

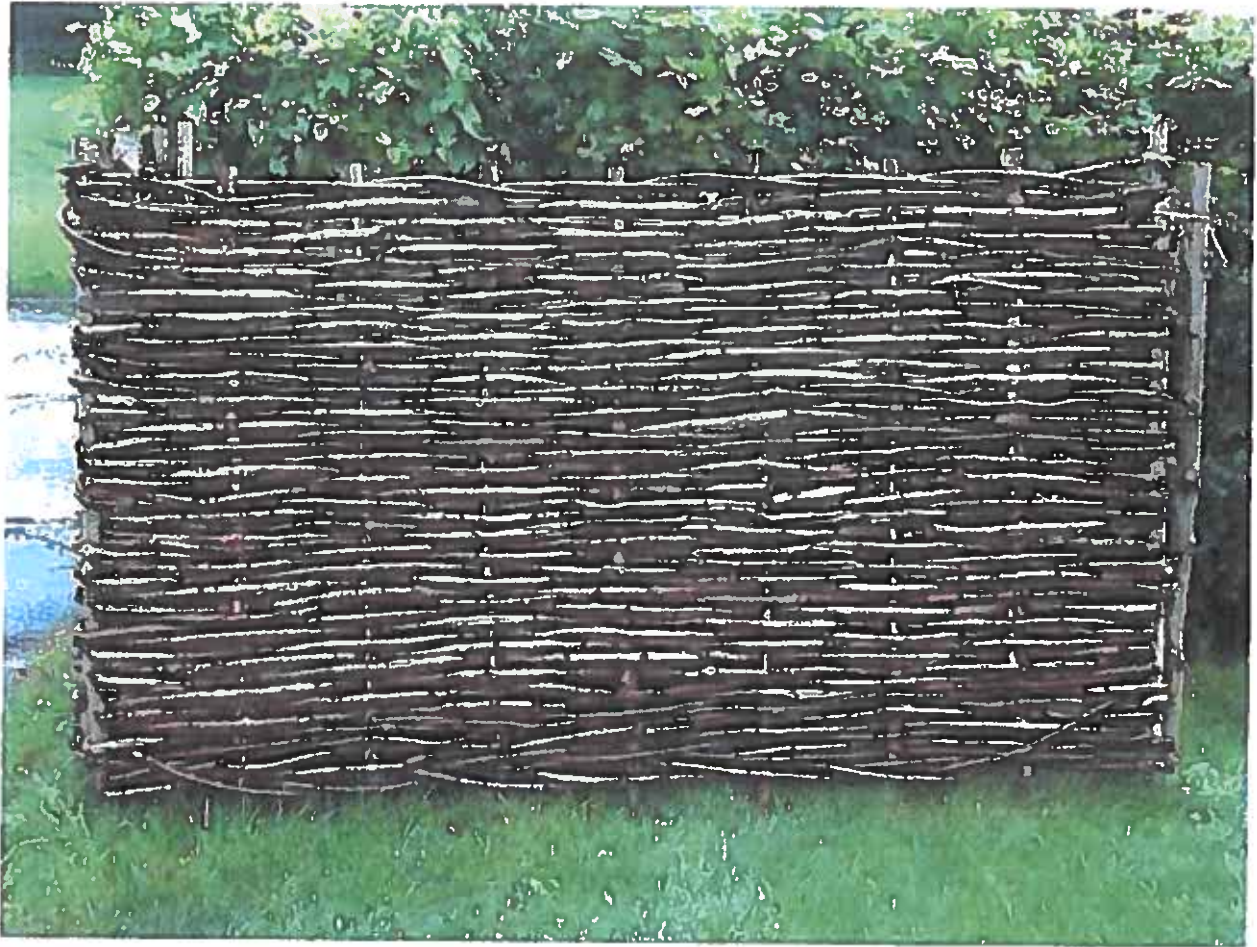
© Crown copyright and database rights 2019 Ordnance Survey 100023408.

46/2019/0748

Scale: 1:1250

Printed on: 21/11/2019 at 10:27 AM

TYPICAL DETAIL OF WOVEN SCREEN FENCE



PROPOSED SCREEN FENCE AT APRIL COTTAGE, GLASCOED ROAD, ST. ASAPH.

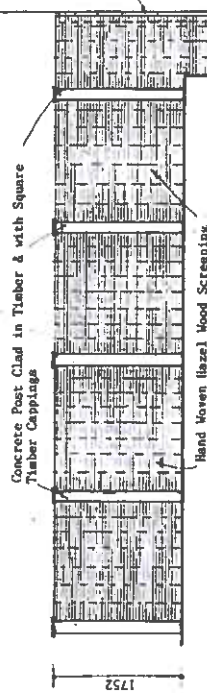
TYPICAL EXAMPLE OF HAND WOVEN HAZEL WOOD SCREENING

29 AUG 2019

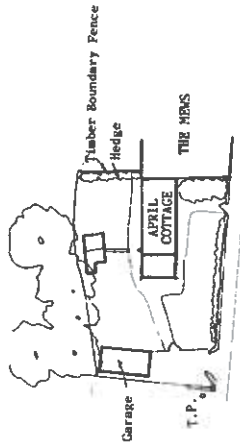
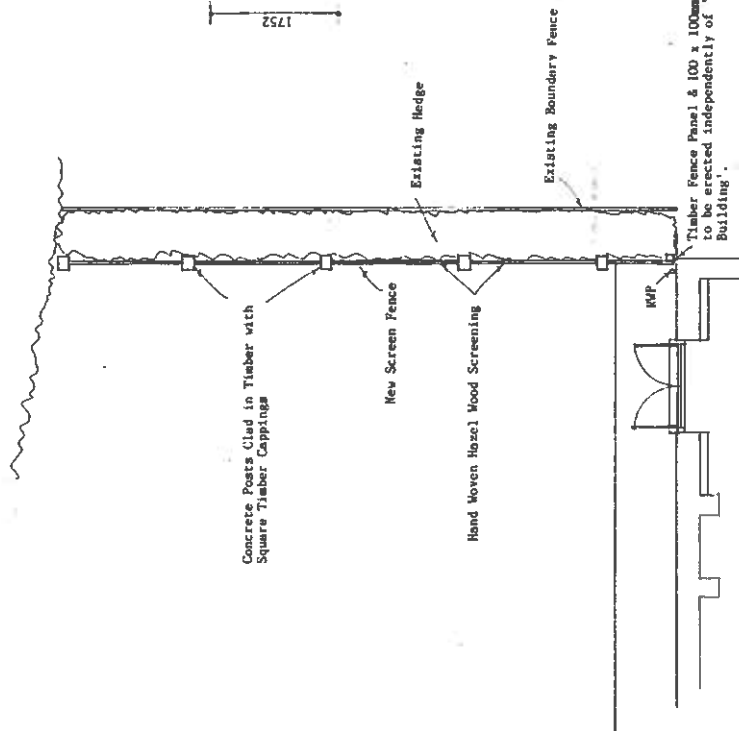
SITE PLAN AND FENCE DETAIL

Concrete Posts Clad in Timber with Square Timber Cappings

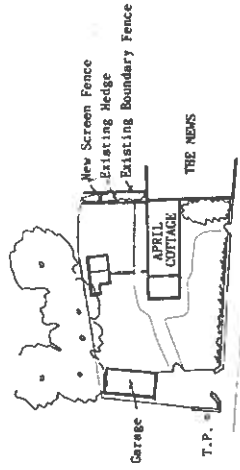
Minimum 12.5mm clear gap between Timber Panel & rear wall of April Cottage.



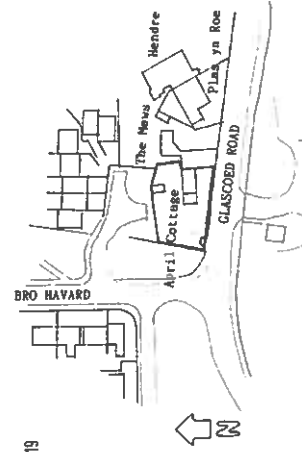
ELEVATION



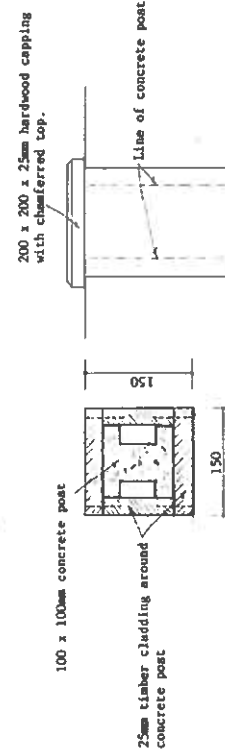
EXISTING SITE PLAN SCALE - 1:500



PROPOSED SITE PLAN SCALE - 1:500



LOCATION PLAN SCALE - 1:1250



DETAIL OF TIMBER CLADDING TO CONCRETE POSTS SCALE - 1:10

NOTE:- TIMBER CLADDING TO BE STAINED GREEN.

PROPOSED PLAN

PROPOSED SCREEN FENCE AT REAR OF APRIL COTTAGE, GLASCOED ROAD, ST. ASAPH.
SCALE - 1:50.

PLAN No. 2700/2A/APH/19
Amended 14/10/19

MR J. E. ROBERTSON, CADRE, HONOR.
Planning & Design Services,
32 Clwyd Road,
Rhyd, Denbighshire LL18 2JG.
Tel: 01745 501189 Mobile: 07946 537229
e-mail: jrobertson@planning.co.uk
A Member of the Guild of Master Craftsmen.

WARD : St Asaph West

WARD MEMBER: Cllr Peter Scott

APPLICATION NO: 46/2019/0748/ PC

PROPOSAL: Erection of 1.75m high hand woven hazel wood screening with concrete support post clad in timber with square timber cappings (partly retrospective)

LOCATION: April Cottage Glascoed Road St Asaph

APPLICANT: Mr & Mrs Tony & Ann Young

CONSTRAINTS: C1 Flood ZoneB Flood ZonePROWLlisted Building

PUBLICITY UNDERTAKEN: Site Notice - No
Press Notice - No
Neighbour letters - Yes

REASON(S) APPLICATION REPORTED TO COMMITTEE:

Scheme of Delegation Part 2

- Recommendation to grant / approve – 4 or more objections received

REASON FOR DELEGATED DECISION

Scheme of Delegation Part 1, Section 1.1

CONSULTATION RESPONSES:

ST ASAPH CITY COUNCIL

Original consultation response:

"The Council object to this proposal for the following reasons:

- Proximity to listed building.
- Loss of amenity to neighbouring property.
- Loss of access.

St Asaph City Council recommend that a Site Visit should be undertaken."

Subsequent amended consultation response:

"There were further discussions regarding this application at Full Council last night. We understand that the Conservation Officer is now happy with the proposed fence.

The City Council resolved to withdraw its objections to this proposal."

Re-consultation response:

"On a purely planning basis St Asaph City Council has no objection to the amended proposal"

DENBIGHSHIRE COUNTY COUNCIL CONSULTEES –

Conservation Officer –

Initially requested additional information regarding the finish to be applied to timber cladding of concrete posts and requested metal end post originally proposed to be replaced with a timber end post.

Following submission of revised fence details, the Conservation Officer considers the details are now acceptable and has no objection to this application.

RESPONSE TO PUBLICITY:

In objection

Representations received from:

Tim and Julie Donovan, Old Coach House, Glascoed Road, St Asaph
Joseph Marshall, Beaumont, Abbey Drive, Gronant
Ryan Williams, Poplar Cottage, Lower Denbigh Road, St. Asaph
Sam Hoyland, Poplar Cottage, Lower Denbigh Road, St. Asaph
James McFarlane, Riverbank, Brooke Avenue, Towyn
Jack Sellors, 14 Y Gorlan, Brighton Road, Rhyl
Pamela Davies, 2 Hillside, St. Asaph, Denbighshire

Summary of planning based representations in objection:

- Objections to the retrospective nature of the application.
- No justification for new fence – existing hedge already forms the boundary.
- Plans inaccurate / existing hedge & fence not shown correctly / incorrectly labelled neighbouring property as the Mews and not the Old Coach House.
- Fence is damaging to existing hedge along the boundary and would inhibit neighbour's ability to maintain existing hedge boundary and would block neighbour's access rights.
- Detrimental impact on the setting a listed building / materials do not support the heritage of the site.
- Adverse impacts on local character and heritage.
- Detrimental impact on amenity of neighbouring property.
- Concrete previously considered to be unacceptable material. Concrete is not traditional material and still forms part of proposal.
- Timber cladding to the concrete post would be of an inferior standard. Concrete will seal in moisture and lead to cladding becoming unattainable.
- No details regarding how concrete plinths will be removed.
- Substandard materials proposed - hand-woven fence has a limited lifespan, concerns raised regarding its upkeep and deterioration over time.
- Concerns regarding impact of fence on flood risk of neighbouring property and would stop the ability for surface water to soakaway from neighbouring property.
- Excavations carried out have adversely impacted upon stability and sustainability of neighbouring property / undermined foundations.
- Radon gas area – concerns raised due to excavations which have been carried out for the fence.

Objectors have also queried the validity of the application due to Certification accompanying the application form, due to the fact that a previous retrospective application has already been refused and has been subject to planning compliance investigations. Issues regarding the validity of the application are addressed further in Section 1.7 below.

Issues relating to party wall legislation, land ownership, easements / access rights and other legal rights over land have also been raised, however these issues are of a private / civil nature and have no bearing on the land use planning considerations.

EXPIRY DATE OF APPLICATION: 23/10/2019

REASONS FOR DELAY IN DECISION (where applicable):

- awaiting consideration by Committee

PLANNING ASSESSMENT:

1. THE PROPOSAL:

1.1 Summary of proposals

- 1.1.1 The proposal relates to the erection of a 1.75m high garden fence which runs to the rear of April Cottage and the adjoining residential property, the Old Coach House.
- 1.1.2 The application seeks permission to replace an existing concrete and timber panel fence, which was refused consent earlier in 2019 due to concerns over the impact on the setting of a Listed Building, specifically from the use of materials, and the design and finish of the fence previously proposed.
- 1.1.3 The current application proposes:
 - Retention of the concrete posts, cladding them in timber to all sides and finishing them with a hardwood capping with chamfered top.
 - Removal of existing concrete gravel board and timber fence panels;
 - Installation of 1.75m high hand woven Hazel wood screening panels;
 - Installation of a new timber end post proposed to be erected independently of the Listed Building, adjacent to the rear elevation of the dwelling.
- 1.1.4 The details of the proposals are shown at the front of the report.

1.2 Other information

- 1.2.1 Whilst the construction of a fence up to 2m in height would not normally require planning permission under 'permitted development' rights, these do not extend to fences, walls and other means of enclosure surrounding a listed building. Planning permission is required in this instance due to April Cottage being a Grade II Listed Building.

1.3 Description of site and surroundings

- 1.3.1 The fence is proposed within the rear garden area of the dwelling, which is located on Glascoed Road in St. Asaph.
- 1.3.2 The fence proposed is at the rear of the two properties. There is a conifer hedge, fence and gate in close proximity, which appear to be within the curtilage of the neighbouring property, the Old Coach House.

1.4 Relevant planning constraints/considerations

- 1.4.1 The site is within the St. Asaph development boundary.
- 1.4.2 April Cottage is a Grade II Listed Building.
- 1.4.3 The site falls within a C1 flood risk zone.

1.5 Relevant planning history

- 1.5.1 The Council's records note previous applications for extensions to the dwelling and the erection of a garage.
- 1.5.2 As noted above, retrospective planning permission for a fence in this position was refused earlier in 2019 year due to the detailing, which comprised a 1.75m high timber panels above concrete gravel boards, with concrete posts which had been painted green.

1.6 Developments/changes since the original submission

- 1.6.1 Revised plans have been submitted during the course of the application in response to the Conservation Officer's comments, and have been subject to re-consultations.

1.7 Other relevant background information

- 1.7.1 Members will note that a number of issues raised in response to the application touch on land ownership, rights of access and other legal rights over land, and related questions over the validity of the application.

- 1.7.2 There have been lengthy submissions from the immediate neighbour which contend that the fence which is the subject of the application is on land outside the applicant's control, that there may be infringement of rights of access and the fence would prevent the neighbours being able to exercise their legal right to maintain the boundary, which is currently formed by a hedge. A copy of a Land Registry Plan has been provided to support the assertion that the land is not within the ownership of the applicant.
- 1.7.3 The inference by the neighbours is that the applicant should serve formal notice on them in connection with the application, and as part of the application form, complete Certificate B confirming the neighbours have been served the formal notice. The claim is that the application should be deemed invalid in these circumstances and the Planning Authority should not be considering it.
- 1.7.4 Factually, in terms of the legal requirements on an applicant with a planning application, members may be aware that each submission for planning permission has to be accompanied by a formal statement from the applicant in relation to land ownership. In the majority of cases, this will involve an applicant certifying that nobody other than the applicant is the owner of any part of the land or building to which the application relates. This requires the completion of what is referred to as 'Certificate A', which is part of the planning application form. Where any part of the land or building to which an application relates is not in the applicant's ownership, the obligation on the applicant is to formally notify the party/parties with an interest through the service of a formal notice, and to certify on the relevant part of the application form the name and address of the owner(s), and the date such notice was served (this requires the completion of what is referred to as 'Certificate B', as part of the application form). There are other notification processes covering different scenarios, but these do not appear to be relevant to the current application.
- 1.7.5 The application under consideration was submitted in August 2019. The applicants completed Certificate A on the application forms, so certifying nobody other than them are the owner of the land / buildings to which the application relates.
- 1.7.6 The applicants have been made aware of the neighbour's representations and have been given opportunity to confirm their position over the ownership situation. In the covering letter accompanying the revised plans, the agent has re-confirmed that the applicants are the sole owners of the land and that the correct certificate has been completed in connection with the application.
- 1.7.7 Members will be aware that land ownership disputes occasionally arise on submission of planning applications. In respecting the representations made in this instance, Officers have to stress that it is not the Council's role to arbitrate over ownership claims, as these can only be settled through private legal challenge. Officers have drawn the attention of both parties to the respective claims being made, and as the applicants have confirmed they have completed the correct Ownership certificate, Officers believe it is incumbent on the Council to proceed to deal with the application. The consultation process and exchanges of correspondence have made the neighbours aware of the planning application and have permitted full opportunity to make representations on it including the revised plans, which is the basic intention of the planning application Certification process. Significantly, the grant of planning permission does not convey any right for one party to undertake development on another person's land, and the neighbours have established civil law procedures they can follow to prevent a development proceeding, should any legal arbitration process confirm their claims. In the event of planning permission being granted, a suitably worded cautionary note can be attached to the Certificate of Decision drawing these matters to the applicant's attention.

- 1.7.8 Having due regard to the above, Officers would advise the Committee that there is no further role the Planning Authority can play in the resolution of what is a private legal dispute over land ownership and legal rights over land, and that there are no reasonable grounds to delay determination of the planning application without placing the Council at risk from a non-determination appeal and the consequent risk of a cost claim for unreasonable behaviour.
- 1.7.9 Representations have also raised issue with the validity of the current application with reference to Section 73A of the Town and Country Planning Act 1990, due to the fact that a retrospective application has already been refused. Officers understanding is that Section 73A of the 1990 Act relates to planning applications for development already carried out, and there is nothing in this legislation which empowers a Council to refuse to process a second retrospective application. In any event, the previous application was refused on grounds of design and not principle, and the detailing of the fence subject of the current application is materially different to the refused scheme, and therefore it has been accepted as an application for an amended scheme following a previous refusal and not a re-submission of a previously refused scheme.
- 1.7.10 Representations have also made reference to planning compliance investigations. For clarity, the Council received a complaint in relation to the existing fence, which had been erected without the benefit of planning permission, and the Council's Planning Compliance Officer duly investigated. No formal Enforcement Notice has been served in relation to the fence.
- 1.7.11 In light of the above, Officers are therefore satisfied that the application is valid and the Council should proceed to determine the application.

2. DETAILS OF PLANNING HISTORY:

- 2.1 45/2015/0957. Alterations and extensions to dwelling and erection of detached garage (PF). Granted 16/11/2015
- 2.2 45/2015/0958. Alterations and extensions to dwelling and erection of a detached garage (LBC). Granted 18/11/2015
- 2.3 46/2016/0659. Increase in size of proposed garage submitted in relation to application code no. 46/2015/0957/PF & 46 (NMA). Granted 28/07/2016
- 2.4 46/2019/0649. Alterations and extension to dwelling and a detached garage (corresponding planning application). Granted 12/11/2019.
- 2.5 46/2019/0650. Alterations and extension to dwelling and a detached garage (Listed building Consent application). Pending determination (recommended for grant and has been referred to CADW in accordance with Listed Building consent procedures)
- 2.6 46/2019/0323. Erection of a 1.75m high timber panel and concrete post screen fence (retrospective application). Refused 07/06/2019 for the following reason:

It is the opinion of the Local Planning Authority, that due to the materials, design and finish, the fence has a detrimental impact on the setting of the Listed Building and therefore the proposal is considered to be contrary to criteria i) of Policy RD1 and Policy VOE 1 in the Local Development Plan and to the advice and guidance contained in Section 6 of Planning Policy Wales Edition 10 (December 2018 and in Technical Advice Note (TAN) 24: The Historic Environment (2017).

3. RELEVANT POLICIES AND GUIDANCE:

The main planning policies and guidance are considered to be:

3.1 **Local Policy/Guidance**

Denbighshire Local Development Plan (adopted 4th June 2013)

Policy RD1 – Sustainable development and good standard design

Policy RD3 – Extensions and alterations to existing dwellings

Policy VOE1 – Key areas of importance

Supplementary Planning Guidance Note: Listed Buildings

Supplementary Planning Guidance Note: Residential Development

Supplementary Planning Guidance Note: Residential Space Standards

3.2 **Government Policy / Guidance**

Planning Policy Wales Edition 10 December 2018

Development Control Manual (2016)

Technical Advice Note 24: The Historic Environment - May 2017

Planning (Listed Buildings and Conservation Areas) Act 1990

Historic Environment (Wales) Act 2016

The Town and Country Planning (General Permitted Development) Order 1995 GPDO Part 2 Class A

3.3 **Other material considerations**

4. **MAIN PLANNING CONSIDERATIONS:**

In terms of general guidance on matters relevant to the consideration of a planning application, Section 9.1.2 of the Development Management Manual (DMM) confirms the requirement that planning applications 'must be determined in accordance with the approved or adopted development plan for the area, unless material considerations indicate otherwise'. It advises that material considerations must be relevant to the regulation of the development and use of land in the public interest, and fairly and reasonably relate to the development concerned.

The DMM further states that material considerations can include the number, size, layout, design and appearance of buildings, the means of access, landscaping, service availability and the impact on the neighbourhood and on the environment (Section 9.4).

The DMM has to be considered in conjunction with Planning Policy Wales, Edition 10 (December 2018) and other relevant legislation.

The following paragraphs in Section 4 of the report therefore refer to the policies of the Denbighshire Local Development Plan, and to the material planning considerations which are considered to be of relevance to the proposal.

4.1 The main land use planning issues in relation to the application are considered to be:

4.1.1 Principle

4.1.2 Impact on setting of Listed Building

4.1.3 Residential amenity

Other matters

4.2 In relation to the main planning considerations:

4.2.1 Principle

Policy RD 3 relates specifically to the extension and alteration of existing dwellings, and states that these will be supported subject to compliance with detailed criteria.

Policy RD1 supports development proposals within development boundaries providing a range of impact tests are met.

The proposal before the Council is for a 1.75m high fence at the rear of April Cottage, which as noted is a Grade II Listed Building. A fence of this height would fall under the permitted development allowances in planning legislation, other than for the fact it is within the curtilage of a listed building.

In this context, Officers would take the view that the principle of erecting a fence in a rear garden is acceptable, subject to a detailed assessment of impacts, with the primary consideration being the impact of the fence on the setting of the listed building.

4.2.2 Impact on setting of Listed Building

Criteria i) of Policy RD 1 requires that development respects the site and surroundings in terms of siting, layout, scale, form, character, design, materials, aspect, micro-climate and intensity of use of land/buildings and spaces around and between buildings.

Local Development Plan Policy VOE1 seeks to protect sites of built heritage from development which would adversely affect them, and requires that development proposals should maintain and wherever possible enhance them for their characteristics, local distinctiveness and value to local communities.

Planning Policy Wales (PPW 10) Section 6 'Distinctive and Natural Places' refers specifically to the need to ensure the character of historic buildings is safeguarded from alterations, extensions, or demolition that would compromise their special architectural and historic interest.; and 6.1.10 indicates that where a development proposal affects a listed building or its setting, the primary material consideration is the statutory requirement to have special regard to the desirability of preserving the building or its setting, and any features of special architectural or historic interest which it possesses.

Representations have been received raising concerns regarding the detailing of the fence and the impact of the proposal on the setting of the Listed Building.

Following submission of revised details, the Conservation Officer considers the details are now acceptable and has no objection to this application.

April Cottage is a Grade II Listed Building, and was listed due to its group value with The Hendre and Plas yn Roe. The adjoining property the Old Coach House which forms part of the grouping of properties along this section of Glascoed Road was considered to be much altered at the time of listing, and therefore was not itself listed.

The fence is proposed at the rear of April Cottage and the Old Coach House, and would run at 90 degrees to the rear elevations of these properties.

There are existing domestic garden fences around the perimeter of the residential curtilage. There has previously been a Leylandii Hedge and a timber gate at the rear of April Cottage and the Old Coach House.

A previous retrospective application for the retention of an existing fence was refused due to the materials, design and finish of the fence. This comprised concrete posts, standard timber fence panels with a concrete gravel board below, which had been painted green and which was affixed to the Listed Building by a screw and bracket.

The current proposal is to retain the concrete posts, but to clad them in timber with a hardwood capping with chamfered top; to remove the concrete gravel boards and timber fence panels and replace them with hand woven hazel wood screening panels. The plans show the fence proposed would be free standing and would not be affixed to the listed building.

Having regard to what is actually proposed, Officers consider hand woven Hazel panels are acceptable materials to be used on fencing within the curtilage of a Listed building. The removal of the concrete gravel boards and the use of wooden cladding on the concrete posts would assist in limiting the impacts of the fencing.

As the fence is at the rear of the properties, it would not be clearly visible in any public views, and having regard to the materials, design and finish proposed, Officers are

satisfied the amendments made are sufficient to overcome the previous reason for refusal and would ensure the fence as proposed would not be detrimental to the listed building and its setting.

4.2.3 Residential Amenity

Criteria iii) of Policy RD 3 requires that a proposal does not represent an overdevelopment of the site.

Criteria vi) of Policy RD 1 requires that proposals do not unacceptably affect the amenity of local residents and land users and provide satisfactory amenity standards itself.

The Residential Development SPG states that no more than 75% of a residential property should be covered by buildings.

The Residential Space Standards SPG specifies that 40sq. m of private external amenity space should be provided as a minimum standard for residential dwellings.

Representations raise objections to the proposal due to adverse impacts on the amenity of the neighbouring property. Concerns have also been voiced over excavations carried out for the fence causing structural instability to the neighbouring property, the release of Radon gas and the fence posing a flood risk due to creating a barrier to flood and surface water.

Section 1.7 of the report refers to other issues raised in public representations, which are considered to be civil rather than planning matters, and therefore cannot be afforded weight in the assessment of impacts upon residential amenity.

In respecting the range of issues raised, Officers consider the fence proposed would have limited impacts on residential amenity having regard to the actual details now in front of the Council. The existing gate and hedge between April Cottage and the Old Coach House would largely obscure views of the proposed fence from the latter garden. It is also of relevance is that it is only because the fence is within the curtilage of a listed building that it requires planning permission, as national planning legislation deems a fence of this height at the rear of a property to be acceptable development anywhere else, without the need to involve the Council. The minor nature of the development is such that there are unlikely to be radon gas, flooding or structural stability issues arising (the latter being a matter over which there are private legal remedies).

Consequently, having regard to the scale, location and design of the proposed fence, it is considered that it would not have an unacceptable impact on the residential amenities of the neighbouring property, and would therefore be in general compliance with the tests of the policies referred to.

Other matters

Well – being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 imposes a duty on the Council not only to carry out sustainable development, but also to take reasonable steps in exercising its functions to meet its sustainable development (or well-being) objectives. The Act sets a requirement to demonstrate in relation to each application determined, how the development complies with the Act.

The report on this application has taken into account the requirements of Section 3 'Well-being duties on public bodies' and Section 5 'The Sustainable Development Principles' of the Well-being of Future Generations (Wales) Act 2015. The recommendation is made in accordance with the Act's sustainable development principle through its contribution towards Welsh Governments well-being objective of supporting safe, cohesive and resilient communities. It is therefore considered that there would be no significant or unacceptable

impact upon the achievement of well-being objectives as a result of the proposed recommendation.

5. SUMMARY AND CONCLUSIONS:

5.1 As set out in section 1.7 above, Members will note that a number of issues raised in public response to the application touch on land ownership, rights of access and other legal rights over land, and related questions over the validity of the application. In respecting the contentions of the parties, Officers have to stress that it is not the Council's role to arbitrate in any dispute over land ownership arising in relation to a planning application and Officers would advise the Committee that there is no further role the Planning Authority can play in the resolution of what is a private legal dispute over land ownership and legal rights over land. Officers are therefore satisfied that the application is valid and the Council should proceed to determine the application in accordance with national and local planning policies and other material planning considerations.

5.2 A previous fence proposal was refused due to the detailing of the fence, however Officers consider that the amendments made to the design and materials of the fence now proposed are sufficient to overcome the previous reason for refusal, and accordingly the proposal is not considered likely to have a detrimental impact on the character and setting of the Listed building.

5.3 Whilst acknowledging the detailed concerns raised in representations, it is only the land use planning considerations which should be afforded weight in the determination of the application.

5.4 Given the particular detailing of the fence, and the fact that it would be permitted development were it not for the Listed status of April Cottage, Officers do not consider the particular proposals would impact unacceptably upon visual and residential amenity or the character and setting of the listed building.

5.5 The proposal is therefore considered to be acceptable and is recommended for grant.

RECOMMENDATION: GRANT- subject to the following conditions:-

1. The development to which this permission relates shall be begun no later than INSERT DATE
2. The development hereby permitted shall be carried out in strict accordance with details shown on the following submitted plans and documents unless specified as otherwise within any other condition pursuant to this permission:
(i) Proposed elevation, proposed and existing site plan & location plan (drawing number 2700/2A/APR/19 amended 14/10/2019) received 15 October 2019 (ii) Photograph in support of application received 29 August 2019

The reasons for the conditions are:-

1. To comply with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and to ensure a satisfactory standard of development.