesn't fit with the look of the wall & overshadows part of Blanerne's garden. There is a fruit garden there that is now compromised. The pressure from the soil built up on Fern Cottage's side is also in danger of damaging the drystone wall - a longstanding feature more in keeping with the character of the village & therefore surely a higher priority.

- I'm concerned about what these changes will do to the ability to sell adjoining properties - who would want to move into a house whose neighbours are able to look over into its back garden? Will house prices be affected?

- Blanerne's occupants have lived there for 47 years & the village clearly has been around for much longer than that - it has the look & feel of a heritage village which shouldn't be compromised

- surely priority should be given to existing features & longstanding residents?

- There must be a compromise to be had involving lowering the ground back to original levels to save the wall & keeping but lowering the deck to be at original ground level instead of raising it so that both parties have privacy?



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 25 Albyn Place
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 T: 01224 588866
 F: 01224 589669
 www.ryden.co.uk

Service Manager
 Planning Service
 Angus Council
 County Buildings
 Market Street
 Forfar DD8 3LG

Our Ref: JF/IL/VH
 Email: ian.livingstone@ryden.co.uk

5 October 2017

Dear Sir / Madam

17/00771/FULL - RETROSPECTIVE RAISED DECKING AND RAISED SECTION OF EXISTING BOUNDARY FENCE AT FERN COTTAGE, KIRKTON OF AUCHTERHOUSE, DUNDEE DD3 OQS – LETTER OF OBJECTION

I write on behalf of Mr & Mrs Paterson, who reside at Blanerne, immediately adjacent to Fern Cottage, and were in receipt of a letter of notification with respect of the retrospective application dated 15 September 2017. My clients are aggrieved at the scale and positioning of both the erected decking and fence which sit immediately adjacent to the dry stone dyke defining the shared border between Fern Cottage and Blanerne. These features are incongruous with the scale and nature of the residential context and exert an unacceptable impact upon the amenity of my clients' property and their levels of privacy and amenity.

The retrospective planning application submitted by the applicant lacks detail and does not accurately reflect the original grounds levels or the constructed finished floor levels. My clients' enjoyment of their home and rear garden stands to be substantially impacted and for this reason the planning application should be refused and the rear garden of the applicant's property returned to its previous state and original ground levels and the decking and fencing significantly reduced in scale and height.

Background & Ground Raising

Since the applicant moved into Fern Cottage in 2016, a number of alterations have been made to the external curtilage of the property. This has involved the formation of a surface car parking area at the front elevation of the dwelling and the redistribution of excavated soils to the rear garden. This has impacted the ground levels along the boundary of the property shares with Blanerne and resultantly placed additional pressure onto the dry stone dyke, which my clients have restored and maintained to a high standard during their 47 year tenure at the property.

Edinburgh
 0131 225 6612

Glasgow
 0141 204 3838

Leeds
 0113 243 6777

Dundee
 01382 227900

London
 020 7436 1212

Manchester
 0161 249 9778

This has also enabled the applicant to manipulate what has been perceived as the original ground levels with the submitted cross section drawings. These are of insufficient detail and fail to conclusively identify the original ground levels prior to the land raising through the addition of soil and the unconsented construction of the decking extending to the rear of the property. The planning authority cannot make an informed planning decision based on such inept supporting information. The original ordnance datum levels must be identified to allow the scale and height of both the constructed decking and fence and ground levels to be assessed competently.

To assist with this, Mr Paterson, who has worked as a civil engineer for his entire career, has undertaken measurements and produced the plans now attached as Appendix 1 and Appendix 2. These provide a more accurate and realistic reflection of the original ground levels taking into consideration the falling topography of the rear garden at Fern Cottage moving east and north, illustrated by Photograph 1, enclosed. These plans show an elevated ground level of approximately 600mm, with the decking erected at 1.13m above dubbed '2016 ground levels' at its highest point. These levels justify the need for a retrospective planning application as this breaches the 0.5m permitted height under domestic permitted development rights.

Amenity

Policy DS4 of the extant Angus Local Development Plan (LDP) states that *'development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties'*. The planning authority are required to consider the impacts of the development on *'residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing'*.

From the enclosed Photograph 2, the erected levels of the decking relative to the boundary wall of my clients' dwelling is clear. The applicant's deck chairs are visible adjacent to the rear bi-folding patio doors, providing clear sight lines into the rear garden of Blanerne above the boundary fence for anyone using the decking. This will have a detrimental impact on my clients' privacy and enjoyment of their rear garden. Any suggestion to raise the fence higher would only serve to exacerbate the problem.

Furthermore, due to differences in ground levels within my client's property and Fern Cottage, the erected fence becomes more prominent in scale and height. This will limit the quantity of daylight reaching my clients' garden where various fruit plants are located adjacent to the dry stone dyke. This will have a limiting influence on their growth and extend the length of the shadow cast across my clients' rear garden. Therefore in respect of scale, siting and the detrimental impact the decking and fencing as constructed imposes on the levels of the residential amenity at Blanerne, this application should be refused.

Householder / Domestic Development

Policy TC4 of the extant Angus LDP is relative to Householder / Domestic Development. The Policy states that alterations will be supported where the siting, design, scale or massing of the proposal, does not:

- *Adversely affect the residential amenity enjoyed by the house or surrounding domestic properties;*
- *Detrimentially affect the character and/or appearance of the building, site or surrounding area; and*
- *Result in the overdevelopment of the plot or a loss of garden ground.*

Accompanying text stipulates that developments should '*maintain the quality of the character of the surrounding area*' and '*respect the amenity of adjacent neighbouring properties and their curtilages*'

It is firmly contended that the development as erected fails to comply with the content of Policy TC4. The scale and massing of the fence and decking is inappropriate in the context of the surrounding residential environment and the overbearing nature of the fence detracts from the character of the setting created and enhanced by the well maintained dry stone dyke. The integrity of this feature has been detrimentally impacted by recent land raising and the presence of the fence immediately abutting the wall. This has forced the wall to move in places, highlighted by Photograph 3 enclosed.

Planning Advice Note

Helpfully, Angus Council has produced a Planning Advice Note on Householder Development to complement the Local Development Plan content. This was published in September 2016. Pertinent to the application for the erected decking and fencing, page 13 of the document advises that decking should '*be developed away from the mutual boundary between adjacent properties*' and '*be developed at, or as close to, ground level as possible (taking account of any level changes within the curtilage of the existing residential property).*'

It is abundantly clear that the applicant has shown scant regard for this advice, having proceeded to raise ground levels and construct an area of decking which exceeds that permissible under permitted development rights. Photograph 4 illustrates the proximity of the fence, which marks the edge of the applicant's decking, to the mutual boundary of Fern Cottage and Blanerne. This layout directly contradicts the advice given by the planning authority's approved note and as a result, the area of decking now allows direct overlooking into my clients' rear garden.

The lower ground levels within my clients' rear garden have not been considered and the fencing as erected is now considered excessively tall. This is illustrated by Photograph 5. Ultimately this is in direct conflict with the planning authority's advice on Boundary Treatments, found on page 17 of the note.

5 October 2017

4

Alternative Location

The 'L' shape footprint of the applicant's home would allow an alternative location for the proposed decking at a position further south on the property's rear elevation. This would contribute to a more secluded and private location which would be mutually beneficial for my clients as well as the applicant. This should have been considered prior to the applicant proceeding with the unconsented construction for which he now seeks planning permission.

Summary

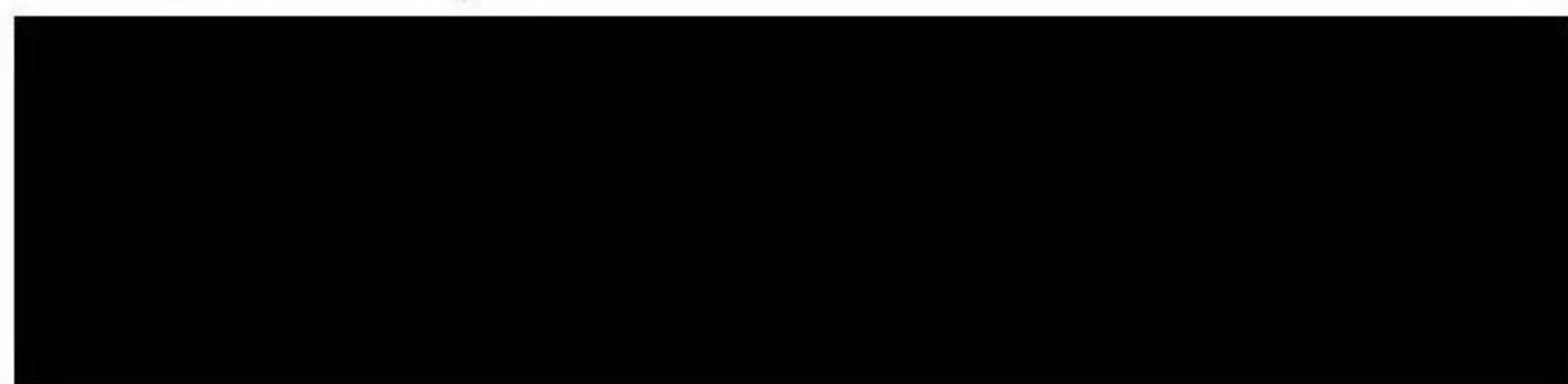
My clients firmly contend that the decking and fencing as erected imposes a detrimental impact on the residential amenity of the rear garden at Blanerne and restricts their enjoyment of their private area. They are disappointed that the applicant failed to divulge the true extent and scale of the decking and fence prior to construction and that the development proceeded without the requisite permission. Following a meeting with the Case Officer on Monday 2 October, my clients would also like to invite Pauline Chalmers to visit their property and view the development from the rear garden in order to ascertain the scale and massing of this experienced from my clients' perspective.

The applicant's application provides insufficient information upon which to base a planning decision as original ground levels cannot be conclusively identified. The onus is firmly on the applicant to address this situation and clarify this point which he has failed to in an amended cross sectional drawings. No decision should be taken until such times as this information is received and verified by the planning authority.

The decking and fencing as constructed fail to comply with the content of Policy D4 Amenity and Policy TC4 Householder / Domestic Development and should therefore be refused permission. The applicant has disregarded the Council's Planning Advice Note relative to decking proximity to mutual boundaries and the design and nature of boundary treatments, showing no consideration for my clients' residential amenity. The scale and massing of the erected development is inappropriate and fails to integrate successfully with the context of the residential environment.

Based on the foregoing, it is respectfully requested that the application is refused.

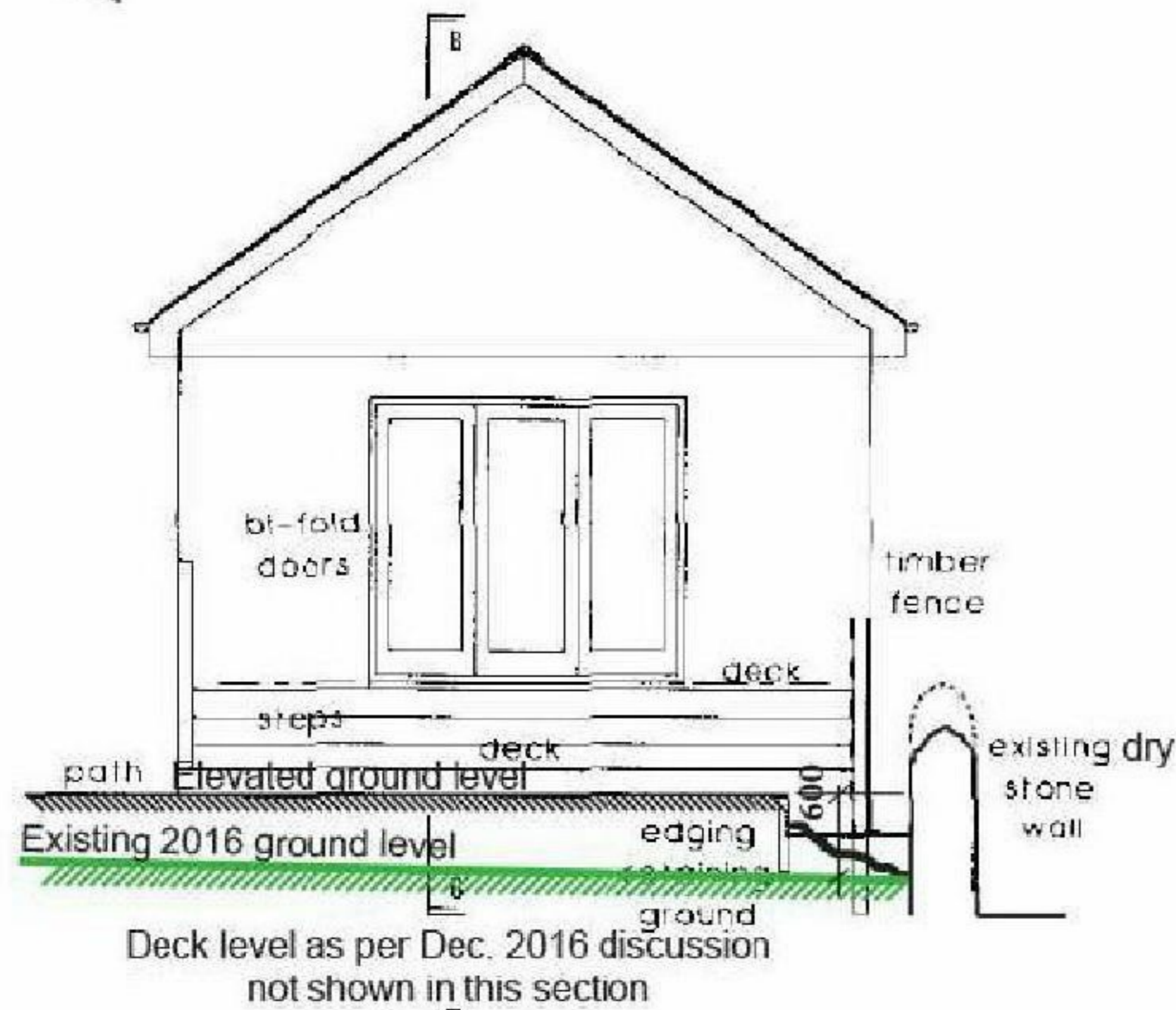
Yours sincerely



Ian Livingstone MRTPI
Senior Planning Consultant

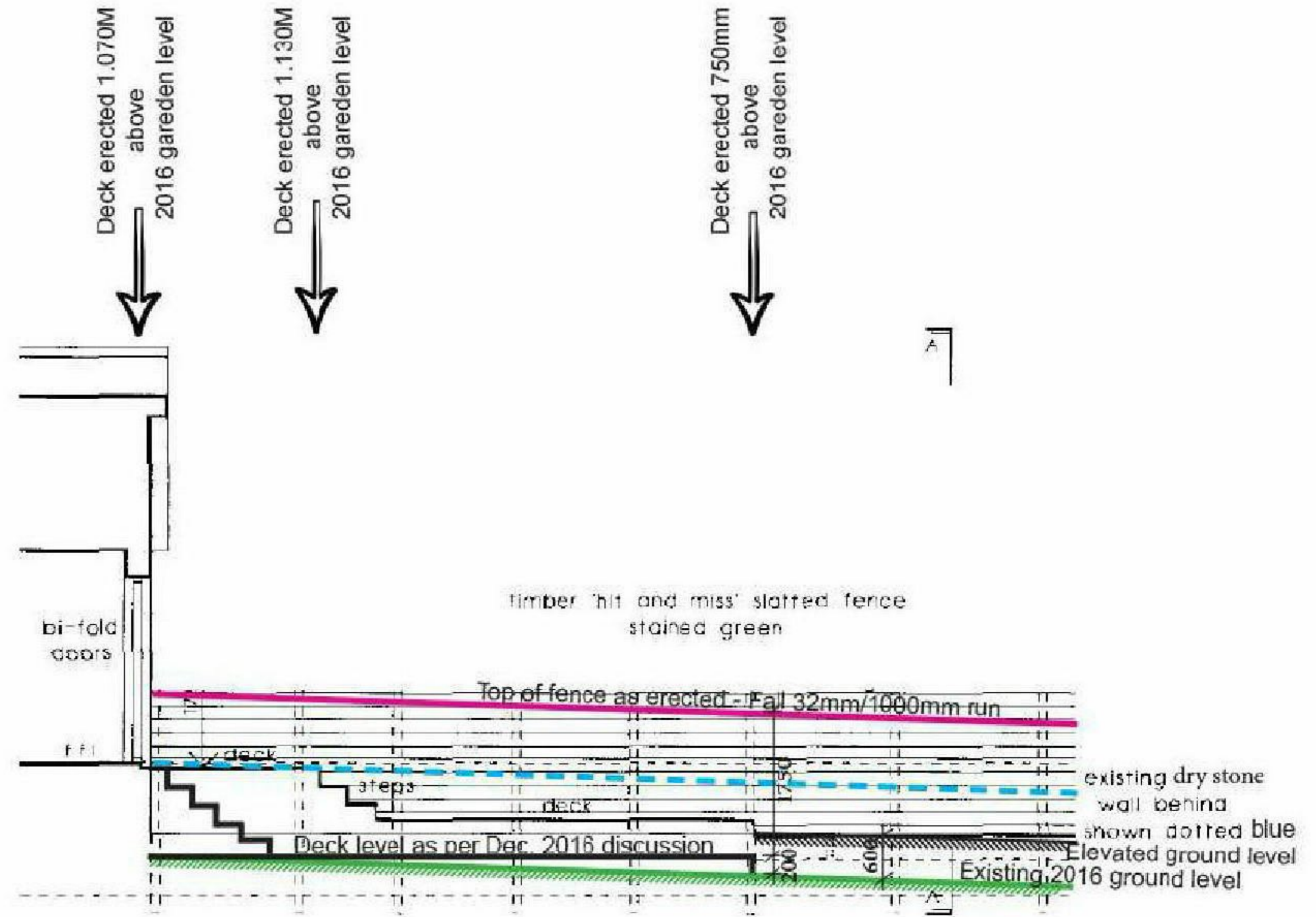
cc. M. Paterson, Blanerne, Kirkton of Auchterhouse, Dundee, DD3 0QS

Appendix 1



section aa (south to north)

scale 1:100



section bb (elevation of fence from south)

scale 1:100

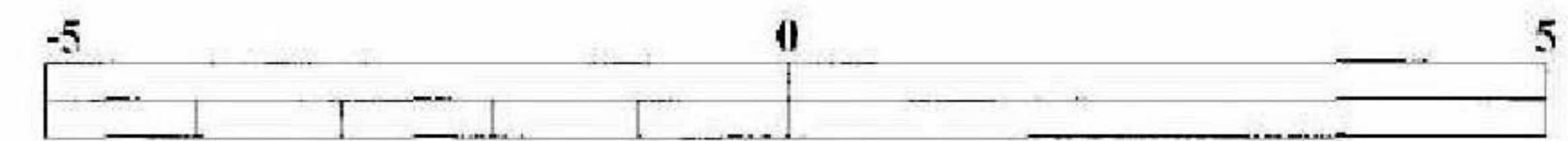
PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.

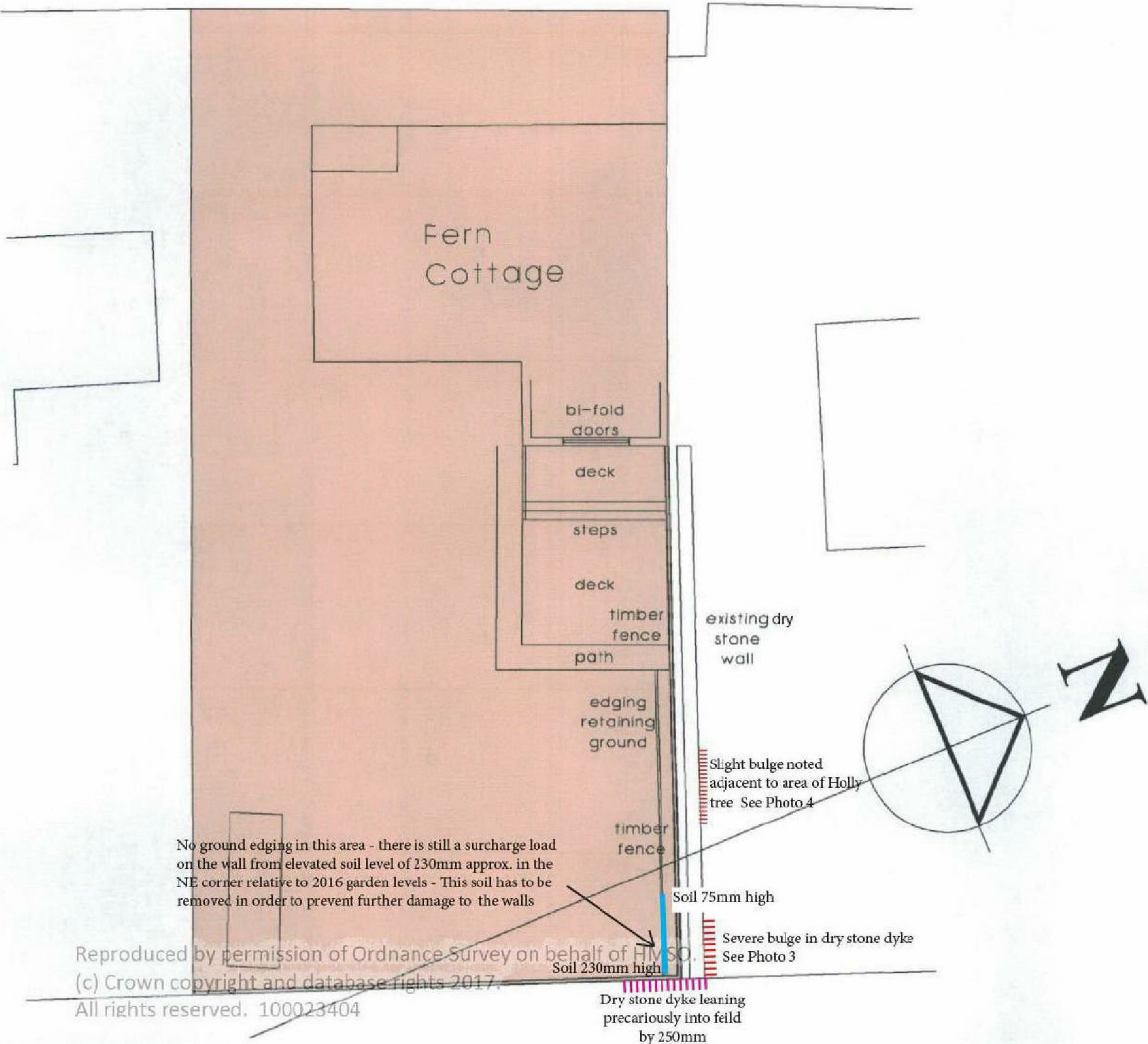
September 2017 Rev A

Rev A Deck levels as per December 2016 discussion/details shown on drawing
 Elevated ground levels identified
 Existing 2016 ground levels added
 Dimensions added



scale 1:100

Appendix 2



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site plan

scale 1:200

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.



scale 1:200

SEPTEMBER 2017 Rev A

Rev A Movements to drystone dyke noted

Elevated soil levels at NE corner relative to 2016 ground levels noted

Photograph 1



Photograph 2



Photograph 3



Photograph 4



Photograph 5



From: [REDACTED]
Sent: 6 Oct 2017 11:29:06 +0100
To: ChalmersPE
Subject: Re: Fern Cottage, Kirkton Of Auchterhouse 17/00771/FUL
Importance: Normal

Dear Pauline

Thank you for your email informing me that a revised drawing has been submitted.

On perusing this drawing I note that Mr McNaughton's indication for the 2016 garden levels, dotted in red, is inaccurate in so much that the original garden levels are some 300+mm lower than shown. If his depiction of garden levels was correct then you would be looking at his lawn and flower bed to the south east of his deck. Instead you are looking at backfilled soil.

I would refer you to Rev A of this drawing which gives a far more accurate indication for the original garden levels.

It is essential that the original garden levels be established by the Council which could easily be verified by the digging of some trial pits down to the lawn (which would now be rotted turf)

Please find enclosed four photos taken from the sales brochure for Fern Cottage which shows the garden as it was in 2016

Yours sincerely

Malcolm Ian Paterson

From: ChalmersPE
Sent: Wednesday, October 4, 2017 12:01 PM
To: [REDACTED]
Subject: Fern Cottage, Kirkton Of Auchterhouse 17/00771/FUL

Dear Mr Paterson

A revised drawing has been submitted, the agent has indicated that various measurements he took are correct within the applicants garden but he has added some more detail to the plan.

The application and updated plan can be viewed [here](#)

If you have comments to make and wish to submit a representation, you can do so on the above link, once you have inserted the application reference you will be taken to the application page and to the right of the page you will find the tab to **make a comment**

Your sincerely

Pauline Chalmers: Development Standards Technician: Angus Council: Communities:
Planning & Place: County Buildings: Market Street: Forfar: DD8 3LG

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Comments for Planning Application 17/00771/FULL

Application Summary

Application Number: 17/00771/FULL

Address: Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS

Proposal: Retrospective Raised Decking and Raise Section of Existing Boundary Fence

Case Officer: Pauline Chalmers

Customer Details

Name: Ms Mo Wiltosz

Address: Four Winds Old Whiskey Road Auchterhouse

Comment Details

Commenter Type: Member of Public

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: I object to this Planning Application on the basis of :

1. The timber fence from Blanerne's side is too high and overbearing. It is also out of character to a dry stone wall and the village itself. To raise the fence even higher would only serve to exacerbate this objection.
2. The deck has been constructed outwith the maximum permitted height of 0.5M above ground level, as per domestic permitted rights. The deck has been constructed at a height of 1.1M approximately above ground level and is in close proximity to the mutual boundary wall. This deck should have been constructed at ground level, or thereby, and away from the mutual boundary wall.
3. The earthworks carried out in close proximity to the mutual boundary wall have raised the garden levels to within 500mm of the top of the mutual dry stone wall. This high level of soil will eventually cause damage to this wall and as such the applicant should remove this soil to reinstate the ground to the previous levels.

From: [REDACTED]
Sent: Mon, 30 Oct 2017 11:25:29 +0000
To: ChalmersPE
Cc: AgnewMJ; CoweyKJ
Subject: Fern Cottage, Kirkton Of Auchterhouse 17/00771/FUL - Ascertaining original ground levels from photographs taken in 2016
Attachments: Soil levels as determined from Photograph of East Elevation.pdf
Importance: Normal

Dear Pauline

Please find enclosed my calculations of soil levels as determined from the photograph of the East elevation of Fern Cottage taken in 2016.

The conclusion of this exercise is that the dimensions that I have previously given you in Revision A and, subsequently, Revision B of Proposed Elevations, Ground Levels & Sections aa & bb, for the original ground levels, the height of the deck and the fence above these original ground levels are all accurate.

I trust this is in order, however, if you require any further information please do not hesitate to contact me.

Yours sincerely

Malcolm Ian Paterson

Original Soil levels as determined from Photograph of East Elevation

On the North gable of Fern Cottage there is a cut off level of the roughcast which gives a clear indication of the soil levels at the time of roughcasting.

From this roughcast cut off level the height to the top of the erected fence is 1.990M and to the top of the Fyfe Stone (as seen on the East elevation) is 46½" (1.180M). The height from the top of the Fyfe Stone to the top of the fence is 810mm.

From Photo 1 you can see that there is a fall in garden levels from South to North.

From Photo 2 the level of the soil from the top of the Fyfe Stone can be determined by knowing the coursing of the Fyfe Stone and interpolation.

The Fyfe Stone was manufactured in nominal sizes of 9", 6" and 3" heights and sized to course in with imperial sized common brickwork at 3¼" coursing. i.e. 2No 6" stones (or 1No 6" and 2No 3" stones) courses out at 13" (this can be confirmed by checking out the as built Fyfe Stone on both properties). From the Photograph No2, to the left of the Half Oak Whisky Barrel Planter, you can make out that there are 3No 6" stones and 3No 3" stones which equates to a height of 29¼" from the top of the Fyfe Stone to the paving slab walkway which is 36" wide. By opening this photo in Photoshop with rulers enabled you can ascertain by scaling/interpolation that the height from the slab walkway to the flower bed is $29.25" \div 13.7 \times 8 = 17.08"$. This gives you an overall height from the top of the Fyfe Stone to the soil level at this location of $(29.25 + 17.08 = 46.33"$ (1.178M).

It is worth noting that this calculated level is within a ⅛" of the gable soil level at the roughcast cut off level.

The height of the fence at this location (36" from the East elevation of Fern Cottage) due to its fall of 30mm from West to East is 780mm above the top of the Fyfe Stone. This gives an overall height for the erected fence relative to this location, from original ground level, of $1.178 + 780 = 1.958\text{M}$. If you add in any fall from South to North then the height of the fence from original garden levels is approaching 2.000M at the Dry Stone Dyke boundary. As the deck is 83mm below the top of the Fyfe Stone the deck has been constructed, at this location, at a height of $1.178 - 83 = 1.095\text{M}$ above original soil level – any fall taken into account from the South to North adds to this height at the boundary.

These ascertained levels, at this location, clearly indicate that when the garden was originally landscaped that there was no soil elevation, whatsoever, implemented at the house location. It also confirms that the dimensions that I have previously given you in Revision A and, subsequently, Revision B of Proposed Elevations, Ground Levels & Sections aa & bb, for the original ground levels, the height of the deck and fence above these original ground levels are all accurate.

On Photograph 2 – enclosed as separate file - I have indicated by white lines the 2No 13” courses and the 3¼” course.

Photograph 1



Photograph 2



Time Line of Discussions/Events/Objections

The Deck

In early December/mid December 2016 Ian informed me that he was taking out the lounge window and replacing it with a bi-folding door and that "the wife" wanted a deck erected to tie in with their FFL which he said he told her that they couldn't do that because the deck, at that level, would virtually be at the top of the boundary drystone dyke which he said would completely dominate and overlook my garden and that he told her that they would have to erect the deck at low level with access to it via a flight of steps.

I expressed surprise that his FFL was at that height relative to the boundary wall and agreed with him that a deck erected at that level was inappropriate and unacceptable for the very reasons that he had just quoted. In further discussion he confirmed that the deck would be constructed hard against the boundary wall and erected as low as possible –circa ground level – in order to maximise the height from the deck to the top of the boundary wall. I confirmed that I had no objections to his deck proposals.

This was the one and only time that he discussed the deck details with me and in the absence of any further discussion on the subject I took it that when the deck was installed it would be installed as per the details given

On drawing Rev A, Section bb, I have shown the deck constructed in total compliance with the details/levels given to me in December 2016. Using a height of 1.750M from the top of the fence to the deck at the east edge of the deck would give a step of 200mm down to the 2016 garden levels. With the deck constructed level, and due to the existing ground level slope/falls, the deck would end up 24mm approx. below the 2016 garden levels at the house elevation.

Fence

Around about the beginning of February 2017, Ian informed me that he was proposing to erect a fence due to his concern for his dogs jumping over the wall. I replied that this would not concern me as dogs can be trained not to jump over walls. The previous owner, who also had a dog, had used 500mm of chicken wire along the top of the wall and it worked and he could do that. He said he wasn't keen on that. He wanted to erect an independent fence. Looking over the wall I pointed out that he had made it easier for the dogs to jump over the wall by the fact that he had dumped all his excess soil, from the elimination of his front garden (for parking), adjacent to the boundary drystone wall. This dumping of excess soil had raised the garden level by 200+mm in this area and by 450+mm in the NE corner where "the wife" wanted a raised flower bed.

I went on to say that in 1970 the drystone boundary dyke was a free standing wall and gave him a 1969 photo confirming this – photo enclosed.



I also pointed out that the dyke was not designed and constructed as a retaining wall and that his dumped soil was putting a surcharge load onto this wall, which would result in instability/movement of this wall. He claimed that the dumped soil was only dumped there on a temporary basis and that he would be scraping it up and removing it from site at a later date to leave the ground levels as they were when he purchased the property in 2016. In the meantime I asked him to remove said soil back from the wall to eliminate any surcharge loading.

I then suggested that any fence erected would have to have a minimal visual impact on the boundary wall and would have to be as transparent as possible so as not to impede direct sunlight into this area of garden. It is a particularly wet area and I didn't want a solid fence, which would exacerbate the problem. I stated that I would have no objections to a fence constructed out of mesh similar to that he had used for his dog compound or diamond/square lattice screening timber fence panels. Either of these materials would have minimal effect on direct sunlight. He appeared to take on board my suggestions as he gave no comment or suggested any alternatives.

It was some 3+ weeks later that I noticed a delivery of timber planks and posts had been made to his property that, at the next opportunity I raised the subject of the fence with him. His reply was that "the wife" did not want mesh and that it had to be constructed out of timber. I again repeated that this was not the type of fence that I wanted to see on this

boundary as it would impede direct sunlight and that a drystone dyke overtopped by a skelp of timber fencing would take away the characteristics, aesthetics of this type of wall and would be overbearing. I also stated that I was under the impression that any boundary construction was down to the agreement of both parties and as such I would not be agreeing to a solid timber fence. I asked him to discuss my observations with his wife and let me know the outcome.

In mid-March he informed me that he was going to proceed to erect a solid hit and miss timber fence and indicated a height that was over 2.0M high from my side of the boundary. I stated that the height proposed was ridiculous and certainly not required to be that height to stop his dogs from jumping over the wall. He then suggested that if I was not happy with what he was doing perhaps I should contact the Council to see what they had to say on the matter.

I promptly did this and was surprised to be informed that several days previously that Ian had Council representatives out to his property to discuss the boundary fence. I was now given the same advice that he was given - he could erect a fence, material of his choice, providing the fence was not erected any higher than 2.0M from the original ground level (not his present elevated levels), he did not require Planning Permission or my approval.

When I contacted Ian next day I expressed my disappointment at his having the Council out and not involving myself in the onsite discussion. He point blank denied having the Council out about the fence and it was only when I pointed out that the Council had photos of the garden showing the deposited heaps of soil dotted round the garden that he then admitted that he had the Council out but that was to discuss his bi-folding doors and deck construction. If this was the case then I am surprised that he subsequently built the deck at a maximum height of 1.130M above original 2016 garden levels, when 500mm is the maximum permitted level. As he was now proceeding with the fence construction I again requested that he completed his task of removing all dumped excess soil adjacent to the boundary wall to leave the garden levels within this area at 2016 levels as it would be more difficult to remove after the fence was erected. He reiterated that all the dumped soil would be removed offsite at a later date.

On completion of the fence erection I checked the fence height and found that the height of the fence followed the original slope of the garden levels at a height of approximately 1.950M, i.e. the height of the fence is under the permitted height of 2.0M. The fence, drystone wall and soil levels all have a similar fall from West to East of 32mm per 1.00M run.

Deck Construction

He then proceeded to remove all dumped soil from the area of the deck and deposited same in a spoil heap in the remaining area of his garden. He also removed all top soil from

the area of his garage drive and added this to the spoil heap ready, I thought, to be removed from site.

On constructing the deck it soon became obvious that he was not erecting the deck to the levels he agreed with me in December 2016 but was erecting the deck to marry in with his floor level – a level which **he** had rejected in December 2016 as being inappropriate and unacceptable due to its height relative to the boundary wall – the erection of a fence does not alter the criteria.

Significant Earthworks

To add insult to injury, and despite assuring me on 3 separate occasions that he was going to remove all dumped excess soil within the rear garden area offsite he did not do this and instead he spread the spoil heap over the remaining area of the rear garden. This has resulted in further elevating the garden levels adjacent to the boundary drystone dyke by approximately 450mm adjacent to the NE corner of his garden and by 600mm at the NE corner of the lower deck from the previous 2016 levels.

On checking the soil levels on 29.09.2017, adjacent to the boundary wall, I find that in the NE corner of his garden, where “the wife” wants a mounded flower bed that relative to the previous 2016 levels the soil is still elevated against the boundary wall by 230mm approx. This soil has to be removed in order to prevent further damage to the walls – there is a severe bulge in the wall into my garden – see photo 1 - and the top of the East wall is leaning precariously into the field – see photo 2.

Photograph 1



Photograph 2



In other areas there is evidence that, due to weathering, etc. there has been soil migration from the elevated soil level filling the gap adjacent to the wall, on his side. I find the soil levels are now anything from 25mm to 50+mm higher than when I previously checked them in May 2017.

It is essential that Mr McNaughton should reinstate the garden back to the previous levels, which prevailed in 2016.

For the record the original owner in 1970 had elevated the soil levels adjacent to the boundary wall by approx. 300 mm at the NE corner of the garden (where the greenhouse was located and was the lowest part of the garden) and by approx. 300 mm at the location of the NE corner elevation of the lower deck and left the soil level at the house elevation as they were when the house was constructed which, at the very most, was only approx. 50mm above the roughcast cut off level on the gable. He then graded the garden with a cross fall from the garage drive to these levels at the North wall. In 1970, in ball park terms, the height of the drystone dyke on Blanerne's side was 4'-0" at Fern Cottage's gable to 4'-6" at midpoint and 4'-6" at the SE corner. After Fern Cottage's landscaping the height of the wall from Fern Cottage's perspective was 4'-0" at the house East elevation to 3'-6" at midpoint and 3'-6" at the NE corner of the garden - the enclosed 4No photos shows the garden in 2016.

Photograph 3



Photograph 4



Photograph 5



Photograph 6



Conclusions and Objections

Elevated Soil Levels

Document 17/00106/UNWKS refers to *“ground levels significantly altered at the property”*.

R. Parry’s email of 18 July 2017 states that *“the works to raise the ground levels would also require planning permission”*

On reading through the correspondence I can find no reference to seeking Planning Permission for the significant earthworks that have been carried out. On looking through the drawings I again can’t find any reference to these works – i.e. in raising the soil levels by 600mm adjacent to the boundary wall. I would expect to see references to the original ground levels, the elevated ground levels and in particular all referenced to the existing drystone dyke boundary wall, all fully dimensioned in order that the full extent of the works can easily be ascertained.

There is evidence that, as of today’s date, there has been soil migration into the gap adjacent to the wall from the elevated soil level. I am certain that over time this soil

migration will continue and eventually to exert an unacceptable surcharge load onto the wall which will cause further damage/bulging.

It would be prudent not to allow this to happen by requesting that Mr. McNaughton reinstates the ground to the previous levels that prevailed in 2016. After all, this is what he informed me he was going to do on three separate occasions.

The Deck

On checking section bb I find that the drawings are inaccurate and give no information relative to the decks construction to the original ground levels. There are no dimensions or any indication of original 2016 ground levels. It is impossible from the current submission drawings for anyone to determine the height, from original ground levels, that this deck has been constructed to. The elevation shown on section bb is inaccurate in so much that the fence, drystone dyke and original garden levels all have a West to East fall of 32mm per 1.000M run. At section aa, due to the above noted falls, the drystone wall is shown too high. Existing 2016 ground levels and the soil elevation are not shown/identified.

For the records the soil elevation at this location is approx. 600mm and comes in at just under 500mm from the top of the drystone dyke.

I have added the relevant information on the section and plan Rev A drawings.

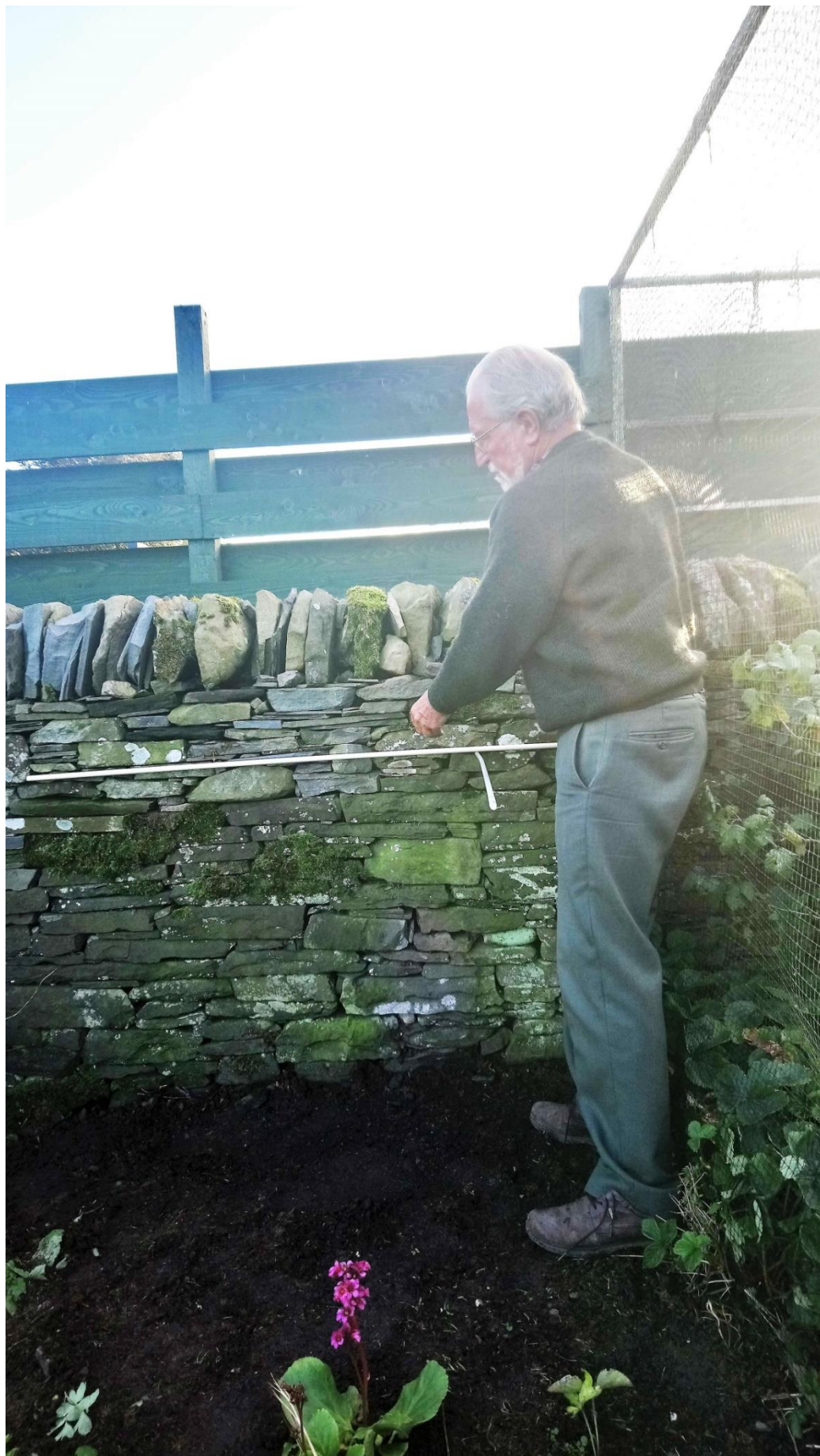
26-10-2017 I have now revised this drawing to Rev B by adding dimensions for the differential ground levels on either side of the boundary wall and the height of the wall.

See enclosed photos showing deck and elevated soil levels relative to the dry stone dyke.

Deck Level relative to Dry Stone Dyke



Elevated soil level relative to the Dry Stone Dyke



Mr. McNaughton blatantly erected the deck to levels (1.070M, 1.130M and 750mm above 2016 ground levels) that **he**, himself, rejected in December 2016 as being inappropriate and unacceptable due to its height to the boundary wall – the erection of a fence does not alter the criteria. As he has exceeded the maximum permitted height of 0.5M, which his decking contractor should certainly have had knowledge of, he should undertake works to reduce the height of the decking and if he were to construct the deck in accordance with the details he gave me in December 2016 then there would be need to increase the height of the fence for any privacy concerns that he might have.

Fence

The fence as erected is already 2.200+M high from my side of the boundary and has already reduced, due to its shadow footprint, the amount of sunlight coming into my flower beds and fruit bushes.

Because Mr. McNaughton has put in a deck at a maximum height of 1.130M, well in excess of the 500mm permitted height above original ground levels, should not now be used as a reason for extending the height of the fence by another 900mm. This would give a fence of with an overall height of 3.100M i.e. a fence that would be over 10'-2" tall on my south facing boundary. A fence of this height would be overbearing, unsightly and out of character to that of a drystone dyke. It would cut even more sunlight coming onto my fruit bushes and as we all know fruit requires direct sunlight to ripen.

As stated previously, had the deck been constructed as per the details he gave me in December 2016, there would be no need to raise the height of the fence. Surely, the correct solution, considering the degree of non-compliance, is for the deck to be dismantled and reconstructed at ground level and away from adjacent to the mutual boundary wall and for the garden to be reinstated to 2016 levels.

I certainly do not want the fence to be raised in height as the fence, as currently erected, is already overpowering.

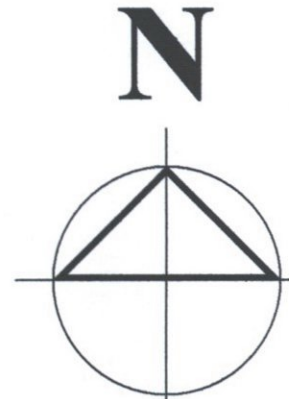
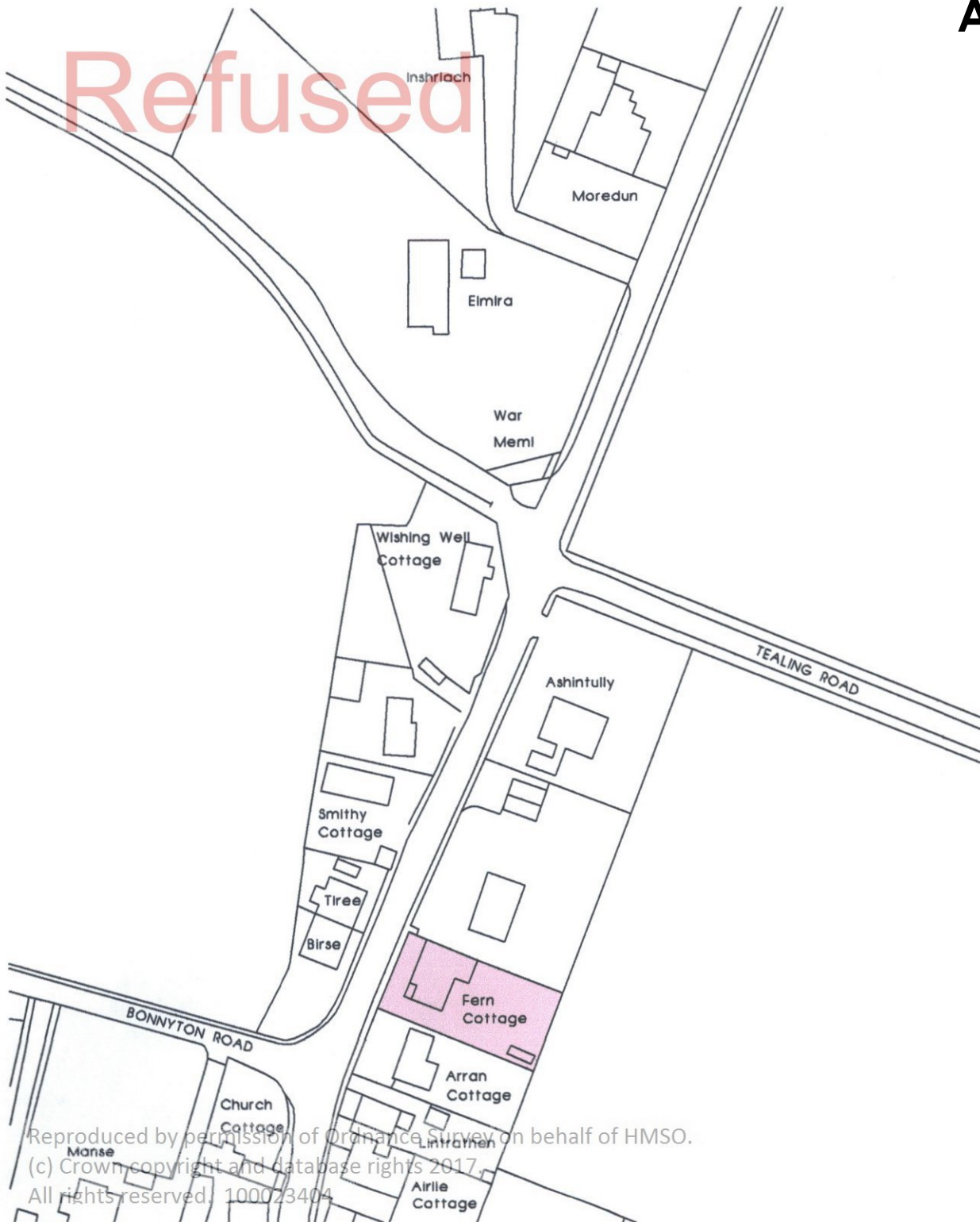
Based on the aforementioned this retrospective planning application should respectively be refused.

AC15



AC16





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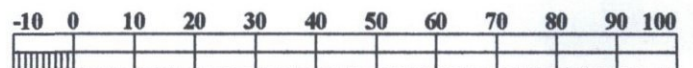
location plan

scale 1:1250

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.

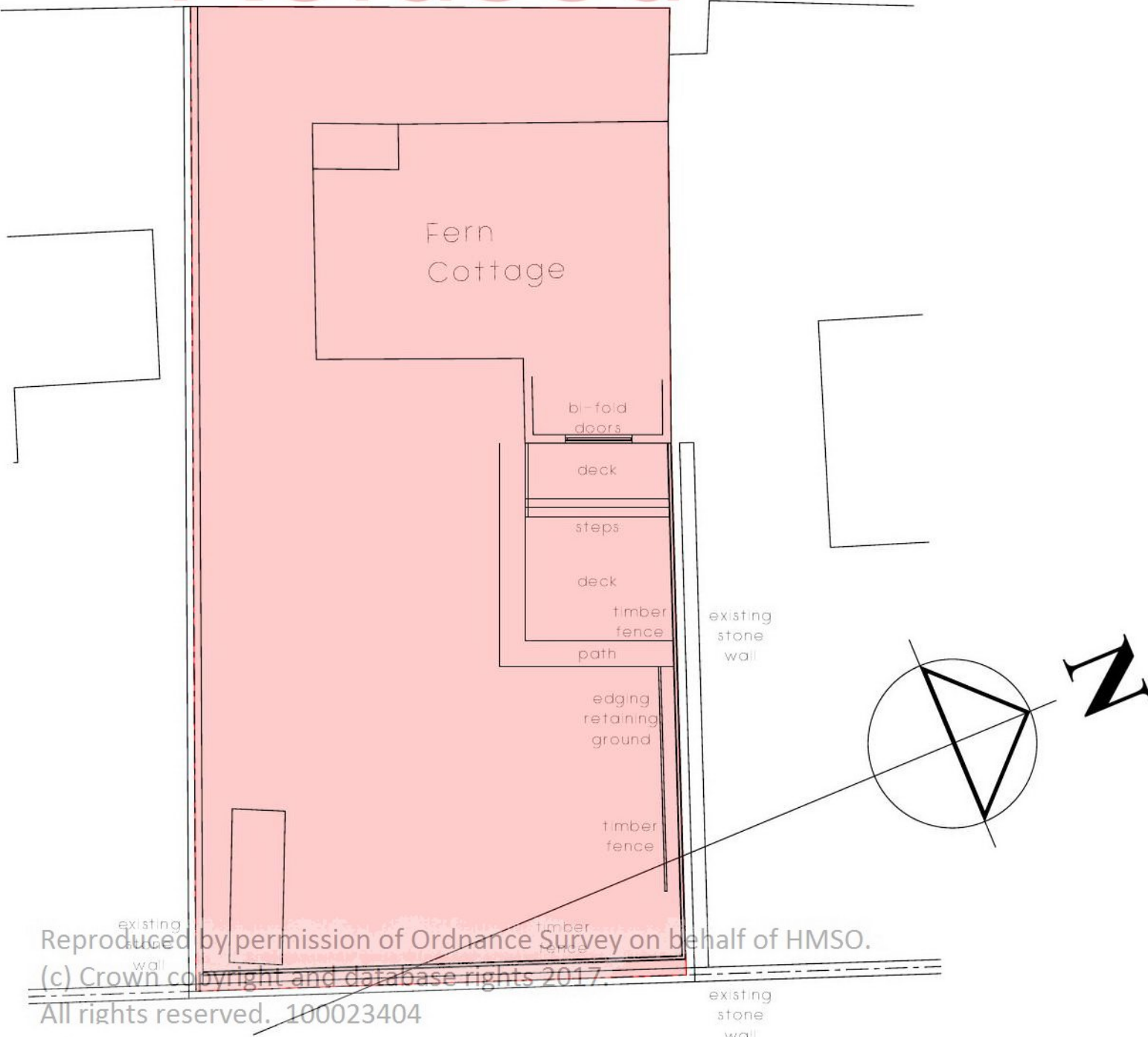


scale 1:1250

SEPTEMBER 2017

Refused

AC18



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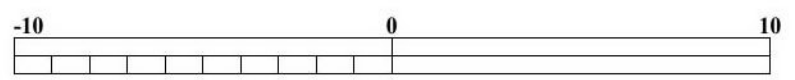
site plan

scale 1:200 @ A3P

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

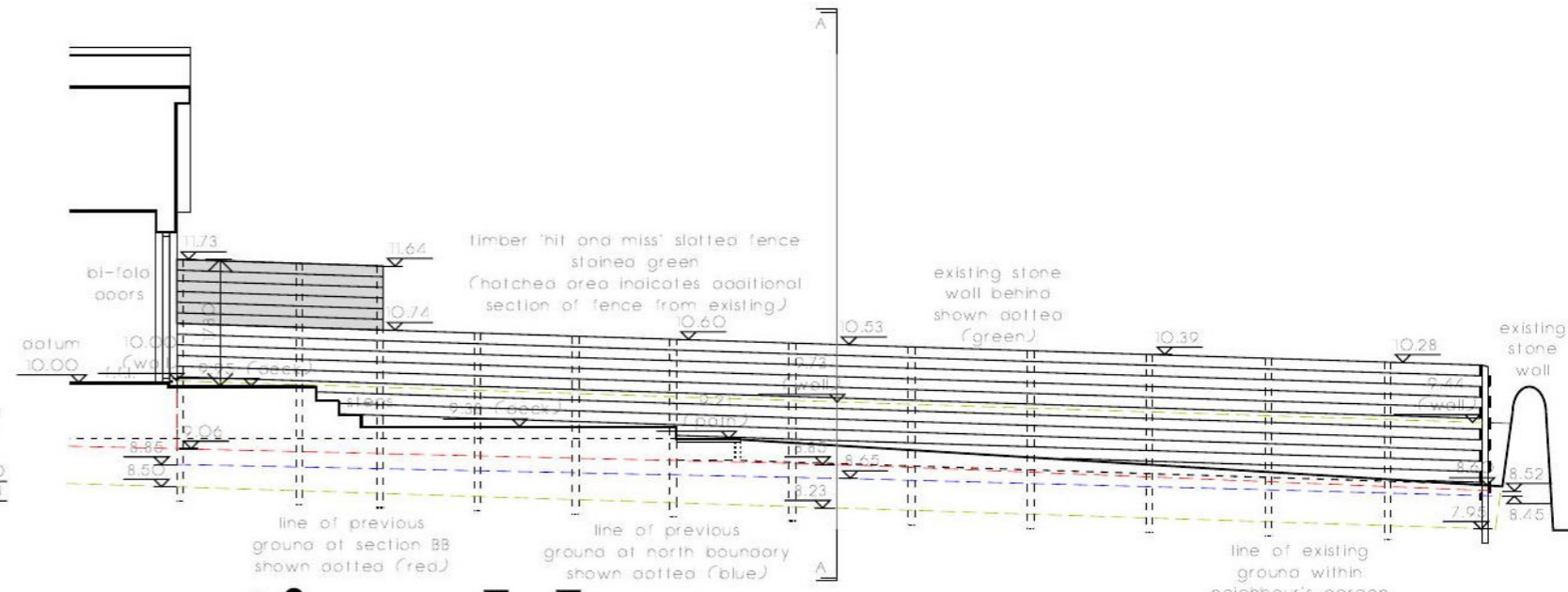
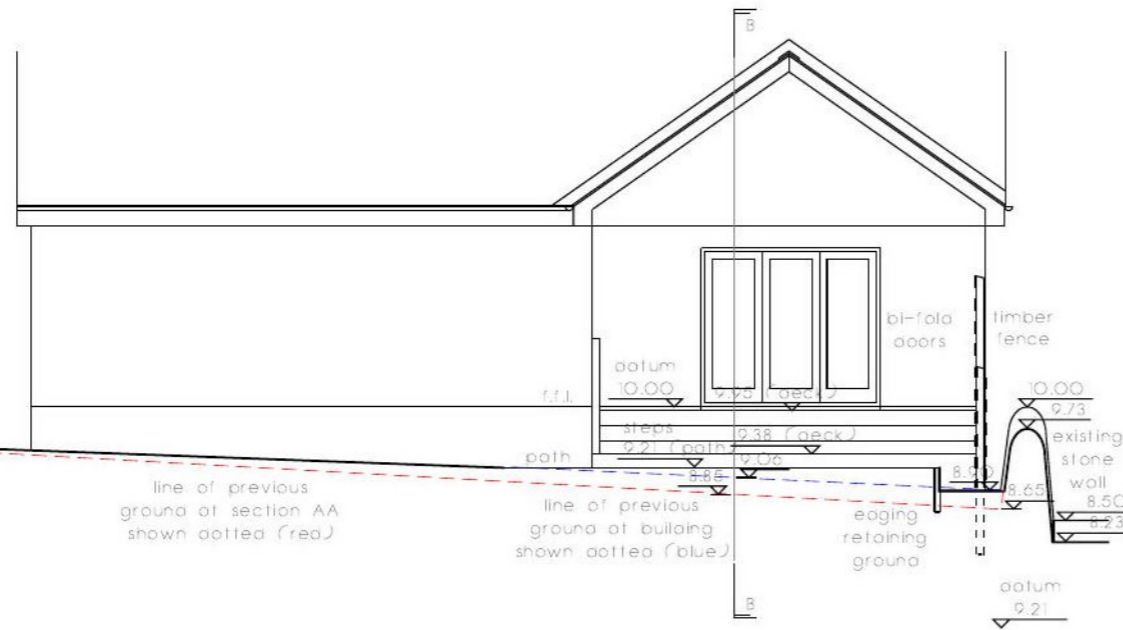
KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.



SEPTEMBER 2017 (AMENDED OCTOBER 2017)

scale 1:200

Refused



section aa (south to north)

scale 1:100 @ A2L

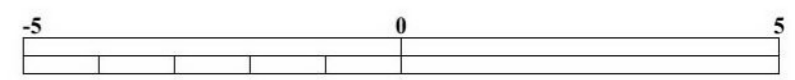
section bb (elevation of fence from south)

scale 1:100 @ A2L

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

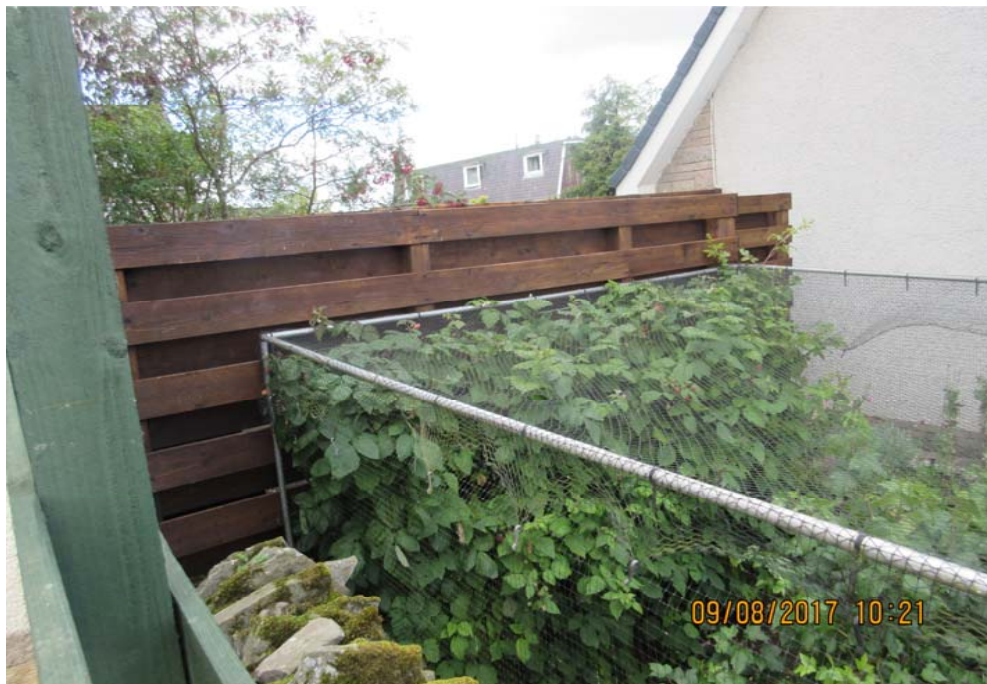
FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.



scale 1:100

SEPTEMBER 2017 (AMENDED OCTOBER 2017)







TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013

PLANNING PERMISSION REFUSAL
REFERENCE : 17/00771/FULL

To **Mr & Ms Ian & Irene McNaughton & Grant**
Fern Cottage
Kirkton Of Auchterhouse
Dundee
DD3 0QS

With reference to your application dated 11 September 2017 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Retrospective Raised Decking and Raise Section of Existing Boundary Fence at Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS for Mr & Ms Ian & Irene McNaughton & Grant

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Refuse Planning Permission (Delegated Decision)** for the said development in accordance with the particulars given in the application and plans docketed as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. That the proposed development by virtue of the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north.

Amendments:

1. The agent has supplied revised drawings which show revisions to the drawings to show the existing site, proposed scheme and the neighbour's garden more clearly.

Dated this **19 December 2017**

Kate Cowey - Service Manager
Angus Council
Place
Angus House
Orchardbank Business Park
Forfar DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

This permission will lapse 3 years from the date of this decision, unless there is a specific condition relating to the duration of the permission or development has commenced by that date.

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Place
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 01307 473212 / 473207 / 473335

E-mail: planning@angus.gov.uk

Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to Directorate for Planning & Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 2

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

PLANNING

Your experience with Planning

Please indicate whether you agree or disagree with the following statements about your most recent experience of the Council's handling of the planning application in which you had an interest.

Q.1 I was given the advice and help I needed to submit my application/representation:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.2 The Council kept me informed about the progress of the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.3 The Council dealt promptly with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.4 The Council dealt helpfully with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.5 I understand the reasons for the decision made on the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.6 I feel that I was treated fairly and that my view point was listened to:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OVERALL SATISFACTION: Overall satisfaction with the service:

Q.7 Setting aside whether your application was successful or not, and taking everything into account, how satisfied or dissatisfied are you with the service provided by the council in processing your application?

Very satisfied	Fairly satisfied	Neither Satisfied nor Dissatisfied	Fairly Dissatisfied	Very Dissatisfied
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OUTCOME: Outcome of the application:

Q.8 Was the application that you had an interest in:-

Granted Permission/Consent	<input type="checkbox"/>	Refused Permission/Consent	<input type="checkbox"/>	Withdrawn	<input type="checkbox"/>
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Q.9 Were you the:- Applicant Agent Third Party objector who made a representation

Please complete the form and return in the pre-paid envelope provided.
Thank you for taking the time to complete this form.

From:leslie smith
Sent:Sun, 26 Nov 2017 17:08:53 +0000
To:ChalmersPE;'IRENE GRANT'
Subject:Re: Fern Cottage, Kirkton of Auchterhouse 17/00771/FULL
Attachments:Photograph 1.pdf, Photograph 2.pdf

Pauline,

Irene Grant has contacted me to say that you had been in touch with her, to tell her that the application is not going to the committee due to Mr. Paterson submitting additional information which may have an affect on your thinking. I have looked at his comments and do not agree with his measurements of the original ground levels.

Please see marked-up photographs as enclosed.

The actual door opening height on the North gable elevation is 2330mm. This is from floor level/ top of fyfestone basecourse to the top of the door opening. You can measure this on site.

On scaling photograph 2 it shows the height at 2330mm (weird!) at 1:100 scale, with the basecourse height circa 800mm. You can scale the photograph yourself.

Mr. Paterson is saying that this basecourse height is 1180mm. This is incorrect.

Mr. Paterson is saying that the height of the erected fence is 810mm above top of fyfestone basecourse at it's junction with the North gable of the house. I agree.

Mr. Paterson is saying that the height of the erected fence above the original ground level is 1990mm (1180 + 810) at it's junction with the North gable of the house. I disagree.

The correct height is 1610mm (800 + 810mm). All the other dimensions Mr. Paterson refers to relating to his height of 1990mm will need to be reduced incrementally.

The dimensions I have confirmed tie in with previous information as already submitted.

I also refer to my comments, as contained in my e-mails dated 5 and 6 October 2013. As I said then, it seems to me that Mr Paterson wants to just have the existing 1m high stone wall as the boundary treatment, which affords no screening or privacy to either party. In my opinion, the height of the fence is not overpowering and provides privacy from my client's decking and garden into Mr. Paterson's garden. His objections (as contained in Ryden's letter) referring to loss of sunlight, daylight and overshadowing are strange, given the height of the trees and bushes that were there before (refer to photographs 1 and 2 as enclosed), which were removed by my clients, thus giving more sunlight, daylight and less overshadowing to Mr. Paterson's garden, as the erected fence is not nearly as high as the trees and bushes were.

I trust that this information helps with your deliberations and allows you to put this application forward for approval.

Regards,

Les Smith
(on behalf of Mr. Ian McNaughton and Ms. Irene Grant).

From:IRENE GRANT
Sent:Sun, 29 Oct 2017 13:13:34 +0000
To:ChalmersPE
Subject:Fw: Your House
Attachments:img041.pdf

Hi Pauline I hope the attached information is useful, If you need any further info let me know, I am going away for a week on the 8th Nov till the 15th, but am available till then.

best wishes Irene & Ian

On Sunday, 29 October 2017, 12:14, leslie smith <[REDACTED]> wrote:

Hi Irene,

Your statement seems to be OK.

Can you please send it to Pauline Chalmers together with the enclosed photograph, which shows the rear elevation of the house (prior to you removing the vegetation on the north boundary) with the decking and fencing superimposed on it. Should Pauline want the original, I will send it to her by post.

Regards,

Les.

From: IRENE GRANT <[REDACTED]>
Sent: 24 October 2017 12:43
To: Leslie Smith
Subject:

Hi Les, hopefully the information is of use, thank you for your help.including the superimposed photo as requested.

Les this is just an initial draft of what we are thinking if you could comment and hopefully advise on any other areas which are relevant, We just need to know if we are on then right track, I haven't forwarded it on to Pauline yet

Hi Pauline We have attached a break down of the works carried out and the reasons behind them

We moved into Fern Cottage Kirkton of Auchterhouse on Friday the 21st October 2016.

1

Starting on the 23rd October 2016, we removed the Leylandii trees from the front of our premises, this was to create street parking for our family and friends. It also ensured that the main street in Auchterhouse did not become overly crowded with parked vehicles. We have as requested submitted a drawing to the Angus council showing the proposed drainage for collecting run off from the area still to be paved. (We can provide photos if required)

2

We started the process of removing Leylandii trees, a holly tree and various other dense shrubs from the rear of our property around the 10th November 2016. They were all growing the full length of the boundary wall on our side, and reached an approximate height of 10 feet. We had the approval of our immediate neighbors Mr & Mrs Paterson.

We removed the said plants to help maximize our rear garden, also our concern was that the roots of the said plants were causing damage to the boundary wall. We also did remedial works to the outside of our property as the effects of the Leylandii trees had caused extensive moss and lichen growth on the roof area, we power washed and repainted the roof. We also upgraded the general outside harling of our property as again the trees had caused considerable discoloration (We received a general thumbs up from local passerby's who would stop in their cars to give us encouragement. One comment we received was " I have lived in the village for years and was totally unaware of the house behind those trees, what a difference you are making" 'Others asked if our workman could go and have a look at their property with a view to carrying out similar remedial works

(Photos of before and after the works can be provided

We have noted the objections regarding our application, and are actually surprised that comments from Lincoln, Montrose and Edinburgh would be included. We have also noted the comments of a concerned neighbor living at TIREE Main street Kirkton of

Auchterhouse and her comments about the alleged discussion held between Mr McNaughton and Mr Paterson regarding a prior agreement before the work was carried out. We feel that this comment has been made on a one-sided statement as we certainly did not reach any agreement regarding the fence. Mr Paterson did suggest that we constructed the fence using the same mesh wire fencing which we had used for our dog run. Where would the privacy be with a see through fence? We declined this suggestion however that led to Mr Paterson telling Mr Mcnaughton that both Mr & Mrs Paterson would be denying us permission to have access to the gable end of our property to carry our urgent repair work needed on the fascias/soffits We have attached a recent photo of the state of the said area (photo no 1)

Also what has been omitted regarding the general condition of the stone dyke, is that part of it had collapsed due to the tree roots and the removal of a flag stone which had been embedded into the dyke. Mr McNaughton is a skilled stone dyker, and he immediately did repair work on the collapsed part. This was also done to ensure the safety of our dogs. Also at no time did any works commence at the time stated (7am) We feel that the improvements made to our property only enhance the appearance of the village. (there are some poor neglected properties in the area)

This brings up the objection from Manderlay leoch road.

On passing this property which is on the main road to the public park, we raise our concern as to the standard of the metal fence and wooden fence surrounding the garden area yet the comments made re the spirit of the village and the fact that we are jeopardizing the stability of the dyke by piling earth against it are totally untrue, we have given the dyke a new lease of life by removing the tree roots, also the dyke has no earth piling up against it. On the contrary Mr Mcnaughton who is an expert fencer, has created a barrier between the fence and dyke to ensure that there is a substantial gap.

3

In Early March 2017 We contacted the Angus council with reference to the removal of an existing lounge window, and the plan to replace this with bi fold doors, we applied for the necessary building warrant, which was granted. We also discussed our plan to replace the above mentioned plants with a fence, and sought their guidance as to heights ect. We have two springer spaniel dogs and one of our immediate concerns were that they could jump over the existing stone dyke, and either escape and come to harm through the adjoining field, or get into our neighbors garden. (our dogs safety is a priority) and they did manage to scale the dyke.

4

We did consult with the Angus council with reference to constructing a deck area, and as the bifold doors were a lot higher than the garden we asked for advice regarding height ect. We did not consider the privacy aspect into the neighbors garden as during a previous discussion with Mr Mcnaughton and Mr Paterson, the view and the light that was now apparent seemed to be of a great benefit to our neighbors. We took into account the fact that we had no view into any window or door of the neighbors home, also the view from the raised deck area is exactly the same as the view from the inside of our property, we can see the same area of the neighbors garden. The suggestion that we moved the deck to another area would impact on the neighbors at the opposite side, as we would be looking directly into one of their windows. We also were looking at a health and safety aspect, as although Mr Mcnaughton is fit and well, he has had a double hip replacement, and therefore requires a good sized platform to balance on prior to walking down the steps. plus we are both now retired and who knows what the future holds.

AC23



DECK ↓

ADDITIONAL FENCE
HEIGHT AT UPPER
DECK LEVEL

FENCE

AC23

2330



AC24



DEVELOPMENT MANAGEMENT REVIEW COMMITTEE

APPLICATION FOR REVIEW

**PLANNING PERMISSION FOR RETROSPECTIVE RAISED DECKING
AND RAISE SECTION OF EXISTING BOUNDARY FENCE AT FERN
COTTAGE, KIRKTON OF AUCHTERHOUSE**

APPLICATION NO 17/00771/FULL

APPLICANT'S SUBMISSION

Page No

ITEM 1	Notice of Review
ITEM 2	Statement of Appeal
ITEM 3	Photographs
ITEM 4	Correspondence with Planning Authority
ITEM 5	Location Plan, Site Plan & Elevations
ITEM 6	Report of Handling
ITEM 7	Application for Planning Permission
ITEM 8	Decision Notice



Angus House Orchardbank Business Park Forfar DD8 1AN Tel: 01307 473360 Fax: 01307 461 895 Email: plnprocessing@angus.gov.uk

Applications cannot be validated until all the necessary documentation has been submitted and the required fee has been paid.

Thank you for completing this application form:

ONLINE REFERENCE 100085741-001

The online reference is the unique reference for your online form only. The Planning Authority will allocate an Application Number when your form is validated. Please quote this reference if you need to contact the planning Authority about this application.

Applicant or Agent Details

Are you an applicant or an agent? * (An agent is an architect, consultant or someone else acting on behalf of the applicant in connection with this application)

Applicant Agent

Agent Details

Please enter Agent details

Company/Organisation:

Ref. Number:

You must enter a Building Name or Number, or both: *

First Name: *

Building Name:

Last Name: *

Building Number:

Telephone Number: *

Address 1
(Street): *

Extension Number:

Address 2:

Mobile Number:

Town/City: *

Fax Number:

Country: *

Postcode: *

Email Address: *

Is the applicant an individual or an organisation/corporate entity? *

Individual Organisation/Corporate entity

Applicant Details

Please enter Applicant details

Title:	<input type="text" value="Ms"/>	You must enter a Building Name or Number, or both: *	
Other Title:	<input type="text"/>	Building Name:	<input type="text" value="Fern Cottage"/>
First Name: *	<input type="text" value="Irene"/>	Building Number:	<input type="text"/>
Last Name: *	<input type="text" value="Grant"/>	Address 1 (Street): *	<input type="text" value="Kirkton of Auchterhouse"/>
Company/Organisation	<input type="text"/>	Address 2:	<input type="text"/>
Telephone Number: *	<input type="text"/>	Town/City: *	<input type="text" value="Dundee"/>
Extension Number:	<input type="text"/>	Country: *	<input type="text" value="UK"/>
Mobile Number:	<input type="text"/>	Postcode: *	<input type="text" value="DD3 0QS"/>
Fax Number:	<input type="text"/>		
Email Address: *	<input type="text"/>		

Site Address Details

Planning Authority:	<input type="text" value="Angus Council"/>
Full postal address of the site (including postcode where available):	
Address 1:	<input type="text" value="FERN COTTAGE"/>
Address 2:	<input type="text" value="KIRKTON OF AUCHTERHOUSE"/>
Address 3:	<input type="text"/>
Address 4:	<input type="text"/>
Address 5:	<input type="text"/>
Town/City/Settlement:	<input type="text" value="DUNDEE"/>
Post Code:	<input type="text" value="DD3 0QS"/>

Please identify/describe the location of the site or sites

Northing	<input type="text" value="738169"/>	Easting	<input type="text" value="334341"/>
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Description of Proposal

Please provide a description of your proposal to which your review relates. The description should be the same as given in the application form, or as amended with the agreement of the planning authority: *
(Max 500 characters)

Retrospective Raised Decking and Raise Section of Existing Boundary Fence.

Type of Application

What type of application did you submit to the planning authority? *

- Application for planning permission (including householder application but excluding application to work minerals).
- Application for planning permission in principle.
- Further application.
- Application for approval of matters specified in conditions.

What does your review relate to? *

- Refusal Notice.
- Grant of permission with Conditions imposed.
- No decision reached within the prescribed period (two months after validation date or any agreed extension) – deemed refusal.

Statement of reasons for seeking review

You must state in full, why you are seeking a review of the planning authority's decision (or failure to make a decision). Your statement must set out all matters you consider require to be taken into account in determining your review. If necessary this can be provided as a separate document in the 'Supporting Documents' section: * (Max 500 characters)

Note: you are unlikely to have a further opportunity to add to your statement of appeal at a later date, so it is essential that you produce all of the information you want the decision-maker to take into account.

You should not however raise any new matter which was not before the planning authority at the time it decided your application (or at the time expiry of the period of determination), unless you can demonstrate that the new matter could not have been raised before that time or that it not being raised before that time is a consequence of exceptional circumstances.

See Supporting Documents.

Have you raised any matters which were not before the appointed officer at the time the Determination on your application was made? *

Yes No

If yes, you should explain in the box below, why you are raising the new matter, why it was not raised with the appointed officer before your application was determined and why you consider it should be considered in your review: * (Max 500 characters)

Please provide a list of all supporting documents, materials and evidence which you wish to submit with your notice of review and intend to rely on in support of your review. You can attach these documents electronically later in the process: * (Max 500 characters)

The drawings which accompanied the planning application, email correspondence between the Planning Department and the client, the planning permission refusal document, the planning officers Report of Handling, and our Grounds of Appeal document.

Application Details

Please provide details of the application and decision.

What is the application reference number? *

17/00771/FULL

What date was the application submitted to the planning authority? *

11/09/2017

What date was the decision issued by the planning authority? *

19/12/2017

Review Procedure

The Local Review Body will decide on the procedure to be used to determine your review and may at any time during the review process require that further information or representations be made to enable them to determine the review. Further information may be required by one or a combination of procedures, such as: written submissions; the holding of one or more hearing sessions and/or inspecting the land which is the subject of the review case.

Can this review continue to a conclusion, in your opinion, based on a review of the relevant information provided by yourself and other parties only, without any further procedures? For example, written submission, hearing session, site inspection. *

Yes No

Please indicate what procedure (or combination of procedures) you think is most appropriate for the handling of your review. You may select more than one option if you wish the review to be a combination of procedures.

Please select a further procedure *

By means of inspection of the land to which the review relates

Please explain in detail in your own words why this further procedure is required and the matters set out in your statement of appeal it will deal with? (Max 500 characters)

A site inspection is vital in that one of the main grounds for refusal relate to the overlooking of the neighbours garden. This has to be viewed on site to fully appreciate same.

In the event that the Local Review Body appointed to consider your application decides to inspect the site, in your opinion:

Can the site be clearly seen from a road or public land? *

Yes No

Is it possible for the site to be accessed safely and without barriers to entry? *

Yes No

If there are reasons why you think the local Review Body would be unable to undertake an unaccompanied site inspection, please explain here. (Max 500 characters)

Client has dogs which are kept in the garden. Although they pose no danger there would need to be some notice of the site inspection to allow these dogs to be kennelled.

Checklist – Application for Notice of Review

Please complete the following checklist to make sure you have provided all the necessary information in support of your appeal. Failure to submit all this information may result in your appeal being deemed invalid.

Have you provided the name and address of the applicant?. *

Yes No

Have you provided the date and reference number of the application which is the subject of this review? *

Yes No

If you are the agent, acting on behalf of the applicant, have you provided details of your name and address and indicated whether any notice or correspondence required in connection with the review should be sent to you or the applicant? *

Yes No N/A

Have you provided a statement setting out your reasons for requiring a review and by what procedure (or combination of procedures) you wish the review to be conducted? *

Yes No

Note: You must state, in full, why you are seeking a review on your application. Your statement must set out all matters you consider require to be taken into account in determining your review. You may not have a further opportunity to add to your statement of review at a later date. It is therefore essential that you submit with your notice of review, all necessary information and evidence that you rely on and wish the Local Review Body to consider as part of your review.

Please attach a copy of all documents, material and evidence which you intend to rely on (e.g. plans and Drawings) which are now the subject of this review *

Yes No

Note: Where the review relates to a further application e.g. renewal of planning permission or modification, variation or removal of a planning condition or where it relates to an application for approval of matters specified in conditions, it is advisable to provide the application reference number, approved plans and decision notice (if any) from the earlier consent.

Declare – Notice of Review

I/We the applicant/agent certify that this is an application for review on the grounds stated.

Declaration Name: Mr Angus Paul

Declaration Date: 01/03/2018



GROUNDS OF APPEAL

FERN COTTAGE, KIRKTON OF AUCHTERHOUSE



James Paul Associates

4 Brook Street, Broughty Ferry, Dundee, DD5 1DP.

Office: 01382 737 866

angus@jamespaulassociates.co.uk

www.jamespaul-associates.co.uk

GROUND OF REFUSAL.

Reason

‘That the proposed development by virtue of the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north’.

Grounds of Appeal.

The appellants recently purchased Fern Cottage and are actively upgrading the building and its grounds. Part of these works included the installation of patio doors to service the rear garden area from the house, together with decking, access steps to these doors, new fencing and general upgrading works to the garden. These works included the removal of a 3 metre high hedge running along the north boundary. Prior to commencing with this particular work they approached Angus Council to ascertain what permissions were required and were advised that the patio doors, fencing and upgrading works to the garden did not require any permissions as they were not structural or could be seen as permitted development under the Planning Acts. They were though advised that the decking required a Building Warrant. This they applied for on 17 May 2017 and a Building Warrant was subsequently granted and work commenced. They were under the impression that planning permission was not required. Subsequently, after a complaint was made to Angus Council, they were made aware that planning permission should have been applied for. A planning application, to which this Appeal relates, was subsequently lodged on 11 September 2017.

It is stressed that at no point in this process was there any intention on behalf of the appellants to mislead and that they were trying to proceed with works in a correct manner.

Prior to works to which this Appeal relates being carried out, the north boundary of the garden consisted of a one metre high stone wall, a three metre high hedge planted inside the wall running for approximately ten metres from the house, plus a number of shrubs and plants at the bottom (east) end of the boundary. The hedge and shrubs were removed during the garden works to leave a one metre high boundary wall as the only delineation between the garden and its neighbour to the north. There was no privacy afforded at this time between the two gardens. Works progressed on the decking to the front of the new patio doors to plus on the erection of a 1.8 metre high timber fence from ground level along the north boundary. This fence now supplies a degree of privacy between the garden and its neighbour to the north which the original one metre stone wall did not. To maintain this privacy along the whole boundary this

fence was also continued at 1.8 metres high from the decking which is at the level of the house ground floor. The top of this decking fence is 2.53 metres above ground level. The decking allows level access from the house to the steps down to garden level. It is this section of the fencing which runs for approximately 3.6 metres that appears to be the main area of contention. The decking as previously stated is at house ground floor level height and runs from the house for approximately two metres.

The above gives a background as to the present position on site and how this was arrived at. This being said the area of fencing at the decking has been cut down to 1.8 metres as a gesture to the neighbour pending the outcome of this Appeal.

Turning to the reason for refusal the areas of concern relate to the height of the raised section of fence and the height of the decking which would introduce overbearing impacts and overlooking. In response the following in points are listed in mitigation;

1. The height of the decking is set by the house ground floor level and was constructed to service the new patio doors which it is accepted by all did not require planning permission. If this Appeal is dismissed then these doors will still require to be serviced by a level access platform to serve the steps down to garden level of at least 1.2 metres wide to comply with the Building Regulations. This platform and steps would not require planning permission. Overlooking of the neighbours garden would still occur particularly if the raised section of fence was removed.
2. Previously there was a hedge of a similar height and in a similar position to the raised section of fencing which would have been just as overbearing as the fence. In fact the fence as constructed allows some light through to the neighbour's premises, something the hedge did not allow.
3. If this Appeal was unsuccessful and the decking and fencing were removed the Appellants could without requiring planning permission erect a garden shed up to 4 metres high, one metre from the existing boundary wall. The present raised section of fence is 2.53 metres above ground level. A 4 metre high shed will be considerably more overbearing than the proposed fence. This would suggest that the height of the fence is within permitted levels and acceptable.
4. Along similar lines to 3 above and with reference to the correspondence between the Planning Department and the appellant's agent, it is of note that the Planning Officer was originally minded to approve this application as reference is made to the planning application having to be put before the Planning Committee. This could only occur if the planning Officer had been minded to approve the application. Again this suggests that the proposals were originally seen as being within acceptable levels.
5. Again if this Appeal is unsuccessful and the decking and boundary fencing are removed and it reverts back to the existing situation then a one metre high stone wall

is not going to afford any privacy to the neighbour's garden. If privacy and overlooking is an issue then the existing pre works position would have a more detrimental effect on the amenity and enjoyment of the garden area to the north.

Given the above it is considered that the decking and fencing are acceptable and are no more detrimental than existed previous to the works being carried out and are in some instances better than was previously the case, particularly with regard to overlooking the neighbour.

JAMES PAUL ASSOCIATES
2 March 2018.



PHOTO WITH MOCK UP OF WHERE PROPOSED FENCE WOULD BE SITUATED.



WORKS AS VIEWED FROM THE EAST



PRESENT VIEW OF NEIGHBOURS GARDEN FROM DECKING.

NOTE : FENCE HAS BEEN REDUCED IN HEIGHT PENDING APPEAL DECISION.



ORIGINAL ONE METRE HIGH STONE WALL SHOWN BEHIND FENCE.

NOTE ; THIS DOES NOT AFFORD ANY PRIVACY TO THE NEIGHBOURS PROPERTY.

From: leslie smith [REDACTED]
To: pauline chalmers <chalmerspe@angus.gov.uk>; 'IRENE GRANT'
[REDACTED]
Sent: Sunday, 26 November 2017, 17:08
Subject: Re: Fern Cottage, Kirkton of Auchterhouse 17/00771/FULL

Pauline,

Irene Grant has contacted me to say that you had been in touch with her, to tell her that the application is not going to the committee due to Mr. Paterson submitting additional information which may have an affect on your thinking. I have looked at his comments and do not agree with his measurements of the original ground levels.

Please see marked-up photographs as enclosed.

The actual door opening height on the North gable elevation is 2330mm. This is from floor level/ top of fyfestone basecourse to the top of the door opening. You can measure this on site.

On scaling photograph 2 it shows the height at 2330mm (weird!) at 1:100 scale, with the basecourse height circa 800mm. You can scale the photograph yourself.

Mr. Paterson is saying that this basecourse height is 1180mm. This is incorrect.

Mr. Paterson is saying that the height of the erected fence is 810mm above top of fyfestone basecourse at it's junction with the North gable of the house. I agree.

Mr. Paterson is saying that the height of the erected fence above the original ground level is 1990mm (1180 + 810) at it's junction with the North gable of the house. I disagree.

The correct height is 1610mm (800 + 810mm). All the other dimensions Mr. Paterson refers to relating to his height of 1990mm will need to be reduced incrementally.

The dimensions I have confirmed tie in with previous information as already submitted.

I also refer to my comments, as contained in my e-mails dated 5 and 6 October 2013. As I said then, it seems to me that Mr Paterson wants to just have the existing 1m high stone wall as the boundary treatment, which affords no screening or privacy to either party. In my opinion, the height of the fence is not overpowering and provides privacy from my client's decking and garden into Mr. Paterson's garden. His objections (as contained in Ryden's letter) referring to loss of sunlight, daylight and overshadowing are strange, given the height of the trees and bushes that were there before (refer to photographs 1 and 2 as enclosed), which were removed by my clients, thus giving more sunlight, daylight and less overshadowing to Mr. Paterson's garden, as the erected fence is not nearly as high as the trees and bushes were.

I trust that this information helps with your deliberations and allows you to put this application forward for approval.

Regards,
Les Smith
(on behalf of Mr. Ian McNaughton and Ms. Irene Grant).

From: leslie smith [REDACTED]
To: ChalmersPE <ChalmersPE@angus.gov.uk>; 'IRENE GRANT'
[REDACTED]
Sent: Tuesday, 17 October 2017, 21:39
Subject: Re: Fern Cottage, Kirkton of Auchterhouse 17/00771/FULL

Pauline,

I refer to your e-mail, as below, and enclose .pdf copy of revised site plan and sections drawings with the additional information incorporated as requested.

Please let me know if you need any further information sent to you, or anything clarified.

Regards,

Les Smith.

T: 07799000952

From: ChalmersPE <ChalmersPE@angus.gov.uk>
Sent: 06 October 2017 18:34
To: 'IRENE GRANT'
Cc: 'leslie smith'
Subject: Fern Cottage, Kirkton of Auchterhouse 17/00771/FULL

Dear Mrs Grant

My senior, manager and I have had an in depth conversation today about the application overall and the various comments made.

From my earlier emails with you I advised that Mr Paterson had made assertions of which you would have noted from the objection emails. Our thoughts are that the measurements may well be correct and I am happy to take the word of your agent that they are correct but it is felt that the drawings need to be more clear and show more detail. This is not meant to offend anyone but our advice and our request of further plans/information is only meant to help as the application will be heard at committee and the members of the committee will want to see the previous garden layout and the proposed and retrospective proposal clearly, this will allow them to make a decision. If it is not clear enough they may not be able to make a decision on the day.

I would ask that you expand on both AA and BB drawings as follows:

- on both AA and BB drawings show the full length and width of the rear garden from east to west and north to south boundaries. It should show the difference between the previous level of the garden and the proposed levels of the garden, the use of different colours would help the committee to see the difference clearly
- the various existing and proposed levels should be labelled indicating clearly what they are and their height/dimensions.
- At various points of the north boundary fence, say every second or third vertical post, the height of the fence should be labelled. The fence looks to slant on photos that I have so to

check the fence and label the heights would be helpful. Please indicate the height of the wall behind the fence as this also looks to slant.

It is unknown to us at this time what the outcome would be at the committee but you will recall that at the start of the application process we discussed you reducing the width of the decking in order that it would be further from the north boundary and that it could be access steps rather than a decked area to reduce overlooking. The decking elevates you to a height that you will recall we already thought to be unacceptable and in order to counteract this, a section of fence would need to be raised to reduce this, this may signal to the members that the decking is unacceptable as the raised section would have to be around 900mm to one metre high which gives an overall height of around 2.5 metres high. This height is my measurement from the day I took measurements onsite. The requested drawings will show further and clearer detail to allow us to consider the proposal and present it to the committee.

Furthermore, I would require you and you partner to supply a supporting statement of the works and the photo of the boundary hedge superimposed with an image of the fence I asked for as this would help the assessment of the applicant further.

I am aware that Les is on holiday for two weeks from tomorrow and when we would need to have committee reports written by. The date the initial draft reports would have to be done by is week starting 20 October, to meet the deadline of finishing the final reports before they to go to the committee on 31 October. This may be cutting it fine and we may not be able to achieve this. Therefore, I suggest we aim for the planning committee on 21 November which would allow the plans to be done timeously. In light of this and to allow time to gather the information required, I would suggest that we enter into a planning processing agreement. All this one page agreement does is ensure that the application would progress timeously to an agreed timescale beyond the expiry date of this application on 10 November and before the committee on 21 November. Please confirm if you would be agreeable with this. I will then email you the planning processing agreement. We would be looking at agreeing that plans be submitted by 27 October , thereafter, that we would consider the plans further, write the report and present the application at committee on 21 November and offer a final written decision to you by 24 November.

I trust this explains what is required and I look forward to receiving the requested information from you after Les returns from vacation. Please advise your thoughts on the planning processing agreement also. I can send the agreement to you with the final wording for you to sign if this is acceptable.

Kind regards

Pauline Chalmers: Development Standards Technician: Angus Council: Communities:
Planning & Place: County Buildings: Market Street: Forfar: DD8 3LG: 01307 47(3206)

Proposal Details

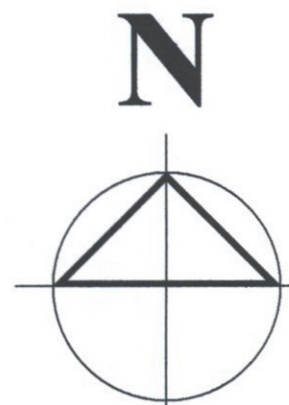
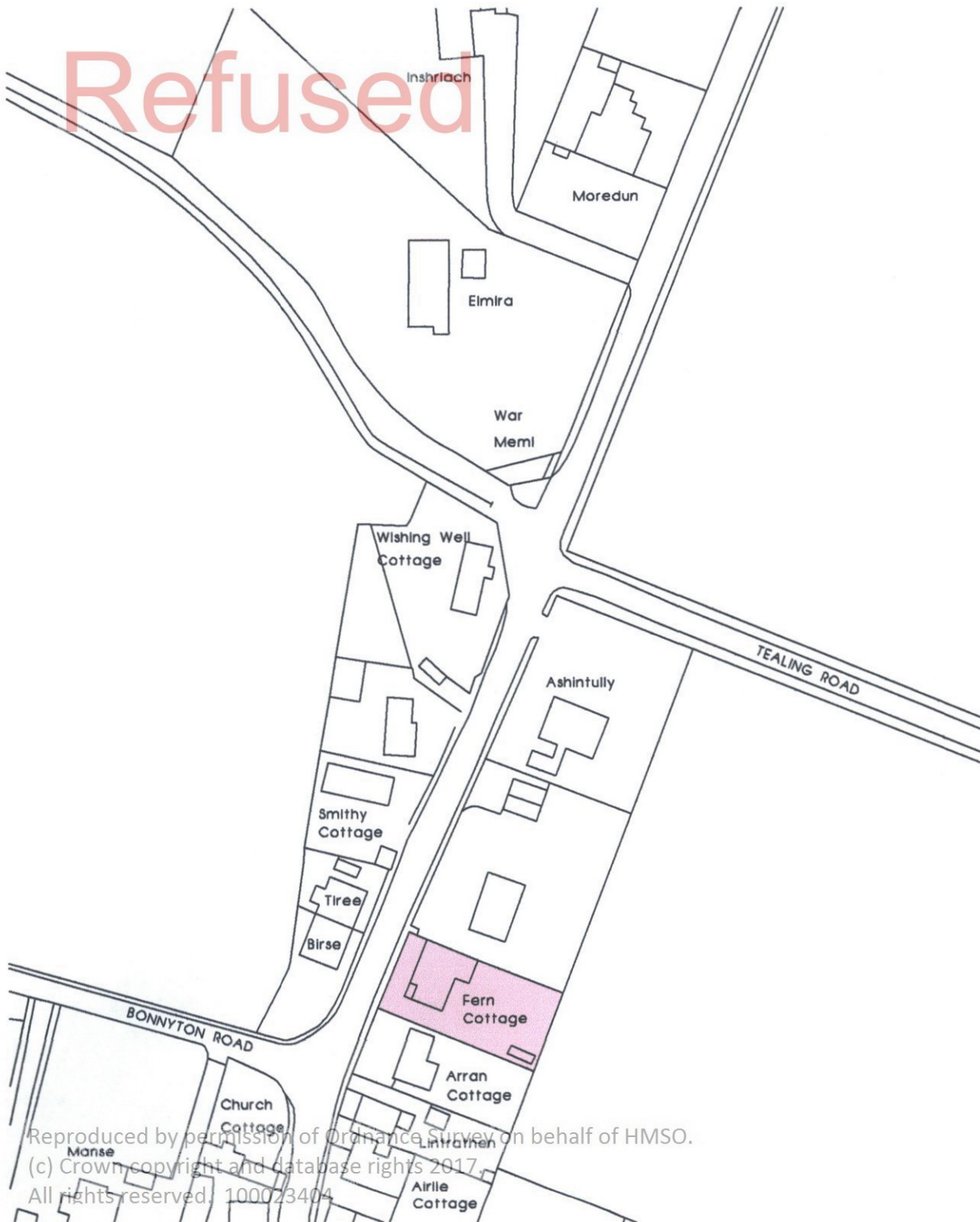
Proposal Name	100085741
Proposal Description	Planning Permission Refusal Review
Address	FERN COTTAGE, KIRKTON OF DUNDEE, DD3 0QS
Local Authority	Angus Council
Application Online Reference	100085741-001

Application Status

Form	complete
Main Details	complete
Checklist	complete
Declaration	complete
Supporting Documentation	complete
Email Notification	complete

Attachment Details

Notice of Review	System	A4
Planning Permission Application Form	Attached	A4
Site Location Plan	Attached	A3
Site Plan	Attached	A3
Proposed Elevation and Section	Attached	A3
Planning Officers Report of Handling	Attached	A4
Planning Refusal Document	Attached	A4
Email correspondance	Attached	A4
Grounds of Appeal	Attached	A4
Notice_of_Review-2.pdf	Attached	A0
Application_Summary.pdf	Attached	A0
Notice of Review-001.xml	Attached	A0



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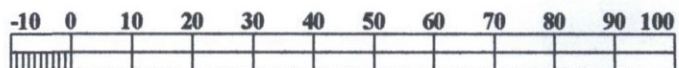
location plan

scale 1:1250

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

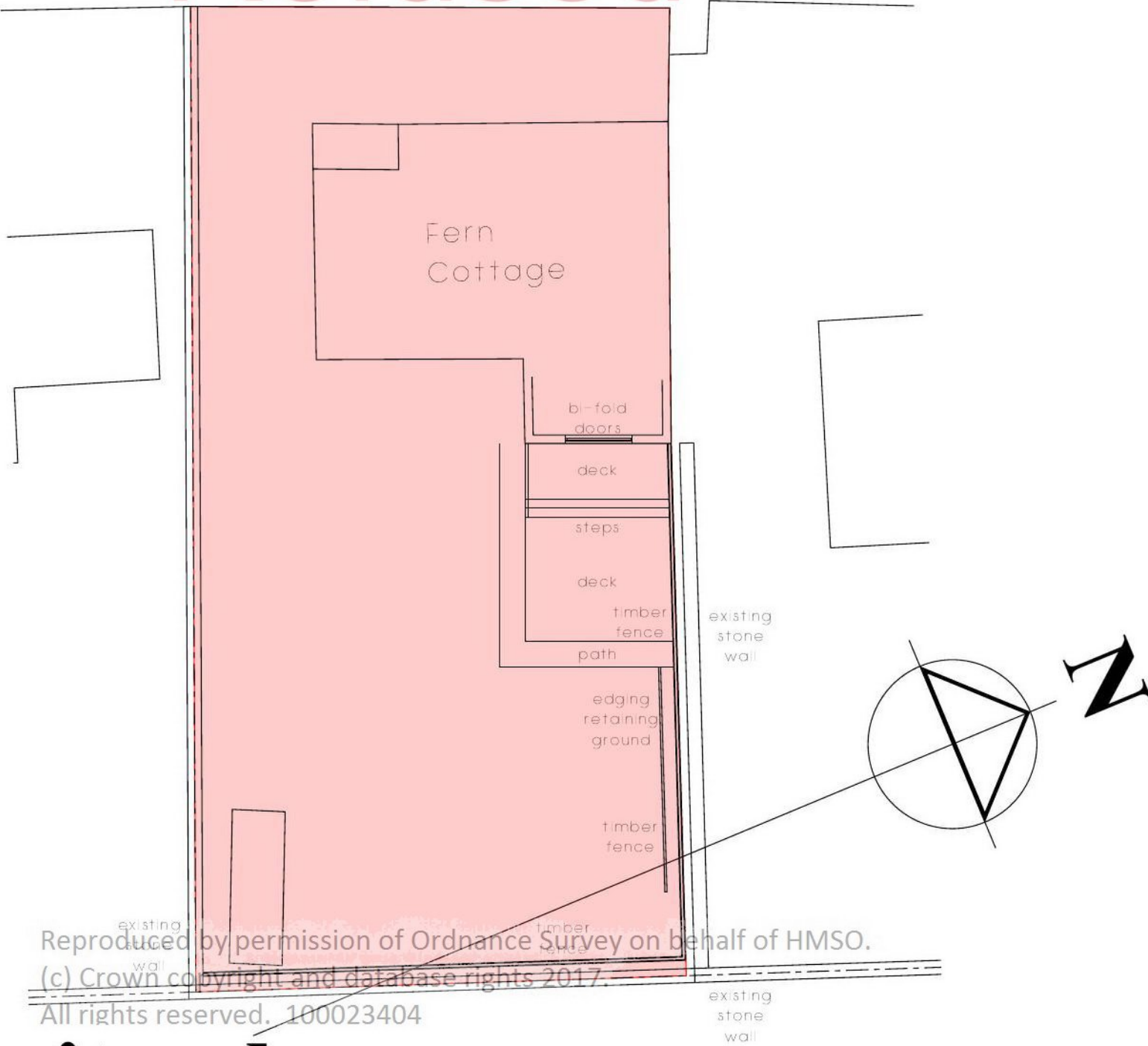
KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.



scale 1:1250

SEPTEMBER 2017

Refused



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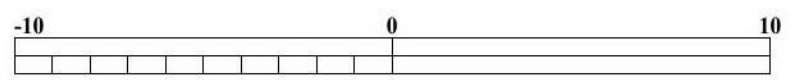
site plan

scale 1:200 @ A3P

PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

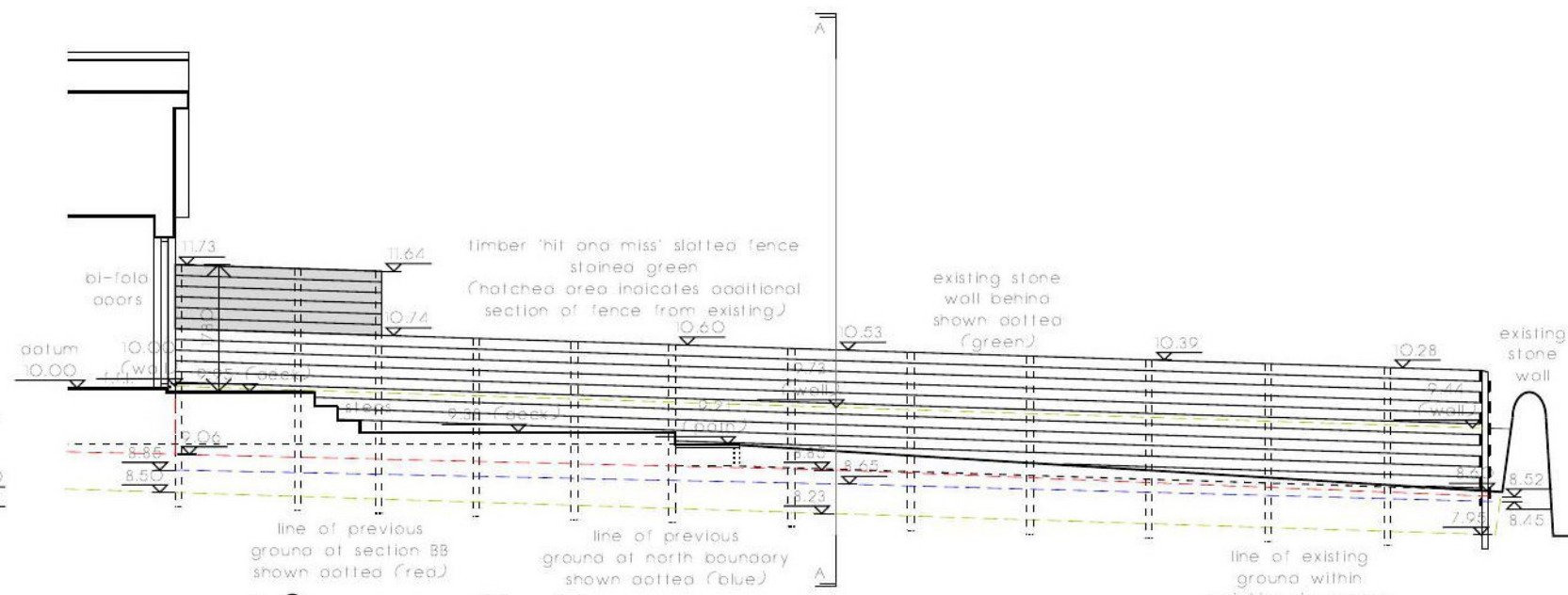
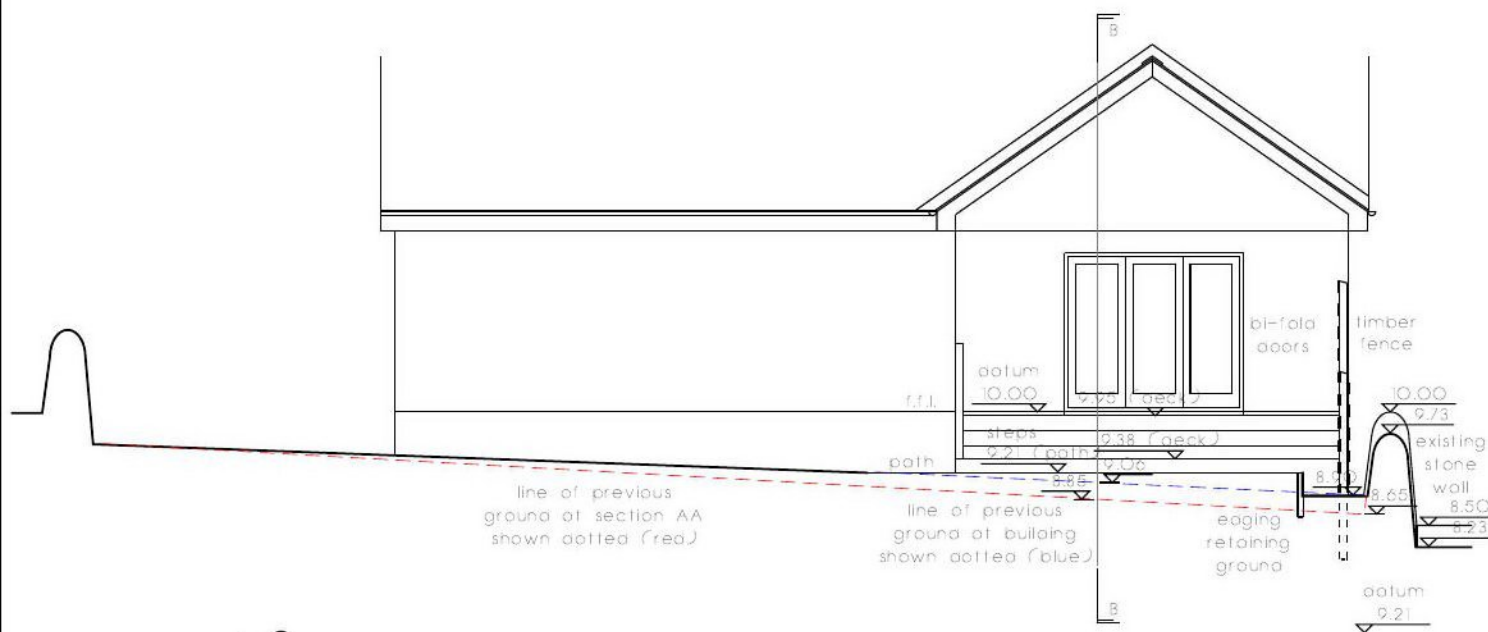
KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.



SEPTEMBER 2017 (AMENDED OCTOBER 2017)

scale 1:200

Refused



section aa (south to north)

scale 1:100 @ A2L

section bb (elevation of fence from south)

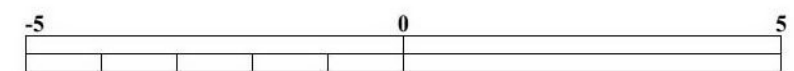
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PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. I. McNAUGHTON & MS. I. GRANT.

SEPTEMBER 2017 (AMENDED OCTOBER 2017)



scale 1:100

Angus Council

Application Number:	17/00771/FULL
Description of Development:	Retrospective Raised Decking and Raise Section of Existing Boundary Fence
Site Address:	Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS
Grid Ref:	334341 : 738169
Applicant Name:	Mr & Ms Ian & Irene McNaughton & Grant

Report of Handling**Site Description**

The detached 1½ storey property is positioned within a 599 square metre (sqm) site that descends gradually parallel with the rear elevation of the house to the north boundary. The applicant is in the process of redeveloping the rear garden and has carried out minor works comprising of the removal of flower beds and grass and laying a layer of soil along the north boundary. The retrospective deck sits upon an area of the raised area of soil. The site is within a residential area on the east edge of Kirkton of Auchterhouse and bound by the public road to the west, residential properties to the north and south and a field to the east.

Proposal

The proposal comprises of a retrospective 890mm high decking, access steps and 480mm lower section of decking and a proposed raised section of fence parallel with the highest section of the deck. The raised section of fence would measure 900mm high and 2.9 metres long- the resulting fence above the highest section of decking would be 1780mm high which is beside the north boundary stone wall. The existing decking sits upon a layer of soil, it is level with original ground to the southern edge of the newly laid soil and would be about 410mm at its deepest point near the north boundary. Only the decking and raised section of fence is required to be considered within this application as there are aspects shown in the application that are deemed to be permitted development such as the area of soil raising this area of garden measures some 410mm at its deepest point which is of a height that would meet with the criteria of Class 3B and the patio doors which would be permitted development under Class 2B of The General Permitted Development (Scotland) Order 1992 (amended). However, there are other aspects that are merely gardening work.

Amendments

The agent has supplied revised drawings which show revisions to the drawings to show the existing site, proposed scheme and the neighbour's garden in greater detail.

Publicity

The application was subject to normal neighbour notification procedures.

The nature of the proposal did not require that the application be the subject of press advertisement.

The nature of the proposal did not require a site notice to be posted.

Planning History

None.

17/00167/PREAPP- Proposed Rear Boundary Fence- closed.

17/00753/PREAPP- New Monoblocked Area with Aqua Channel- closed.

Applicant's Case

The applicant and agent have supplied various height and level information and amended plans. This was in response to the correspondences from an objector indicating that the information on the drawings did not show the original and existing ground levels, the existing height of the stone north boundary wall and the immediate ground level of the northerly neighbour's garden.

Consultations

Community Council - The Auchterhouse Community Council has not objected to the decking but has asked that the original and proposed ground levels be depicted correctly on the proposed elevation drawing so that the true height of the decking and raised fence can be determined.

Angus Council - Roads - Offered no objection to the proposal.

Scottish Water - There was no response from this consultee at the time of report preparation.

Representations

8 letters of representation were received, of which 1 offered comments which neither supported nor objected to the proposal, 7 objected to the proposal and 0 supported the proposal.

The main points of concern were as follows:

- o Overlooking from the decking
- o Timber fence would be overbearing and not in keeping with the environment and heritage of area.

The above points are assessed in the Assessment section of this report.

Other points have been raised and have been summarised as follows:

- o Ground levels, original and proposed, the north boundary stone wall and the ground level of the northerly neighbour's garden are not depicted correctly. Response- the agent has extensively re-measured the site, stone boundary wall and the ground level of the northerly neighbour's garden and has shown extensive measurements and all points raised have been depicted more clearly on revised drawings.
- o Noise from building works- Whilst additional noise can be frustrating for neighbours, this would not be a material planning consideration.
- o May impact on value of properties: Response- this is not a material planning consideration.
- o Discussions and decisions between the applicant and neighbours have been ignored. Response- discussions between neighbours are not binding agreements and are not relevant.
- o Proposal is harming the structural stability of the stone wall. Response- there is no evidence to suggest that the condition of the boundary wall is anything other than wear and tear.
- o The high level of soil will cause damage to the wall.- Response- the laying of soil is not required to be considered as part of this application as it meets with the permitted development regulations, any potential damage to the stone boundary wall is a civil matter.

Development Plan Policies

Angus Local Development Plan 2016

Policy DS4: Amenity

Policy TC4: Householder / Domestic Development

TAYplan Strategic Development Plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

The full text of the relevant development plan policies can be viewed at Appendix 1 to this report.

Assessment

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning decisions be made in accordance with the development plan unless material considerations indicate otherwise.

Policy TC4: Householder/Domestic Development relates to proposals for house and flat alterations/extensions and development within the curtilage of houses and flats. Development will be supported where the siting, design, scale or massing of the proposal do not:

- (1) adversely affect the residential amenity enjoyed by the dwelling and adjoining households,
- (2) detrimentally impact on the character and appearance of the dwelling, site and surrounding area;
- (3) result in overdevelopment of the site or a loss of garden ground, parking or bin storage.

Policy TC4 indicates that further guidance will be set out in the Householder Development Planning Advice Note. The advice notes general design principles indicate that alterations to existing residential properties should be designed to avoid over dominating or overwhelming the existing residential property or neighbouring properties.

Policy DS4 indicates that development will not be permitted where there is an unacceptable adverse impact on the surrounding area or amenity of neighbouring properties.

The general layout of the street and immediate surrounding area is a medium density area that consists of mostly detached houses that are of varying eras, from traditional to modern types of houses which are on comfortable plots with large back gardens.

In terms of test (1) of Policy TC4 and the amenity criteria of Policy DS4 which relates to impacts on the residential amenity of neighbouring houses, there is a ground level difference between the application site and the northerly lower neighbour measuring some 670mm. The retrospective decking stands 790mm below the top of the existing fence would be level with the stone boundary wall and there is a difference in height of 1765mm between the highest point of the decking and the neighbour's garden. There would also be a difference in height of 3.5 metres between the top of the raised fence and the ground level of the neighbour's garden. It is recognised that the fence is an attempt to counteract a degree of overlooking, nevertheless, taking into account the raised fence, the close proximity of the decking to the boundary and revised drawing indicating precise measurements, it is considered that the 3.5 metre height difference between the top of the proposed fence and the neighbours ground would introduce overbearing impacts upon the neighbours garden that would be unreasonable and would be detrimental to their residential amenity. Although there was previously a hedge on the north boundary which was similarly high as the proposed raised section of fence, the hedge is softer in appearance beside the boundary than a solid and stark fence of a similar height. Furthermore, it is recognised that there would be a degree of overshadowing midday but I do not consider that this would be significantly detrimental as the existing lower 1.8 metre high fence and the raised section have replaced the previous high hedge that would have cast a shadow consistently into the neighbour's garden. Additionally, although the immediate area is a built up residential area, the close proximity of the decking and raised fence to the boundary is considered excessive in height and would go beyond what is considered reasonable within the residential. The deck would allow a degree of overlooking into the neighbouring garden that goes beyond that which would normally be expected and would have a detrimental impact on the neighbours privacy and the enjoyment of their garden. As previously indicated, whilst it is considered that the proposed raised fence section could counteract some overlooking, the fence in itself would result in an amenity impact.

The proposal would be unacceptable in terms of test (1) of Policy TC4, the amenity criteria of Policy DS4 and the guidance within the Householder Development Planning Advice Note.

In terms of test (2) of Policy TC4; it is very common for decking to be sited within rear gardens and the general design is considered to be acceptable notwithstanding its amenity impact. The principle of a fence within the rear garden, beside the boundary is not considered to be detrimental to the character or appearance of the village as it is noted there are fences elsewhere within the village. However, the position and height of the decking and the height of the fence to counteract overlooking that would be overbearing in height would have such a detrimental impact on the neighbour's residential and visual amenity as indicated above which would ultimately be the determining factor in the assessment of this application.

In assessing the proposal against test (3), the proposal would not result in overdevelopment and an acceptable level of garden ground would be retained. Bin storage would be unaltered as would parking to the side of the dwelling, The Roads Service has confirmed no objection to the proposal. It is considered that the proposal would not accord with test (3) of Policy TC4.

In conclusion, the proposal is contrary to the provisions of Policy TC4: Householder/Domestic Development and DS4: Amenity of The Angus Local Development Plan or the Householder Development Planning Advice Note. There are no material considerations which carry sufficient weight to override the development plan position and as such the application is recommended for refusal of planning permission.

Given the retrospective nature of the application and the refusal of planning permission due to the demonstrable harm to the residential amenity of the northerly neighbour, enforcement action is required to remedy the situation. Enforcement action for alterations to the decking and potentially a re-application for an altered decking will be instigated on expiry of the 3 month period but prior to the expiry of this time the applicant can submit a review of this planning decision to the Development Management Review Committee.

Legal agreement not required.

Human Rights Implications

The decision to refuse this application has potential implications for the applicant in terms of his entitlement to peaceful enjoyment of his possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying the decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified. Any interference with the applicant's right to peaceful enjoyment of his possessions by refusal of the present application is in compliance with the Council's legal duties to determine this planning application under the Planning Acts and such refusal constitutes a justified and proportionate control of the use of property in accordance with the general interest and is necessary in the public interest with reference to the Development Plan and other material planning considerations as referred to in the report.

Equalities Implications

The issues contained in this report fall within an approved category that has been confirmed as exempt from an equalities perspective.

Decision

The application is Refused

Reason(s) for Decision:

1. That the proposed development by virtue of the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north.

Notes:

Case Officer: Pauline Chalmers
Date: 14 December 2017

Appendix 1 - Development Plan Policies

Angus Local Development Plan 2016

Policy DS4: Amenity

All proposed development must have full regard to opportunities for maintaining and improving environmental quality. Development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties.

Angus Council will consider the impacts of development on:

- Air quality;
- Noise and vibration levels and times when such disturbances are likely to occur;
- Levels of light pollution;
- Levels of odours, fumes and dust;
- Suitable provision for refuse collection / storage and recycling;
- The effect and timing of traffic movement to, from and within the site, car parking and impacts on highway safety; and
- Residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing.

Angus Council may support development which is considered to have an impact on such considerations, if the use of conditions or planning obligations will ensure that appropriate mitigation and / or compensatory measures are secured.

Applicants may be required to submit detailed assessments in relation to any of the above criteria to the Council for consideration.

Where a site is known or suspected to be contaminated, applicants will be required to undertake investigation and, where appropriate, remediation measures relevant to the current or proposed use to prevent unacceptable risks to human health.

Policy TC4 : Householder / Domestic Development

Proposals for householder development (including alterations/extensions to houses and flats, development within the curtilage of houses and flats, means of enclosure, satellite antenna and domestic scale microgeneration) will be supported where the siting, design, scale or massing of the proposal, does not:

- adversely affect the residential amenity enjoyed by the house or surrounding domestic properties including, in the case of microgeneration, through noise or shadow flicker;
- detrimentally affect the character and/or appearance of the building, site or surrounding area; and
- result in the overdevelopment of the plot or a loss of garden ground, parking or bin storage.

Further guidance on householder development will be set out in a Householder Development Planning Advice Note.

TAYplan Strategic Development plan

The proposal is not of strategic significance and policies of TAYplan are not referred to in this report.

HOUSEHOLDER APPLICATION FOR PLANNING PERMISSION

Town and Country Planning (SCOTLAND) ACT 1997
The Town and Country Planning (Development Management Procedure) (SCOTLAND) REGULATIONS 2013

Please refer to the accompanying Guidance Notes when completing this application
PLEASE NOTE IT IS FASTER AND SIMPLER TO SUBMIT PLANNING APPLICATIONS ELECTRONICALLY VIA <https://www.eplanning.scot>

1. Applicant's Details		2. Agent's Details (if any)	
Title	MR. + MS.	Ref No.	
Forename	IAN + IRENE	Forename	
Surname	MENAGHAN + GRANT	Surname	
Company Name		Company Name	
Building No./Name	FERN COTTAGE	Building No./Name	
Address Line 1	KIRKTON OF	Address Line 1	
Address Line 2	AUCHTERHOUSE	Address Line 2	
Town/City	DUNDEE	Town/City	
Postcode	DD3 0QS	Postcode	
Telephone		Telephone	
Mobile		Mobile	
Fax		Fax	
Email		Email	
3. Address or Location of Proposed Development (please include postcode)			
FERN COTTAGE KIRKTON OF AUCHTERHOUSE DUNDEE DD3 0QS			
NB. If you do not have a full site address please identify the location of the site(s) in your accompanying documentation.			
4. Describe the Proposed Works			
Please describe accurately the work proposed:			
PROPOSED ERECTION OF FENCE + RAISED DECKING (RETROSPECTIVE)			
Have the works already been started or completed Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
If yes, please state date of completion, or if not completed, the start date:			
Date started:	JUNE 2017	Date completed:	

If yes, please explain why work has already taken place in advance of making this application.

DID NOT THINK THAT PLANNING PERMISSION WAS REQUIRED.

5. Pre-Application Discussion

Have you received any advice from the planning authority in relation to this proposal? Yes No

If yes, please provide details about the advice below:

In what format was the advice given? Meeting Telephone call Letter Email

Have you agreed or are you discussing a Processing Agreement with the planning authority? Yes No

Please provide a description of the advice you were given and who you received the advice from:

Name: PAULINE CHALMERS Date: 25/8/17 Ref No.: -

FOLLOWING ENFORCEMENT ORDER (REF. 17/00106/UNWRKS) WAS TOLD THAT A PLANNING APPLICATION WAS REQUIRED TO BE MADE + THAT FENCE REQUIRED TO BE INCREASED IN HEIGHT TO SCREEN + PROVIDE PRIVACY TO ADJOINING PROPERTY.

6. Trees

Are there any trees on or adjacent to the application site? Yes No

If yes, please show on drawings any trees (including known protected trees) and their canopy spread as they relate to the proposed site and indicate if any are to be cut back or felled.

7. Changes to Vehicle Access and Parking

Are you proposing a new altered vehicle access to or from a public road? Yes No

If yes, please show in your drawings the position of any existing, altered or new access and explain the changes you propose to make. You should also show existing footpaths and note if there will be any impact on these.

Are you proposing any changes to public paths, public rights of way or affecting any public rights of access? Yes No

If yes, please show on your drawings the position of any affected areas and explain the changes you propose to make, including arrangement for continuing or alternative public access.

How many vehicle parking spaces (garaging and open parking) currently exist on the application site? N/A.

How many vehicle parking spaces (garaging and open parking) do you propose on the site? (i.e. the total of existing and any new spaces or reduced number of spaces) N/A.

Please show on your drawings the position of existing and proposed parking spaces and identify if these are for the use of particular types of vehicles (e.g. parking for disabled people, coaches, HGV vehicles, etc).

8. Planning Service Employee/Elected Member Interest

Are you / the applicant / the applicant's spouse or partner, a member of staff within the planning service or an elected member of the planning authority? Yes No

Or, are you / the applicant / the applicant's spouse or partner a close relative of a member of staff in the planning service or elected member of the planning authority? Yes No

If you have answered yes please provide details:

DECLARATION

I, the applicant / ~~agent~~ certify that this is an application for planning permission and that accompanying plans/drawings and additional information are provided as part of this application. I hereby confirm that the information given in this form is true and accurate to the best of my knowledge.

I, the applicant/~~agent~~ hereby certify that the attached Land Ownership Certificate has been completed

I, the applicant/agent hereby certify that requisite notice has been given to other land owners and /or agricultural tenants Yes No N/A

Signature: [REDACTED] Name: MR. IAN McNAUGHTON Date: 9 SEPTEMBER 2017

Any personal data that you have been asked to provide on this form will be held and processed in accordance with the requirements of the 1998 Data Protection Act.



ANGUS COUNCIL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
(AS AMENDED)TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(SCOTLAND)
REGULATIONS 2013PLANNING PERMISSION REFUSAL
REFERENCE : 17/00771/FULL

To **Mr & Ms Ian & Irene McNaughton & Grant**
Fern Cottage
Kirkton Of Auchterhouse
Dundee
DD3 0QS

With reference to your application dated 11 September 2017 for planning permission under the above mentioned Acts and Regulations for the following development, viz.:-

Retrospective Raised Decking and Raise Section of Existing Boundary Fence at Fern Cottage Kirkton Of Auchterhouse Dundee DD3 0QS for Mr & Ms Ian & Irene McNaughton & Grant

The Angus Council in exercise of their powers under the above mentioned Acts and Regulations hereby **Refuse Planning Permission (Delegated Decision)** for the said development in accordance with the particulars given in the application and plans docketed as relative hereto in paper or identified as refused on the Public Access portal.

The reasons for the Council's decision are:-

1. That the proposed development by virtue of the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north.

Amendments:

1. The agent has supplied revised drawings which show revisions to the drawings to show the existing site, proposed scheme and the neighbour's garden more clearly.

Dated this **19 December 2017**

Kate Cowey - Service Manager
Angus Council
Place
Angus House
Orchardbank Business Park
Forfar DD8 1AN

Planning Decisions – Guidance Note

Please retain – this guidance forms part of your Decision Notice

You have now received your Decision Notice. This guidance note sets out important information regarding appealing or reviewing your decision. There are also new requirements in terms of notifications to the Planning Authority and display notices on-site for certain types of application. You will also find details on how to vary or renew your permission.

Please read the notes carefully to ensure effective compliance with the new regulations.

DURATION

This permission will lapse 3 years from the date of this decision, unless there is a specific condition relating to the duration of the permission or development has commenced by that date.

PLANNING DECISIONS

Decision Types and Appeal/Review Routes

The 'decision type' as specified in your decision letter determines the appeal or review route. The route to do this is dependent on the how the application was determined. Please check your decision letter and choose the appropriate appeal/review route in accordance with the table below. Details of how to do this are included in the guidance.

Determination Type	What does this mean?	Appeal/Review Route
Development Standards Committee/Full Council	National developments, major developments and local developments determined at a meeting of the Development Standards Committee or Full Council whereby relevant parties and the applicant were given the opportunity to present their cases before a decision was reached.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1
Delegated Decision	Local developments determined by the Service Manager through delegated powers under the statutory scheme of delegation. These applications may have been subject to less than five representations, minor breaches of policy or may be refusals.	Local Review Body – See details on attached Form 2
Other Decision	All decisions other than planning permission or approval of matters specified in condition. These include decisions relating to Listed Building Consent, Advertisement Consent, Conservation Area Consent and Hazardous Substances Consent.	DPEA (appeal to Scottish Ministers) – See details on attached Form 1

NOTICES

Notification of initiation of development (NID)

Once planning permission has been granted and the applicant has decided the date they will commence that development they must inform the Planning Authority of that date. The notice must be submitted before development commences – failure to do so would be a breach of planning control. The relevant form is included with this guidance note.

Notification of completion of development (NCD)

Once a development for which planning permission has been given has been completed the applicant must, as soon as practicable, submit a notice of completion to the planning authority. Where development is carried out in phases there is a requirement for a notice to be submitted at the conclusion of each phase. The relevant form is included with this guidance note.

Display of Notice while development is carried out

For national, major or 'bad neighbour' developments (such as public houses, hot food shops or scrap yards), the developer must, for the duration of the development, display a sign or signs containing prescribed information.

The notice must be in the prescribed form and:-

- displayed in a prominent place at or in the vicinity of the site of the development;
- readily visible to the public; and
- printed on durable material.

A display notice is included with this guidance note.

Should you have any queries in relation to any of the above, please contact:

Angus Council
Place
Angus House
Orchardbank Business Park
Forfar
DD8 1AN

Telephone 01307 473212 / 473207 / 473335

E-mail: planning@angus.gov.uk

Website: www.angus.gov.uk



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 1

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided by Angus Council*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers to review the case under section 47 of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of appeal should be addressed to Directorate for Planning & Environmental Appeals, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR. Alternatively you can submit your appeal directly to DPEA using the national e-planning web site <https://eplanning.scotland.gov.uk>.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.



TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 (AS AMENDED)

The Town & Country Planning (Development Management Procedure) (Scotland) Regulations 2013 – Schedule to Form 2

*Notification to be sent to applicant on refusal of planning permission
or on the grant of permission subject to conditions decided through
Angus Council's Scheme of Delegation*

1. If the applicant is aggrieved by the decision of the planning authority-
 - a) to refuse permission for the proposed development;
 - b) to refuse approval, consent or agreement required by condition imposed on a grant of planning permission;
 - c) to grant planning permission or any approval, consent or agreement subject to conditions,

the applicant may require the planning authority to review the case under section 43A of the Town and Country Planning (Scotland) Act 1997 within three months beginning with the date of this notice. The notice of review should be addressed to Committee Officer, Angus Council, Resources, Legal & Democratic Services, Angus House, Orchardbank Business Park, Forfar, DD8 1AN.

A Notice of Review Form and guidance can be found on the national e-planning website <https://eplanning.scotland.gov.uk>. Alternatively you can return your Notice of Review directly to the local planning authority online on the same web site.

2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part 5 of the Town and Country Planning (Scotland) Act 1997.

PLANNING

Your experience with Planning

Please indicate whether you agree or disagree with the following statements about your most recent experience of the Council's handling of the planning application in which you had an interest.

Q.1 I was given the advice and help I needed to submit my application/representation:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.2 The Council kept me informed about the progress of the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.3 The Council dealt promptly with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.4 The Council dealt helpfully with my queries:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.5 I understand the reasons for the decision made on the application that I had an interest in:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Q.6 I feel that I was treated fairly and that my view point was listened to:-

Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree	It does not apply
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OVERALL SATISFACTION: Overall satisfaction with the service:

Q.7 Setting aside whether your application was successful or not, and taking everything into account, how satisfied or dissatisfied are you with the service provided by the council in processing your application?

Very satisfied	Fairly satisfied	Neither Satisfied nor Dissatisfied	Fairly Dissatisfied	Very Dissatisfied
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

OUTCOME: Outcome of the application:

Q.8 Was the application that you had an interest in:-

Granted Permission/Consent	<input type="checkbox"/>	Refused Permission/Consent	<input type="checkbox"/>	Withdrawn	<input type="checkbox"/>
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Q.9 Were you the:- Applicant Agent Third Party objector who made a representation

Please complete the form and return in the pre-paid envelope provided.
Thank you for taking the time to complete this form.

APPENDIX 3

FURTHER LODGED REPRESENTATIONS

From: Leonie Paterson
Sent: 20 March 2018 19:30
To: ForsythSL
Subject: Re: Application for Review - Fern Cottage, Kirkton of Auchterhouse

Dear Sarah,

Thank you for letting me know that the applicant at Fern Cottage wants the recent decision made by Angus Council reviewed.

I just want to reiterate the point that the Patersons, to the north of Fern Cottage have lived in Kirkton of Auchterhouse for around 50 years. When they arrived they took efforts to improve their property in such a way that it fitted in with the character of the village, even taking courses in dry stone walling to do so. They have established and nurtured a garden around their property that they enjoy spending time in. It's their hobby and their space to relax, both having had stressful careers. Now their privacy in, and enjoyment of this garden is under threat from an overbearing high fence and accompanying raised decking; and the underlying raised ground levels pushing against the boundary wall at Fern Cottage are threatening the stability of the dry stone dyke between the two properties. I seriously wonder what is more important - preventing this? Or having raised decking in the neighbouring garden?

Yours,

Leonie Paterson

Sent from Outlook

From: ForsythSL <ForsythSL@angus.gov.uk>
Sent: 08 March 2018 10:19
Subject: Application for Review - Fern Cottage, Kirkton of Auchterhouse

Dear Sir/Madam

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

Application for Review – Retrospective Raised Decking and Raise Section of Existing Boundary Fence at Fern Cottage, Kirkton of Auchterhouse, Dundee – Mr & Mrs I & I McNaughton & Grant

Application No 17/00771/FULL - DMRC-4-18

I refer to the above planning application and your lodged representations to that application.

I write to advise you that the applicant has made an application for a review of the decision taken by the Service Manager (Planning), Communities. This is a process brought in by the above legislation to enable applicants dissatisfied with a decision of the Planning Authority to ask for it to be reviewed. This review will be made by Angus Council's Development Management Review Committee. A copy of the Council's Decision Notice is enclosed for your information.

In accordance with the above Regulations, I am required to ask you if you wish to make any further representations. The Review Committee will be given copies of your original representation. If you do wish to do so, you have 14 days from the date of receipt of this letter to make such representations. These should be sent directly to me.

The applicant will then be sent a copy of these representations and the applicant will be entitled to make comments on them. These comments will also be placed before the Review Committee when it considers the review.

I can also advise that a copy of the Notice of Review and other documents related to the review can be viewed by appointment at this office.

Kind regards

Sarah

Sarah Forsyth | Committee Officer | Legal & Democratic Services | Place Directorate | Angus Council
| Angus House | Orchardbank Business Park | Forfar | DD8 1AN | T: 01307 476269 | ForsythSL@angus.gov.uk

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Sarah Forsyth
Committee Officer
Legal and Democratic Services
Angus Council
Angus House
Orchardbank Business Park
Forfar, DD8 1AN

19 March 2018

Our Ref: JF/CC
Email: claire.coutts@ryden.co.uk

Dear Ms Forsyth

Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013
Application for Review – Retrospective Raised Decking and Raise Section of Existing Boundary Fence at Fern Cottage, Kirkton of Auchterhouse, Dundee – Mr & Mrs I & I McNaughton & Grant
Application No 17/00771/FULL - DMRC-4-18

Edinburgh
0131 225 6612

Glasgow
0141 204 3838

Leeds
0113 243 6777

Dundee
01382 227900

London
020 7436 1212

Manchester
0161 249 9778

I refer to the above Application for Review which was submitted by James Paul Associates on 2 March 2018 on behalf of the appellant. Ryden previously submitted a representation, to the planning application on behalf of Mr Paterson dated 5 October 2017 (Document 1). This provided some background information on the history of the site and details of previous land raising that had been carried out. Objection was made to the scale and massing of the development and issues related to ground levels and loss of amenity.

Throughout the application process there has been some disagreement on ground levels and Mr Paterson made several submissions during the planning application process to highlight this position. Additional information was submitted on 26 October 2017 and included details of timelines of discussions/events/objections (Document 2). On 30 October 2017 further details on Original Soil Levels as determined from Photograph East Elevation was submitted (Document 3). The appellant's agent submitted a letter to the planning officer dated 26th November 2017 which disagreed with Mr Paterson's measurements and this included photographs which have been attached as Document 4. A further letter was submitted by Mr Paterson dated 18 December 2017 (Document 5). Mr Paterson also sought to highlight discrepancies on the elevation drawing (Document 6). The amended cross sections referred to are attached as Document 7.

Although some disagreement still existed, Mr Paterson was relieved when the application was refused. However, Mr Paterson considers that the Grounds of

Appeal statement contains several errors and misleading information and wishes to make comment on these:

“A 3 metre high hedge running along the north boundary wall running for approximately ten metres from the house”. The leylandii hedge as such was approx. 2½M high and approx. 3¾M in length and the top of this hedge was cut back at an angle of 55° to reduce its impact re causing a shadow.

“Prior to commencing with this particular work they approached Angus Council to ascertain what permissions were required and were advised that the patio doors, fencing and upgrading works to the garden did not require any permissions as they were not structural or could be seen as permitted development under the Planning Acts”. It is argued that this is not the case and Angus Council's Planning Enforcement Officer stated, via email of 18th July 2017 that **“similarly the works to raise the ground level would also require planning permission”.**

“Works progressed on the decking to the front of the new patio doors plus erection of a 1.8 metre high timber fence from ground level along the north boundary”. The erected fence is taller than this and extends to 1.950M to just under 2M in height.

“This fence was also continued at 1.8 metres high from the decking which is at the level of the house ground floor. The top of this decking fence is 2.53 metres above ground level”. The fence was never erected to this height as detailed above. Therefore the top of the decking is considered to be higher above ground level than stated.

“The decking as previously stated is at house ground floor level height and runs from the house for approximately two metres”. It is this section of decking that has been erected at a maximum height of 1.130m, well in excess of the 500mm permitted height above the original ground levels and at a height that is within 150mm of the top of the boundary dry stone dyke. This should not be used as a reason for extending the height of the fence by another 1350mm (scaled from mock up photograph within the appellant's grounds of appeal statement and attached at Document 8). This would give a fence with an overall height of 3.55m, which would be overbearing, unsightly and out of character to that of a drystone dyke. It would also cut even more sunlight to Mr Paterson's fruit which requires direct sunlight to ripen.

“Overlooking of the neighbours garden would still occur particularly if the raised section of fence was removed”. This was never erected in first place, only a proposal.

“Previously there was a hedge of a similar height and in a similar position to the raised section of fencing”. In this area there were roses that were pruned

back in the spring (no impediment to sunlight at that time) and as the roses grew over the summer months allowed mottled sunlight through into the fruit cage.

“If this Appeal was unsuccessful and the decking and fencing were removed the Appellants could without requiring planning permission erect a garden shed up to 4 metres high, one metre from the existing boundary wall. The present raised section of fence is 2.53 metres above ground level. A 4 metre high shed will be considerably more overbearing than the proposed fence. This would suggest that the height of the fence is within permitted levels and acceptable”. It is argued that this statement is hypothetical. In any case, it would not create an unacceptably high viewing platform that would invade privacy.

“Along similar lines to 3 above and with reference to the correspondence between the Planning Department and the appellant’s agent, it is of note that the Planning Officer was originally minded to approve this application as reference is made to the planning application having to be put before the Planning Committee. This could only occur if the planning Officer had been minded to approve the application. Again this suggests that the proposals were originally seen as being within acceptable levels”. It should be emphasised that the application did not go to Committee and was refused as the height of the raised section of fence and the height of the decking would introduce overbearing impacts and overlooking which would have a detrimental effect on the amenity and enjoyment of the garden area to the north. It should also be noted that the Planning Officer expressed dubiety regarding the height and location of the deck by stating **“we discussed you reducing the width of the decking in order that it would be further from the north boundary and that it could be access steps rather than a decked area to reduce overlooking. The decking elevates you to a height that you will recall we already thought to be unacceptable”.**

“Again if this Appeal is unsuccessful and the decking and boundary fencing are removed and it reverts back to the existing situation then a one metre high stone wall is not going to afford any privacy to the neighbour’s garden”. It is contended that the 3’-6” high wall has not been a problem in the last 47 years with the two previous owners of Fern Cottage due to the fact that when Mr Lambert built Fern Cottage in 1969/70 he created two sitting out areas. The first and main area was their slabbed patio located within the curtilage of the “L” shape footprint of the house which was accessed via sliding doors from their lounge/dining area. The second area was a slabbed area immediately to the south of their greenhouse at the bottom of their garden (Document 9). Both areas were at ground level and as such neither of these sitting out areas overlooked Mr Paterson’s rear garden nor did it, being at a slightly lower level, overlook these areas within Fern Cottage. Neither of the two previous owners nor any owner over the last 100+ years since the dyke was originally constructed felt the need to raise the height of the boundary dry stone dyke by the erection of a fence.

Mr Paterson maintains his position in relation to original ground levels and the height of the proposals and the overbearing impact this would have on the amenity and enjoyment of his property. The appellant has stated in the appeal form that a site inspection is vital in that one of the main grounds for refusal relate to the overlooking of the neighbours garden and that this has to be viewed on the site. If such a site visit does go ahead, it is considered essential that this extends to the neighbours garden at Blanerne to ascertain the scale and massing of the works from their perspective.

As such it is respectfully requested that this appeal is refused.

Yours sincerely

Claire Coutts
Associate

Service Manager
Planning Service
Angus Council
County Buildings
Market Street
Forfar DD8 3LG

Our Ref: JF/ILVH
Email: ian.livingstone@ryden.co.uk

5 October 2017

Dear Sir / Madam

17/00771/FULL - RETROSPECTIVE RAISED DECKING AND RAISED SECTION OF EXISTING BOUNDARY FENCE AT FERN COTTAGE, KIRKTON OF AUCHTERHOUSE, DUNDEE DD3 OQS – LETTER OF OBJECTION

I write on behalf of Mr & Mrs Paterson, who reside at Blanerne, immediately adjacent to Fern Cottage, and were in receipt of a letter of notification with respect of the retrospective application dated 15 September 2017. My clients are aggrieved at the scale and positioning of both the erected decking and fence which sit immediately adjacent to the dry stone dyke defining the shared border between Fern Cottage and Blanerne. These features are incongruous with the scale and nature of the residential context and exert an unacceptable impact upon the amenity of my clients' property and their levels of privacy and amenity.

The retrospective planning application submitted by the applicant lacks detail and does not accurately reflect the original grounds levels or the constructed finished floor levels. My clients' enjoyment of their home and rear garden stands to be substantially impacted and for this reason the planning application should be refused and the rear garden of the applicant's property returned to its previous state and original ground levels and the decking and fencing significantly reduced in scale and height.

Background & Ground Raising

Since the applicant moved into Fern Cottage in 2016, a number of alterations have been made to the external curtilage of the property. This has involved the formation of a surface car parking area at the front elevation of the dwelling and the redistribution of excavated soils to the rear garden. This has impacted the ground levels along the boundary of the property shares with Blanerne and resultantly placed additional pressure onto the dry stone dyke, which my clients have restored and maintained to a high standard during their 47 year tenure at the property.

Edinburgh
0131 225 6612

Glasgow
0141 204 3838

Leeds
0113 243 6777

Dundee
01382 227900

London
020 7436 1212

Manchester
0161 249 9778

This has also enabled the applicant to manipulate what has been perceived as the original ground levels with the submitted cross section drawings. These are of insufficient detail and fail to conclusively identify the original ground levels prior to the land raising through the addition of soil and the unconsented construction of the decking extending to the rear of the property. The planning authority cannot make an informed planning decision based on such inept supporting information. The original ordnance datum levels must be identified to allow the scale and height of both the constructed decking and fence and ground levels to be assessed competently.

To assist with this, Mr Paterson, who has worked as a civil engineer for his entire career, has undertaken measurements and produced the plans now attached as Appendix 1 and Appendix 2. These provide a more accurate and realistic reflection of the original ground levels taking into consideration the falling topography of the rear garden at Fern Cottage moving east and north, illustrated by Photograph 1, enclosed. These plans show an elevated ground level of approximately 600mm, with the decking erected at 1.13m above dubbed '2016 ground levels' at its highest point. These levels justify the need for a retrospective planning application as this breaches the 0.5m permitted height under domestic permitted development rights.

Amenity

Policy DS4 of the extant Angus Local Development Plan (LDP) states that *'development will not be permitted where there is an unacceptable adverse impact on the surrounding area or the environment or amenity of existing or future occupiers of adjoining or nearby properties'*. The planning authority are required to consider the impacts of the development on *'residential amenity in relation to overlooking and loss of privacy, outlook, sunlight, daylight and overshadowing'*.

From the enclosed Photograph 2, the erected levels of the decking relative to the boundary wall of my clients' dwelling is clear. The applicant's deck chairs are visible adjacent to the rear bi-folding patio doors, providing clear sight lines into the rear garden of Blanerne above the boundary fence for anyone using the decking. This will have a detrimental impact on my clients' privacy and enjoyment of their rear garden. Any suggestion to raise the fence higher would only serve to exacerbate the problem.

Furthermore, due to differences in ground levels within my client's property and Fern Cottage, the erected fence becomes more prominent in scale and height. This will limit the quantity of daylight reaching my clients' garden where various fruit plants are located adjacent to the dry stone dyke. This will have a limiting influence on their growth and extend the length of the shadow cast across my clients' rear garden. Therefore in respect of scale, siting and the detrimental impact the decking and fencing as constructed imposes on the levels of the residential amenity at Blanerne, this application should be refused.

Householder / Domestic Development

Policy TC4 of the extant Angus LDP is relative to Householder / Domestic Development. The Policy states that alterations will be supported where the siting, design, scale or massing of the proposal, does not:

- *Adversely affect the residential amenity enjoyed by the house or surrounding domestic properties;*
- *Detrimentially affect the character and/or appearance of the building, site or surrounding area; and*
- *Result in the overdevelopment of the plot or a loss of garden ground.*

Accompanying text stipulates that developments should '*maintain the quality of the character of the surrounding area*' and '*respect the amenity of adjacent neighbouring properties and their curtilages*'

It is firmly contended that the development as erected fails to comply with the content of Policy TC4. The scale and massing of the fence and decking is inappropriate in the context of the surrounding residential environment and the overbearing nature of the fence detracts from the character of the setting created and enhanced by the well maintained dry stone dyke. The integrity of this feature has been detrimentally impacted by recent land raising and the presence of the fence immediately abutting the wall. This has forced the wall to move in places, highlighted by Photograph 3 enclosed.

Planning Advice Note

Helpfully, Angus Council has produced a Planning Advice Note on Householder Development to complement the Local Development Plan content. This was published in September 2016. Pertinent to the application for the erected decking and fencing, page 13 of the document advises that decking should '*be developed away from the mutual boundary between adjacent properties*' and '*be developed at, or as close to, ground level as possible (taking account of any level changes within the curtilage of the existing residential property).*'

It is abundantly clear that the applicant has shown scant regard for this advice, having proceeded to raise ground levels and construct an area of decking which exceeds that permissible under permitted development rights. Photograph 4 illustrates the proximity of the fence, which marks the edge of the applicant's decking, to the mutual boundary of Fern Cottage and Blannerne. This layout directly contradicts the advice given by the planning authority's approved note and as a result, the area of decking now allows direct overlooking into my clients' rear garden.

The lower ground levels within my clients' rear garden have not been considered and the fencing as erected is now considered excessively tall. This is illustrated by Photograph 5. Ultimately this is in direct conflict with the planning authority's advice on Boundary Treatments, found on page 17 of the note.

Alternative Location

The 'L' shape footprint of the applicant's home would allow an alternative location for the proposed decking at a position further south on the property's rear elevation. This would contribute to a more secluded and private location which would be mutually beneficial for my clients as well as the applicant. This should have been considered prior to the applicant proceeding with the unconsented construction for which he now seeks planning permission.

Summary

My clients firmly contend that the decking and fencing as erected imposes a detrimental impact on the residential amenity of the rear garden at Blarney and restricts their enjoyment of their private area. They are disappointed that the applicant failed to divulge the true extent and scale of the decking and fence prior to construction and that the development proceeded without the requisite permission. Following a meeting with the Case Officer on Monday 2 October, my clients would also like to invite Pauline Chalmers to visit their property and view the development from the rear garden in order to ascertain the scale and massing of this experienced from my clients' perspective.

The applicant's application provides insufficient information upon which to base a planning decision as original ground levels cannot be conclusively identified. The onus is firmly on the applicant to address this situation and clarify this point which he has failed to in an amended cross sectional drawings. No decision should be taken until such times as this information is received and verified by the planning authority.

The decking and fencing as constructed fail to comply with the content of Policy D4 Amenity and Policy TC4 Householder / Domestic Development and should therefore be refused permission. The applicant has disregarded the Council's Planning Advice Note relative to decking proximity to mutual boundaries and the design and nature of boundary treatments, showing no consideration for my clients' residential amenity. The scale and massing of the erected development is inappropriate and fails to integrate successfully with the context of the residential environment.

Based on the foregoing, it is respectfully requested that the application is refused.

Yours sincerely


Ian Livingstone MRTPI
Senior Planning Consultant

cc. M. Paterson, Blarney, Kirkton of Auchterhouse, Dundee, DD3 0QS

Document 2

Time Line of Discussions/Events/Objections

The Deck

In early December/mid December 2016 Ian informed me that he was taking out the lounge window and replacing it with a bi-folding door and that "the wife" wanted a deck erected to tie in with their FFL which he said he told her that they couldn't do that because the deck, at that level, would virtually be at the top of the boundary drystone dyke which he said would completely dominate and overlook my garden and that he told her that they would have to erect the deck at low level with access to it via a flight of steps.

I expressed surprise that his FFL was at that height relative to the boundary wall and agreed with him that a deck erected at that level was inappropriate and unacceptable for the very reasons that he had just quoted. In further discussion he confirmed that the deck would be constructed hard against the boundary wall and erected as low as possible –circa ground level – in order to maximise the height from the deck to the top of the boundary wall. I confirmed that I had no objections to his deck proposals.

This was the one and only time that he discussed the deck details with me and in the absence of any further discussion on the subject I took it that when the deck was installed it would be installed as per the details given

On drawing Rev A, Section bb, I have shown the deck constructed in total compliance with the details/levels given to me in December 2016. Using a height of 1.750M from the top of the fence to the deck at the east edge of the deck would give a step of 200mm down to the 2016 garden levels. With the deck constructed level, and due to the existing ground level slope/falls, the deck would end up 24mm approx. below the 2016 garden levels at the house elevation.

Fence

Around about the beginning of February 2017, Ian informed me that he was proposing to erect a fence due to his concern for his dogs jumping over the wall. I replied that this would not concern me as dogs can be trained not to jump over walls. The previous owner, who also had a dog, had used 500mm of chicken wire along the top of the wall and it worked and he could do that. He said he wasn't keen on that. He wanted to erect an independent fence. Looking over the wall I pointed out that he had made it easier for the dogs to jump over the wall by the fact that he had dumped all his excess soil, from the elimination of his front garden (for parking), adjacent to the boundary drystone wall. This dumping of excess soil had raised the garden level by 200+mm in this area and by 450+mm in the NE corner where "the wife" wanted a raised flower bed.

I went on to say that in 1970 the drystone boundary dyke was a free standing wall and gave him a 1969 photo confirming this – photo enclosed.



I also pointed out that the dyke was not designed and constructed as a retaining wall and that his dumped soil was putting a surcharge load onto this wall, which would result in instability/movement of this wall. He claimed that the dumped soil was only dumped there on a temporary basis and that he would be scraping it up and removing it from site at a later date to leave the ground levels as they were when he purchased the property in 2016. In the meantime I asked him to remove said soil back from the wall to eliminate any surcharge loading.

I then suggested that any fence erected would have to have a minimal visual impact on the boundary wall and would have to be as transparent as possible so as not to impede direct sunlight into this area of garden. It is a particularly wet area and I didn't want a solid fence, which would exacerbate the problem. I stated that I would have no objections to a fence constructed out of mesh similar to that he had used for his dog compound or diamond/square lattice screening timber fence panels. Either of these materials would have minimal effect on direct sunlight. He appeared to take on board my suggestions as he gave no comment or suggested any alternatives.

It was some 3+ weeks later that I noticed a delivery of timber planks and posts had been made to his property that, at the next opportunity I raised the subject of the fence with him. His reply was that "the wife" did not want mesh and that it had to be constructed out of timber. I again repeated that this was not the type of fence that I wanted to see on this

boundary as it would impede direct sunlight and that a drystone dyke overtopped by a skelp of timber fencing would take away the characteristics, aesthetics of this type of wall and would be overbearing. I also stated that I was under the impression that any boundary construction was down to the agreement of both parties and as such I would not be agreeing to a solid timber fence. I asked him to discuss my observations with his wife and let me know the outcome.

In mid-March he informed me that he was going to proceed to erect a solid hit and miss timber fence and indicated a height that was over 2.0M high from my side of the boundary. I stated that the height proposed was ridiculous and certainly not required to be that height to stop his dogs from jumping over the wall. He then suggested that if I was not happy with what he was doing perhaps I should contact the Council to see what they had to say on the matter.

I promptly did this and was surprised to be informed that several days previously that Ian had Council representatives out to his property to discuss the boundary fence. I was now given the same advice that he was given - he could erect a fence, material of his choice, providing the fence was not erected any higher than 2.0M from the original ground level (not his present elevated levels), he did not require Planning Permission or my approval.

When I contacted Ian next day I expressed my disappointment at his having the Council out and not involving myself in the onsite discussion. He point blank denied having the Council out about the fence and it was only when I pointed out that the Council had photos of the garden showing the deposited heaps of soil dotted round the garden that he then admitted that he had the Council out but that was to discuss his bi-folding doors and deck construction. If this was the case then I am surprised that he subsequently built the deck at a maximum height of 1.130M above original 2016 garden levels, when 500mm is the maximum permitted level. As he was now proceeding with the fence construction I again requested that he completed his task of removing all dumped excess soil adjacent to the boundary wall to leave the garden levels within this area at 2016 levels as it would be more difficult to remove after the fence was erected. He reiterated that all the dumped soil would be removed offsite at a later date.

On completion of the fence erection I checked the fence height and found that the height of the fence followed the original slope of the garden levels at a height of approximately 1.950M, i.e. the height of the fence is under the permitted height of 2.0M. The fence, drystone wall and soil levels all have a similar fall from West to East of 32mm per 1.00M run.

Deck Construction

He then proceeded to remove all dumped soil from the area of the deck and deposited same in a spoil heap in the remaining area of his garden. He also removed all top soil from

the area of his garage drive and added this to the spoil heap ready, I thought, to be removed from site.

On constructing the deck it soon became obvious that he was not erecting the deck to the levels he agreed with me in December 2016 but was erecting the deck to marry in with his floor level – a level which he had rejected in December 2016 as being inappropriate and unacceptable due to its height relative to the boundary wall – the erection of a fence does not alter the criteria.

Significant Earthworks

To add insult to injury, and despite assuring me on 3 separate occasions that he was going to remove all dumped excess soil within the rear garden area offsite he did not do this and instead he spread the spoil heap over the remaining area of the rear garden. This has resulted in further elevating the garden levels adjacent to the boundary drystone dyke by approximately 450mm adjacent to the NE corner of his garden and by 600mm at the NE corner of the lower deck from the previous 2016 levels.

On checking the soil levels on 29.09.2017, adjacent to the boundary wall, I find that in the NE corner of his garden, where “the wife” wants a mounded flower bed that relative to the previous 2016 levels the soil is still elevated against the boundary wall by 230mm approx. This soil has to be removed in order to prevent further damage to the walls – there is a severe bulge in the wall into my garden – see photo 1 - and the top of the East wall is leaning precariously into the field – see photo 2.

Photograph 1



Photograph 2



In other areas there is evidence that, due to weathering, etc. there has been soil migration from the elevated soil level filling the gap adjacent to the wall, on his side. I find the soil levels are now anything from 25mm to 50+mm higher than when I previously checked them in May 2017.

It is essential that Mr McNaughton should reinstate the garden back to the previous levels, which prevailed in 2016.

For the record the original owner in 1970 had elevated the soil levels adjacent to the boundary wall by approx. 300 mm at the NE corner of the garden (where the greenhouse was located and was the lowest part of the garden) and by approx. 300 mm at the location of the NE corner elevation of the lower deck and left the soil level at the house elevation as they were when the house was constructed which, at the very most, was only approx. 50mm above the roughcast cut off level on the gable. He then graded the garden with a cross fall from the garage drive to these levels at the North wall. In 1970, in ball park terms, the height of the drystone dyke on Blanerne's side was 4'-0" at Fern Cottage's gable to 4'-6" at midpoint and 4'-6" at the SE corner. After Fern Cottage's landscaping the height of the wall from Fern Cottage's perspective was 4'-0" at the house East elevation to 3'-6" at midpoint and 3'-6" at the NE corner of the garden - the enclosed 4No photos shows the garden in 2016.

Photograph 3



Photograph 4



Photograph 5



Photograph 6



Conclusions and Objections

Elevated Soil Levels

Document 17/00106/UNWKS refers to *“ground levels significantly altered at the property”*.

R. Parry’s email of 18 July 2017 states that *“the works to raise the ground levels would also require planning permission”*

On reading through the correspondence I can find no reference to seeking Planning Permission for the significant earthworks that have been carried out. On looking through the drawings I again can’t find any reference to these works – i.e. in raising the soil levels by 600mm adjacent to the boundary wall. I would expect to see references to the original ground levels, the elevated ground levels and in particular all referenced to the existing drystone dyke boundary wall, all fully dimensioned in order that the full extent of the works can easily be ascertained.

There is evidence that, as of today’s date, there has been soil migration into the gap adjacent to the wall from the elevated soil level. I am certain that over time this soil

migration will continue and eventually to exert an unacceptable surcharge load onto the wall which will cause further damage/bulging.

It would be prudent not to allow this to happen by requesting that Mr. McNaughton reinstates the ground to the previous levels that prevailed in 2016. After all, this is what he informed me he was going to do on three separate occasions.

The Deck

On checking section bb I find that the drawings are inaccurate and give no information relative to the decks construction to the original ground levels. There are no dimensions or any indication of original 2016 ground levels. It is impossible from the current submission drawings for anyone to determine the height, from original ground levels, that this deck has been constructed to. The elevation shown on section bb is inaccurate in so much that the fence, drystone dyke and original garden levels all have a West to East fall of 32mm per 1.000M run. At section aa, due to the above noted falls, the drystone wall is shown too high. Existing 2016 ground levels and the soil elevation are not shown/identified.

For the records the soil elevation at this location is approx. 600mm and comes in at just under 500mm from the top of the drystone dyke.

I have added the relevant information on the section and plan Rev A drawings.

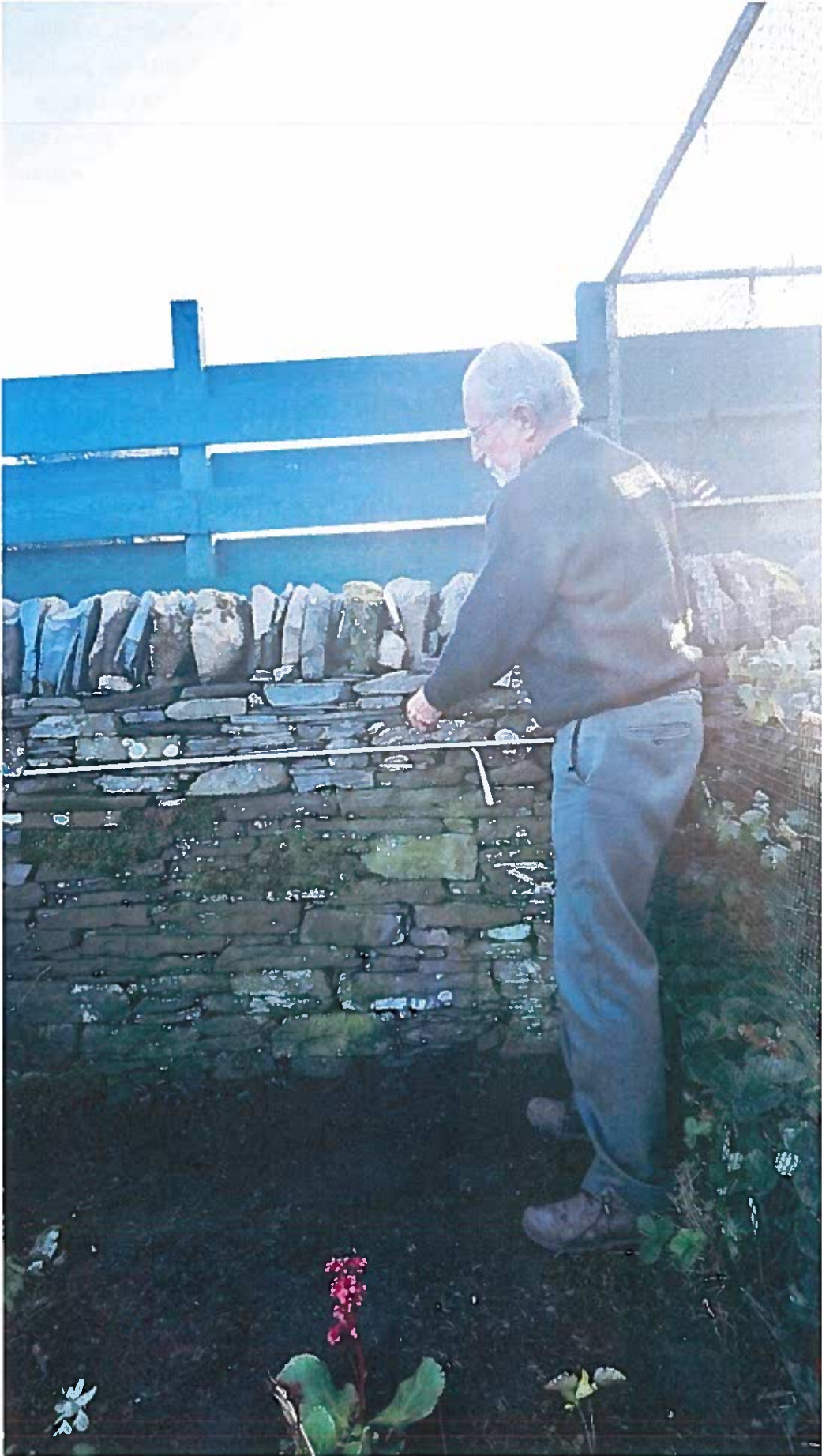
26-10-2017 I have now revised this drawing to Rev B by adding dimensions for the differential ground levels on either side of the boundary wall and the height of the wall.

See enclosed photos showing deck and elevated soil levels relative to the dry stone dyke.

Deck Level relative to Dry Stone Dyke



Elevated soil level relative to the Dry Stone Dyke



Mr. McNaughton blatantly erected the deck to levels (1.070M, 1.130M and 750mm above 2016 ground levels) that he, himself, rejected in December 2016 as being inappropriate and unacceptable due to its height to the boundary wall – the erection of a fence does not alter the criteria. As he has exceeded the maximum permitted height of 0.5M, which his decking contractor should certainly have had knowledge of, he should undertake works to reduce the height of the decking and if he were to construct the deck in accordance with the details he gave me in December 2016 then there would be need to increase the height of the fence for any privacy concerns that he might have.

Fence

The fence as erected is already 2.200+M high from my side of the boundary and has already reduced, due to its shadow footprint, the amount of sunlight coming into my flower beds and fruit bushes.

Because Mr. McNaughton has put in a deck at a maximum height of 1.130M, well in excess of the 500mm permitted height above original ground levels, should not now be used as a reason for extending the height of the fence by another 900mm. This would give a fence of with an overall height of 3.100M i.e. a fence that would be over 10'-2" tall on my south facing boundary. A fence of this height would be overbearing, unsightly and out of character to that of a drystone dyke. It would cut even more sunlight coming onto my fruit bushes and as we all know fruit requires direct sunlight to ripen.

As stated previously, had the deck been constructed as per the details he gave me in December 2016, there would be no need to raise the height of the fence. Surely, the correct solution, considering the degree of non-compliance, is for the deck to be dismantled and reconstructed at ground level and away from adjacent to the mutual boundary wall and for the garden to be reinstated to 2016 levels.

I certainly do not want the fence to be raised in height as the fence, as currently erected, is already overpowering.

Based on the aforementioned this retrospective planning application should respectively be refused.

Document 3

Original Soil levels as determined from Photograph of East Elevation

On the North gable of Fern Cottage there is a cut off level of the roughcast which gives a clear indication of the soil levels at the time of roughcasting.

From this roughcast cut off level the height to the top of the erected fence is 1.990M and to the top of the Fyfe Stone (as seen on the East elevation) is 46½" (1.180M). The height from the top of the Fyfe Stone to the top of the fence is 810mm.

From Photo 1 you can see that there is a fall in garden levels from South to North.

From Photo 2 the level of the soil from the top of the Fyfe Stone can be determined by knowing the coursing of the Fyfe Stone and interpolation.

The Fyfe Stone was manufactured in nominal sizes of 9", 6" and 3" heights and sized to course in with imperial sized common brickwork at 3¼" coursing. i.e. 2No 6" stones (or 1No 6" and 2No 3" stones) courses out at 13" (this can be confirmed by checking out the as built Fyfe Stone on both properties). From the Photograph No2, to the left of the Half Oak Whisky Barrel Planter, you can make out that there are 3No 6" stones and 3No 3" stones which equates to a height of 29¼" from the top of the Fyfe Stone to the paving slab walkway which is 36" wide. By opening this photo in Photoshop with rulers enabled you can ascertain by scaling/interpolation that the height from the slab walkway to the flower bed is $29.25" \div 13.7 \times 8 = 17.08"$. This gives you an overall height from the top of the Fyfe Stone to the soil level at this location of $(29.25 + 17.08 = 46.33"$ (1.178M).

It is worth noting that this calculated level is within a ⅛" of the gable soil level at the roughcast cut off level.

The height of the fence at this location (36" from the East elevation of Fern Cottage) due to its fall of 30mm from West to East is 780mm above the top of the Fyfe Stone. This gives an overall height for the erected fence relative to this location, from original ground level, of $1.178 + 780 = 1.958\text{M}$. If you add in any fall from South to North then the height of the fence from original garden levels is approaching 2.000M at the Dry Stone Dyke boundary. As the deck is 83mm below the top of the Fyfe Stone the deck has been constructed, at this location, at a height of $1.178 - 83 = 1.095\text{M}$ above original soil level – any fall taken into account from the South to North adds to this height at the boundary.

These ascertained levels, at this location, clearly indicate that when the garden was originally landscaped that there was no soil elevation, whatsoever, implemented at the house location. It also confirms that the dimensions that I have previously given you in Revision A and, subsequently, Revision B of Proposed Elevations – Appendix 1, Ground Levels & Sections aa & bb, for the original ground levels, the height of the deck and fence above these original ground levels are all accurate.

On Photograph 2A - I have indicated by white lines the 2No 13" courses and the 3¼" course.

Photograph 1



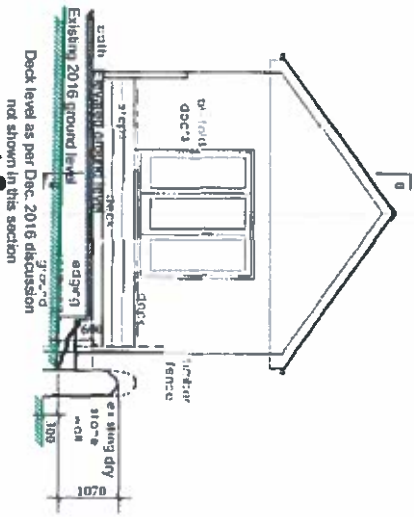
Photograph 2



Photograph 2A



Appendix 1



Section aa (south to north)

scale 1:100

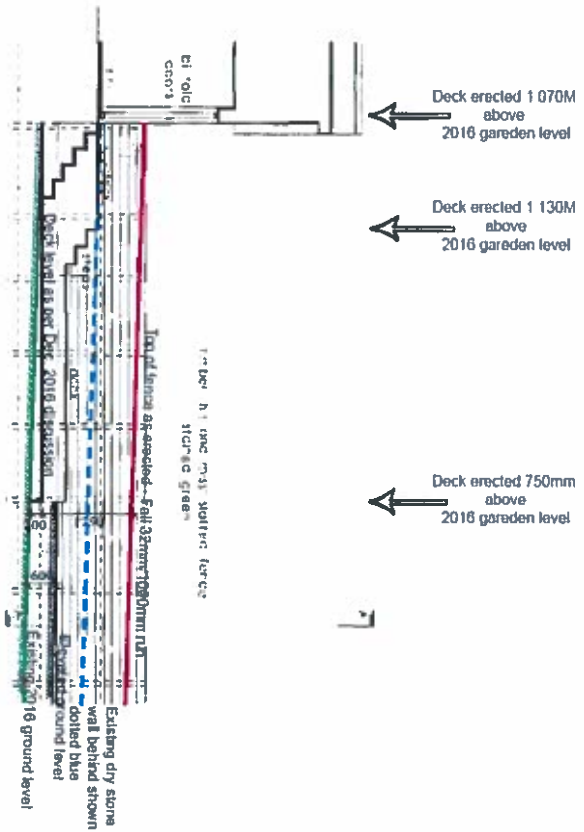
PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. J. McNAUGHTON & MS. I. GRANT.

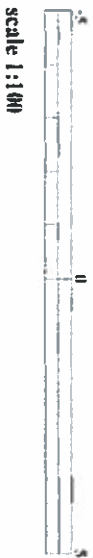
September 2017 Rev B

- Rev A Deck levels as per December 2016 discussions details shown on drawing
- Elevated ground levels identified
- Existing 2016 ground levels added
- Dimensions added
- Rev B Dimension added for differential ground levels on either side of boundary wall
- Section aa



Section bb (elevation of fence from south)

scale 1:100



Document 4



Photograph 1 Enclosed with Leslie Smith's email of 26 November 2017



Photograph 2 Enclosed with Leslie Smith's email of 26 November 2017

Document 5

Blanerne,
Kirkton of Auchterhouse.
DD3 0QS
18-12-2017

Dear Pauline

Fern Cottage 17/00771/FULL

I write in response to the "Email from Agent – Dimension information responding to Neighbour", uploaded on 15th December 2017, dated 26th November 2017, wherein Leslie Smith is disagreeing with my measurements of the original ground levels.

In response to measurements

Leslie Smith is unaware of the fact that the elevated paving slab walkway from the patio, which was installed by the original owner for the cleaning of the lounge window, does not run the full width of the East elevation but is in fact curtailed some 3'-0" back from the North gable with the flower bed against the dry stone dyke running around the end of this walkway through to butt up against the East elevation. It is relative to the soil level within this flower bed that my measurements are referenced to.

I quite clearly state in my "Original Soil levels as determined from Photograph of East Elevation" of 30th October 2017 that

*"On the North gable of Fern Cottage there is a cut off level of the roughcast which gives a clear indication of the soil levels at the time of roughcasting.
From this roughcast cut off level (original soil level) the height to the top of the erected fence is 1.990M and to the top of the Fyfe Stone (as seen on the East elevation) is 46½" (1.180M). The height from the top of the Fyfe Stone to the top of the fence is 810mm."*

Please feel free to visit my premises to verify these actual on site measurements for yourself.

Nowhere within that document do I state that the base course height is 1180mm. What I clearly stated in that document was that the height from the original ground level, as given by the roughcast cut off level, to the top of the Fyfe Stone (as seen on the East elevation) is 46½" (1.180M). On viewing the enclosed photo Leslie Smith is giving a measurement from the top of the Fyfe Stone, Arrow A, to the elevated walkway, Arrow B, and not to the original ground levels, Arrow C.

The "Proposed Elevation & Section" drawing, uploaded on 15th December, dated 17th October 2017, submitted by Mr McNaughton, clearly gives the height of the fence as 1.980M from the original ground level (dotted blue on Section bb). Height of fence 10.83 minus height of original ground level 8.85 = 1.980M. I am certainly not going to quibble over the 10mm difference between the two ascertained heights.

Therefore Leslie Smith's statement that *"the correct height is 1610 (800+810mm) above the original ground level"*, based on the above, is clearly wrong. An elevated paving slab walkway on part of the East elevation is not the original ground level.

I also note that Leslie Smith by his methodology of scaling photograph 2 arrives at a base course height of circa 800mm – I would be delighted in using this figure of 800mm for the base course in interpolation of the height from the slab walkway to the soil level within the flower bed as this would give an original soil level of this flower bed some 90mm lower than previously ascertained level within my "Original Soil levels as determined from Photograph of East Elevation". However, this would be wrong as the coursing of the Fyfe Stone gives a very accurate height of the base course as 29¼" (743mm) and therefore I stand by my stated overall height from the top of the Fyfe Stone to the soil level at this location of (29.25 + 17.08 = 46.33" (1.178M) i.e. From Arrows A to B and Arrows D to C.

In response to conjecture on shadows

The fence as erected is already 2.200+M high from my side of the boundary and has already reduced, due to its shadow footprint, the amount of sunlight coming into my flower beds and fruit bushes. Isolated trees and bushes that were further south into the garden than the fence has a reduced shadow footprint and have a transient shadow for as the Sun moves from East to West the shadow moves West to East whereas a solid fence gives a constant shadow irrespective of the Sun's position. For example the Leylandii hedge was further into Mr. McNaughton's garden, by approximately 900mm, than the fence and as I trimmed this hedge on behalf of Mr. and Mrs. Heggie the top of this hedge was cut to a slope of 55° which reduced its shadow footprint into my garden.

In conclusion

Because Mr. McNaughton has put in a deck at a maximum height of 1.130M, well in excess of the 500mm permitted height above original ground levels, should not now be used as a reason for extending the height of the fence by another 900mm. This would give a fence of with an overall height of 3.100M (over 10'-2"). A fence of this height would be overbearing, unsightly and out of character to that of a drystone dyke. It would cut even more sunlight coming onto my fruit bushes and as we all know fruit requires direct sunlight to ripen.

As stated previously, had the deck been constructed as per the details he gave me in December 2016, there would be no need to raise the height of the fence.

I certainly do not want the fence to be raised in height as the fence, as currently erected, is already overpowering.

There have been no privacy problems with the previous two neighbours relative to the height of the drystone dyke for the last 47 years that I have lived here and, no doubt, no privacy problems over the last 100+ years since the dyke was originally constructed.

For the record the original owner in 1970 had elevated the garden levels adjacent to the boundary wall by approx. 300 mm at the NE corner of the garden (where the greenhouse was located and was the lowest part of the garden) and by approx. 300 mm at the location of the NE corner elevation of the lower deck and left the garden at the house elevation at the level indicated by the roughcast cut off level on the gable. He then graded the garden with a cross fall from the garage drive to these

levels at the North wall. I am informed that because I did not object to these elevated levels in 1970 that after a period of years they became the de facto levels. I am now also concerned that Mr. McNaughton has added a further 600mm adjacent to the North boundary Dry Stone Dyke, that, if uncontested, will become the next de facto ground levels for future ground alterations and works.

It is essential that Mr McNaughton should reinstate the garden back to the previous levels, which prevailed in 2016.

Yours sincerely

Malcolm Ian Paterson



Document 6

Highlighted Discrepancies on Elevation Drawing

Refer to Photo 1.

Discrepancy is that wall, detailed out at same level as top of Fyfe Stone, is displaced downwards by 150mm on Elevation Drawing thereby making Blanterne soil levels on Section bb lower by 104mm than they actually are. The difference between the line of previous ground at north boundary shown dotted blue and the Blanterne soil levels is shown as, $8.85 \text{ minus } 8.50 = 350\text{mm}$ whereas on site the difference measures out at 216mm – a discrepancy of 134mm. Although Mr Smith agrees with my height of 810mm from the top of the Fyfe Stone to the top of the fence he shows this height as 830mm on his drawing.

Refer to Photo 1.

At the Section BB location on Section aa elevation the ground level, on the “line of the previous ground at building shown dotted blue”, is given as 9.06(also given as 9.06 on Section bb). As this Section BB location is virtually at the location, arrows A to B and arrows D to C, where I have calculated by interpolation, in my document “Original Soil levels as determined from Photograph of East Elevation” of 30th October 2017, the level as 1.178M from the top of the Fyfe Stone to the original ground level in front of the elevated paving slab walkway. To arrive at the level at the East elevation you have to add 30mm to this level giving a revised height of 1.148M (this is the allowance for the West to East fall of 32mm/1M run). Taking this height from the Datum of 10.00 gives an original ground level of $10.00 - 1.148 = 8.852$ which is 208mm lower than the stated level of 9.06 on elevation Section aa. This is a significant discrepancy.

Refer to Photo 2.

At the Section AA location on Section bb elevation the top of the dry stone dyke is given as 9.73 with the soil level on Blanterne’s side given as 8.23 – a difference of 1.5M whereas on site this measurement is 1.37M (4’-6” high) – a discrepancy of 130mm.

Refer to Photo 3.

At the East end of Section bb, at the NE corner of Fern Cottage’s garden, the top of the dry stone dyke is given as 9.44. The soil level on Blanterne’s side (dotted green) is given as 7.95 and the elevated soil level on Fern Cottage’s side is given as 8.60. The height of the wall from the soil level on Blanterne’s side is 1.32M giving a soil level of 8.12 – a difference of 170mm higher than the stated level of 7.95. The height of the wall from the elevated soil level on Fern Cottage’s side is 630mm giving an elevated soil level of 8.81 – a difference of 210mm higher than the stated level of 8.6. My level for the original ground level on Fern Cottage’s side is 8.42 ($300 + 8.12\text{M}$) which is within 30mm of the Agent’s stated level of 8.45.

Refer to Section aa and Section bb amended drawing December 2017

The level for the line of previous ground at north boundary shown dotted blue is given as 8.85 in Section bb and as 8.90 in Section aa.

Level 8.85 is the more accurate level of the two quoted levels for the same location.

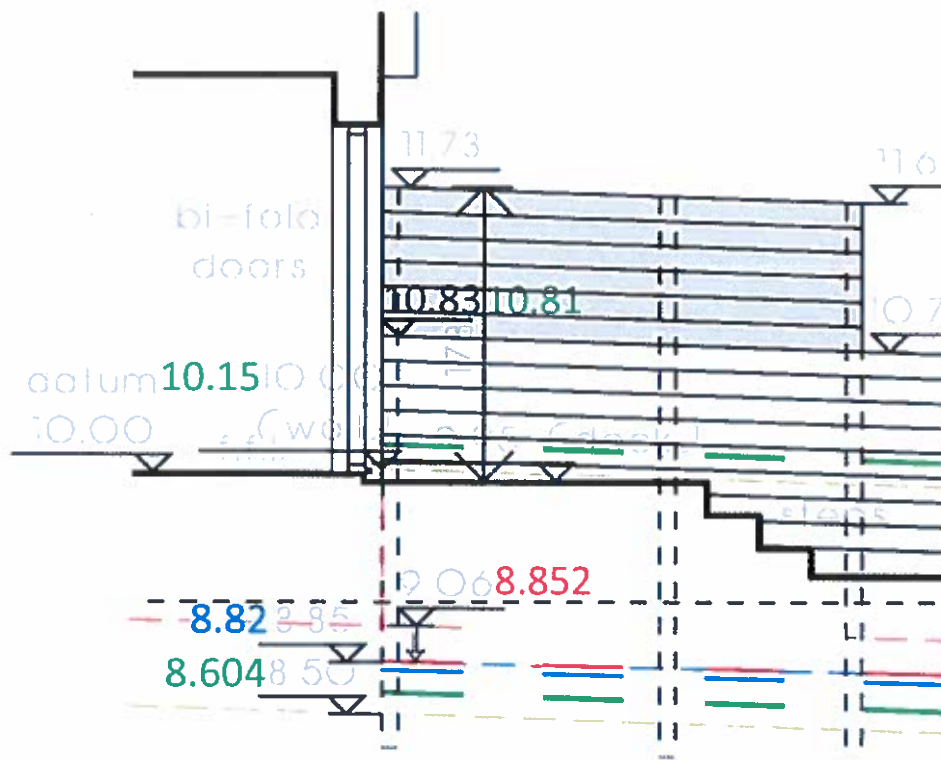
Refer to Section aa and Section bb amended drawing December 2017

At Section aa it would appear that from Thornton’s photographs that the elevated slabbed walkway and patio are at the same level as the garage drive. I have shown the line of previous ground at building from the north boundary, shown dotted blue, marrying in with the garage drive at this location which was level in the north/south cross section. As the garage drive has a similar fall, west to east, as that of the North boundary I have shown the line of previous ground at Section AA shown dotted red coming in at a level which would be some 240mm lower than the line of previous ground at building.

From the above you will note that the various ground levels as shown on the Agent's drawing are inaccurate.



Photo1- Cane shown is 5'-0" in length (1.524M). Discrepancy is that wall, detailed out at same level as top of Fyfe Stone, is displaced downwards by 150mm on Elevation Drawing thereby making Blanerne soil levels on Section bb lower by 104mm than they actually are.

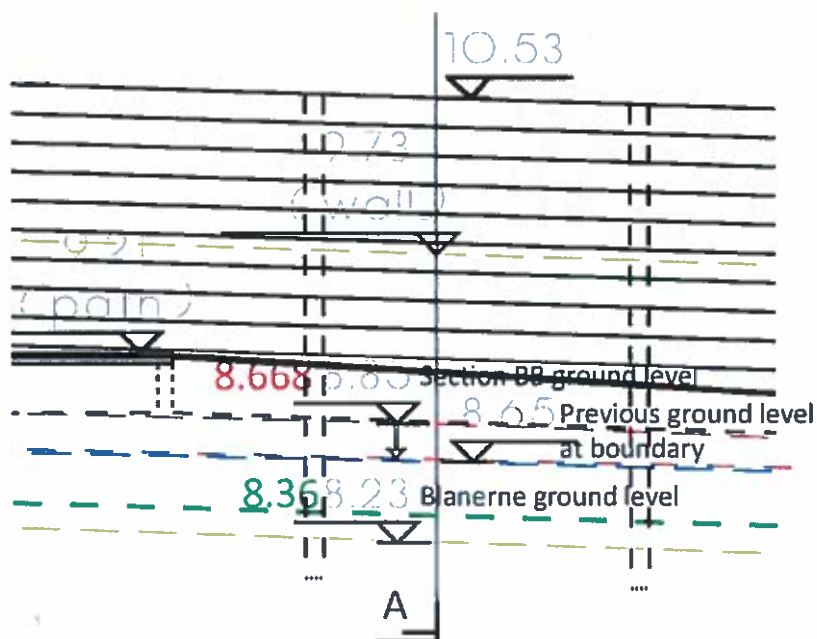


Levels that are noted in colour are actual levels compared to noted levels on Section bb. Line of previous ground at Section BB shown dotted red is 208mm lower than shown on the elevation drawing and is only 32mm higher than the line of previous ground at north boundary shown dotted blue. Therefore these two soil profiles running from west to east are virtually at the

same level at the house elevation. Although Mr Smith agrees with my height of 810mm from the top of the Fyfe Stone to the top of the fence he shows it as 830mm on his drawing.



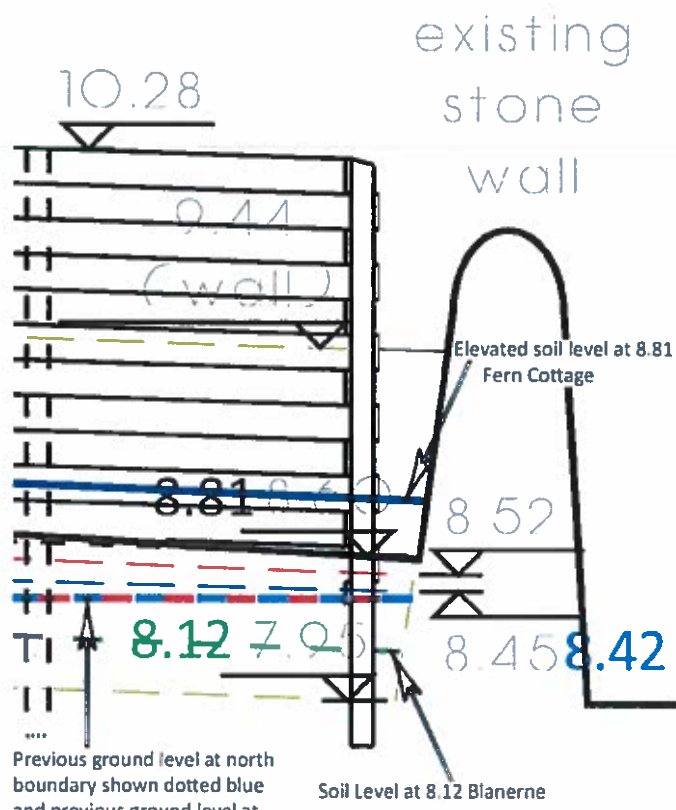
Photo 2 – Two canes are 5'-0" & 4'-0" high respectively. The two horizontal canes are the original ground levels and projected elevated ground levels respectively at Fern Cottage north boundary. Discrepancy is that wall is detailed as 1.5M (4'-11") whereas it measures 1.37M (4'-6") on site.



Levels that are noted in colour are actual levels compared to noted levels on Section bb. Line of previous ground at Section BB shown dotted red is 182mm (8.850 minus 8.668) lower than shown on the elevation drawing.



Photo 3 – Two canes are 5'-0" & 4'-0" high respectively. Discrepancy is that wall is detailed as 1.49M high (4'-10 ⁵/₈") whereas it measures 1.32M (4'-4") on site – a discrepancy of 170mm.



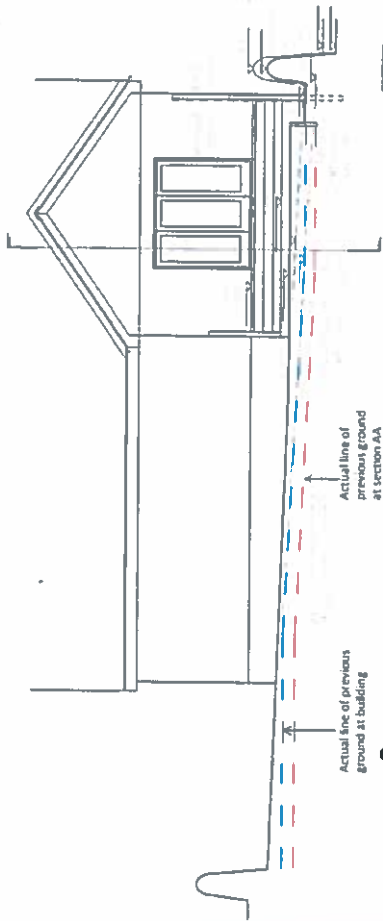
Previous ground level at north boundary shown dotted blue and previous ground level at section BB shown dotted red at same level 8.42 due to this area being virtually level to accommodate Greenhouse.

Soil Level at 8.12 Blanerne

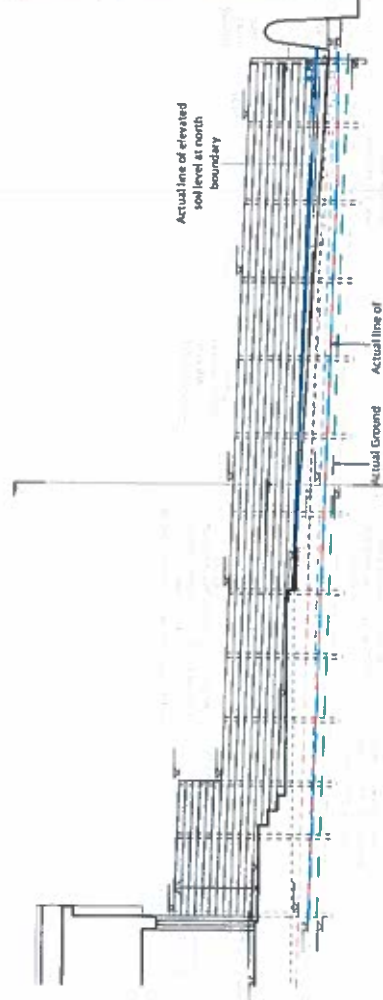
Levels that are noted in colour are actual levels compared to noted levels on Section bb. The elevated soil level at the boundary measures out at 630mm from the top of the wall giving a level of 8.81M compared to 8.60M as shown on the elevation drawing – a discrepancy of 210mm.

From the above you will note that the various ground levels as shown on the Agent's drawing are inaccurate.

Document 7



section aa (south to north)
scale 1:100 @ A2L



section bb (elevation of fence from south)
scale 1:100 @ A2L

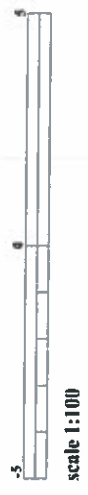
PROPOSED ERECTION OF EXTERNAL RAISED DECKING & BOUNDARY FENCE TO HOUSE AT

FERN COTTAGE

KIRKTON OF AUCHTERHOUSE FOR MR. J. McNAUGHTON & MS. J. GRANT.

Amended December 2017 to show revised previous ground dashed blue at building, previous ground at Section AA dashed red & ground level within neighbours garden dashed green in Section bb.
Refer to "Highlighted Discrepancies on Elevation Drawings" for actual levels

SEPTEMBER 2017 (AMENDED OCTOBER 2017)



Document 8



Document 9



APPENDIX 4

APPLICANT'S REPOSENSE TO FURTHER REPRSENTATIONS

Received
Legal & Democratic Services

09 APR 2018

**JAMES PAUL
ASSOCIATES**

Time 1050 Ints ame

4 Brook Street, Broughty Ferry, Dundee DD5 1DP.
Telephone. (01382) 737866 Fax. (01382) 480315
E-mail: enquiries@jamespaulassociates.co.uk

6 April 2018.

For the attention of **Sarah Forsyth**.

Angus Council
Place
Angus House
Orchardbank Business Park
Forfar
DD8 1AN.

Dear Sirs,

**Application No 17/00771/FULL – DMRC-4-18
Fern Cottage, Kirkton of Auchterhouse.**

I refer to your letter of 29 March 2018 forwarding on the two further representations with regard to this Application to Review. I would take this opportunity to comment on these.

Initially and generally, I would respectfully remind the two representees that this application relates to the raised decking and raised section of the **existing** boundary fence. Planning permission is not being sought nor is it required for any other garden works which have been carried out. Mentioned items such as the raised ground levels, the stability of the dry stone wall, and other garden works do not require planning permission and as such are not the subject of this Application for Review.

Specifically with regard to the submission by Ryden on behalf of the neighbour, Mr Paterson, I would comment as follows to Mr Paterson's allegations of errors and misleading information in our Appeal statement as follows. It is of note that these are allegations by Mr Paterson and not his agents. These are dealt with in chronological order as they appear in their submission dated 14 March 2018.

1. The original hedge.

It can be seen quite clearly from the submission made on behalf of Mr Paterson, photographs on pages 1, 8 and 9 of his Document 2 that the hedge was of considerable length and height.

2. Angus Council approach by the Appellants.

The items mentioned, being the patio doors, fencing and upgrading works to the garden did not and do not require planning permission.

3. Height of fence.

The fence did not and does not require planning permission.

4. Fence never erected at this height.

This fence was not built awaiting the outcome of this Review.

5. The decking at ground floor level and running for two metres.

This is a statement of fact on our behalf. There is no denying that the decking is above the level where planning permission would not be required. Hence the application which was lodged.

6. The overlooking of the garden.

This is a statement of fact which regardless of whether the fence has been erected or not remains such.

7. Hedge of a similar height and position.

This is not denied by the neighbour and the hedge's make up does not detract from this statement of fact.

8. Four metre high shed.

Again this is a statement of fact. A shed could be built without the requirement for planning permission. The purpose of the screening along the decking is to avoid overlooking of the neighbours garden.

9. Planning Officer originally minded to approve.

This is a statement of fact.

10. Decking and boundary fencing removed.

Again the works which have been carried out to the garden, other than those which are the subject of this Review, do not and did not require planning permission and my clients, the applicants, cannot be expected to design their garden based on what has occurred over the 'last 100+ years' or to what Mr Paterson, their neighbour, feels is appropriate.

To conclude, I refute that our statement contains any errors or misleading information and on the whole contains statements of fact.

Contrary to what is obviously Mr Paterson's belief, this Application for Review relates to a planning application for raised decking and a raised section of the existing boundary fence, and his protracted comments on other matters do nothing detract from this fact.

Trusting the above will be considered in the determination of this Review.

Yours Faithfully,

A black rectangular redaction box covers the signature area. A small, faint circular mark is visible above the box, likely a remnant of a signature or stamp.

Angus Paul
For and on behalf of
James Paul Associates