

ANGUS COUNCIL

DEVELOPMENT STANDARDS COMMITTEE – 11 DECEMBER 2018

PLANNING APPLICATION – FERN COTTAGE KIRKTON OF AUCHTERHOUSE DUNDEE DD3 0QS

GRID REF: 334349 : 738165

REPORT BY SERVICE LEADER – PLANNING & COMMUNITIES

Abstract:

This report deals with planning application No. 18/00812/FULL for the erection of a raised deck and associated steps at Fern Cottage, Kirkton of Auchterhouse, Dundee, DD3 0QS for Mr Ian McNaughton and Ms Irene Grant. This application is recommended for approval.

1. RECOMMENDATION

It is recommended that the application be approved for the reason given in Section 10 of this report.

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

- Safe, secure, vibrant and sustainable communities
- A reduced carbon footprint
- An enhanced, protected and enjoyed natural and built environment

3. INTRODUCTION

3.1 The applicant seeks full planning permission for the erection of a raised deck at Fern Cottage Kirkton of Auchterhouse near Dundee. The application is in part retrospective as a deck has already been formed although it would require to be altered to conform to the proposed scheme.

3.2 The application property is a detached dwelling that is sited within a plot measuring around 600 sq m. The site is situated within a residential area on the east edge of the village of Kirkton of Auchterhouse and is bound by the public road to the west, residential properties to the north and south and an agricultural field to the east. The north and east boundaries of the site are contained by a timber fence of around 2 metres in height. The south boundary is contained by a traditional stone dyke.

3.3 The proposal relates to the reconfiguration of an existing unauthorised deck that would result in the formation of 745mm high deck that is accessed from a French door in the east facing gable of the dwelling. The raised element of the deck would be 1 metre deep and 3.8 wide. The raised platform would lead onto access steps to a lower deck area. The deck would be around 35 sq metres overall.

3.4 This application requires to be determined by the Development Standards Committee as more than five representations have been received. The application drawings were varied to correct typographic errors and to clarify the height of boundary features. The nature of the proposal did not require that the application be the subject of press advertisement.

4. RELEVANT PLANNING HISTORY

- 4.1 An observation was received on 16 June 2017 regarding the erection of a deck and the alteration of ground levels at the application property. Planning enforcement case, 17/00106/UNWRKS was opened at that time. The applicant was advised that under The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended), the decking and land raising would require the benefit of planning permission. On receipt of further information from the applicant it was determined that the level changes that had taken place would not require planning permission as that aspect of the works was either permitted development under Class 3B of the aforementioned order or was de minimis gardening work that did not constitute development.
- 4.2 A retrospective planning application ref: 17/000771/FULL that sought to regularise the unauthorised deck and to establish a screen fence along the length of the deck was refused under delegated powers on 19 December 2017. A subsequent appeal sought review of that decision by the Development Management Review Committee (DMRC). The appeal was dismissed by the DMRC on 14 June 2018.

5. APPLICANT'S CASE

The applicants' agent has provided a letter in support of the application which makes the following points:

- the height of the top of the fence on submitted drawings should read 10.84 rather than 10.48 (which was a typographical error and has been corrected).
- the height of the fence along its entire length is less than 2 metres from the original ground level and the fence does not require planning permission on that basis.
- there is a 950mm gap between the slightly raised rear lawn and the stone wall along the north boundary.
- the rear lawn has been raised between 200mm and 400mm within less than 50% of the area of the rear curtilage (excluding the ground area of the original dwellinghouse and any hard surface or deck). The other changes to the level of the lawn constitute everyday gardening and are considered to be de minimus.

The agent also provides the following responses to representations in objection to the proposal:

1. As the height of the fence is less than 2 metres from the original ground level to the top of the horizontal fence boards (currently 1.82m to 1.87m), the fence is permitted development by virtue of Class 3E of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) The fence does not therefore form part of this planning application. The householders of Fern Cottage will trim down the supporting posts to 2 metres or less once the planning application has been determined.
2. The current householders of Fern Cottage replaced a circa 2.5 metres high continuous hedge which ran along part of the northern boundary of the back garden and substantial ornamental trees, with the current fence. The hedge (and ornamental trees) would have caused severe overshadowing of the neighbour's garden to the north, and its root system was likely undermining the stability of the mutual stone wall.
3. The replacement fence ensures privacy is maintained for both households and also prevents the 2 springer spaniels owned by the occupiers of Fern Cottage jumping into the garden of the dwellinghouse to the north.
4. The raised lawn area is off-set from the natural stone wall along the northern boundary by 950mms. This means that the stability of the stone wall will not be compromised in any way and that the long term future of the stone wall is assured now that the overly dominant hedges have been removed.
5. The "permitted height" of decking is not 500mm. Decking over 500mm above ground level requires the benefit of planning permission. That is why the decking has been included as part of the planning application.

6. The proposal reduces the depth of the platform outside the bi-folding doors to 1 metre. If the householders of Fern Cottage did choose to place a chair on this reduced platform (which would be entirely irrational as the whole garden is available to place a chair on), the chair would be at the opposite side of the bi-folding doors and well away from the mutual boundary.
7. Historical garden levels between Fern Cottage and Blanerne to the north have always been different. This is extremely common in urban areas and on sloping streets. The applicants have tried their very best to strike a reasonable balance between improving their house and garden, maintaining mutual privacy and maintaining the residential amenity of Blanerne to the north.
8. The neighbour's planning representative at page 4 of the representation document comments that the fence along the northern boundary is no higher than 2 metres from the original ground level. Therefore, the fence has been confirmed by the neighbour's planning representative as permitted development, and this is why it has not been included as part of the planning application.

6. CONSULTATIONS

Community Council – There was no response from this consultee at the time of report preparation.

Angus Council - Roads – Offered no objections to the proposal.

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

7. REPRESENTATIONS

- 7.1 27 letters of representation from 25 households have been submitted. 11 households have objected to the proposal and 14 households have offered support. The representations will be circulated to Members of the Development Standards Committee and a copy will be available on the council's [Public Access](#) website.

The main points of objection are:

- Overlooking of the garden of the neighbouring property to the north and subsequent loss of privacy;
- Impact on the character of the area;
- Proposal does not accord with Policies DS4 and TC4 of the Angus local Plan or the Householder Development Planning Advice Note.

These matters are discussed at Section 8 below.

In addition to the foregoing, the following points have been raised:

•The north boundary fence is overbearing and is prominent in scale and height and it will be raised by 150mm. Furthermore, the fence will reduce sunlight and daylight - The fence that has been erected between the site and the property to the north is permitted development under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended) (the GPDO) as it would not exceed two metres in height. This matter does not require further discussion.

•Dimensions on drawings are not correct- Dimensions shown on submitted drawings in as far as can be determined appear to be correct however their accuracy continues to be disputed by objectors. Notwithstanding this the majority of the proposed deck has been erected and other site features such as boundary treatments and site levels are established. Whilst the consideration of proposals in retrospect or part in retrospect is never advised or encouraged, this enables impacts to be assessed in real terms at the site. Impacts have been assessed and are discussed in Section 8 below.

•**Fence posts have not been tidied up and levelled-** The applicant has indicated that once the application has been determined they intend to shorten the posts to ensure that the fence is even and tidy and will remain within the two metre high permitted development tolerance of the GPDO.

•**Ground works are not permitted development under the provisions of the GPDO as 100% of the rear garden has been raised-** The information submitted indicates that the rear garden has been subject to garden works and that soil has been redistributed around the garden. Although this has resulted in the raising of the ground level in the proximity of the north boundary the works that have been undertaken are considered to be either permitted development or are considered to constitute works that do not fall within the scope of the meaning of development.

• **Any changes in site levels should be considered as the erection of a raised platform-** as above.

•**The proposal has affected the wellbeing of the occupants of a neighbouring property due to concerns of the effects on their garden-** It is appreciated that change can be unsettling for individuals however the application relates to the erection of a deck that will not have an unacceptable impact on neighbouring residential amenity. The development as proposed has no direct; or incidental impact on land outwith the site and the development is not considered to pose any risk to the health or wellbeing of residents of any neighbouring property.

•**levels within the site should be returned to original levels and the deck should be lowered as pressure is being exerted on a wall between the site and the property to the north-** The application relates to the erection of a raised deck and consideration to that aspect is given below. Ground level changes are not part of the proposal.

•**The 15 November 2018 deadline for neighbours to make representation does not appear to matter-** There is a statutory minimum 21 day period for neighbours to make representation. That does not preclude representations being received after that date.

The following points have been made in support of the application:

- the works carried out on this property and garden complement the house and the village;
- the fence is not overbearing as it is lower than the previous hedge;
- there would be no impact on privacy;
- the gap left between the lawn and the wall would protect the wall from pressure from soil.

8. PLANNING CONSIDERATIONS

8.1 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.

8.2 In this case the development plan comprises:-

- TAYplan (Approved 2012)
- Angus Local Development Plan (Adopted 2016)

8.3 As the application is not of strategic importance the policies of TAYplan are not referred to in this report and the policies of the Angus Local Development Plan (ALDP) form the basis for the consideration of the proposal. The relevant ALDP policies are reproduced at Appendix 2.

8.4 Policy TC4 relates to proposals for house and flat alterations/extensions and development within the curtilage of houses and flats. It indicates that development will be supported where the siting, design, scale or massing of the proposal does not:

1. adversely affect the residential amenity enjoyed by the house or surrounding domestic properties including, in the case of microgeneration, through noise or shadow flicker;
2. detrimentally affect the character and/or appearance of the building, site or surrounding area;

and

3. result in the overdevelopment of the plot or a loss of garden ground, parking or bin storage.
- 8.5 Policy DS4 deals with amenity and requires all proposed development to have regard to opportunities for maintaining and improving environmental quality. It indicates 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 policy identifies matters that will be taken into account and recognises that in some circumstances it will be appropriate to approve proposals that give rise to amenity impacts where they can be mitigated.
- 8.6 As mentioned above, the application relates to the erection of a raised deck within the curtilage of a dwellinghouse in an established residential area. The first test of Policy TC4 relates to existing residential amenity and states that development proposals will be supported where they do not adversely affect the residential amenity enjoyed by the house or surrounding domestic properties. Policy DS4 is also relevant in this respect and states that proposals will be considered in terms of their impact on residential amenity in terms of overlooking, loss of privacy, outlook, sunlight, daylight and overshadowing. A number of letters of objection have been submitted in relation to the proposal and these concentrate primarily on the potential effects of the development on the amenity of the garden area of the dwelling to the immediate north of the site. As indicated above any points of objection relevant to level changes or the erection of a fence are not relevant to this application as such works have been either determined to constitute permitted development under the relevant provisions of the GPDO or have been identified as being outwith the scope of the land use planning system based on a fact and degree assessment that they constitute everyday gardening operations that are de minimis in nature.
- 8.7 As such the consideration of the proposal in terms of the aforementioned tests must be confined to the consideration of the impacts of the proposed deck. As indicated in Section 4 above, the application is made following an earlier unsuccessful attempt to regularise an unauthorised larger deck at the site. The current proposal would see the depth of the deck reduced to 1 metre from its original proposed depth of around 2 metres. The deck would effectively be reduced to become a top step that would allow access to a bi-fold door that has been installed in the east facing gable of the dwelling (also permitted development). This matter has been discussed with the Council's Building Standards Service who indicate that the minimum depth of a top step in such a circumstance would be 900mm. The stepped section of the deck would be around 3.8 metres wide and would be limited to the northmost extent of the door in order to ensure a stand-off from the established boundary fence of around 1.2 m and a stand-off from the mutual boundary of around 1.85m. The bi-fold door is around 2.3 metres wide and when it is in use, it would effectively leave an available area of 1.5 sq m (including balustrade) that would be 1 metre in depth on the upper level. This area would not constitute a particularly useable deck for the purposes of sitting on and the applicants have confirmed that it is not their intention to use it as a seating area. It would be located in excess of 4 metres from the mutual boundary and is considered to be unlikely to result in a significant or unacceptable impact on neighbouring residential amenity. The rest of the raised section of deck would consist of stair treads of 300mm depth with 200mm risers and again these are not considered to offer any potential for unacceptable or significant impact on amenity.
- 8.8 The garden within which the deck would be located slopes gently in generally west to east and south to north directions and as previously indicated the applicant has redistributed soil within the site to form a more level garden area. The result is that at the north eastern most extent of the main deck, a small area slightly breaches the permitted 500mm height allowed under provisions of the GPDO. Although the deck is generally 170mm above ground level this small section occurs where there is a very localised level change on the site. Overall the deck measures 35 sq m and is not inconsistent with the type of deck that is commonly found in residential areas. It is generally around 170mm above the site level and would not constitute an unacceptable impact on neighbouring amenity by virtue of loss of sunlight, daylight overlooking, impact on outlook or loss of privacy. Its impact beyond the impact of sitting in a garden with no deck is considered to be negligible. It is acknowledged that the applicants would be visible from neighbouring properties when using the staircase to access the bi-fold door. The relationship between the site and the property to the north is not dissimilar to the situation in terms of views between the site and the property to the south which also sits in a higher level. Generally, in built up areas, the occupiers

of neighbouring properties will commonly have some degree of intervisibility when using their garden areas. In this situation, the boundary between the site and the neighbouring property to the north is defined by a fence of around 2 m in height that has been erected under permitted development rights to replace mature vegetation of a similar or greater height that was previously removed. No planning permission is required for the removal of vegetation unless it is specifically protected. The site is not in a protected area. This fence combined with an established level change between the two properties would ensure that privacy is maintained to an acceptable level and to a degree that is commonly found in existing built up areas. Overall the deck would not result in a significant or unacceptable amenity impact and the proposal is in accordance with the relevant provisions of Policy DS4 and the first test of Policy TC4.

- 8.9 Policy TC4 also requires that proposals should not have a detrimental effect on the character and appearance of the dwelling or its surroundings. The area is a mix of dwellings of differing vintages and styles. Decking is a type of structure that is commonly found within the rear garden of residential properties and in this respect, the deck does not appear out of place within the rear garden area of a relatively modern residential property. The proposal does not conflict with the second test of Policy TC4.
- 8.10 Policy TC4 further indicates there should be no overdevelopment of the plot or a loss of garden ground, parking or bin storage. The proposed 35 sq m deck would not reduce the amount of available useable garden area and would therefore not result in a material loss or impact in respect of any of these considerations. The proposal does not conflict with the final policy test of TC4.
- 8.11 As stated at paragraph 8.1 above, planning decisions need to be made in accordance with the development plan unless material considerations indicate otherwise. In this case the proposal relates to a site where an application for a similar form of development was refused planning permission by the planning authority and an appeal against that decision was subsequently dismissed by the DMRC. That decision is a material consideration in the determination of this application. The application in question is detailed at Section 4 above (ref: 17/000771/FULL). That application was for a deck with a larger and deeper raised area that extended to the boundary of the property. The proposal required the installation of an overbearing screen fence to counteract overlooking effects. It was determined by the DMRC that the deck in that instance was contrary to Policies DS4 and TC4 as the position and height of the deck and the proposed height of the fence to counteract overlooking would be overbearing and detrimental to the amenity and enjoyment of neighbouring garden ground. The current application is considered to have taken sufficient account of that decision by reducing the available raised area to a minimal depth and width to the point where countermeasures would no longer be required as it would not constitute a useable seating area. In those regards, the proposal is considered to address the main reasons for the previous refusal sufficiently to determine that the previous decision; although material, would not indicate a presumption against the approval of the application as it would not lead to the same degree of impact on neighbouring property. As indicated in the foregoing discussion the proposal is now considered to comply with the relevant Development Plan policies.
- 8.12 Representations received from third parties are also material considerations in the determination of planning applications in as far as they raise material issues either in support or in objection to the development. Points raised in representation are detailed at Section 7 above. The comments in support of the application are noted and many of them do not differ from the conclusion drawn in the foregoing assessment and therefore need no further comment. Similarly many of the points of objection are addressed at Section 7. Unresolved points at Section 7 relate to overlooking and privacy impacts and compliance with relevant Development Plan Policies. These matters have however been assessed in the foregoing discussion which has determined that the development would not result in unacceptable amenity impacts and that the development is in compliance with relevant Development Plan Policies.
- 8.13 In conclusion the proposed deck is compatible with relevant Development Plan policies and is consistent with the Council's Householder Development Planning Advice Note. The decking would not adversely affect the appearance and character of the surrounding area or have a significant and unacceptable detrimental effect on the residential amenity enjoyed by neighbouring households. There are no material considerations that justify refusal of the

application. No planning obligation is required. As the deck as it is currently configured is also subject of an open enforcement case (ref: 17/00106/UNWRKS) measures would be taken through enforcement procedures to ensure that the alterations to the decking are carried out and completed within a reasonable timescale should Committee approve the application.

9. OTHER MATTERS

HUMAN RIGHTS IMPLICATIONS

The decision to grant permission/consent has potential implications for neighbours in terms of alleged interference with privacy, home or family life (Article 8) and peaceful enjoyment of their possessions (First Protocol, Article 1). For the reasons referred to elsewhere in this report justifying this decision in planning terms, it is considered that any actual or apprehended infringement of such Convention Rights, is justified.

EQUALITIES IMPLICATIONS

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

10. CONCLUSION

It is recommended that the application be approved for the following reasons.

Reason(s) for Approval:

The proposed development complies with the relevant policies of the Angus Local Development Plan 2016 and the Angus Council Householder Development Planning Advice Note. The development would not result in an unacceptable loss of privacy or amenity in neighbouring properties and would be consistent with the type and level of development that is commonly found in the private garden areas of dwellinghouses. As such the development does not create any unacceptable impacts on the character or appearance of the area. There are no material considerations that justify refusal of the application.

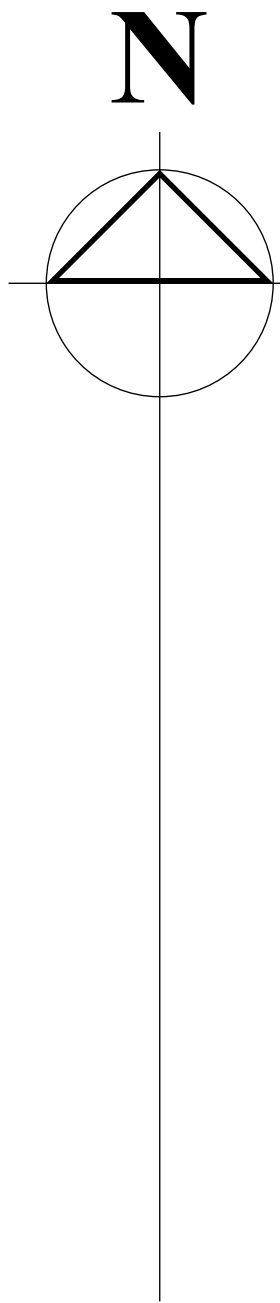
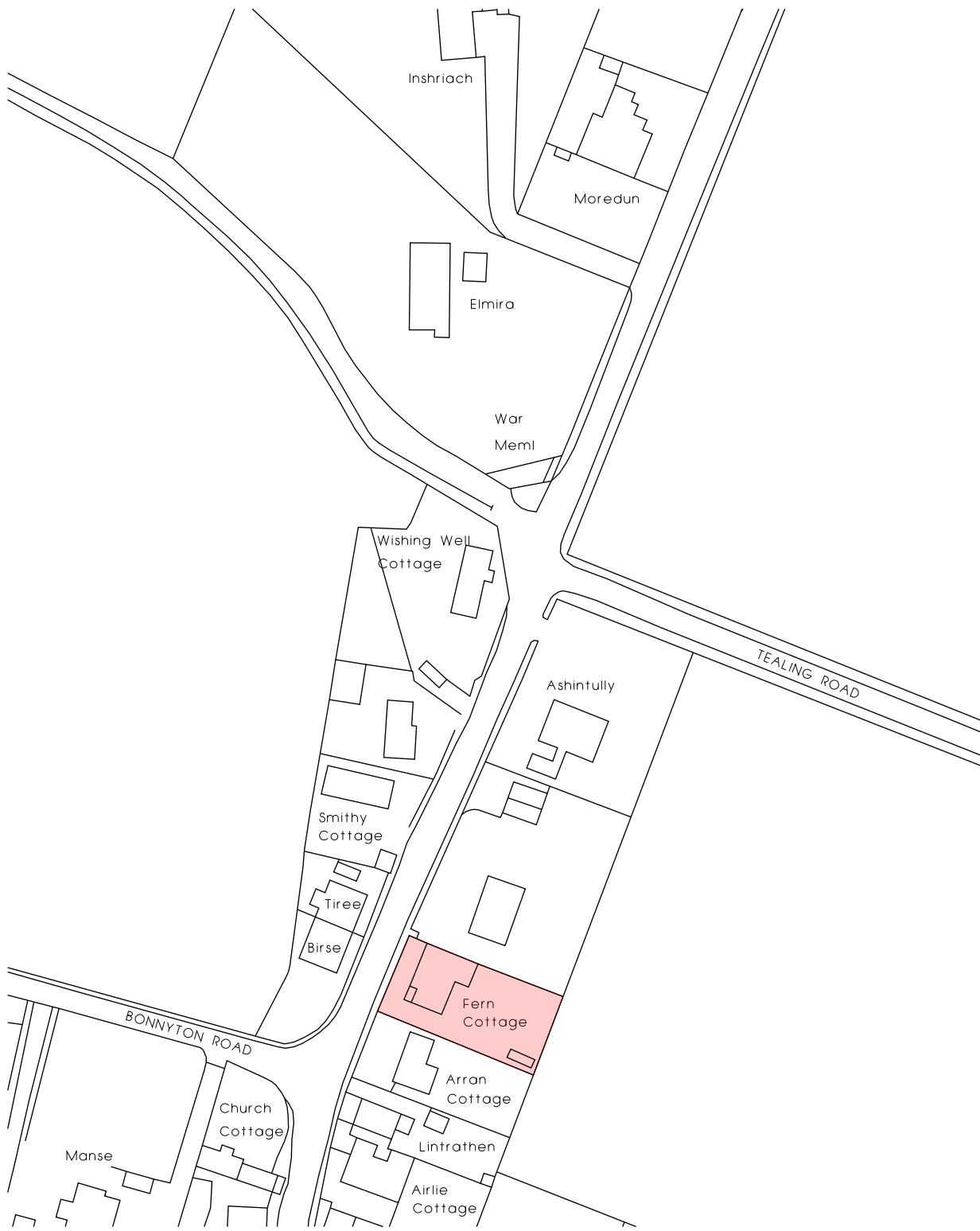
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NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

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DATE: 03 December 2018

APPENDIX 1: LOCATION PLAN
APPENDIX 2: DEVELOPMENT PLAN POLICIES



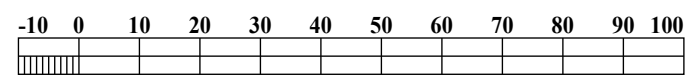
location plan

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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

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Appendix 2 - Development Plan Policies

Angus Local Development Plan

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.