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# Appeal Decision

Site visit made on 13 June 2011

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**decision date: 23 June 2011**

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**Appeal Ref: APP/M0933/C/10/2137528**

**Woodbine Cottage, Penny Bridge, Ulverston, Cumbria LA12 7RN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Michael Murphy Snr against an enforcement notice issued by South Lakeland District Council.
  - The Council's reference is SL/2010/1057.
  - The notice was issued on 2 September 2010.
  - The breach of planning control as alleged in the notice is the erection of a structure in the rear garden of the land, consisting of three tiers of timber decking with associated pool and sauna.
  - The requirements of the notice are (1) Remove from the land the whole of the structure, including the pool and sauna and any foundation or structures associated with it; and (2) Remove from the land all demolition materials associated with compliance with (1) above.
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The enforcement notice is varied by the deletion of '2 months' in section 6 of the notice and the substitution instead of '4 months'.
2. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Reasons

The ground (b) appeal

3. Comments made by the Appellant's Agent on this ground of appeal do not relate to whether the alleged breach of planning control has occurred. The breach of planning control alleged in the enforcement notice has occurred, as a matter of fact. The ground (b) appeal thus fails.

The ground (c) appeal

4. Permitted development rights are set out in Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 [the GPDO]. The GPDO has been amended by The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 [the 2008 Order]. The 2008 Order states that Part 1 of Schedule 2 of the GPDO, 'Development within the

curtilage of a dwellinghouse', is substituted by the Schedule to the Order which, in effect, sets out an amended Part 1 to the GPDO.

5. Class E of Part 1 of the Schedule to the 2008 Order states that the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse is permitted development unless, amongst other things, it could include the construction or provision of a veranda, balcony or raised platform. A government publication 'Permitted Development for Householders – Technical Guidance' states that "A raised platform is any platform with a height greater than 300 millimetres...". A raised platform with a height, above ground level, of no more than 300mm is thus permitted development.

6. The timber decking at Woodbine Cottage has three tiers, with stepped access between the tiers, over sloping ground to the rear of the cottage. The decking may be less than 300mm above ground level in a few places but the majority of the decking is more than 300mm above ground level. Though not significant some of the decking is well above this critical level. Most of the timber decking is more than 300mm above ground level and the timber decking cannot therefore be considered to be permitted development incidental to the enjoyment of the dwelling. The ground (c) appeal thus fails.

The ground (d) appeal

7. Comments made by the Appellant's Agent on this ground of appeal do not relate to whether it was too late for the Council to take enforcement action against the breach of planning control. He does not dispute the fact that the works that are the subject of the enforcement notice were undertaken within the four year period before the date of issue of the notice. It was not therefore too late for the Council to take enforcement action against the breach of planning control. The ground (d) appeal thus fails.

The ground (a) appeal

8. The main issue is the effect of the timber decking on the amenities of neighbouring residents.

9. Woodbine Cottage is an end-terraced two-storey dwelling in a terrace of four dwellings that has an east front elevation and a west rear elevation. The attached dwelling to the north is Yew Tree Cottage and ground levels to the rear of the dwellings rise sharply up to the west. A narrow access way alongside the south elevation of Woodbine Cottage leads to a very small rear amenity area from which steep stone steps lead up to a sloping garden area that is wider than the rear elevation of the dwelling. Yew Tree Cottage has a similar very small rear amenity area but no similar rear garden area. Its garden area is detached from the dwelling, is to the south of Woodbine Cottage and its rear garden area, is accessed from the aforementioned narrow access way, and includes two landscaped areas. The mid-terraced dwelling to the north of Yew Tree Cottage, 2 Rose Cottage, has a rear sloping garden area adjoining that to Woodbine Cottage.

10. The decking area includes a built in pool and alongside this is a timber clad sauna. The wood plank south wall of this sauna and the wood plank south boundary wall of the decking area are set very close to the boundary to the upper level of the garden area associated with Yew Tree Cottage. The wood plank north boundary wall of the decking area is set close to the boundary to the rear garden of 2 Rose Cottage. The wood plank elements rise well above the timber palisade fence along the boundary to the garden to Yew Tree Cottage and above the fence

to the rear garden area at 2 Rose Cottage. The wood plank elements are visually intrusive and dominate the adjoining garden areas. In views west from the lower level of the garden area at Yew Tree Cottage are the timber balustrades along the south edges of the decking levels and the roof of a covered area on the upper tier of the decking. Given in particular their extent the timber balustrades are visually intrusive from this direction also and dominate the garden area.

11. The decking, balustrading and other elements of the structure dominate all parts of the garden associated with Yew Tree Cottage and the rear garden at 2 Rose Cottage. The structure is visually intrusive and overbearing in these garden areas. The retention of the structure thus conflicts with South Lakeland Local Plan policy S2. Planning permission must therefore be withheld and the ground (a) appeal thus fails.

12. The Appellant's Agent has indicated that the decking was introduced, partly, to stabilise the steeply sloping garden area and to prevent damp, flooding and dangerous conditions. Other works could have been carried out to stabilise ground conditions and to alleviate problems caused by water run-off from the garden area. Seeking guidance from officers of another Council on general rules for decking is not advised as any advice would not be, amongst other things, site specific. All other matters mentioned have been taken into account but do not alter the conclusion that planning permission must be withheld.

The ground (f) appeal

13. Most of the comments made by the Appellant's Agent on this ground of appeal do not relate to whether the steps required by the enforcement notice exceed what is necessary to remedy the injury to amenity which has been caused by the breach of planning control. However, the Agent has suggested that various alternatives could remedy the injury to amenity such as blocking the decking from view from the road in front of Woodbine Cottage, changing the decking areas to lawn leaving perimeter fencing in place, and changing the fencing to dry stone walls. He has also indicated that the Council should be specifying the works to replace the timber decking and to stabilise the sloping ground beneath.

14. The Council is not required to specify replacement works. They are simply required to identify unlawful development, issue the necessary enforcement notice and ensure compliance with the requirements of the notice. It is for the Appellant to specify whether there are any different works, alternative to those required by the notice, that would remedy the injury to amenity. The decking and fencing are all part of the same structure and it is unlikely that either element could be retained without the other. Blocking the decking in views from the road would not remedy the harm caused to amenity. It is the decking in its entirety that causes the harm to amenity and nothing other than its complete removal would remedy this harm. The requirements of the notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

15. Comments made by the Appellant's Agent on this ground of appeal do not relate to whether the compliance period is too short. They mostly relate to alternative works and to the length of time it would take to carry out such works. There are no alternative works that would remedy the harm to amenity and there is a statutory requirement to remove unlawful works as soon as is reasonable.

16. Given the narrowness of the access to the side of Woodbine Cottage and the steepness of the rear garden and of the steps up to the decking, the structure will have to be removed piece by piece and removal will be tortuous and time consuming. Part of the two month period for compliance will be taken up with organising labour and equipment and the remaining time would probably not be sufficient to remove the structure completely and safely.

17. A compliance period of four months would strike a balance between the need to remove the unlawful structure as soon as possible and to do so safely and completely. The ground (g) appeal thus succeeds and the compliance period has been varied to be four months.

#### Other matters

18. Enforcement action is not always initiated following a complaint and the Council has a duty to protect the amenities of a property rather than those of residents of a property. The views of the residents of Yew Tree Cottage have not influenced the outcome of the appeal. All other matters mentioned have been taken into account, including an indication that the Appellant would suffer financial hardship if the notice was to be upheld. However none of these matters, either individually or collectively, outweigh the conclusions in this decision.

*John B aithwaite*

Inspector