

**COPELAND BOROUGH COUNCIL  
DELEGATED PLANNING DECISION**

1.	<b>Reference No:</b>	4/22/2432/OF1
2.	<b>Proposed Development:</b>	FITTING OF COMPOSITE DECKING AND GLASS BALUSTRADE IN REAR GARDEN (RETROSPECTIVE)
3.	<b>Location:</b>	54 THE MOUNT, WHITEHAVEN
4.	<b>Parish:</b>	Moresby
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts Coal - Standing Advice - Data Subject To Change
6.	<b>Publicity Representations &amp;Policy</b>	Neighbour Notification Letter: YES  Site Notice: NO  Press Notice: NO  Consultation Responses: See report Relevant Planning Policies: See report
7.	<b>REPORT:</b>  <b>SITE AND LOCATION</b>  <p>This application relates to 54 The Mount, a detached new build bungalow situated on The Mount estate in Whitehaven. The dwelling is situated within a residential area with properties to the north and south and benefits from a modest sized garden to the rear. A private road fronts the property to the east which connects to Phase 4 of this estate with a further 8 residential properties to the north and the west.</p> <p>In addition, as The Mount estate is located in an elevated position within Whitehaven, due to the orientation of the site, 54 The Mount is elevated above the street-scene and the neighbouring properties to the south numbers 31-39 and to the north and west of the site, numbers 41-47 and 58-64.</p> <b>PROPOSAL</b>  <p>Retrospective Planning Permission is sought for the retention of a decking structure with glass balustrade which has been installed within the rear garden.</p> <p>The main decking element which contains the seating area has an overall width of 3.77 metres,</p>	

projecting up to the boundary fence with the neighbouring property, no. 58 The Mount and it has a depth of 0.61 metres and a length of 4.75 metres. It has been designed to sit in most part below the existing ground level to provide an in-set seating area with glazed balustrade where the owners can enjoy a view across to the Irish Sea. There is an additional stepped decking platform positioned to the rear of the site measuring approximately 7.7 metres, making the total length of the decking from the grassed verge nearest to the roadside to the edge of the garden adjacent to no.52 The Mount approximately 12 metres.

The structure has been built out of light grey composite decking with an anthracite grey composite border and it is accessed from the main grassed garden area by 2 steps.

### **RELEVANT PLANNING APPLICATION HISTORY**

Planning Permission has previously been granted for:

**4/18/2118/0F1 PHASE 3, LAND TO NORTH EAST OF RANNERDALE DRIVE, WHITEHAVEN -**  
RESIDENTIAL DEVELOPMENT FOR 28 DWELLINGS PLUS ASSOCIATED INFRASTRUCTURE AND  
LANDSCAPING

### **CONSULTATION RESPONSES**

#### Whitehaven Town Council

No comments received.

#### Public Representations

The application has been advertised by way of neighbour notification letters issued to 3 no. properties.

One letter of objection has been received to the original proposal, which raised the following concerns:

- Incorrect plans which don't accurately show the site in context or to scale;
- Reduced boundary fence height due to positioning of the structure - 90cm in some places;
- Removal of existing trees/shrubs to accommodate decking;
- The close proximity of the decking structure to neighbouring windows compromises privacy within side en-suite window and dining room patio doors;
- Structure is overbearing;
- Feelings of being overlooked – documents part of application 4/21/2136/0B1 refer to this and are relevant;
- Overbearing vantage points of the decking down into both front and rear garden, en-suite and dining room;

- Concerns with future maintenance of boundary fence;
- Design and materials used are out of character for the area;
- Concerns regarding pests under the decking after finding vermin holes in garden;
- Drainage concerns regarding surface water run-off and run off of chemicals used to clean decking due to sloped site;
- Issues with noise, nuisance and ambient lighting;
- Breach of restrictive covenants.

Whilst no formal letters of objection were received in response to first re-consultation after the Local Planning Authority received additional plans, the following concerns were verbally raised:

- Above concerns repeated.

An email response was received in response to the second re-consultation which raised the following concerns:

- Whilst the new drawings are a more accurate representation of the site, there are still concerns regarding overlooking and overbearing on side/rear garden;
- Design and size of balustrade / seating area having the same impact of overlooking and overbearing again due to elevations, particularly on the front of the property.

## **PLANNING POLICIES**

Planning law requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

### **Development Plan**

Copeland Local Plan 2013 – 2028 (Adopted December 2013)

#### Core Strategy

Policy ST1 – Strategic Development Principles

Policy ST2 – Spatial Development Strategy

#### Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

Policy DM18 – Domestic Extensions and Alterations

Policy DM24 – Development Proposals and Flood Risk

### **Other Material Planning Considerations**

National Planning Policy Framework (NPPF)

#### Emerging Copeland Local Plan (ELP):

The emerging Copeland Local Plan 2017-2038 comprising the Publication Draft (January 2022) and Addendum (July 2022) have recently been submitted for examination by the Planning Inspector. As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF. Given the stage of preparation of the emerging Copeland Local Plan 2017-2038 some weight can be attached to policies where no objections have been received or objections have been resolved. The Publication Draft (January 2022) and Addendum (July 2022) provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the NPPF.

The following policies are relevant to this proposal:

Policy DS1PU – Presumption in favour of Sustainable Development

Policy DS6PU – Design and Development Standards

Policy H14PU – Domestic Extensions and Alterations

## **ASSESSMENT**

The key issues raised by this proposal are the principle of development, its scale and design and the potential impacts on residential amenity and flood risk.

### Principle of Development

The retrospective application relates to a residential dwelling on an existing new-build housing estate within Whitehaven and it provides a decking structure with in-set seating area and glass balustrade within the rear garden. Policy DM18 supports extensions and alterations to residential properties subject to detailed criteria, which are considered below.

On this basis, the principle of the development is therefore considered to be acceptable, and the extension satisfies Policies ST2, DM18 and the NPPF guidance.

### Scale and Design

Policy ST1 and section 12 of the NPPF seek to promote high quality designs. Policy DM10 and DM18 seek to ensure domestic alterations are of an appropriate scale and design which are appropriate to their surroundings and do not adversely affect the amenities of adjacent dwellings.

An objection was received as the proposed plans did not reflect the site due to the retrospective nature of the proposal. Following a site inspection where the accuracy of the plans was assessed, additional plans were sought which more accurately represent the decking structure as built which is located up against the neighbouring boundary fence, and the height of the glass balustrade in relation to the existing fences either side of it. The additional drawings also included additional fence

heights and dimensions.

A site visit was carried out to both the application site and the neighbouring property, no. 58 The Mount to assess the scale and design and the impact of the proposal in relation to neighbouring amenity. The decking is located directly adjacent to the boundary fence at no.58 The Mount. Despite an objection raising concerns that the decking is too close to the boundary, it was considered that the decking is appropriately located within the rear garden, and it would be unreasonable to ask the applicant to re-configure the design to increase the separation distance.

Whilst an objection was received in relation to the choice of materials used, particularly for the glass balustrade, it was considered that due to the modern aesthetic of this new build estate, the materials used are suitable for their use and acceptable in policy terms. The development is finished to a high standard and despite the height of the glass balustrade being slightly higher than the original fence which it has replaced, it is not considered to cause any significant harm to the amenity. The retrospective decking, in my opinion, respects the overall character of this residential garden and surrounding estate.

Despite the main decking element being relatively large overall, the majority of the structure has been set in rather than elevated due to excavation of the original ground level. This has resulted in the highest decking area above original ground level of the garden as constructed being the raised edges at between 15-20cm. On this basis, given the existing character of this elevated and sloping site, the proposal is considered to be acceptable in terms of scale and design.

On balance, the proposed decking is considered to meet Policies DM10 and DM18(A) from the Local plan and NPPF guidance.

#### Residential Amenity

Policy ST1, Policy DM18 and section 12 of the NPPF seek to safeguard good levels of residential amenity of the parent property or adjacent dwellings.

Amenity issues were considered as part of this proposal, given the floor area of the decking structure and the concerns raised regarding the loss of privacy and overlooking the neighbouring properties garden, en-suite and dining room patio doors.

Significant consideration was given to these impacts. A site visit confirmed that the en-suite window on the side elevation of no.58 The Mount was already obscure glazed and did not relate to a habitable room, and the dining patio doors were located at the furthest point away from the main element of the decking which contains the seating area that is to be primarily used by the owners. The separation distance from the rear dining room patio doors at no.58 The Mount and the boundary fence of no.54 The Mount is approximately 8.5 metres which is considered to be an appropriate separation distance and therefore the structure is considered to be satisfactory and will not have a detrimental impact on the neighbouring amenity.

In addition, a solid fence currently runs along the boundary with no. 58 The Mount, along the edge of

the decking, to screen the development which was installed as part of the original landscaping management plan approved as part of the previous permissions for The Mount Estate development by John Swift Homes. This fence varies in height from the top of the garden to the roadside due to the site being sloped and the floor levels at no.54 The Mount being higher than those present at no.58.

During the site visit, it was noted that an element of overlooking already occurs due to the lower sections of the boundary fence. The existing lower fence height is 0.9 metres from the decking level at no.54 and the addition of a higher fence was considered to provide more screening. However, in my opinion, this was likely to cause further overshadowing for the owners at no.58. On this basis, this initial consideration was omitted and, due to the relationship of the decking with the neighbour's gable which contains one obscure glazed window, it is considered that the structure as built is unlikely to cause harmful amenity issues. The siting of the decking with the orientation of the boundary fence, adjacent to the gable of no. 58 The Mount is considered to be more acceptable to mitigate excessive overlooking concerns rather than an increase in overshadowing and dominance from a planning condition to heighten the boundary fence to secure further privacy. These measures are therefore considered to be appropriate to mitigate overlooking concerns and the maintenance of the current boundary fence height can also be secured by a planning condition.

Concerns were also raised as part of the re-consultation with regards to the design and size of balustrade and seating area which it is alleged has an impact on overlooking and an overbearing impact, particularly on the front of the neighbouring property.

Following a site visit, it was noted that the fence that existed before it was replaced with the current glass balustrade was an open boarded fence that was not particularly effective in offering a significant level of privacy. The replacement glass balustrade is not a significant change to the existing situation and therefore would have a similar effect. Furthermore, the privacy of the owners of no.58 is already compromised to some degree by overlooking whilst sitting on their patio as this has been sited to the front of their property adjacent to the road and is visible from the front elevation windows in neighbouring properties at nos. 41-47.

On this basis, due to the measures to mitigate overlooking issues and given the fact that the ground levels on the application site were already higher than those at no.58 due to the orientation and layout during construction of the estate, it is not considered that the proposal will cause any significant additional levels of overlooking or loss of privacy.

Concerns raised regarding the breach of restrictive covenants are not material planning considerations so cannot be considered as part of the application assessment.

Similarly, concerns regarding the presence of pests underneath the decking are not material planning considerations so cannot be considered as part of the application assessment and should therefore be passed on to Environmental Health to investigate.

Concerns regarding boundary issues and long-term maintenance are private matters and cannot be

taken into account in the application assessment.

On balance, given the existing elevated and sloping site, and the relationship with the gable of no. 58 The Mount, it is considered that the proposal will not cause a detrimental loss of amenity to the existing property or the surrounding properties. Despite an element of overlooking, the inclusion of the current solid boundary fence will provide suitable mitigation as opposed to conditions for a higher fence that would be likely to result in a loss of light to the garden of No.58 The Mount.

A planning condition is proposed to ensure that the fence height is maintained to protect residential amenity further. On this basis the proposal is considered to comply with Policy DM18 and the NPPF guidance.

#### Flood Risk

Policy DM24 seeks to protect developments against flood risk.

Whilst the development site is not located within a Flood Zone, concerns were raised regarding drainage and problems arising from surface run-off including chemicals that may be used to clean the decking.

Due to the modest floor area covered within the garden and the nature of the development which is positioned on a sloping site, the proposal is not considered to significantly increase flood risk to neighbouring properties.

Overall, the proposal is not considered to cause unacceptable flood risk in accordance with Policy DM24 of the Copeland Local Plan.

#### Planning Balance and Conclusion

This application seeks retrospective planning permission for the retention of a composite decking structure with glass balustrade in the rear garden which consists of a seating area that has been excavated below the original garden level. The main issues raised by the application were the scale of the development and the potential residential amenity issues caused.

Significant concerns were received regarding the proposal and additional plans were sought to provide a more accurate representation of the retrospective decking and glass balustrade as built in relation to the boundary fences, however, these concerns were repeated informally during the first re-consultation period.

A site visit was carried out to the application site and the neighbouring property, no. 58 The Mount to assess the scale of development and the impact of the proposal. The concerns raised were noted and, despite an element of overlooking, the decking is not considered to be unacceptable due to the relationship with the existing gable of no. 58 The Mount which contains an obscure glazed en-suite window. The maintenance of the solid fence can be secured by the use of a planning condition.

Overall, subject to the inclusion of planning conditions, the retrospective decking is considered to be acceptable in terms of scale and design. The impacts on neighbouring amenity and flood risk are not

	<p>considered to be unacceptable.</p> <p>Concerns regarding restrictive covenants, ambient lighting, impact of noise and nuisance and maintenance of the neighbouring boundary fence are not material planning considerations so cannot be considered as part of the application assessment.</p> <p>On this basis, subject to the imposition of the planning conditions proposed, the application is considered to be an acceptable form of development which accords with the policies set out within the adopted Local Plan and the guidance in the NPPF.</p>
8.	<p><b>Recommendation:</b></p> <p>Approve (with conditions)</p>
9.	<p><b>Conditions:</b></p> <ol style="list-style-type: none"> <li> <p>Permission shall relate to the following plans and documents as received on the respective dates and development shall be carried out in accordance with them: -</p> <p>Application Form, received 1<sup>st</sup> November 2022;  Site Location Plan, scale 1:500, received 1<sup>st</sup> November 2022;  Proposed site Plan, scale 1:500, received 1<sup>st</sup> November 2022;  Decking Plans and Elevations, received 1<sup>st</sup> November 2022;  Fence Plans and Elevations (additional), received 22<sup>nd</sup> November 2022;  Fence position and glass height (additional) received 12<sup>th</sup> December 2022;  Fence and glass position (additional) received 12<sup>th</sup> December 2022;</p> <p>Reason</p> <p>To conform with the requirement of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.</p> </li> <li> <p>The current solid boundary fence with No.58 The Mount must be maintained in accordance with the approved plan 'Fence Plans and Elevations (additional)' received by the Local Planning Authority on 22<sup>nd</sup> November 2022 and shall be retained in perpetuity thereafter.</p> <p>Reason</p> <p>To protect residential amenity in accordance with Policy DM18 of the Copeland Local Plan.</p> </li> </ol>



**Informative Note**

The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848.

Further information is also available on the Coal Authority website at:

[www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

**Statement**

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development as set out in the National Planning Policy Framework.

**Case Officer: Demi Crawford**

**Date : 20/12/2022**

**Authorising Officer: N.J. Hayhurst**

**Date : 22/12/2022**

**Dedicated responses to:-**