

Served by sheriff office ...
Terms of E.N. complied with.



IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY AND HAS IMMEDIATE EFFECT. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE NOTICE MAY RESULT IN PROSECUTION

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997,
AS AMENDED BY THE PLANNING ETC. (SCOTLAND) ACT 2006**

ENFORCEMENT NOTICE

REFERENCE NUMBER: ED2016/0002/ENF

ISSUED BY: East Dunbartonshire Council

**ISSUED TO: Owner of the Land: Mr Robert Burns
20 Ballaig Avenue
Bearsden
G61 4HA**

**ISSUED TO: Owner of the Land: Mrs Eileen Burns
20 Ballaig Avenue
Bearsden
G61 4HA**

- 1. THIS IS A FORMAL NOTICE** issued under section 127 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006 (hereinafter referred to as the "the Act") by East Dunbartonshire Council (hereinafter referred to as "the Council") as Planning Authority because it appears to the Council that there has been a breach of planning control as defined by section 123(1)(a) of the Act at the land hereinafter described.

The Council believes it is expedient to issue this Notice as there has been a breach of planning control by the carrying out of development without the required planning permission.

- 2. THE LAND AFFECTED BY THE NOTICE**
The site (hereinafter referred to as "the Site") to which this Notice relates forms an area of land and dwelling house located thereon at 20 Ballaig Avenue, Bearsden, G61 4HA, all as identified and delineated in red on the Location Plan, noted as such, and attached and annexed to this Notice.

3. THE BREACH OF PLANNING CONTROL ALLEGED

The breach of planning control takes the form of:-

- a) Without planning permission the construction of a deck or other raised platform with a wooden fence attached thereto at the Site and located and identified by the area coloured blue on the Location Plan as described in **Schedule 1**, noted as such, and attached and annexed to this Notice.

4. REASONS FOR ISSUING THIS NOTICE

- a) The construction of the deck or other raised platform with fence attached thereto at the Site as described in this Notice constitutes development as defined by section 26 of the Act.
- b) The construction of the deck or other raised platform with fence attached thereto at the Site as described in this Notice does not fall within the terms of Article 3 and by reference to Class 3D of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011.
- c) As the construction of the deck or other raised platform with fence attached thereto at the Site does not fall within the terms of Article 3 and by reference to Class 3D of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended by the Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011, planning permission by either the Council or the Scottish Ministers is required, and no such permission has been granted.
- d) An application for Planning Permission under reference TP/ED/15/0011 for the retention of the deck or other raised platform with fence attached thereto at the Site was refused by the Council as Planning Authority on 27 April 2015. The reasons for refusal were:-

1. The raised platform area by reason of its height, resulting from the gradient of the land at no. 20 Ballaig Avenue, the use of gabion baskets and the size of the raised platform area has resulted in an alien and incongruous addition to the rear garden of no. 20 Ballaig Avenue, which when viewed from surrounding gardens has resulted in a loss of visual amenity. The development is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, 'Development should enhance and certainly not reduce the amenity and character of the surrounding area....' In addition the raised platform development is contrary to Local Plan Guidance Note 13 - House Extensions and Garages.
2. The raised platform area by reason of its height, size, siting and gradient of land has resulted in a loss of privacy to the rear gardens and rear facing windows of properties to the south of the application site in Milverton Avenue. The loss of privacy and amenity to the occupants of these properties is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, '...residential amenity will be strongly protected.' Furthermore the raised platform is contrary to Guidance Note - House Extensions and Garages and Guidance Note 7 Daylight and Inter-visibility of Windows, both of which seek to ensure privacy levels are protected

A copy of the Decision Notice for this application is contained within **Schedule 2**, noted as such, and attached and annexed to this Notice.

A copy of the Report of Handling of this application is contained within **Schedule 3**, noted as such, and attached and annexed to this Notice.

A review of the decision to refuse planning permission was requested on 24 July 2015. At its meeting on 5 October 2015 the East Dunbartonshire Planning Local Review Body upheld the Council's decision to refuse planning permission. A copy of the Decision Notice of the Local Review Body dated 16 February 2016 is contained within **Schedule 4**, noted as such, and attached and annexed to this Notice.

- e) In the absence of a valid Planning Permission, the construction of the deck or raised platform with fence attached thereto at the Site is unauthorised and in breach of planning control.
- f) The breach of planning control described herein has occurred within the last 4 years.

5. WHAT YOU ARE REQUIRED TO DO

You shall take the following steps:

- (1) Remove the wooden fence that is attached to the deck or other raised platform described herein and any associated fixtures and fittings from the Site.

Time Period for Compliance: 12 weeks from the date this Notice takes effect.

- (2) Remove the deck or other raised platform and all materials therewith from the Site.

Time Period for Compliance: 12 Weeks from the date this Notice takes effect.

- (3) Remove from the Site all gabions baskets and stones therein upon which the deck or other raised platform is situated.

Time Period for Compliance: 12 Weeks from the date this Notice takes effect.

- (4) Remove from the Site all associated materials arising from compliance with requirements (1), (2) and (3) above.

Time Period for Compliance: 12 Weeks from the date this Notice takes effect.

- (5) Restore the Site to the condition it was in before the breach of planning control took place and with such restoration to the extent that the appearance of the restored Site is commensurate with the area of ground adjacent to and adjoining the deck or raised platform.

Time Period for Compliance: 12 Weeks from the date this Notice takes effect.

6. WHEN THIS NOTICE TAKES EFFECT

This Notice takes effect on **1 August 2016**, unless an appeal is made to the Scottish Ministers before the date the Notice takes effect.

A copy of this Notice is also served on Mrs Eileen Burns, 20 Ballaig Avenue, Bearsden as a co-owner of the land to which it relates.

7. YOUR RIGHT OF APPEAL

You can appeal against this Notice. Your appeal must be received, or posted in time for receipt, by the Scottish Ministers before this Notice takes effect.

Schedule 5, noted as such, and attached and annexed to this Notice contains explanatory notes for those in receipt of an "Enforcement Notice". The Schedule contains information on your right of appeal.

Schedule 6, noted as such, and attached and annexed to this Notice contains extracts of relevant legislation. It is reproduced to assist you. It is your responsibility to check the legislation that you consider to be relevant to this Notice.

8. WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this Notice, it will take effect on **1 August 2016** and you must ensure that the required steps for complying with it have been taken by the end of the Time Period for Compliance as specified in this Notice. Failure to comply with the requirements of this Notice can result in prosecution and/or the taking of certain measures by the Council as hereinafter described.

Dated: 22.6.16.

Signed:

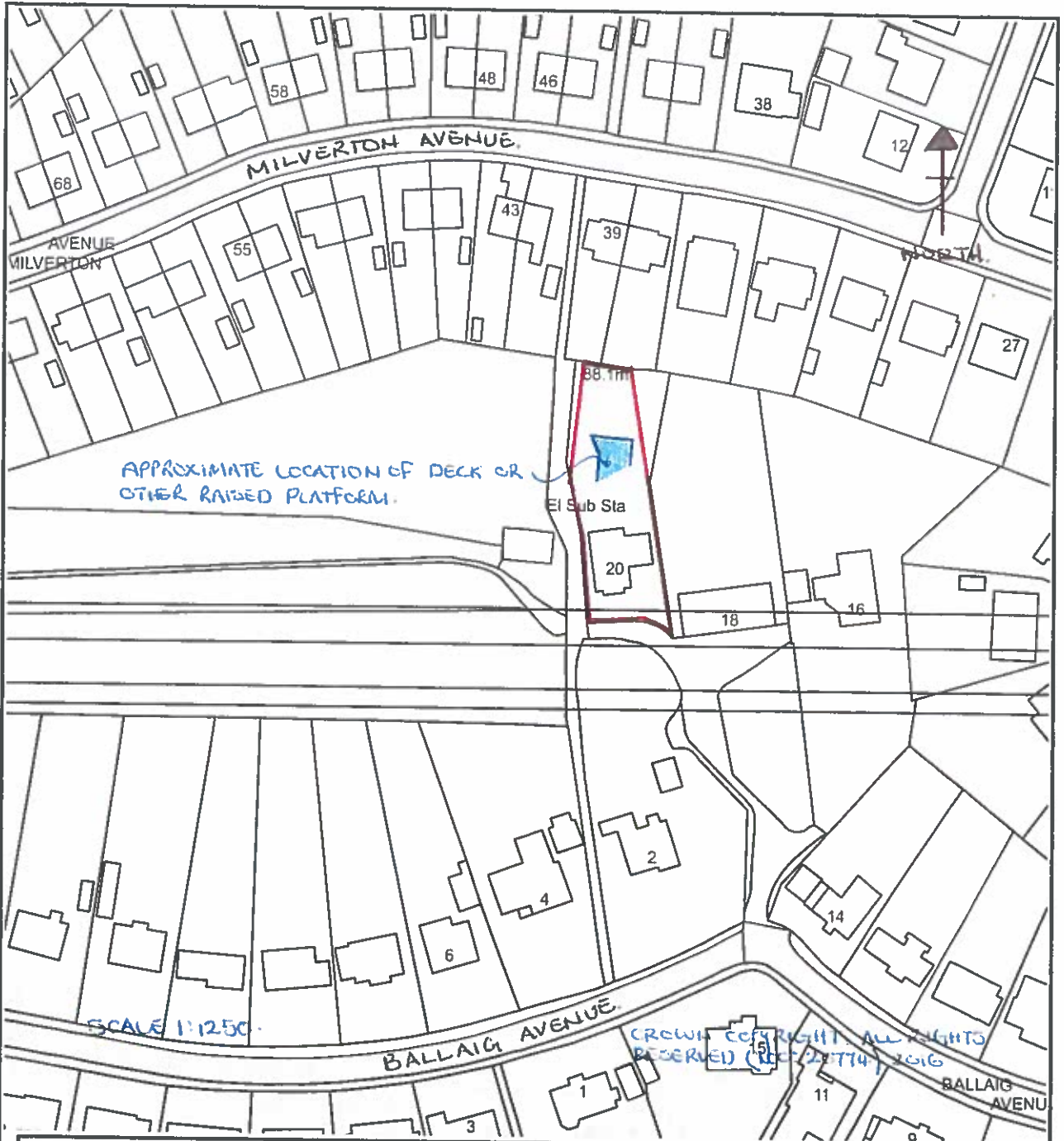


Thomas Glen

Deputy Chief Executive - Place, Neighbourhood and Corporate Assets

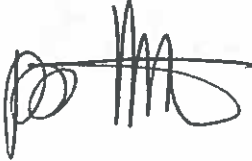
On behalf of: **East Dunbartonshire Council**
Southbank House
Strathkelvin Place
Kirkintilloch
Glasgow
G66 1XQ

LOCATION PLAN



This is the Location Plan referred to in the foregoing Enforcement Notice issued in accordance with section 127 of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006, regarding the construction of a deck or other raised platform with fence attached thereto at the Site and located and identified by the area coloured blue on this Location Plan.

Dated: 22.6.16 .

Signed: 

Thomas Glen, Depute Chief Executive - Place, Neighbourhood and Corporate Assets, East Dunbartonshire Council, Southbank House, Strathkelvin Place, Kirkintilloch, Glasgow, G66 1XQ.

SCHEDULE 1

DESCRIPTION OF THE BREACH OF PLANNING CONTROL REFERRED TO IN THIS NOTICE

The construction of a deck or other raised platform with a wooden fence attached thereto at the Site and located and identified by the area coloured blue on the Location Plan.

The deck or other raised platform is situated within the rear garden ground of the dwelling house located at 20 Ballaig Avenue, Bearsden and is accessed by wooden steps leading down from a paved patio area at the rear of the dwelling house. The ground upon which the deck or other raised platform is situated slopes downwards in a northerly direction. Wire gabion baskets have been placed on the slope and are filled with stones. The deck or other raised platform is located on top of the filled gabions and extends 9.0 metres in length (north) and 7.06 metres at its widest point (east to west). At its northernmost elevation, the surface of the deck or other raised platform is 1.81 metres above the lowest point of the adjacent ground level. The deck or other raise platform is comprised of a grassed area the perimeter of which on the north, east and west sides is edged with a single row of paving slabs. Wooden posts are embedded within the gabions and are located at intervals along the north, east, and west sides of the deck or other raised platform. Horizontal wooden struts are fixed between the posts. A wooden fence has been fixed to the struts and with the fence in the form of vertical wooden planks with narrow gaps between the planks. The fence is of the order of 1.3 metres in height.

The constructed deck or other raised platform with wooden fence attached thereto is more particularly identified in the four photographs below.





SCHEDULE 2

COPY OF THE DECISION NOTICE ISSUED UNDER REFERENCE TP/ED/15/0011
AND AS REFERRED TO IN THIS NOTICE



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East Dunbartonshire Council

www.eastdunbarton.gov.uk

**REFUSAL OF FULL PLANNING PERMISSION CONSENT
NOTICE NO. TP/ED/15/0011**

**TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
AS AMENDED BY THE PLANNING ETC. (SCOTLAND) ACT 2006**

Applicant

Agent (if applicable)

Mr Robert Burns
20 Ballaig Avenue
Bearsden
East Dunbartonshire
G61 4HA

With reference to your application dated 6 January 2015 for consent to the following;

retention of raised decking area to rear garden

20 Ballaig Avenue, Bearsden, East Dunbartonshire, G61 4HA

The East Dunbartonshire Council in exercise of their powers under the Acts and Orders hereby refuse full planning permission for the said development.


The reasons for the Council's decision are:-

1. The raised platform area by reason of its height, resulting from the gradient of the land at no. 20 Ballaig Avenue, the use of gabion baskets and the size of the raised platform area has resulted in an alien and incongruous addition to the rear garden of no. 20 Ballaig Avenue, which when viewed from surrounding gardens has resulted in a loss of visual amenity. The development is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, 'Development should enhance and certainly not reduce the amenity and character of the surrounding area...' In addition the raised platform development is contrary to Local Plan Guidance Note 13 - House Extensions and Garages.
2. The raised platform area by reason of its height, size, siting and gradient of land has resulted in a loss of privacy to the rear gardens and rear facing windows of properties to the south of the application site in Milverton Avenue. The loss of privacy and amenity to the occupants of these properties is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, '...residential amenity will be strongly protected.' Furthermore the raised platform is contrary to Guidance Note - House Extensions and Garages and Guidance Note 7 Daylight and Inter-visibility of Windows, both of which seek to ensure privacy levels are protected.

The following documents make up the decided application and can be found by searching for TP/ED/15/0011 on the Council's "Search Planning Application" page (<http://www.eastdunbarton.gov.uk/eplanning>):

PL1 APPLICATION
PL2 LOCATION PLAN
PL3 EXISTING BLOCK PLAN
PL4 GOOGLE VIEW PLAN
PL5 PROPOSED PHOTO ELEVATIONS
PL6 (001) PLAN VIEW OF REAR GARDEN
PL7 (002) ELEVATION OF REAR GARDEN

Dated 27 April 2015


Director of Development & Regeneration

(SEE OVER)



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

1. If the applicant is aggrieved by the decision to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval 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 from the date of this notice. The notice of review should be addressed to the Local Review Body, East Dunbartonshire Council, 12 Strathkelvin Place, Kirkintilloch, G66 1TJ.
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.

ENFORCEMENT NOTICE UNDER REFERENCE ED2016/0002/ENF

SCHEDULE 3

COPY OF THE REPORT OF HANDLING ISSUED UNDER REFERENCE
TP/ED/15/0011 AND AS REFERRED TO IN THIS NOTICE



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East Dunbartonshire Council

www.eastdunbarton.gov.uk

DEVELOPMENT QUALITY REPORT

Application Number: TP/ED/15/0011 Application Type: Full planning permission

Proposal retention of raised decking area to rear garden	Site 20 Ballaig Avenue Bearsden East Dunbartonshire G61 4HA
Applicant Mr Robert Burns 20 Ballaig Avenue Bearsden East Dunbartonshire G61 4HA	Agent
Date of Application 6 January 2015	Date of Validation 11 March 2015
Local Plan East Dunbartonshire Local Plan 2	Community Council Bearsden North Community Council
Ward Bearsden North	Advert
Recommendation Refuse	Target Determination Date 10 May 2015
Case Officer Helen Atkinson 0141 578 8613	Decision Type Delegated Decision

DESCRIPTION

Retention of raised decking area to rear garden

SITE HISTORY

Enforcement Case: ED2014/0077/ENF

Description: Enforcement Enquiry opened as a result of complaints received with regard to the decking resulted in the submission of the application.

POLICY CONTEXT

The application site lies within an area covered by the East Dunbartonshire Local Plan 2 - October 2011 and is covered by the following policies:

DQ1- Assessing Proposed Uses

DQ2 - Design Quality;

DQ2B - House Extensions;

The following Council approved Guidance Notes are material policy considerations in the assessment of the application.

Guidance Note 7- Daylight and Intervisibility of Windows

Guidance Note 13 - House Extensions and Garages.

Guidance Note 18 - Road Layout and Design and Parking Standards

REPRESENTATIONS

Number of Neighbours Notified:	8
Total Number of Contributors:	5
Number of Letters of Objections:	4
Number of Letters of Support:	0
Number of Letters of Representation (Neutral):	1

Objections have been received from three addresses in Milverton Avenue and one via email. The objections can be summarised as,

Overpowering and unsightly structure dominates the garden of neighbouring properties

- i) Loss of privacy and intrusive
- ii) Loss of property value
- iii) If minded to grant permission the tree screening that has been planted should be limited to prevent loss of sunlight to neighbouring gardens.
- iv) Increase in noise levels associated with the house and garden ground since the construction of the decked area.

One representation has been received from Ballaig Avenue, Bearsden advising that they have no objection to the retention of the decking but advises of land ownership and boundary issues which are to be resolved with the applicant.

DISCUSSION WITH APPLICANT

None requested.

CONSULTATION

None requested.

ASSESSMENT

The application site is a large detached house that is accessed -from a private lane off Ballaig Avenue along with nos. 16-18 Ballaig Avenue. The house is set in a large garden with the main rear garden ground facing north. The property is elevated with properties to the south in Milverton Avenue being at a lower level to the application site. The dwelling lies within an established residential area.

Section 25 of the Town and Country Planning (Scotland) Act 1997 (as amended) states that all applications should be assessed in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Development Plan consists of the Glasgow & Clyde Valley Strategic Development Plan 2012 and East Dunbartonshire Local Plan 2 October 2011.

The application is not of strategic significance and therefore will be assessed against the provisions of the Local Plan.

The application seeks planning permission for the retention of a platform area to the rear of no. 20 Ballaig Avenue. The decking area is to the rear of no. 20 Ballaig Avenue and forms a level surface from the existing rear patio area at the back of the property. The decked area has an area of 7.65m across its width (facing property to the rear in Milverton Avenue) and has a depth of 9m facing east and west. To the western side of the platform there is a stairway which allows the residents to access the lower portion of the garden with an approximate drop to this level of 3m. The platform area sits on a double height gabion baskets with a floor level of 1.8m above ground level. The platform area is enclosed within a boundary fence 1.1m. Overall the structure has a height (to the top of the fence) of 2.9m. The platform structure is sited around 9m from no. 20 Ballaig Avenue and is 14.5m from the shared boundary with houses to the north in Milverton Avenue.

On the western site boundary there is an area of open ground with the land sloping to the north. A 2m fence forms the boundary along the length of the applicant's boundary with this area of land. To the south of the site at a much lower level than the application site are properties in Milverton Avenue, which are semi-detached two storey houses. Along the shared boundary with these properties in Milverton Avenue the boundary comprises of a hedgerow in excess of 2m in height and along the boundary with no. 18 Milverton Avenue a fence of approximately 1.2m in height provides a boundary along the lower part of the garden, albeit at the upper level the boundary is in part marked by a hedgerow of around 2m in height.

The development quality policies require that developments should be compatible with the amenity and character of the area which it is located and extensions should not dominate the existing building by way of size, scale, proportions or design. In this regard Local Plan policy DQ1 Assessing Proposed Uses states that, 'Development should enhance and certainly not reduce the amenity and character of the surrounding area...' In this case the raised platform area is, by reason of the gradient of the land and the form its design has taken, highly prominent when viewed from houses to the rear of the application site and the land to the west of the application site. The height of the structure and the use of gabion baskets mean that the design of the platform area is highly visible. This type of structure and in particular the materials used are completely out of character with a rear garden setting. The design and height of platform therefore have resulted in a structure that appears to be completely incongruous to a rear garden setting and is harmful to the visual amenities of the neighbouring residents. The development is does not enhance the amenity and character of the surrounding area and therefore fails to comply with Local Plan policy DQ1 – Assessing Proposed Uses. The design of the structure and visual prominence at an elevated position therefore forms the first reason for refusal.

Local Plan policy DQ1 Assessing Proposed Uses also states that, '...residential amenity will be strongly protected' Guidance Note 7 Daylight & Intervisibility of Windows provides some guidance on privacy and states that, ' The Council cannot guarantee complete privacy for households and garden areas, but will

seek to provide a balanced approach to privacy. Consideration will be given to the impact of privacy to and from external seating areas.' It is clear from a site visit that the platform structure provides unrestricted views to the private rear gardens of properties to the south in Milverton Avenue. Prior to this structure being erected their private gardens enjoyed a greater amenity as they were not overlooked by an elevated platform structure and planting existing between themselves and the application site provided a screening belt. With the planting removed to make way for this platform structure any privacy they previously enjoyed has now been completely eroded. The privacy of the residents to the south in Milverton Avenue has been completely eroded by this development which is contrary to Local Plan policy DQ1 a) Assessing Proposed Uses and this forms second reason for refusal.

Local Plan Guidance Note 13 House Extensions and Garages discuss the impact of decking. The Guidance Note states that, 'The adverse impact of decking/patios can, depending on individual circumstances, be minimised by providing effective and acceptable screening e.g. fences or walls, which should not normally exceed 2.5 metres in height from the existing ground level. The scale of the fencing can in itself have an adverse impact on the amenity of adjacent property by creating shading to windows or gardens, or dominating a garden, and this factor may justify refusing planning application for raised decking/patios.' In this case in order to screen views to neighbours gardens a screen in the region of 1.8m would be needed to be sited on top of the platform. This height of screen would effectively prevent overlook BUT as the platform sits on top of a gabion baskets at 1.8m above natural ground level this would result in a structure that is effectively 3.6m in height. For the reasons discussed in the paragraph about the design of the platform and its siting the introduction of a screen on top of the decking would increase the prominence of the raised structure within this rear garden environment and accordingly whilst this would reduce any overlook it would result in other issues which the Planning Service would be unable to support. The applicant has indicated on the submitted drawings planting at the foot of the platform area. The planting comprises of six Cupressus Stricta trees, these are evergreen and planted at 1m intervals. The Planning Service acknowledges that these are planted to provide screening of views to the south but they are too small at present to provide any benefit to either the neighbours impacted by the platform structure in terms of loss or privacy or as an attempt to screen the gabions and hard engineering that has been carried out in association with the platform area.

In response to the representations received,

- i) Noted and agreed.
- ii) This is not a material planning consideration.
- iii) Noted.
- iv) Noted.

Having regard to the height of the platform structure, the uninterrupted views to the private garden ground of neighbours to the south and the lack of a suitable screening option the platform structure raises a number of concerns regarding design and neighbouring amenity and accordingly planning permission is refused. The reasons for refusal are discussed above but relate to design and loss of privacy and are contrary to Local Plan policy DQ1 Assessing Proposed Uses and Guidance Note 13 – House Extensions and Garages.

RECOMMENDATION

Refuse for the following reasons

- 1) The raised platform area by reason of its height, resulting from the gradient of the land at no. 20 Ballaig Avenue, the use of gabion baskets and the size of the raised platform area has resulted in an alien and incongruous addition to the rear garden of no. 20 Ballaig Avenue, which when viewed from surrounding gardens has resulted in a loss of visual amenity. The development is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, 'Development should enhance and certainly not reduce the amenity and character of the surrounding area....' In addition the raised platform development is contrary to Local Plan Guidance Note 13 – House Extensions and Garages.

- 2) The raised platform area by reason of its height, size, siting and gradient of land has resulted in a loss of privacy to the rear gardens and rear facing windows of properties to the south of the application site in Milverton Avenue. The loss of privacy and amenity to the occupants of these properties is contrary to Local Plan policy DQ1a) Assessing Proposed Uses which states that, '...residential amenity will be strongly protected.' Furthermore the raised platform is contrary to Guidance Note - House Extensions and Garages and Guidance Note 7 Daylight and Inter-visibility of Windows, both of which seek to ensure privacy levels are protected.

Advisory Notes(s):

Director of Development & Regeneration

SCHEDULE 4

COPY OF THE DECISION NOTICE ISSUED BY THE EAST DUNBARTONSHIRE
PLANNING LOCAL REVIEW BODY UNDER REFERENCE TP/ED/15/0011 AND AS
REFERRED TO IN THIS NOTICE

EAST DUNBARTONSHIRE PLANNING LOCAL REVIEW BODY (EDPLRB)

DECISION NOTICE DATED 16 FEBRUARY 2016

To: Mr Robert Burns, 20 Ballaig Avenue, Bearsden G61 4HA

Planning Application Ref. TP/ED/15/0011

1. Location of proposed development: **20 Ballaig Avenue, Bearsden G61 4HA**
2. Description of proposed development: **Retention of raised decking area to rear garden**
3. Description of any variation made to the Application in terms of Section 32 of the Act: **N/A**
4. Any conditions to which the decision is subject: **N/A**
5. The following documents make up the application and can be found by searching for TP/ED/15/0011 on the East Dunbartonshire Council's Search Planning Application page (<http://planning.eastdunbarton.gov.uk/online-applications>):
 - PL1 APPLICATION
 - PL2 LOCATION PLAN
 - PL3 EXISTING BLOCK PLAN
 - PL4 GOOGLE VIEW PLAN
 - PL5 PROPOSED PHOTO ELEVATIONS
 - PL6 (001) PLAN VIEW OF REAR GARDEN
 - PL7 (002) ELEVATION OF REAR GARDEN
6. References to Sections 58(2) or 59(4) or (5) of the 1997 Act: **N/A**
7. Section 75 obligations: **N/A**

1.0 Decision

- 1.1 That the delegated decision of the Appointed Officer to refuse planning permission for the proposed development be upheld for the reasons given below and that permission for the development is refused.

2.0 Process

- 2.1 The EDPLRB considered the Notice of Review at its meeting held in public on 5 October 2015.
- 2.2 At the meeting of 5 October 2015 the EDPLRB had before them the Applicant's Notice of Review and accompanying submission documents, together with relevant administrative correspondence. The EDPLRB agreed that the Notice was valid and competent.
- 2.3 At the invitation of the Convener, the Land Planning & Development Manager provided information on the development plan policies which required to be considered, being Local Plan Policies DQ1 (Assessing Proposed Uses), DQ2 (Design Quality) and DQ2B (House Extensions) and

Guidance Notes 7 (Daylight and Intervisibility of Windows), 13 (House Extensions and Garages) and 18 (Road Layout and Design and Parking Standards).

2.5 There followed discussion of the Reasons for Refusal, during which Members expressed views on the validity of the Reason and the Land planning & Development Manager was heard in response to Members' questions.

3.0 Reasons for decision

Members of the EDPLRB were unanimously of the view that:

- 3.1 the raised platform area by reason of its height (resulting from the gradient of the land at number 30 Ballaig Avenue), the use of gabion baskets and the size of the raised platform area has resulted in an alien and incongruous addition to the rear garden of number 20 Ballaig Avenue which, when viewed from surrounding gardens, has resulted in a loss of visual amenity (being contrary to Local Plan Policy DQ1 and Local Plan Guidance Note 13); and
- 3.2 the raised platform area by reason of its height, size and siting and the gradient of the land has resulted in a loss of privacy to the rear gardens and rear facing windows of properties to the south of the application site in Milverton Avenue (being contrary to Local Plan Policy DQ1 and Local Plan Guidance Note 7).

Solicitor

[REDACTED]

16 February 2016

pp Director of Finance & Shared Services

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

Notification to be sent to applicant on determination by the planning authority of an application following a review conducted under section 43A (8)

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
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 V of the Town and Country Planning (Scotland) Act 1997.

SCHEDULE 5

EXPLANATORY NOTES FOR THOSE IN RECEIPT OF AN ENFORCEMENT NOTICE

Right of Appeal

If you wish to appeal against this Enforcement Notice, you should write to the Directorate for Planning and Environmental Appeals, 4 The Courtyard, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR. Alternatively, you may submit your appeal online at <https://eplanning.scotland.gov.uk/WAM/>. The appeal must be received, or posted in time for receipt, by the Directorate before the date on which this Notice takes effect. The Directorate acts on behalf of Scottish Ministers and has no power to consider an appeal that is not submitted on time.

The appeal, and which must be made in writing, must be based on one or more of the grounds described in section 130(1) of the Act. You should state the facts in support of each of the grounds of appeal you intend to rely upon. The statement of facts and the grounds of appeal must be submitted with your appeal.

If you lodge an appeal, this Notice will be suspended and will not take effect until such time as the appeal is either withdrawn or dismissed.

Consequences of not complying with this Notice

If the steps required by this Notice are not taken within the Time Period for Compliance, the owner of the land shall be guilty of an offence in terms of section 136 of the Act. Further, if any person who has control of the land to which this Notice relates carries on any activity which this Notice requires to cease, then that person shall be guilty of an offence. A person guilty of an offence shall be liable on summary conviction to a fine not exceeding £20,000, or to an unlimited fine on conviction on indictment. Furthermore, a person may be convicted of a second or subsequent offence.

Fixed Penalty Notices

Alternatively, and in terms of section 136A of the Act, the Council may serve a fixed penalty notice offering the opportunity to discharge any liability to conviction for an offence under section 136 of the Act. The payment required under the terms of such a notice is £2,000 if paid within 30 days from the day following the date of service of the notice (and reduced to £1,500 if paid within 15 days). There is no right of appeal against a fixed penalty notice.

A fixed penalty notice can be served in respect of a failure either to comply with each step required to be taken or to cease carrying on any activity to which this Notice relates. Consequently, several fixed penalty notices can be issued.

Measures that can be taken by the Council following failure to comply with this Notice

If the steps required by this Notice are not taken within the Time Period for Compliance, the Council can, under section 135 of the Act, enter the land and take those steps. The Council can also recover all reasonable costs incurred, including administration costs. It is an offence for any person to wilfully obstruct a person acting in the exercise of the aforementioned measures that can be taken by the Council.

If a fixed penalty is paid, the Council retains the authority to take measures to remedy the breach of planning control by entering the land and recovering any associated costs.

Further Offences

Compliance with the terms of this Notice does not discharge the Notice. It continues to have effect and any repetition of the breach of planning control may incur further penalties or result in further measures being taken by the Council.

SCHEDULE 6

EXTRACTS OF RELEVANT ENFORCEMENT LEGISLATION

Sections 123, 124, 127, 128, 129, 130, 136 and 136A of the Act.

Section 123. Expressions used in connection with enforcement.

- (1) For the purposes of this Act -
 - (a) carrying out development without the required planning permission, or
 - (b) failing to comply with any condition or limitation subject to which planning permission has been granted, or
 - (c) initiating development without giving notice in accordance with section 27A(1) of this Act, or
 - (d) carrying out development without displaying a notice in accordance with section 27C(1) of this Act, constitutes a breach of planning control.
- (2) For the purposes of this Act -
 - (a) the issue of an enforcement notice, or
 - (b) the service of a breach of condition notice, under this Part constitutes taking enforcement action as does the issuing of a notice under section 33A.
- (3) In this Part "planning permission" includes planning permission under Part III of the 1947 Act and Part III of the 1972 Act.

Section 124. Time limits.

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
- (4) Subsections (1) to (3) do not prevent—
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect, or
 - (b) taking further enforcement action in respect of any breach of planning control if, during the period of 4 years ending with that action being taken, the planning authority have taken or purported to take enforcement action in respect of that breach.

Section 127. Issue of enforcement notice

- (1) The planning authority may issue a notice (in this Act referred to as an “enforcement notice”) where it appears to them -
 - (a) that there has been a breach of planning control, and
 - (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- (2) A copy of an enforcement notice shall be served -
 - (a) on the owner and on the occupier of the land to which it relates, and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by this notice.
- (3) The service of the notice shall take place -
 - (a) not more than 28 days after its day of issue, and
 - (b) not less than 28 days before the date specified in it as the date on which it is to take effect.

Section 128. Contents and effect of notice.

- (1) An enforcement notice shall state -
 - (a) the matters which appear to the planning authority to constitute the breach of planning control, and
 - (b) the paragraph of section 123(1) within which, in the opinion of the authority, the breach falls.
- (2) A notice complies with subsection (1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
- (4) Those purposes are -
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
- (5) An enforcement notice may, for example, require -
 - (a) the alteration or removal of any buildings or works,
 - (b) the carrying out of any building or other operations,
 - (c) any activity on the land not to be carried on except to the extent specified in the notice, or
 - (d) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides.
- (6) An enforcement notice issued in respect of a breach of planning control consisting of demolition of a building may require the construction of a building (in this section referred to as a “replacement building”) which, subject to subsection (7), is as similar as possible to the demolished building.
- (7) A replacement building -
 - (a) must comply with any requirement imposed by or under any enactment applicable to the construction of buildings,
 - (b) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control, and

- (c) must comply with any regulations made for the purposes of this subsection (including regulations modifying paragraphs (a) and (b) of this subsection).
- (8) An enforcement notice shall specify the date on which it is to take effect and, subject to section 131(3), shall take effect on that date.
- (9) An enforcement notice shall specify the period for compliance with the notice at the end of which any steps are required to have been taken or any activities are required to have ceased, and may specify different periods for different steps or activities.
- (10) Where different periods apply to different steps or activities, references in this Part to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased.
- (11) An enforcement notice shall specify such additional matters as may be prescribed.
- (12) Regulations may require every copy of an enforcement notice served under section 127 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under section 130.
- (13) Where -
 - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so, and
 - (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted under section 33 in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
- (14) Where -
 - (a) an enforcement notice requires the construction of a replacement building, and
 - (b) all the requirements of the notice with respect to that construction have been complied with, planning permission shall be treated as having been granted under section 33 in respect of development consisting of that construction.

Section 129. Variation and withdrawal of enforcement notice.

- (1) The planning authority may -
 - (a) withdraw an enforcement notice issued by them, or
 - (b) waive or relax any requirement of such a notice and, in particular, may extend any period specified in accordance with section 128(9).
- (2) The powers conferred by subsection (1) may be exercised whether or not the notice has taken effect.
- (3) The planning authority shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served with a copy of the enforcement notice or would, if the notice were reissued, be served with a copy of it.
- (4) The withdrawal of an enforcement notice does not affect the power of the planning authority to issue a further enforcement notice.

Section 130. Appeal against enforcement notice.

- (1) A person on whom an enforcement notice is served or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds -
 - (a) [repealed]
 - (b) that the matters which, by virtue of section 128(1)(a) have been stated in the notice, have not occurred;
 - (c) that those matters (if they occurred) do not constitute a breach of planning control;
 - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
 - (e) that copies of the enforcement notice were not served as required by section 127;
 - (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
 - (g) that any period specified in the notice in accordance with section 128(9) falls short of what should reasonably be allowed.
- (2) An appeal under this section shall be made -
 - (a) by giving written notice of the appeal to the Secretary of State before the date specified in the enforcement notice as the date on which it is to take effect;
 - (b) by sending such notice to him in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date; or
 - (c) by sending such notice to them using electronic communications at such time that, in the ordinary course of transmission, it would be delivered to them before that date.
- (3) A person who gives notice under subsection (2) shall submit to the Secretary of State, either when giving the notice or within the prescribed time, a statement in writing -
 - (a) specifying the grounds on which he is appealing against the enforcement notice, and
 - (b) giving such further information as may be prescribed.

Section 136. Offence where enforcement notice not complied with.

- (1) Where, at any time after the end of the compliance period in respect of an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.
- (2) Where the owner of the land is in breach of the notice he shall be guilty of an offence.
- (3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.
- (4) A person who has control of or an interest in the land to which an enforcement notice relates (other than the owner) must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on.
- (5) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (4) shall be guilty of an offence.
- (6) An offence under subsection (2) or (5) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.
- (7) Where -

- (a) a person charged with an offence under this section has not been served with a copy of the enforcement notice, and
 - (b) the notice is not contained in the appropriate register kept under section 147, it shall be a defence for him to show that he was not aware of the existence of the notice.
- (8) A person guilty of an offence under this section shall be liable -
- (a) on summary conviction, to a fine not exceeding £20,000, and
 - (b) on conviction on indictment, to a fine.
- (9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Section 136A. Fixed penalty notice where enforcement notice not complied with.

- (1) Where a planning authority have reason to believe that, by virtue of subsection (1) of section 136, a person is in breach of an enforcement notice they may, provided that the conditions mentioned in subsection (7) are satisfied, serve on him a fixed penalty notice as respects that breach.
- (2) The fixed penalty notice is to specify -
- (a) the step specified, under subsection (3) of section 128, in the enforcement notice which has not been taken, or
 - (b) the activity so specified which has not ceased.
- (3) It is not competent to serve more than one fixed penalty notice in relation to a particular step or activity.
- (4) For the purposes of this section, a "fixed penalty notice" is a notice offering the person the opportunity of discharging, by paying to the planning authority, within the period of 30 days which immediately follows the day on which that notice is served, a penalty of an amount (being a prescribed amount) specified in the notice, any liability to conviction for an offence under section 136 as respects the breach of the enforcement notice.
- (5) But if payment is made within the first 15 days of the period mentioned in subsection (4) the amount payable is reduced by 25%.
- (6) The fixed penalty notice is to identify the period mentioned in subsection (4) and is also to state that if payment is made within the first 15 days of that period the amount payable is reduced by 25%.
- (7) The conditions are that the fixed penalty notice -
- (a) is served within the period of 6 months which immediately follows the compliance period in relation to the enforcement notice, and
 - (b) is not served after the person has been charged with an offence under section 136 as respects the breach of the enforcement notice.
- (8) During the period mentioned in subsection (4) it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (9) If the amount (or as the case may be the reduced amount) is timeously paid it is not competent to commence proceedings against the person for an offence under section 136 as respects that breach.
- (10) A penalty received by a planning authority by virtue of subsection (4) is to accrue to that authority.
- (11) In prescribing an amount for the purposes of subsection (4), the Scottish Ministers may make different provision for different cases or for different classes of case.

