

**PLANNING APPEAL DECISION****Lead Officer:** Tony Pomfret – Development Control Manager**To inform Members of a recent appeal decision at 72 Hilltop Road, Kells, Whitehaven****Recommendation:** That the decision be noted in the context of the Council's Local Plan policies and also in relation to performance monitoring.**Resource Implications:** Nil.**1.0 SUPPORTING INFORMATION**

1.1 Full planning permission for a timber summerhouse/decking in the garden of this domestic property was refused in April this year for the following reason:-

“By virtue of its scale and elevated siting the detached timber summerhouse and balcony result in an unacceptable degree of overlooking and loss of privacy to the adjoining property. Furthermore, the height and position of the building constitute an over dominant form of development out of character with the parent property and neighbouring dwellings at variance with Policies DEV 6 and HSG 20 of the adopted Copeland Local Plan 23001-2016.”

1.2 A recent appeal against this decision has been DISMISSED. The Inspector considered that given the size and elevated position of the development that it had an oppressive impact on the outlook from the back garden and windows of the rooms in the rear elevation of the neighbouring dwelling, No 71. Furthermore, he was of the opinion that it overlooked their entire back garden and rear windows to the extent that it is harmful to the living conditions of the occupiers and significantly diminished the enjoyment they might reasonably expect from their dwelling contrary to Policy HSG 20 of the Local Plan.

1.3 In view of the fact the application is retrospective enforcement action is now being pursued to secure the removal of the timber summerhouse and decking.

**Contact Officer:** Heather Morrison – Senior Planning Officer**Background Papers:** A copy of the Inspector's Appeal Decision is attached to this report



# Appeal Decisions

Site visit made on 4 August 2009

by **Richard McCoy** BSc, MSc, DipTP,  
MRTPI, IHBC

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

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Decision date:  
27 August 2009

**Appeal Ref: APP/Z0923/A/09/2104609**

**72 Hilltop Road, Kells, Whitehaven, Cumbria, CA28 9EB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr William Smith against the decision of Copeland Borough Council.
- The application Ref 4/09/2035/0, dated 26 January 2009, was refused by notice dated 2 April 2009.
- The development proposed is the erection of a timber summer house/garden shed and decking.

## Preliminary matter

1. It was apparent from my visit that the development described above has already been carried out. I shall therefore deal with the appeal on that basis.

## Decision

2. I dismiss the appeal.

## Main issues

3. I consider the main issues to be the effect of the proposal on (a) the living conditions of the occupiers of No. 71 from any loss of outlook and overlooking, and (b) the character and appearance of the area.

## Reasons

4. The appeal site is a semi-detached dwelling located in a predominantly residential area. In common with its neighbours, it stands on a steeply sloping site so that its back garden rises from the house towards Hilltop Road. The summer house (which measures around 3.8 x 3.8 x 2 metres) and decking (which covers an area of around 10m<sup>2</sup>) are situated to the rear of the back garden and stretch across most of the garden's width.
5. Given the size and elevated position of the development, and its close proximity to the boundary with No. 71, I consider that it has an oppressive impact on the outlook from the back garden and windows of the rooms in the rear elevation that dwelling.
6. Furthermore, the summer house is orientated so that its windows face towards the back garden of No. 71. Along with the decking, which stands at a high level in close proximity to the boundary, they overlook the entire back garden and the windows of the rooms on the rear elevation of that dwelling. I consider

that the intensity of the overlooking is not typical of the area and is harmful to the living conditions of the occupiers.

7. Consequently, the development significantly diminishes the enjoyment the occupiers might reasonably expect from their dwelling and in my opinion this would not be overcome by the imposition of a condition limiting the time the development may be used, as suggested by the appellant. Accordingly, the development is contrary to Policy HSG 20 of the Copeland Local Plan 2001-2016, adopted June 2006.
8. Of further concern to the Council is the effect of the development on the character and appearance of the area. While the summer house is large it is seen in the context of other garden sheds and domestic paraphernalia from both Hilltop Road and the nearby public footpath. In addition, the existing planting along the Hilltop Road boundary provides a degree of screening so that the development does not detract from the character and appearance of the area.
9. In this regard therefore the development does not conflict with LP Policy DEV 6. Nevertheless, this consideration does not outweigh the harm the development is causing to the living conditions of occupiers of No. 71.
10. Having considered all of the matters raised in the representations, including the appellant's arguments that the development is a benign use of the space, has a similar impact to outdoor furniture and maintains adequate amenity, I conclude that the appeal should be dismissed.

*Richard McCoy*

INSPECTOR