

4 Pontymason Close, Rogerstone, Newport NP10 9HG

RETROSPECTIVE APPLICATION TO RETAIN TERRACED GARDEN

Paul and Laura Coombs

There is currently an enforcement case open on the application E24/0115 for Engineering operations in rear garden to form “raised” terrace.

The scope of this application is for those areas that are not permitted development, and does not include any fence, wall, or other structure that has existed for more than 4 years. It does not include areas of the garden that by the limited nature of the work do not constitute engineering works

It is important to note that the “engineering work” identified in the enforcement subsequently forming part of this application, only relates to the areas that have alterations to levels above the accepted level of excavation or fill recognised as engineering work; which is above 300mm and undertaken by machine, and or arranged by an engineer. The works defined as permitted development aren’t arranged by an engineer, undertaken by a machine, or exceed 300mm. This has previously been recognised in the Newport City Council Application at 9 Mulberry Close Rogerstone Newport NP10 9JS.

- The Welsh Government define ‘engineering Works’, by use of the Courts definition of The term "engineering operation" is not defined in the 1990 Planning Act, but courts have described it as an operation that would usually be supervised by an engineer.

And the WG further define engineering works as not needing permission, where it involves;

- Using land or buildings within a dwelling house for related purposes.

The use of this garden is clearly related to the dwelling house, being the primary amenity space.

These definitions clearly state what works constitute ‘engineering works’.

Newport LPA has offered an opinion that any change in level “regardless of extent” constitutes engineering works.

Should this be the case every house in Newport with a patio should have applied for consent to lay a 15mm slab. This is wholly contradicted by Class F of permitted development, which reads;

- ***Permitted development F. Development consisting of— (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose***

incidental to the enjoyment of the dwellinghouse as such; or (b) the replacement in whole or in part of such a surface.

SITE LOCATION AND CONTEXT

This application is therefore considered in light of the definition of engineering works, the application site is a two-storey detached property in Rogerstone West. The host property is defined within the urban boundary. The properties along Pontymason Close are of differing heights as the land level changes. No.3 Pontymason Close is set 1.0m down from the host property, and no.5 Pontymason Close sits higher by a similar amount.

Gardens along Pontymason Close typically hold sloping gardens, with raised terraced areas, see photographs Figures 1 to 4.

Proposal

This application seeks retrospective permission to retain the areas defined as 'engineering works' and therefore outside permitted development, and are in the enforcement notice but are due consideration only where such works require consent.

Area A,

This is closest terrace to the dwelling, it is 1.4m high, the whole of this retaining structure is existing, there is no increase in height along the whole width of the tier, and it does not constitute engineering works, except where it falls within the red line. It is defined on the block plan and those areas outside the redline are excluded from the application as they are permitted development and do not require consent. The application only extends to those areas requiring consent are shown within the red line.

Area B

Has a maximum variation of 1172 mm height measured from Area A, however the level of Area A was reduced at the rear, so the height above the original level is only 1000mm. This tier is 4.2m front to back. This area is and always has been amenity space, there can be no change of use within a residential curtilage, meaning it is amenity space, that is the only definition that applies.

Area C

That is the natural sloping bank and has a small section of garden and a small terrace at the summit, this is retained by a 450mm dwarf wall to create a sitting area, and a shed is

located in the opposite corner. The top sloping section is covered in slate chippings. This has again existed prior to the works.

General Proposal

The proposed amendment in this application from the original application is to apply only for the areas that require consent for “engineering works” and mitigation in the form of new planters to screen the areas concerned. It should be noted that the same levels at the top and bottom of the garden have always existed and this application relates only to the small areas where a change of level has been made. Then it is only where that change constitutes engineering works.

PLANNING HISTORY

01/1038 CERTIFICATE OF LAWFULNESS FOR
PROPOSED CONVERSION OF GARAGE TO
COMMERCIAL KITCHEN
R 23/11/2001

PLANNING POLICY

THE NATIONAL DEVELOPMENT FRAMEWORK: FUTURE WALES - THE NATIONAL PLAN 2040 Future Wales sets out the Welsh Government's land use priorities and provides a national land use framework for SDPs and LDPs. Future Wales concentrates on development and land use issues of national significance, indicating areas of major opportunities and change, highlighting areas that need protecting and enhancing and helping to co-ordinate the delivery of Welsh Government policies to maximise positive outcomes.

Policy 1 - Where Wales Will Grow

Policy 2 - Shaping Urban Growth and Regeneration - Strategic Placemaking

Policy 9 - Resilient Ecological Networks and Green Infrastructure

PLANNING POLICY WALES (EDITION 12) 2024

Good design is fundamental to creating sustainable places where people want to live, work and socialise.

Meeting the objectives of good design should be the aim of all those involved in the development process and should be applied to all development proposals at all scales.
NEWPORT LOCAL DEVELOPMENT PLAN (2011-2026) Policy GP2 (General Amenity)
Policy GP5 (Natural environment) Policy GP6 (Quality of Design)

SUPPLEMENTARY PLANNING GUIDANCE House Extensions and Domestic Outbuildings
SPG

CONSULTATION RESPONSES 6.1 Tree Officer: NCC owns land adjacent to this property which would give a planting opportunity for replacement trees.

2no neighbour commented on the previous application.

*3 Pontymason Close: - Concerns over first tier and balustrade height -
Misrepresentation of the existing land levels and plans do not represent development. -
Amenity area is now not proportionate in size. - Areas marked on plans as patio is not
patio - 2no Trees to the rear of the garden removed*

*- No inclusion of metal balustrade on plans. The first tier has resulted in the creation of a
balcony and a new structure in excess of 3 metres high. The consequence of this newly
developed patio and balustrade is that a new and additional amenity space has been
created. - Overlooking into garden and house - The developed land has been raised,
altered or built upon along the entire length of the boundary with Number 3, including
the third tier of the development, diminishing greatly the necessary and important
intended benefits of the boundary fence at all points*

*5 Pontymason; Close Have no objections with the work thats been undertaken. Our
family is able to be out side in our garden at the same time as next door and we don't
feel (they) intrude on or that our privacy is being affected.*

Details of Proposals

The basic development is retrospective, with proposed mitigation measures; the existing ground levels prior to works are defined by photographic evidence and can be confirmed by their relationship with the existing boundary fences, which are unaltered and are available for any check on positions or heights.

Area A,

The front wall is existing and has not been raised, the part of this tier is an existing levelled area, that does not form part of this application, Class F permits hard surfacing, and this is not limited as to its area.

The rear of this amenity area has been reduced in level to match the front this is a reduction in level, not an increase, and has no bearing on overlooking or shadowing. The LPA made reference to the SPG for extensions, and although this legislation is not relevant, the area of the amenity that passes the 45 degree rule and is shown on the attached plans, at no point does the additional amenity space increase over looking, only '1.8 sq m' fall inside the 45 degree rule and at that point the garden is shielded by the proposed planters and an existing 2.0m fence preventing any overlooking and as the boundary fence is existing there is no consent required for that element.

Given the above, being maintained at the existing level, screened by the existing boundary fence, being designated as existing amenity to a residential property, no increase in wall height, and in accord with part F, with no new fence over 1.8m high, there is no reason to apply for consent, except for the areas defined as inside the redline, which shows area where the ground level has been reduced, not highered.

Area B

The existing garden levels to the original sloped garden have been increased in the southern corner and decreased in the northern corner. It should also be noted that changes in level of less than 300mm have been considered by Newport council not to require consent in previous applications. In this case only small part of the ground level closest to the southern boundary fence has been raised, constituting engineering works. The works create a level area, of which less than 13.5% is raised above 300mm. The mitigation in this proposal will render the whole area within this 13.5% as unusable, by being covered in planters with evergreen plants to prevent views of the boundary. The previous planning report tried to imply that this was the "North Eastern boundary", adjacent to the neighbouring property of no.3; meaning any screen would shadow the neighbouring property, however it is the "South Western boundary" and as such does not shadow the neighbouring property. The introduction of the mitigation will prevent "access to" and "views from" the area concerned.

The screen planting boxes will have a range of evergreen plants which ensure all year screening.

The original report stated that the documentation, **8.6 The adopted House Extensions and Domestic Outbuildings Supplementary Planning should be applied**; however there is no extension, and this SPG does not apply to existing amenity areas, the tests for shadowing in the 45 degree and 25 degree rule are met, in so much that no construction is visible above existing structures.

So, this proposal does not create "*a raised amenity space that substantially reduces natural light*", There is no reduction in natural light the existing fence is higher than this

proposal. The garden of the neighbour at no.3 is to the south of the area concerned, so this claim in the report is simply not true and this must be made clear to the Planning Committee.

The following statement is included as a quotation from SPG, *“perceived space or privacy in neighbouring habitable rooms or back gardens will not be acceptable”*. However this statement does not exist in the SPG as quoted, the only references are to extensions, over-looking amenity, so this is simply not relevant and should be considered as such. Investigating the actual proposals in this current application; there is no overlooking from any point on the proposed amenity where the levels have been adjusted, the planting prevents access to those areas and the planting and screen stops any direct view.

The planters themselves do not require consent, and can be installed at any time, the issue is that the level on which they are situated on is above the 300mm guidance for increased levels considered as “engineering works”, and that requires consent.

The wording of GP2 states THERE WILL NOT BE A **SIGNIFICANT** ADVERSE EFFECT ON LOCAL AMENITY, INCLUDING IN TERMS OF NOISE, DISTURBANCE, PRIVACY, OVERBEARING, LIGHT, ODOURS AND AIR QUALITY;

In this proposal there is no effect on local amenity, there is no noise involved in the development, there are no privacy issues due to the mitigation, there are now no lines of sight from the amended area, no access to the raised area, and no overlooking via the raised area. So, in every relevant point this proposal meets the requirements of GP2. The planters have been located away from the boundary, to further reduce any impact and allow maintenance from within the boundary of the host property, without the need to intrude on the neighbour’s property. The removal of the fences previously proposed, and restriction of access to the sensitive areas, mean that the LPA’s previous reasons for objection have been removed

There is now no proposed privacy screen between the host property and the neighbouring property at 3 Pontymason Close and the LPA should note that plants in a garden do not create an overbearing effect and do not require consent.

Area C

This has been deemed acceptable in previous reports and is not changed in this application.

Replacement Planting

The planters will provide a high density of evergreen foliage, berries, seeds and habitat.

The applicant is also willing to install a semimature tree to compensate the loss of the former trees.

The final issue to be raised is that of the relevance of comments from the neighbour;

Firstly; Any planting within an amenity area is at the will of the owner and isn't a planning matter. Photographs of the southern boundary which predate the work and clearly shows no shrubs or natural privacy to that boundary as claimed, the boundary is clearly visible along its length. This photograph formed part of the previous application and the comments could and should have been checked against it, and dismissed as a false claim.



The report writer previously stated, *“this was more of an informal area than its current use”*. The use of any amenity within the boundary of a residential property, isn't defined separately in planning, and this should have been clearly stated, anyone can use any part of their garden for any amenity purpose they wish, as long as it's in conjunction with the residential use. Surfacing an area is covered by Class F permitted development and that too doesn't need consent.

The areas amended in the works have been clearly defined on the drawings, and the validity is easy to establish as the fence on both side remains in place and measurements to ground levels are simple to measure from that existing structure, so such claims of inaccuracy should not be made or reported on, unless there is a clear error.

The previous officers report states that the "House Extensions and Domestic Outbuildings SPG", states that a raised amenity space should relate sympathetically to the existing building and the streetscape by virtue of its size, design and materials. The plateau area and steps with associated balustrade provides an adequate amenity area.

The House Extensions SPG 2005 available on the Newport Website makes no such statement.

The changes to this current proposal eliminate the suggested problems of overlooking, positioning planters away from the boundary prevent incursion and by increasing biodiversity enhances the scheme.

Conclusion

The previous application was determined in relation to these facts;

Due to the depth, height and use of the plateau, the raised tiers substantially reduces privacy to 3 Pontymason Close's garden when residents are on the plateau causing detrimental harm to neighbouring amenity and overlooking. The plateaus are insensitive and unneighbourly to neighbouring properties and the privacy fencing would create an overbearing structure contrary to the SPG and GP2. Therefore, the application is refused.

Taking these points one at a time;

1 Depth, height and use of plateau,

The LPA, have no control over the 'use' of amenity space within a residential curtilage. The relevant legislation clearly states; **Using land or buildings within a dwelling house for related purposes. Is permitted development.** The areas where the height was raised have been made inaccessible to humans and had planting added to restrict views across to the boundary. The height of the Area A is not increased, except for 35mm the depth of a slab in accord with Permitted development F. Development

consisting of— (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or (b) the replacement in whole or in part of such a surface.

Area B is treated similarly, and no access is available to the boundary

The width isn't increased at all.

- 2 *the raised tiers substantially reduces privacy to 3 Pontymason Close's garden when residents are on the plateau causing detrimental harm to neighbouring amenity and overlooking.*

This proposal now causes no increase in overlooking, proximity, and no detrimental harm to the original garden, by adding the planting boxes there in no access to the boundary and no sightline across the boundary. This represents an improvement on what was originally in place.

- 3 *The plateaus are insensitive and unneighbourly to neighbouring properties and the privacy fencing would create an overbearing structure contrary to the SPG and GP2.* Area A, is unaltered in height the only difference is that it is extended away from the properties, the introduction of the planters removes the privacy fencing included in the previous application, and the amenity areas would now be invisible to the adjacent property, so there cannot be 'overbearing'. The current out-building has been in place for many years and screens the direct front view from the amenity area. The planters are natural, environmentally friendly units that will enhance the ecology of the area.

The extracts below show that far from being "*insensitive and unneighbourly to neighbouring properties*". The type of development contained in this application is replicated, on the whole estate of the south facing hillside. It is virtually standard with raised platforms to the elevated areas of the gardens in every property



Figure 1.



Figure 2.



Figure 3.



Figure 4.

The removal of the possibility of overlooking, the removal of access to the boundary, the fact that the statements used in the previous application aren't in the SPG's as stated, mean that the contents of this application, with increased biodiversity, Green Infraction Statement, and the removal of areas that do not require consent from the application, can be positively determined with the knowledge that a condition to retain the planters in perpetuity, will safeguard the boundary relationship to the highest standards possible.