

**SCOTTISH BORDERS COUNCIL**

**APPLICATION TO BE DETERMINED UNDER POWERS DELEGATED TO  
SERVICE DIRECTOR REGULATORY SERVICES**

**PART III REPORT (INCORPORATING REPORT OF HANDLING)**

**REF :** 15/00511/FUL

**APPLICANT :** Peter Smillie Esq

**AGENT :** W M Brown

**DEVELOPMENT :** Erection of decking and balustrade

**LOCATION:** 12 Todburn Way  
Clovenfords  
Galashiels  
Scottish Borders  
TD1 3AL

**TYPE :** FUL Application

**REASON FOR DELAY:** No Reason

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**DRAWING NUMBERS:**

<b>Plan Ref</b>	<b>Plan Type</b>	<b>Plan Status</b>
DEVELOPMENT LAYOUT	Location Plan	Refused
N. ELEVATION, SECTION AA & PLAN	Elevations	Refused

**NUMBER OF REPRESENTATIONS: 4**  
**SUMMARY OF REPRESENTATIONS:**

None.

Clovenfords Community Council was not a consultee on this application. Nonetheless, they commented as follows:

1. The planning application appears to be retrospective since the structure is already in place. This does not appear to have been identified in the planning application.
2. The list of neighbours identified for notification appears to be limited inasmuch as it does not take cognisance of all the adjacent properties potentially affected by this structure.
3. The objectors (none of whom appear on the neighbour notified list) have clearly identified the reasons for their objections. These objections are fundamental and can be summarised as:
  - a. invasion/loss of privacy.
  - b. intrusive lighting.
  - c. noise.
4. Having reviewed the plans and the structure the Clovenfords and District CC agree fully with the comments raised by the objectors.
5. If such a structure is approved it sets a precedent for similar structures to be erected in the development.
6. It would be remiss of the CC if it did not voice its concerns over this planning application. The Clovenfords and District CC would therefore wish to register its objection to the above planning application.

**PUBLICITY AND REPRESENTATIONS**

This application was publicised by means of the direct postal notification of 5 neighbouring dwellings initially (8 and 10 Todburn Way, and 15, 17 and 19 Lairburn Drive), I hand delivered a further 4 notifications to 23,25 27 and 14 Todburn Way on 10.05.15. At such time it also became apparent that the terrace of dwellings on Lairburn Drive (The terrace to the NW of the site) should have been notified also, and this was carried out by post on 10.05.15. This is why these addresses do not appear on the neighbour notification list to which the Community Council refer.

All of the submissions made can be viewed in full on the Public Access Website. Objections were received from 4 dwellings in total, and can be summarised as follows:

PSLIGA (29 Lairburn Drive) (2 submissions both summarised below)

- \* Barratt Homes have erected a fence on top of the retaining wall which runs along the length of the garden for privacy purposes. The erection of the elevated decking and balustrade is above the level of the fence line which results in an invasion of privacy, allowing the residents to overlook the garden and into the back bedroom window, kitchen window and patio doors of the objectors house.
- \* The decking and balustrade has been erected above the top level of the fence line on the retaining wall. The objector complains that this structure has a big impact in terms of invasion of privacy over the garden, back bedroom window and kitchen window and patio doors.
- \* There are also issues with decking lighting, should it be left on late at night.

CLEMENT (23 Lairburn Drive)

- \* The height of this decking completely overlooks the objector's garden.
- \* The objector feels they have now no privacy when sitting out in their garden.
- \* Comment that the decking dominates the area and ensures the objector and surrounding residents have no privacy.
- \* Decking lights are also left on, making intrusive light into the objectors property.

HOGARTH (25 Lairburn Drive)

- \* Due to the decking being built over the sloped garden area, the decking is very high and is dominating over the objectors and neighbouring gardens which they feel gives no privacy due to the close proximity of the expansive structure.
- \* Also comment that the lighting is considered to be very intrusive.

CARPENTER (27 Lairburn Drive)

- \* Comment that the decking at no.12 Todburn Way, Clovenfords is very extensive and elevated. The sheer size of it has a huge impact on the privacy of the surrounding houses and gardens.
- \* Point out that the deck is slightly higher than the level of the objectors back bedroom and bathroom windows.
- \* Complain that the deck overlooks and looks down into the privacy of their garden and rear of their property.
- \* Point out that the decking lights are on either side of every post, and together with the spotlights on the steps, are very bright when on, and can sometimes be left on until late at night.
- \* Also comment that the applicant's dogs also chase a hard plastic ball over the wooden decking which makes a lot of noise. This can also be late at night when they are let out.
- \* Point out that their baby daughter sleeps in the back bedroom of their property and both of the above issues have woken her up on occasion.
- \* The objector fears that they may struggle to sell our property in the future as the deck would put potential buyers off.
- \* Overall, feel this decking is very intrusive and is an invasion of their privacy. Confirm that they feel very overlooked.

The same objector also lodged a series of photographs purporting to show the decking illuminated at night time on the 5th, 7th and 8th April, and on the 24th of May.

**PLANNING CONSIDERATIONS AND POLICIES:**

Consolidated Scottish Borders Local Plan (2011)  
G1, H2

Other

SPG - Householder Development

SPG - Placemaking and Design

- The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011.

**Recommendation by** - Andrew Evans (Planning Officer) on 23rd June 2015

This application seeks retrospective planning permission for the erection of decking to the rear elevation of this detached dwelling.

SITE

The site is the garden ground of a new build detached dwelling on the "Meigle Row" Barratt Homes development in Clovenfords. The dwelling (12 Todburn Way) is located in an elevated position relative to neighbouring houses.

DEVELOPMENT UNDERTAKEN

Decking has been constructed to the rear of the dwelling without the benefit of the necessary planning permission. An enquiry was received earlier this year regarding the construction of a sleeper wall / landscaping feature in the dwelling. This was not carried out. Instead, a deck was constructed to the rear of the dwelling.

Class 3D of the GPDO (as amended in 2011) sets out that decking can be added to a dwelling, without the need for planning permission, so long as generally the deck is to the rear elevation of the dwelling (Behind the principal or roadside elevation), the floor level of any part of the deck would not exceed 0.5 metres in height, and the combined height of the deck and any wall, fence, balustrade or any structure attached to it does not exceed 2.5m.

In this case I have, with some difficulty due to the softness of the earth underfoot, measured various parts along the length of the deck, and at spots along its length measured heights of 1.4m and 1.7m above ground level. The decking is above the height limit whereby it can be considered "Permitted Development", and as such planning permission is required.

POLICY PRINCIPLE

The Council has adopted supplementary planning guidance on Householder Development. Policy H2 of the Consolidated Scottish Borders Local Plan also seeks to protect residential amenity.

Policy G1 of the CSBLP requires that development must be compatible with, and respect the character of the surrounding area, neighbouring uses, and neighbouring built form. It should be of a scale, massing, height and density appropriate to its surroundings, and where an extension or alteration, appropriate to the existing building. It must be finished externally in materials, the colour and textures of which complement the local architecture and, where an extension or alteration, the existing building.

ASSESSMENT OF APPLICATION

Whilst the deck is set behind the front building line formed by other properties on the street, it is raised above ground level and quite prominent from neighbouring back gardens, this part of the Barratt Homes development featuring a back-to-back layout, with a significant level change between dwellings.

- Overlooking of neighbours and impacts on amenity

The deck permits clear and unscreened overlooking of the back of neighbouring dwellings in a manner which is intrusive. Visually, the outlook from the neighbouring property is adversely affected by the intrusion of the raised deck.

In respect of residential amenity, the adjoining properties are almost exclusively set on lower ground levels than the deck, with the result on standing on the platform it is possible to view down into the neighbour's habitable rooms and gardens due to the distance and angle of vision between gardens, neighbours windows and decking area. It is therefore considered that there would be an unsatisfactory impact upon the residential amenity presently enjoyed by occupiers of the neighbouring houses as a result of the development. It is appreciated that someone would be able to stand in the garden ground and look down into these windows; however this would not be from the same elevated position. I am also satisfied that if the garden were returned to its previous sloping extent prior to the erection of the deck, the incidence and potential for overlooking and loss of privacy would be reduced.

I do not consider that the decking complies with policy H2 of the CSBLP. I consider that it has an adverse impact on the amenity of existing residential dwellings. In particular, the deck, by virtue of its scale and height relative to surrounding gardens is considered an unacceptable fit in the surrounding residential area. The decking has an unacceptable impact on existing neighbouring dwellings, in terms of elevated overlooking of neighbouring houses and gardens from the deck, resulting in unacceptable loss of neighbouring privacy.

In relation to the residential amenity of the neighbour it is considered that the proposal, by reason of its size and siting, represents an undesirable and un-neighbourly form of development detrimental to the amenity of the occupiers of the adjoining residential property, particularly by reason of loss of privacy. In addition to being contrary to policy H2 of the CSBLP, the deck is also contrary to policy G1 of the CSBLP, in that it is not compatible with, does not respect the character of the surrounding area, neighbouring uses, and neighbouring built form. It should be of a scale, massing and height considered inappropriate to its surroundings.

I do not consider that any benefits the applicants may accrue from this deck should outweigh the harm to the amenity of the neighbouring property. I have considered whether screen fencing would mitigate some of the adverse impacts upon the neighbouring property; however I do not consider that this would suitably reduce the adverse impacts of the decking, and it would create other negative impacts on the wider area. Due to the elevated level of the deck it is not felt in this instance that screening would be either a viable or preferred option.

#### - Illumination of the deck

Objectors cite the illumination of the deck as being part of the concerns and issues experienced. I am though mindful of the fact that the applicant would have been able to undertake such illumination without the need for planning permission. The rear of the dwelling could be illuminated to a similar extent, outwith the decked area. It is however noted that the illumination carried out emphasises the overbearing nature of the deck, and does indeed give prominence to its presence during the hours of darkness.

#### - Impacts on property values

The impact of the decking upon neighbouring property values is raised in objection to the application. I note however that the impact arising on neighbouring property values is not a material planning consideration, and I can attach no weight to such comments in the decision making process.

#### - Applicants supporting information

In support of the application, the applicant lodged supporting information. A set of annotated photographs show the deck in situ, when viewed from the rooms on the rear of the applicant's house. Annotated copies of the objections to the application, rebutting the issues raised in objection was also lodged. Without wishing to be drawn further into this neighbour dispute, I would only comment here that the neighbours were perfectly entitled to raise their objections and perceptions of the impacts arising from the deck. Likewise, the applicant is entitled to make comment on any representations made.

#### - Conclusion

In summary, I am satisfied that planning permission would have been necessary for the deck as constructed. I am also satisfied that the deck results in an adverse impact on the amenity and privacy of its neighbours. This deck is contrary to policies G1 and H2 of the CSBLP.

**REASON FOR DECISION :**

The decking as constructed is contrary to Policies G1 and H2 of the Consolidated Scottish Borders Local Plan (2011) in that the decking leads to an unacceptable loss of privacy to habitable rooms and gardens of neighbouring dwellings on Lairburn Drive. Furthermore, the decking has an overbearing impact upon neighbouring dwellings and their garden ground, leading to significant loss of residential amenity

**Recommendation:** Refused

- 1 The decking as constructed is contrary to Policies G1 and H2 of the Consolidated Scottish Borders Local Plan (2011) in that the decking leads to an unacceptable loss of privacy to habitable rooms and gardens of neighbouring dwellings on Lairburn Drive. Furthermore, the decking has an overbearing impact upon neighbouring dwellings and their garden ground, leading to significant loss of residential amenity

**“Photographs taken in connection with the determination of the application and any other associated documentation form part of the Report of Handling”.**