

LOCAL MEMBER CONCERNS

COMMITTEE DATE: 19/01/2022

APPLICATION No. **19/02864/MNR** APPLICATION DATE: 07/11/2019

ED: **RADYR**

APP: TYPE: Full Planning Permission

APPLICANT: Mr May

LOCATION: REAR OF 17 AEL-Y-BRYN, RADYR, CARDIFF, CF15 8AZ

PROPOSAL: ERECTION OF DWELLING (AMENDMENTS TO DESIGN OF DWELLING GRANTED PERMISSION UNDER REF 12/02142/DCO) AND GARAGE

RECOMMENDATION 1 : That planning permission be **GRANTED** subject to the following conditions :

1. The development shall be carried out in accordance with the following approved plans and documents:
 - 05 – Location plan
 - DOC.G.001A – Proposed garage floor plan, garage elevations and garage location plan (except in respect of the details given on drawing DOC.R.G.001 Rev C).
 - DOC.R.002B – Proposed floor plans.
 - DOC.R.003B – Proposed elevations.
 - DOC.R.G.001 Rev C – Partial Site Plan, Patio/Garden.
 - DOC.R.001 Rev B – Proposed Site Plan (except in respect of the details given on drawing DOC.R.G.001 Rev C).

Reason: To ensure satisfactory completion of the development and for the avoidance of doubt in line with the aims of Planning Policy Wales to promote an efficient planning system.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking or re-enacting that Order) no structure or extension shall be placed within the curtilage of the dwelling hereby approved, no windows or other openings shall be made in the external walls of the building, and no extensions shall be added to the roof of the building, other than those shown on the approved plans.

Reason: To ensure that the privacy and amenity of adjoining occupiers is protected, in accordance with policy KP5 of the Cardiff Local Development Plan.

3. Details of the appearance of the additional screening to be added to the existing boundary structures and the planters to be added to the patio,

as noted on drawing DOC.R.G.001 Rev C, along with a timetable for installation of the screening and planters, shall be submitted to and approved in writing by the local planning authority within one month of the date of this notice, and the screening material and planters shall be installed in accordance with the approved details and timetable and shall thereafter be retained in perpetuity.

Reason: To ensure that the privacy of adjoining occupiers is protected, and in the interests of visual amenity, in accordance with policy KP5 of the Cardiff Local Development Plan.

4. No part of the patio that is within 10.5 metres of the boundary with the garden at the rear of no. 17 Ael Y Bryn (when measured in a horizontal plane) shall be used as a balcony or as a sitting out area or for any recreational purpose whatsoever at any time.

To ensure that the privacy of adjoining occupiers is protected, in accordance with policy KP5 of the Cardiff Local Development Plan.

5. Details of an opaque screening material which shall replace, or be added to, the railings of the balcony on the rear of the dwellinghouse, along with a timetable for installation of the material, shall be submitted to and approved in writing by the local planning authority within one month of the date of this notice, and the screening material shall be installed in accordance with the approved details and timetable and shall thereafter be retained in perpetuity.

Reason: To ensure that the privacy and amenity of adjoining occupiers is protected, in accordance with policy KP5 of the Cardiff Local Development Plan.

6. Facilities for the secure storage of cycles at a rate of at least one cycle space per bedroom shall be provided in accordance with details and a timetable for compliance which shall have been submitted to and approved in writing by the local planning authority within one month of the date of this notice, and the approved facilities shall be thereafter retained in perpetuity.

Reason: To ensure that adequate provision is made for the parking / storage of cycles in accordance with policies KP5 and T5 of the Cardiff Local Development Plan.

7. The existing vehicular access and hardstand at the front of the dwellinghouse, as depicted on drawings DOC.G.001A and DOC.R.001 Rev B, shall be permanently removed and replaced with a boundary structure and soft landscaping in accordance with details and a timetable for compliance which shall have been submitted to and approved in writing by the local planning authority within one month of the date of this notice.

Reason: Use of this area for the parking of vehicles is not possible without illegally crossing the footway and the parking space and access should therefore be replaced with an appropriate boundary structure and soft landscaping, in the interests of visual amenity and biodiversity enhancement, to mitigate against the effects of climate change and

adapt to its impacts, to enhance biodiversity, and to ensure that the use of the proposed development does not interfere with the safety and free flow of traffic passing along the highway abutting the site, in accordance with policies KP5, KP15, KP16 and T5 of the Cardiff Local Development Plan.

8. Within one month of the date of this notice, a landscaping scheme comprising:
- Scaled planting plan.
 - Plant schedule.
 - Topsoil and subsoil specification.
 - Planting methodology.
 - Aftercare methodology
 - Implementation programme.

shall be submitted to and approved in writing by the Local Planning Authority and upon approval shall be carried out in accordance with the approved implementation programme.

Reason: To maintain and improve the appearance of the area in the interests of visual amenity and to mitigate against/adapt to the effects of climate change, in accordance with policies KP5 and KP15 of the Cardiff Local Development Plan.

9. Any trees, plants, or hedgerows included in the landscaping scheme required by condition 8 which, within a period of five years from the completion of the approved landscaping works, die, are removed, become seriously damaged or diseased, or become (in the opinion of the Local Planning Authority) otherwise defective, shall be replaced in the current planting season or the first two months of the next planting season, whichever is the sooner, unless the Local Planning Authority gives written consent to any variation.

Reason: To maintain and improve the appearance of the area in the interests of visual amenity, in accordance with policies KP5 and EN8 of the Cardiff Local Development Plan.

RECOMMENDATION 2: The applicant is advised that since January 7th 2019, all new developments of more than 1 house, or where the construction area is 100 square metres or more, require sustainable drainage to manage on-site surface water. Surface water drainage systems must be designed and built in accordance with mandatory standards for sustainable drainage published by the Welsh Ministers. These systems must be approved by the local authority acting in its SuDS Approving Body (SAB) role.

This development requires SAB approval. It is therefore recommended that the applicant engage with the SAB in discussions with regard to this matter. To arrange discussion regarding this please contact SAB@cardiff.gov.uk

Further information is available on the Council's website:

<https://www.cardiff.gov.uk/ENG/resident/planning-and-suds/suds-approval-body/>

The legislation set by Welsh Government can be reviewed at:

<https://gweddill.gov.wales/topics/environmentcountryside/epq/flooding/drainage/>

RECOMMENDATION 3: The applicant is advised that no more than one vehicular crossover per property is permitted by the Local Highway Authority and that the existing crossover approved at this site cannot be widened, as 4.8m is the maximum vehicular crossover width permitted by the council.

RECOMMENDATION 4: The applicant is advised that no work should take place on or over the neighbours' land without the neighbours' express consent and this planning approval gives no such rights to undertake works on land outside the applicant's ownership.

RECOMMENDATION 5: The applicant is advised that light emitted from the building must not cause nuisance to the occupiers of other premises in the vicinity, and that, where nuisance occurs, the Council has powers to take action to improve the situation, including serving an abatement notice on the person responsible.

1. **DESCRIPTION OF PROPOSED DEVELOPMENT**

- 1.1 Retrospective planning permission is sought for the retention of a dwellinghouse and detached garage as built. The house is a split-level, 4 bedroom house of a contemporary design. It is single storey to the front (on Cae'r Graig) and two storey at the rear, where the building is split into two "wings" with monopitch roofs extending from the main body of the house on either side of a central courtyard garden and rear balcony. The building is finished in white coloured render with black brickwork and dark grey profile sheet roofing. Windows and doors are grey powder coated aluminium. The windows, other than those which face inwards towards the courtyard, have very narrow profiles and those on the rear elevation at first floor level are orientated horizontally.
- 1.2 Planning permission was granted for a split level 3 bedroom detached dwelling on this site in January 2013 (12/02142/DCO). However, the development was not carried out in accordance with the approved plans and this application seeks permission to retain it as built. The differences between the approved and built development are –
 - a detached garage measuring 2.2m x 5.45m with a pitched roof to a height of 3m has been built on land adjacent to the house that was not included in the original planning permission. The garage has been constructed on top of a retaining wall and a level patio area has been formed between the garage and the side of the house, which is approximately 7.5m away. A 1.7m to 2m high wall/fence has been erected on the boundary with the highway in front of this patio;

- the internal layout of the house has been reconfigured to provide an additional (fourth) bedroom and, by additional excavation, space has been added to the lower ground floor at the front of the property, providing a utility room and ensuite bathroom;
- the footprint of the house has been altered: the approved house would have been 10.3m wide x 9.2m deep on the west side and 11.6m deep on the east side, with a 2.5m wide central recess in the rear elevation containing a 1.3m deep balcony at upper floor level. The house that has been built is 9.2m wide x 9.4m deep on the west side and 11m deep on the east side. The central recess is 1.9m wide and the balcony is 1.6m deep. The eastern 'wing' has been reduced in depth so that it projects only 1.8m from the central rear elevation of the house at ground floor / basement level (3.5m at upper floor level as the building is stepped back to accommodate the balcony) whereas the approved plans show this wing to project 2.9m and 4.2m respectively.
- the house has been set further back from the highway than approved and, although around 1m narrower than the approved dwelling, with the eastern 'wing' stepped back, it is positioned, at its closest point, around 2m closer to the rear boundary than approved (i.e. the house is around 11m from the rear boundary).
- a patio door has been added to the north west elevation leading from the kitchen/dining room onto the raised patio adjacent to the garage;
- Steps have been added leading down from the side patio to the rear of the house where a patio has been built which extends the full width of the plot and approximately 5m from the rear elevation of the house. The approved plans did not show steps here – access to the rear garden would have been via the house – and there was no raised patio, rather there would be a landscaped rear garden sloping down for around 6.5m with a 1.5m drop to a level garden area below, which would be approximately 8m long and would be bordered by tall shrubs. The raised patio that has been built has steps leading to a lower level that is around 5.5m long and has been landscaped with turf.
- Following the receipt of amended plans, the layout now shows that the majority of the rear patio would be covered with planters and would not be used as outdoor amenity space, and screening panels would be added to the steps leading down from the upper patio area.

2. **DESCRIPTION OF SITE**

- 2.1 The site was formerly part of the rear garden of a house which lies to the north east (17 Ael Y Bryn) and is located between that property and a highway, Cae'r Graig. The land slopes steeply up from the rear of the existing houses on Ael Y Bryn towards the highway to the south west. Two dwellings have recently been built on the land to the south east which also fronts onto Cae'r Graig. The rear gardens and rear elevations of houses on Graig Lwyd face towards the front of the site. These are at a higher level than the application site and are set above

a retaining wall. There are houses at a lower level on Ael Y Bryn to the north and east with rear habitable room windows facing towards the application site.

3. **SITE HISTORY**

- 3.1 07/00235M/- New dwelling (outline). Granted 06/02/08.
- 3.2 12/00137/DCO- Split-level 3 bedroom detached dwelling. Refused (un-neighbourly and overbearing effect upon the property at 19 Ael-y- Bryn, loss of privacy due to balcony and windows overlooking gardens of properties to the north, and alien and incongruous form of development).
- 3.3 12/01630/DCO - Variation of condition 1 of planning permission 07/00235M/ to extend the time period for submission of reserved matters application.
- 3.4 12/02142/DCO – Proposed split level 3 bedroom detached dwelling on a vacant plot. Granted 16/01/13.
- 3.5 19/01627/MNR - Minor amendment to re-configure the internal layout of the property - previously approved under 12/02142/DCO. Refused 09/07/2019.

4. **POLICY FRAMEWORK**

- 4.1 *Cardiff Local Development Plan 2006-2021:*
KP5 (Good Quality and Sustainable Design);
KP15 (Climate Change);
KP16 (Green Infrastructure);
EN10 (Water Sensitive Design);
T5 (Managing Transport Impacts);
C3 (Community Safety/Creating Safe Environments);
W2 (Provision for Waste Management Facilities in Development).
- 4.2 Supplementary Planning Guidance:
Waste Collection and Storage Facilities (October 2016); Cardiff Infill Sites (November 2017); Cardiff Residential Extensions and Alterations (November 2017); Green Infrastructure (November 2017); Managing Transportation Impacts (Incorporating Parking Standards) (2018).
- 4.3 *Planning Policy Wales (Edition 11 – February 2021):*
 - 2.2 All development decisions, either through development plans policy choices or individual development management decisions should seek to contribute towards the making of sustainable places and improved well-being.
 - 3.4 Meeting the objectives of good design should be the aim of all those involved in the development process and applied to all development proposals, at all scales.
 - 3.6 Development proposals must address the issues of inclusivity and accessibility for all.
 - 3.7 Developments should seek to maximise energy efficiency and the efficient use of other resources (including land), maximise sustainable movement, minimise the use of non-renewable resources, encourage decarbonisation and

prevent the generation of waste and pollution.

3.9 The layout, form, scale and visual appearance of a proposed development and its relationship to its surroundings are important planning considerations.

3.11 Local authorities are under a legal obligation to consider the need to prevent and reduce crime and disorder in all decisions that they take.

3.21 The planning system must consider the impacts of new development on existing communities and maximise health protection and well-being and safeguard amenity.

4.1.34 In determining planning applications, planning authorities must ensure development proposals, through their design and supporting infrastructure, prioritise provision for access and movement by walking and cycling and, in doing so, maximise their contribution to the objectives of the Active Travel Act.

4.1.35 New development must provide appropriate levels of secure, integrated, convenient and accessible cycle parking and changing facilities. As well as providing cycle parking near destinations, consideration must also be given to where people will leave their bike at home.

4.1.52 Parking standards should be applied flexibly and allow for the provision of lower levels of parking and the creation of high quality places.

5.12.9 Adequate facilities and space for the collection, composting and recycling of waste materials should be incorporated into the design and, where appropriate, layout of any development as well as waste prevention measures at the design, construction and demolition stage.

6.4.5 Planning authorities must seek to maintain and enhance biodiversity in the exercise of their functions. This means development should not cause any significant loss of habitats or populations of species, locally or nationally and must provide a net benefit for biodiversity.

6.4.24. The particular role, siting and design requirements of urban trees in providing health and well-being benefits to communities, now and in the future should be promoted as part of plan making and decision taking.

6.7.14 Proposed development should be designed wherever possible to prevent adverse effects to amenity, health and the environment but as a minimum to limit or constrain any effects that do occur.

4.4 *Building Better Places: The Planning System Delivering Resilient and Brighter Futures - Placemaking and the Covid-19 recovery (July 2020).*

4.5 *Future Wales- the National Plan 2040.*

4.6 *Technical Advice Note 12 - Design (March 2016).*

4.7 *Development Management Manual (May 2017).*

5. **INTERNAL CONSULTEE RESPONSES**

5.1 *Transportation:*

There is planning approval for a single parking space. However, there is an approved crossover at the garage location (approved in 2019) which has been installed. The applicant has installed the garage without permission. We are

therefore obliged to accept the location of the installed vehicle crossover, the issue being whether they can build a garage. Highways do not have a comment on the planning merits of the garage structure.

- 5.2 It appears the site has also introduced a significant driveway (without a crossover) near/at the location of the single approved off-street car parking location. Also, the plan indicates a 4.8m width crossover leading to a garage set back from the footway, which might allow access (should the resident's boundary wall be amended) to another parking space adjacent to the garage.
- 5.3 I must assume that the applicant is now effectively applying for a second vehicle crossover to access for the same property. Crossover No 1 (the only access in the 2012 application) has effectively been overtaken by crossover No 2, which has approval to be installed. It should be noted that the Council clearly states within the stated terms & conditions (which can be viewed on the Council website) that a second vehicle crossover to serve the same residence would not be permitted.
- 5.4 In this instance I would recommend that the applicant remove crossover No 1 from the application, as the crossover assessment team would refuse permission. It should also be noted that 4.8m is the maximum permissible width of a residential crossover, therefore, should any additional off-street car parking be required, the applicant should review the proposed plans/actuality at crossover No 2.
- 5.5 We confirm we are happy with the garage and approved crossover, but need the other access to be removed to prevent access, which appears to be illegally achieved at the moment across the footway without an approved vehicle crossover. A crossover in this location has been refused due to insufficient depth.
- 5.6 I also confirm that if the applicant wants to locate a parking place adjacent to the garage then the existing vehicle crossover cannot be widened. 4.8m is the maximum vehicular crossover permitted by the council. I would again refer the applicant to the council's T&Cs on crossovers.

5.7 *Waste Strategy & Minimisation Officer:*

The plans do not show the intended storage site for waste and recycling, however providing the bins are stored within the curtilage of the property this will be acceptable.

- 5.8 *Drainage:* I can confirm the development requires SAB approval. There is insufficient information within the application to determine whether SAB approval will be granted or whether the application satisfies policy EN14 of the LDP.

6. **EXTERNAL CONSULTEES RESPONSES**

- 6.1 *Welsh Water:* No objection.

6.2 *Radyr and Morganstown Community Council*: No comments received.

7. **REPRESENTATIONS**

7.1 The application, including the amended plan received in August 2021, has been advertised by neighbour notification. 4 written representations and a video from 3 properties, plus a letter from a planning consultant representing the same objectors (the occupiers of Nos 15, 17 and 19 Ael-y-Bryn) were received following notification of the initial application. The following is a summary of the initial grounds for objection:

- 1) **Overbearing impact.**
The house, additional raised balcony/patio area, rear wall, stepped platform at the front and the garage have an overbearing impact on 13-19 Ael y Bryn.
- 2) **Loss of daylight/sunlight.**
The height of the garage and rear wall (more than 6.5m) has led to loss of daylight/sunlight to the adjacent property.
- 3) **Loss of privacy.**
The developer has, in breach of previous Conditions, removed the trees/shrubs and failed to re-plant them. People have unobstructed views from the patio into the adjoining gardens, living rooms and upstairs bedrooms (less than 15m away). The boundary fence built between the neighbour's property and the development is not tall enough to offer any privacy from the new development. There should have been opaque glass around the small balcony outside the rear window but this has been changed to metal railings and there is now a view into the bedroom of the house below. The balcony and steps could be used for socialising, subjecting the neighbours to intrusive overlooking.
- 4) **Previous refusals.**
A balcony in this position was previously found unacceptable (application 12/00137/DCO) on the grounds of loss of privacy. The application for a non-material amendment was refused therefore this indicates that it has already been agreed by CCC that the current development is overbearing and has resulted in an unacceptable loss of privacy.
- 5) **Light pollution.**
The large rear window will cause light pollution, affecting the properties below. Also the garden steps will need to be lit.
- 6) **Security.**
The steps and rear balcony/patio will provide an easy climbing aid to gain access to the neighbouring property.
- 7) **Inaccurate drawings.**
The garage is not positioned correctly on any of the plans. The presence of a bus stop and street lamp have not been considered. The North West 'Wing' has been built even larger than specified on the drawings, the roofline has been raised, and it is nearer to the adjacent property. The Proposed Rear Elevation is misleading as it does not show the new set of steps against the neighbours' fence. Drawing no. AL(9)04 does not show the large balcony. The drawings do not accurately depict the

difference in levels between the application site and the neighbours' gardens.

- 8) The development may have encroached onto land owned by the neighbour at 15 Ael Y Bryn.
- 9) Noise pollution.
People can clearly be heard talking when on the raised area. If the occupiers of the house include children, then this area will be very noisy.
- 10) Overdevelopment of the plot.
The original drawings show a sloping area of natural garden. The developer has increased the original footprint by building on almost every part of the natural landscape within the plot. The raised balcony area surrounded by metal railings appears integral to the house and clearly extends the footprint of the building.
- 11) Inadequate car parking facilities.
A car cannot be parked on the front as this area is too small and restricted by a wall, steps etc. and the garage is not up to standard as no turning area is provided so that cars can enter and leave in a forward gear. The garage should be repositioned for manoeuvrability for vehicles, and away from the boundary line that makes the wall over 6m high, or replaced with a more modest cycle store.
- 12) Inadequate drainage.
The neighbouring garden has turned into a quagmire, with damp patches on the retaining wall. The original plan shows a lawn area at the front of the property which would allow surface water to be directed into this area, however this too has been replaced with pavers. The lack of vegetation is increasing natural drainage problems for the land around the properties below.
- 13) Precedent.
Allowing this development will send out a message to all developers that planning permission is only a formality that can be ignored, and that they can build what they choose.
- 14) Negative impact on visual amenity.
The developer has removed more than 200 perfectly functioning and reusable paving slabs and replaced them with tarmac, conveniently incorporating a dropped kerb to the unpermitted garage. The pavement should be restored to its original specification.
- 15) A site visit should be made to the neighbours' property.
The planning department has not safeguarded the interests of the neighbours. Decisions around this retrospective planning permission should not be made at officer level, or between the head of planning and the chair of the planning committee alone, but be heard in full session of the planning committee.

7.2 The following is a summary of the objections relating to the amended plan submitted in August 2021.

1. A window in the dwelling overlooks the rear garden of 32 Min-y-Coed from an elevated position, affecting residential amenity.
2. Nothing in the new proposal alters the overbearing nature of the property.
3. The current application has again used drawings which suggest that

boundary tree lines have been retained.

4. The new plan is misleading as it makes it appear that the property to the rear of 17 Ael-y-Bryn is responsible for the 'screen of trees' when in fact any trees acting as a 'screen' are planted on the neighbour's property.
5. The inclusion of a 450mm screening panel will not change the dimensions of the property nor will it prevent an elevated line of sight from the property directly into 15, 17 and 19 Ael Y Bryn.
6. Raising the height of the already elevated fence would increase the overbearing nature of the property.
7. The terrace should be lowered and a proper screen of trees should be planted on the property, in addition to the raising of the fence height.
8. People sitting on the balcony will still be able to see directly into the neighbours' bedrooms.
9. There are very bright lights in the balcony area of the new house which are occasionally on until 2.00 am.

7.3 Councillor Rod McKerlich has submitted the following observations:

'I believe that this application should be refused on the following grounds:

- The height of the ridge is significantly higher than that of the 2 other new builds which are adjacent. The 2 other new builds were obliged to reduce ridge height to obtain planning approval ; therefore this ridge height is above the approved level.
- The balcony , patio and rear window with clear glass all overlook existing properties in Ael y Bryn; the gardens, bedrooms and sitting areas are overlooked and privacy is breached to an alarming extent. This was not as in the approved plans
- The retaining wall is made of wood and water is oozing through it into the gardens of Ael y Bryn. The wall does not appear to be robust enough to properly retain the land and buildings above.
- The garage was built without permission as was the drop kerb giving access to it.

I submit that a site visit is required and this should not be determined under delegated powers.'

8. **ANALYSIS**

8.1 The main consideration with regard to this proposal is the effect of the changes to the approved development on the amenities of neighbouring occupiers. This can be assessed by considering the objections that have been submitted (which are summarised in section 7 of this report):

8.2 1) Overbearing impact on 13-19 Ael y Bryn.
The house itself, as built, has more or less the same dimensions as the approved building. However, it has been constructed closer to the rear boundary and the additional raised patio area and steps at the rear of the house have also brought development closer to the properties at the rear. The raised patio and steps do not in themselves add to the 'bulk' of the development when viewed from the neighbouring land and can be screened by appropriate

boundary treatment, and it is not considered, on balance, that the reduction in the distance between the house and the rear boundary has led to the development becoming unacceptably overbearing. The garage and retaining wall are around 13.5m from the neighbouring dwelling to the rear and, although they have an impact on the rear garden of that property, they are relatively well screened by vegetation and are not considered to be unduly overbearing.

8.3 2) Loss of daylight/sunlight.

There has been a reduction in the amount of sunlight reaching the adjacent property over and above what would have occurred had the originally approved scheme been implemented due to the small difference in the positioning of the house and the construction of the garage and retaining wall, but this additional impact is limited and is not considered severe enough to warrant the refusal of planning permission. Adequate sunlight and daylight will still reach the adjoining properties.

8.4 3) Loss of privacy.

There was no condition on the previous approval which prevented the removal of trees and shrubs. There was a landscaping condition, which was discharged, but since the current application relates to a different development, this condition is not relevant. The raised patio that has been constructed does enable overlooking of adjoining properties, being only around 7.5m from the rear boundary. As it is in an elevated position, the guidance relating to overlooking of adjoining properties from upper floor windows of new dwellings can be used to assess whether this is acceptable. The Supplementary Planning Guidance 'Infill Sites' (2017) states at paragraph 4.9 that '*The minimum overlooking distance from a habitable room window to a garden area of a separate dwelling should be 10.5m.*' Therefore, provided the distance between the gardens of the properties on Ael Y Bryn and the useable area of the patio can be increased to at least 10.5m, there can be no reasonable grounds for refusing the application for reasons of loss of privacy. The amended plan submitted by the applicant in August 2021 demonstrates that planters will be added to the end of the patio and the railings moved back, and states that this will be to a distance of 10.5m from the boundary with the gardens on Ael Y Bryn. The amended plan shows that the rear boundary fence will also be increased in height to 2.35m and screening panels added to the top of the fence alongside the steps leading down to the patio which, along with the setting back of the useable area of the patio, will prevent unacceptably close overlooking from the steps and patio area.

8.5 The Infill Sites SPG (paragraph 4.9) also requires a minimum of 21m to be maintained between principal windows to habitable rooms and advises that it may also be possible to achieve privacy with a combination of separation distance, appropriate position and aspect of habitable rooms, screening, building orientation, window positioning, size and style of window and placement of gardens.

8.6 Although the patio will be within 21m of the windows in the rear of 17 Ael Y Bryn, it is not a 'habitable room'. The only habitable room window that will face towards the houses to the rear is that of the lounge in the eastern 'wing' and

this will be more than 24m from the facing bedroom window in the rear of no. 17. This distance, including the raising of the height of the rear boundary fence, will ensure that adequate privacy is maintained in respect of facing habitable room windows.

8.7 The small balcony outside the central rear window also featured in the approved plans and would have been 18.5m from the rear boundary, 24m from the conservatory of 17 Ael Y Bryn and 29m from no. 17's rear window. As built, this balcony extends further from the house but is still 15m from the rear boundary, 21.5m from the conservatory and 27m from the rear window, which is considered to be adequate to maintain an acceptable level of privacy in accordance with the adopted SPG. However, despite the SPG standards being met and although in the approved scheme there is no mention of opaque glass being used around the rear balcony rather than the railings, which have been used in the current scheme, it is recommended that a planning condition be imposed on any approval of this application requiring the railings to be changed to an opaque material in order to reduce neighbours' perception of being overlooked from above.

8.8 4) Previous refusals.

The balcony proposed in application 12/00137/DCO was not in this position but was a much larger balcony, open on two sides and overlooking the gardens to the north. The application for a non-material amendment was refused not because it had already been determined that 'the current development is overbearing and has resulted in an unacceptable loss of privacy' but because the differences between the approved building's footprint and what has been built were considered to be 'material' in that the changes have affected local amenity (evinced by the objections that were received) but the amended plan did not show the building in relation to the site boundaries, therefore it did not demonstrate that the changes to the footprint comply with the Council's adopted policies and planning guidance relating to impact on the amenities of neighbours. The amended plan also failed to indicate any cycle parking facilities, whereas these were included in the approved scheme. A garage and raised patio had also been constructed as part of the development but these were not shown on the plans even though they required planning permission.

8.9 5) Light pollution.

There is a large rear window in the approved scheme which could also have emitted light. Interior domestic lights are unlikely to be so bright as to cause nuisance to neighbours. Any lights on the steps will be screened from neighbouring windows by the boundary fence and existing vegetation and are also unlikely to be excessively bright. The applicant can be advised that action can be taken by the Council if light pollution is causing a Statutory Nuisance.

8.10 6) Security.

The steps and rear balcony/patio will be bordered by fences and it will be no easier to gain access to neighbouring properties than from any other rear garden.

- 8.11 7) Inaccurate drawings.
The drawings appear to be accurate enough to enable proper assessment of the proposals. The bus stop and street lamp are not shown on the plans but officers are aware of their location and no concerns regarding these items have been raised by Highways officers.
- 8.12 The drawing of the proposed rear elevation of the house does not have to show the new set of steps against the neighbours' fence as these are depicted on other plans, and drawing no. AL(9)04 does not have to show the large balcony, for the same reason. The difference in levels between the application site and the house to the rear is depicted on the submitted sectional drawing. The levels of the various gardens surrounding the plot has been noted following site visits by officers and taken into consideration when assessing this application.
- 8.13 8) The development may have encroached onto land owned by the neighbour at 15 Ael Y Bryn.
This is a legal matter and not a material planning consideration, and no evidence of this has been provided. The granting of planning permission does not, in any case, confer the right to encroach onto neighbouring property without the owner's consent.
- 8.14 9) Noise pollution.
The sound of people talking or children playing in a neighbouring garden is to be expected within a residential area and does not constitute noise pollution. Excessive noise causing a statutory nuisance could be controlled under Environmental Health legislation.
- 8.15 10) Overdevelopment of the plot.
The area of hard surfacing has been increased but since this is used as outdoor amenity space and is partly landscaped using planters, this does not constitute 'overdevelopment'. The raised patio does not constitute part of the house.
- 8.16 11) Inadequate car parking facilities.
The adopted Supplementary Planning Guidance 'Managing Transportation Impacts (Incorporating Parking Standards)' does not require any car parking facilities to be provided for a development of this nature, therefore it is acceptable if the area to the front of the house is too small to park a car. This area is in fact unsuitable for parking as the Highways Authority has refused to allow a crossover to be constructed in this location. The garage that has been built is of acceptable dimensions to accommodate one vehicle, which accords with the maximum standard set out in the SPG, and its position is acceptable to the Highways Authority in terms of the manoeuvring of vehicles onto and off of the highway. The crossover providing access to the garage has been approved by Highways officers.
- 8.17 12) Inadequate drainage.
Surface water drainage is now dealt with separately to planning permission. The applicant will have to provide evidence to the local authority acting in its SuDS Approving Body role that the surface water drainage system for this development complies with the mandatory standards for sustainable drainage

published by the Welsh Ministers.

8.18 13) Precedent.

Any development that is not built in accordance with the approved plans will be open to enforcement action by the Council whether or not this application is approved. Each application must be determined on its own merits, even if it is retrospective. In this case, consideration must be given as to whether what has been built, including the proposed mitigation measures shown on the amended plan, could reasonably be refused planning permission.

8.19 14) Negative impact on visual amenity (loss of paving slabs).

This is not a material planning consideration as works to the public highway are controlled by the Council in its role as Local Highway Authority. The objector has since stated that they have been informed by a Highways representative that the removal of slabs was accepted, based on the claim that the existing paving had a lot of cracked slabs (although they do not agree with this and their objection still stands).

8.20 15) A site visit should be made to the neighbours' property.

Officers have visited neighbouring properties as well as the application site itself. Concern for the interests of neighbours is the reason that this application was required, rather than treating the changes as 'non-material', and it is for the Chair of Planning Committee to decide whether or not the application is reported to the full planning committee.

8.21 Regarding the objections relating to the amended plan:

1. At its closest point, the garden of 32 Min-y-Coed is more than 50m from the window in question. This is more than twice the minimum distance required for the protection of a reasonable standard of privacy.

2. The development is not considered to be unacceptably overbearing for the reasons set out earlier in this report.

3. and 4. The drawings clearly show that the boundary trees are outside the application site and it is therefore clear that they are not under the applicant's control and may or may not be retained.

5. The 450mm screening panel will prevent a line of sight from the raised patio into the property below. There will be no close overlooking from the house itself, as discussed earlier in this report.

6. The increase in the height of the fence will improve privacy standards and, on balance, it is considered acceptable despite its having other negative consequences.

7. The proposed mitigation measures are considered to achieve the same privacy outcome as lowering the terrace and planting a screen of trees.

8. As discussed above, the balcony is at an acceptable distance from the properties to the rear to prevent undue loss of privacy, in accordance with the adopted 'Infill Sites' SPG. However, given the neighbours' concerns, it is considered appropriate to require screening to be provided so that people seated on this balcony will not be visible from the properties below, thus reducing the neighbours' perception of being overlooked.

9. Domestic lights, either interior or exterior, do not require planning permission. However, if the lights are illuminating another property so as to cause nuisance

or be prejudicial to health, then they may be classed as a statutory nuisance, in which case action could be taken under Environmental Protection legislation.

- 8.22 In response to the objections submitted by Councillor Rod McKerlich:
- According to the submitted drawings, the ridge height of the building at the rear is around 0.8m higher than approved but at the same level towards the front. It is not significantly higher than the adjacent houses.
 - The issue of privacy is discussed earlier in this report.
 - Since this comment was submitted, the neighbour has advised that the problem has been alleviated to a certain extent by the digging of a drainage trench within the application site.
 - The construction details of the retaining wall relating to its ability to properly retain the land are not a material planning consideration but are controlled under other legislation. The wall is not made of wood but is only faced in timber.
 - The garage was built without permission but the crossover giving access to it has been approved by the Highway Authority.
- 8.23 The applicant's agent disputes the Councillor's comments and has submitted the following response:
- "the level of the roof ridge has been measured again and is the same from ground level as that approved in the original plans;
 - the detailing of the rear elevation, including balcony, is virtually identical to the rear elevation in the approved plans;
 - the retaining wall is built of reinforced concrete, albeit that it is clad in timber to make it more aesthetically pleasing than would otherwise be the case. Water oozes out of weep-holes during periods of high rainfall. Weep-holes are a normal part of the design of a retaining wall as any competent structural engineer would testify. The water is taken to a land drain built along the base of the wall, which is laid to a design agreed with the vendor.
 - It is true that the garage was erected without permission, on the mistaken basis that it was permitted development. However, the dropped kerb has been consented by the Council under the Highway Acts."
- 8.24 In conclusion, although the development as built is not in accordance with what was originally approved for this site and has had an impact on the amenities of neighbouring occupiers, consideration has to be given as to whether it is possible to remedy the effects of the development without requiring demolition of the unauthorised structures. In this case, the amendments proposed to the development, in the form of additional screening and the reduction in the useable area of the raised patio, are considered to adequately address the objections that have been raised with regard to loss of privacy, and conditions can be used to control other aspects of concern such as lighting, drainage and landscaping. On balance, the proposal is considered acceptable, and it is recommended that the application be approved subject to the conditions set out above.

9. **OTHER CONSIDERATIONS**

9.1 *Crime and Disorder Act 1998*

Section 17(1) of the Crime and Disorder Act 1998 imposes a duty on the Local Authority to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. This duty has been considered in the evaluation of this application. It is considered that there would be no significant or unacceptable increase in crime and disorder as a result of the proposed decision.

9.2 *Equality Act 2010*

The Equality Act 2010 identifies a number of 'protected characteristics', namely age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation; marriage and civil partnership. The Council's duty under the above Act has been given due consideration in the determination of this application. It is considered that the proposed development does not have any significant implications for, or effect on, persons who share a protected characteristic, over and above any other person.

9.3 *Well-being of Future Generations (Wales) Act 2015*

The Well-being of Future Generations (Wales) Act 2015 places a duty on the Welsh Ministers (and other public bodies) to produce well-being objectives and take reasonable steps to meet those objectives in the context of the principle of sustainable development. The duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 (the WBFG Act), has been considered and account has been taken of the ways of working set out at section 5 of the WBFG Act in the determination of this application, and it is considered that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the well-being objectives referred to in section 9 of the WBFG Act.

10. **ALTERNATIVE RECOMMENDATION**

- 10.1 This application was deferred by Planning Committee at its meeting on 3rd November 2021 in order to undertake a Site Visit, which took place on Monday 6th December 2021. The application was reported back to the Planning Committee meeting of 15th December 2021 for determination and was deferred to enable officers to draft reasons for refusal based on the Committee's objections to the proposal as having a detrimental impact on the amenities of neighbouring residents due to the close proximity of the raised patio to the boundary with neighbouring properties, which has a detrimental impact on the privacy of neighbouring occupiers, and the increase in the height of the boundary structures which would be needed in order to maintain an adequate level of privacy, which would appear overbearing and oppressive when viewed from the neighbouring properties.

10.2 If members remain minded to refuse the application, the following reasons are suggested :

1. The increased length of the raised patio results in an unacceptable loss of privacy for the occupiers of the neighbouring properties and therefore results in a poor design contrary to Policy KP5(x) of the Cardiff Local Development Plan.
2. The proposed increase in the boundary enclosures, in order to secure adequate levels of privacy for the adjoining occupiers of neighbouring properties, will appear overbearing and oppressive when viewed from the properties to the rear of the application site resulting in a loss of residential amenity. The proposal therefore represents a poor design contrary to policy KP5(x) of the Cardiff Local Development Plan.

Recommendation 2 That the Chief Legal Services Officer be granted authorisation under Section 172 of the Town and Country Planning Act 1990 to take appropriate enforcement action in order to secure the regularisation of the breach of planning control.









