



DEVELOPMENT MANAGEMENT COMMITTEE

Report by Head of Planning, Economic Development and Regeneration

1 DESCRIPTION

Change of use from open space to private garden ground and erection of decking over watercourse (in retrospect) at 13 Ballencrieff Mill, Bathgate, West Lothian, EH48 4LL.

2 DETAILS

Reference no.	0552/FUL/22	Owner of site	Mr Robert Walker Mr Michael Alexander
Applicant	Mr Michael Alexander	Ward & local members	Armadale & Blackridge Councillor Willie Boyle Councillor Harry Cartmill Councillor Tony Pearson Councillor Pauline Stafford
Case officer	Kirsty Hope	Contact details	01506 282413 kirsty.hope@westlothian.gov.uk

Reason for referral to Development Management Committee: Referred by Councillor Willie Boyle.

3 RECOMMENDATION

3.1 Refuse planning permission

4 DETAILS OF THE PROPOSAL AND BACKGROUND

- 4.1 Planning permission is sought (retrospectively) for the change of use from open space to private garden ground and erection of decking across the adjacent watercourse. The decking is enclosed with access from the rear garden of number 13 Ballencrieff Mill only.
- 4.3 Whilst the property is within the settlement boundary of Bathgate, the decking extends over the watercourse and into the countryside (on the edge of agricultural ground).

History

4.5 The relevant planning history (at number 13) set out below:

- ENA-400-2048 - Appeal against Enforcement Notice for change of use from open space to private garden ground and erection of decking (Retrospective Planning Application Refused, Ref: 0801/FUL/21) – appeal was dismissed by DPEA on 13 July 2022 and the decking must be removed by 13 October 2022.

- ENA-400-2047 - Appeal against Enforcement Notice for Change of use from open space to private garden ground and erection of decking (Retrospective Planning Application Refused, Ref: 0801/FUL/21) – appeal was dismissed by DPEA on 13 July 2022 and the decking must be removed by 13 October 2022.
- ENF/0355/21 - Erection of decking and structure (application refused 0801/FUL/21) - Enforcement Notice(s) to the relevant landowners for the removal of the decking and to reinstate the land issued on 29 March 2022.
- 0801/FUL/21 - Change of use from open space to private garden ground and erection of fence and decking over watercourse (in retrospect) was refused planning permission on 13 September 2021.
- ENF/0093/21 - Erection of decking and structure - Enforcement case was closed as application above was submitted.

4.6 There is also relevant site history at number 15 Ballencrieff Mill, as set out below:

- 0470/FUL/22 - Change of use from open space to private garden ground and erection of decking across watercourse (in retrospect) is pending decision.
- ENA-400-2049 - Appeal against Enforcement Notice for the alleged breach of planning control by the unauthorised change of use from open space to private garden ground and erection of decking is pending consideration by the DPEA.
- ENA-400-2050 - Appeal against Enforcement Notice for the alleged extension of garden ground, and erection of decking over watercourse is pending consideration by the DPEA.
- ENF/0310/21 - Erection of decking (application refused 0584/FUL/21) - Enforcement Notice(s) to land owner(s) for the removal of the decking and to reinstate the land issued on 10 May 2022.
- 0584/FUL/21 - Change of use from open space to private garden ground and erection of decking across watercourse (in retrospect) was refused planning permission on 17 August 2021.
- ENF/0096/21 - Erection of decking – Enforcement case was closed as application above was submitted.

EIA Development

4.7 The proposal is not EIA development as it does not fall within Schedule 1 or Schedule 2 of the Environmental Impact Assessment (Scotland) Regulations 2017 (EIA Regulations).

Equalities Impact

4.8 The application has been assessed and has no impact in terms of equalities or human rights.

5. REPRESENTATIONS

5.1 No letters of representation have been received.

6. CONSULTATIONS

6.1 This is a summary of the consultations received. The full documents are contained in the application file.

Consultee	Objection?	Comments	Planning Response
SEPA	Holding Objection	<p>Site is located within the functional floodplain whereby there is a medium to high risk of flooding from the Bathgate Water. No Flood Risk Assessment (FRA) has been submitted.</p> <p>A simple manning's capacity calculation should be carried out by a qualified Flood Risk Consultant.</p> <p>The structure would have required authorisation under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) (CAR), prior to construction however the works that have been carried out are not authorised.</p>	<p>Noted. Given the holding objection by SEPA, if granting permission contrary to this advice then the application would need to be referred to Scottish Ministers.</p> <p>No FRA or manning capacity calculation was submitted.</p>
WLC Flood Risk Management	Holding Objection	<p>Request a flood risk assessment with all compliance checks and certificates.</p> <p>Request a structural inspection from a chartered Structural engineer to determine the strength of the decking in flooding conditions, as well as the foundations to determine if they are sufficient.</p>	<p>Noted. The relevant details were sought and it was confirmed by the agent that these details will not be submitted.</p>

Consultee	Objection?	Comments	Planning Response
WLC Ecology	Yes	<p>Concerns of the Riparian areas impacts on the local wildlife.</p> <p>Concerns raised regarding flooding and no structural report.</p> <p>Verbally - A Preliminary Ecological Appraisal (PEA) report should have been submitted prior to construction.</p>	Noted. No surveys were submitted by the applicant.

7. PLANNING POLICY

- 7.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 7.2 The development plan comprises the Strategic Development Plan for South East Scotland (SESplan) and the West Lothian Local Development Plan
- 7.3 The relevant development plan policies are listed below:

Plan and Policy	Policy Summary	Assessment	Conform?
West Lothian Local Development Plan (LDP) (2018) DES1 - Design Principles	All development proposals will require to take account of and be integrated with the local context and built form.	The scale and location of the decking impacts on the visual amenity of the surrounding area. No ecological survey was submitted to assess the impact on habitats or wildlife. The proposal is used by a residential household.	No
LDP ENV 11 - Protection of the Water Environment / Coastline and Riparian Corridors	Sets out the importance of the water environment in terms of landscape, ecological, recreational and land drainage functions.	There is no justification for the development.	No

Plan and Policy	Policy Summary	Assessment	Conform?
LDP EMG2 - Flooding	Seeks to prevent development which would have a significant probability of being affected by flooding or would increase the probability of giving rise to flooding.	The application fails to demonstrate how the development would comply with this policy as an FRA has not been submitted.	No
LDP ENV 20 - Species Protection and Enhancement	Development that may affect protected species should only be permitted where there is an overriding public need or no alternative solution can be met.	A Preliminary Ecological Report has not been submitted.	No

7.4 Other relevant policy guidance and documents are listed below:

- Statutory Supplementary Guidance (SG):
 - Flooding and Drainage
- Non-Statutory Planning Guidance (PG)
 - Planning for Nature: Development Management and Wildlife

8. ASSESSMENT

8.1 The determining issues in respect of this application are listed below:

8.2 Its worth noting that this application is identical to application 0801/FUL/21 which was previously refused through delegated powers. WLC Planning Enforcement then issued two Enforcement Notices to remove the decking, which both of the owners appealed to the DPEA. However, the DPEA dismissed both of the appeals and agreed with the council's decision to refuse planning permission and enforce against the decking. The Enforcement Notices were updated by the DPEA Reporter and require the decking to be removed by 13 October 2022.

Principle of development

- 8.3 The application involves the change of use from informal open space (on the edge of agricultural ground) to private garden ground and the erection of decking across the watercourse (in retrospect).
- 8.4 The overall design, scale and location of the decking has a detrimental impact on the visual amenity of the surrounding area and sets a precedent for other residents to follow suit. (Note that number 15 Ballencrieff Mill has extended in a similar way, see history section noted above). No ecological survey has been submitted. It has not been demonstrated that the development would not have a detrimental impact on the water environment. The application therefore fails to comply with policy DES 1 (Design Principles).
- 8.5 Policy ENV 11 (Protection of the Water Environment / Coastline and Riparian Corridors) advises that development proposals adjacent to a waterbody should comply with the Scottish Environment Protection Agency (SEPA) Guidance on buffer strips adjacent to water bodies. The development is contrary to this guidance that recommends a minimum distance of 6m of undeveloped buffer strip is provided to all watercourses and this decking is erected on the embankment of the watercourse.
- 8.6 Policy ENV 11 (Protection of the Water Environment / Coastline and Riparian Corridors) also states that there will be a general presumption against any unnecessary engineering works in the water environment including bridges and bank modifications. This decking is for the enjoyment of the residents' address and whilst it is noted that the development may well be desirable from the resident's perspective, it is not necessary works on an existing riparian corridor. Development within riparian corridors which impacts on the ecological and landscape integrity will not be permitted unless a specific need for the development can be demonstrated, no justification has been given to satisfy this policy.
- 8.7 The applicant has not provided a specific locational justification for the development which outweighs the need to retain the informal open space and the existing watercourse. The site has ecological value as a riparian corridor. The proposal is therefore contrary to policy ENV 11 (Protection of the Water Environment / Coastline and Riparian Corridors)
- 8.8 The applicant has not satisfactorily demonstrated that the site is not at risk of flooding by failing to provide a flood risk assessment or a structural report as requested. Both SEPA and WLC Flood Risk colleagues have raised concerns in regards to flooding. The proposal is therefore contrary to Policy EMG2 (Flooding) and the Supplementary Guidance on Flooding and Drainage, 2019 of the West Lothian Local Development Plan 2018.
- 8.9 The WLC Ecologist has raised concerns regarding the impact on the riparian corridor. Concerns were also raised regarding the impacts on otters, water voles and other creatures that either dwell in the area or use it as a source of feeding. They also have concerns regarding flooding given that no flood risk assessment (FRA) has been submitted nor has the applicant submitted a structural engineering survey. Additionally, the applicant has not submitted an Ecological Report (PEA) contrary to policy ENV 20

(Species Protection and Enhancement) and PG on Planning for Nature: Development Management.

9. CONCLUSION AND RECOMMENDATION

9.1 In conclusion, the development does not comply with policies DES1 (Design Principles), ENV 11 (Protection of the Water Environment / Coastline and Riparian Corridors), EMG2 (Flooding) and ENV 20 (Species Protection and Enhancement) within the local development plan, nor does it comply with the supplementary guidance on Flooding and Drainage or planning guidance on Planning for Nature: Development Management.

9.2 It is therefore recommended that planning permission be refused

9. BACKGROUND REFERENCES & ATTACHMENTS

- Draft reasons for refusal
- Location Plan
- Site Plan and Photos
- Local Member Referral Form

Plans and site photos are available in the accompanying slide presentation pack.

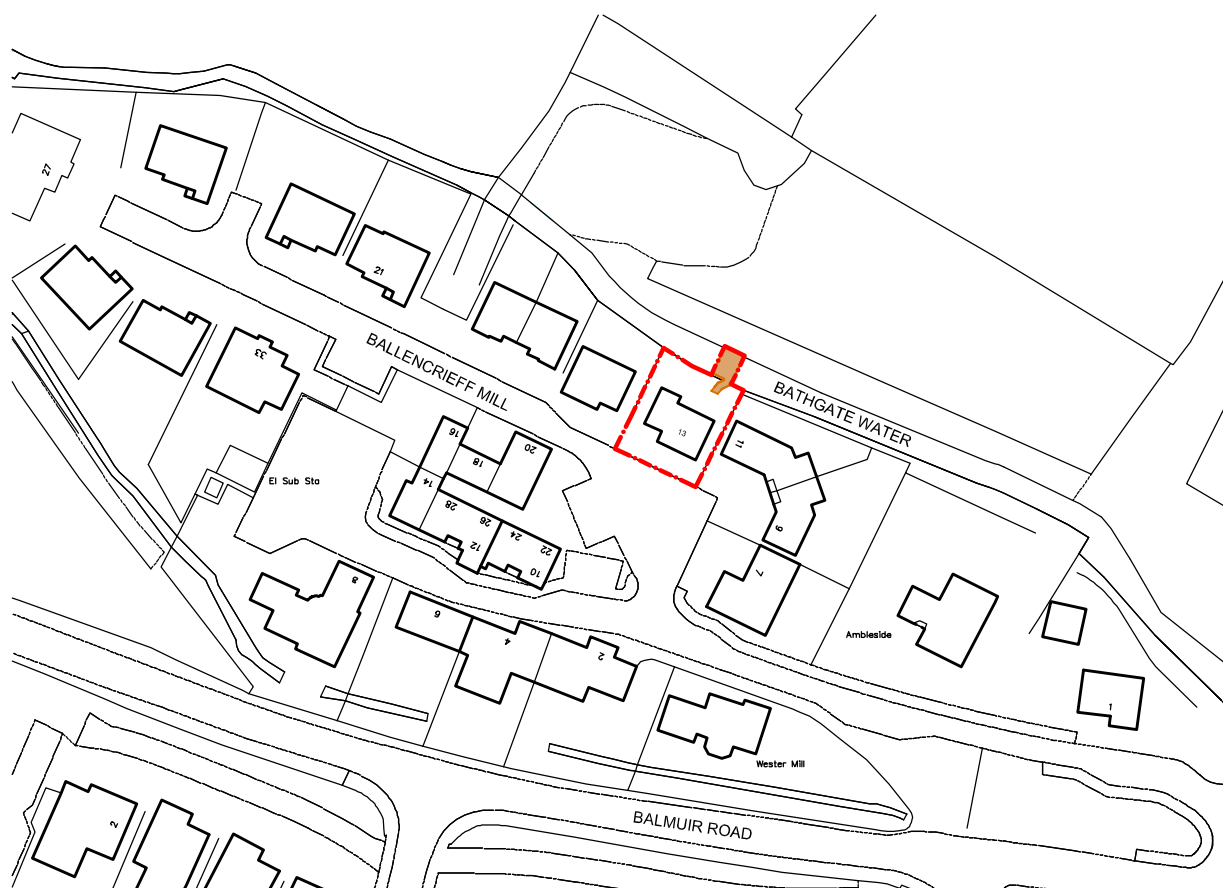
Craig McCorriston

Head of Planning, Economic Development and Regeneration Date: 17 August 2022

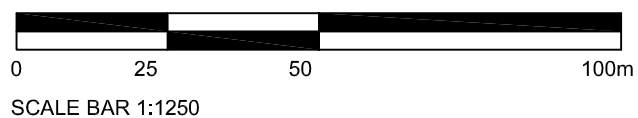
DRAFT REASONS FOR REFUSAL – APPLICATION 0552/FUL/22

Reasons for refusal

1. The development, by virtue of its overall scale, design and location, results in a detrimental impact on the visual amenity of the area and no specific locational justification for the development has been provided by the applicant. This would set an unnecessary precedent for other neighbouring properties to follow suit. The development is contrary to both Policy DES1 (Design Principles) and Policy (ENV 21 (Protection of Formal and Informal Open Space) of the West Lothian Local Development Plan, 2018.
2. The applicant has not satisfactorily demonstrated that the development will not have a detrimental effect on the integrity and water quality of aquatic and riparian ecosystems, the recreational amenity of the water environment, which would lead to deterioration of the ecological status of any element of the water environment. The development is directly bridging over an existing watercourse which fails to comply with the Scottish Environment Protection Agency (SEPA) Guidance on buffer strips adjacent to water bodies. The application is contrary to Policy ENV 11 (Protection of the Water Environment / Coastline and Riparian Corridors) of the West Lothian Local Development Plan, 2018
3. The applicant has not satisfactorily demonstrated that the development will not have a detrimental effect on habitats or species on or nearby the site, contrary to policy ENV 20 (Species Protection and Enhancement) and PG on Planning for Nature: Development Management of the West Lothian Local Development Plan, 2018
4. The applicant has not demonstrated that the site is not at risk of flooding by failing to provide a flood risk assessment or a structural engineers report. The application is therefore contrary to Policy EMG2 (Flooding) and the Supplementary Guidance on Flooding and Drainage, 2019 of the West Lothian Local Development Plan 2018.



Location Plan. 1:1250.



Proposed Decking,
13 Ballencrieff Mill,
Bathgate.

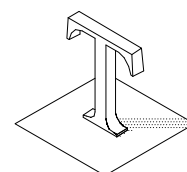
Mr M. Alexander.

Location Plan.

Scale: 1:1250 @ A4. Date: Jul '21.

Drawing No: LP

Rev:



T-Square

70, Bellsburn Avenue,
Linlithgow,
West Lothian.
EH49 7LB.

tel 01506 844744

© T-Square.
Do not Scale.

This drawing is intended for the sole purpose of obtaining building warrant and/or planning permission and contains a level of information relevant for that purpose. As such, there may be certain omissions. Although this drawing may appear suitable, T-Square accept no liability for any omissions should it be used for construction or pricing purposes. If in doubt - ask.

land owned by R W Walker, Eastoun Farm



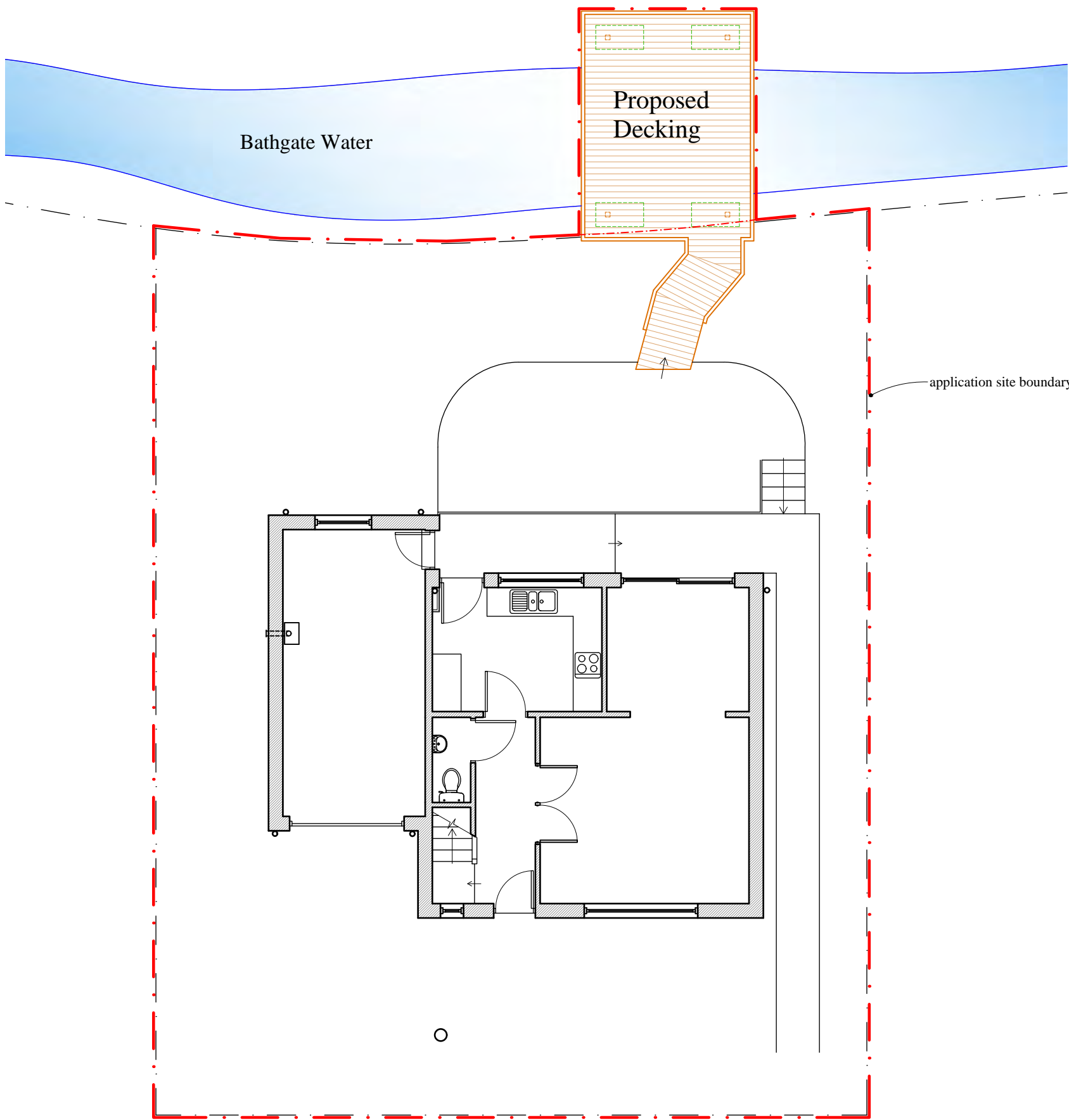
Proposed Decking, viewed from upstairs bedroom.



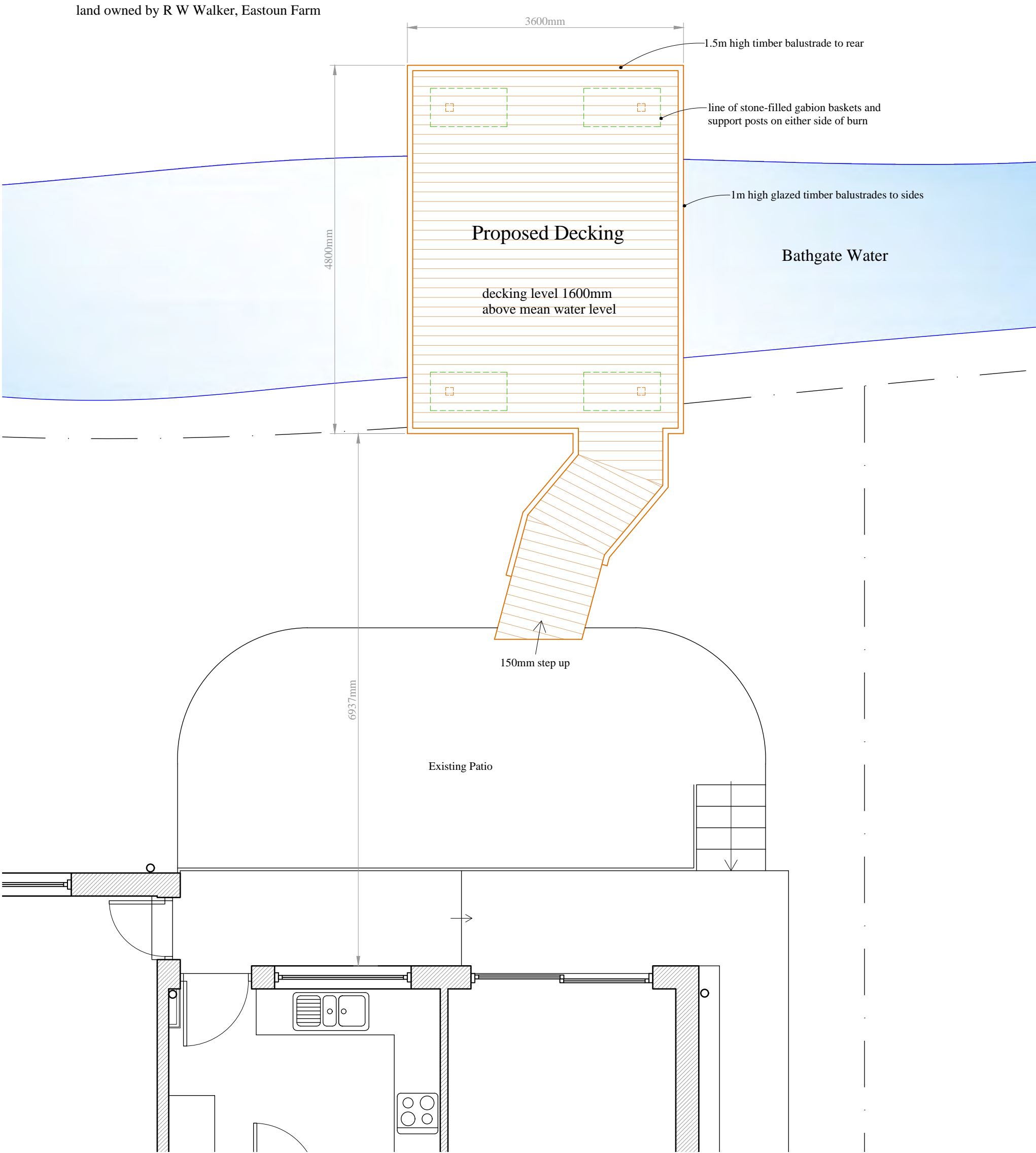
Proposed Decking, viewed from back garden.



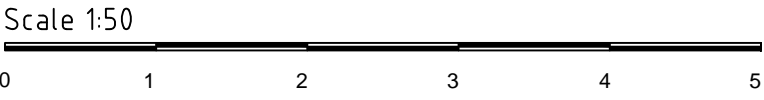
Proposed Decking construction.



Proposed Site Plan. 1:100.



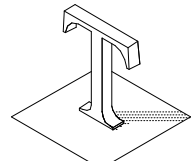
Proposed Decking Plan. 1:50.



Proposed Decking,
13 Ballencreeff Mill,
Bathgate.
Mr M. Alexander.

Proposed Plans.

Scale: 1:50 @ A1. | Date: Jul '21.
Drawing No: 01 | Rev:



T-Square

70, Bellshurn Avenue,
Linthgow,
West Lothian,
EH49 7LB.
tel 01506 844744

PROPOSED DELEGATED PLANNING DECISIONS

☒ LOCAL MEMBER REFERRAL REQUEST ☒

In accordance with standing orders members wishing a planning application to be heard at the Development Management Committee have to either represent the ward in which the application site is located or be chair of Development Management Committee and complete and return this form to Development Management within 7 days and by 12 Noon.

The planning application details are available for inspection within the Planning & Building Standards web site by clicking on the link below.

<https://planning.westlothian.gov.uk/publicaccess/>

<u>Application Details</u>	<u>Reason For Referral Request</u> (please tick ✓)
Application Reference Number 0552/FUL/22	Applicant Request <input type="checkbox"/>
Site Address 13 Ballencrieff Mill Bathgate West Lothian EH48 4LL	Constituent Request ✓
Title of Application Change of use from open space to private garden ground and erection of decking over watercourse	Other (please specify) <input type="checkbox"/>
Member's Name Cllr Willie Boyle Date 15/7/22	