



Appeal Decision

by Richard E. Jenkins BA (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 26/08/2025

Appeal reference: CAS-04167-Y7D1Y5

Site address: Land at 8 Woolpitch Wood, Bayfield, Chepstow, Monmouthshire, NP16 6DW

- 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 Belinda Klugah Cavill against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice, numbered E/23/379, was issued on 11 March 2025.
 - The breach of planning control as alleged in the notice is: "Decking measures over 30cm in height above the ground below it to the rear garden, therefore does not comply with Permitted Development requirements".
 - The requirements of the notice are to: 1) Remove the decking as shown in Appendix A enclosed, in its entirety from the land shown edged in red; 2) Remove all resulting material from the land shown edged in red.
 - The period for compliance with the requirements is within six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
 - A site visit was made on 10 July 2025.
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Decision

1. It is directed that the Enforcement Notice be corrected by the substitution of the alleged breach of planning control set out at Schedule 2 in its entirety with the following words: "*The construction of decking measuring over 30cm in height above the ground levels of the rear garden*". Subject to that correction, the appeal is dismissed and the Enforcement Notice upheld.

Reasons

2. The appeal relates to a decked area located to the rear of the appeal property. The allegation, as set out at Schedule 2 of the Enforcement Notice, is as follows: "*Decking measures over 30cm in height above the ground below it to the rear garden, therefore does not comply with Permitted Development requirements*". I am duty bound to ensure that the alleged breach of planning control is appropriately formulated and, without

prejudice to the substantive ground of appeal, I consider it necessary to correct the Notice in this case in the interest of both clarity and precision.

3. Specifically, the alleged breach of planning control should be corrected to read as follows: *"The construction of decking measuring over 30cm in height above the ground levels of the rear garden"*. Given that this correction would not materially alter the substance of the allegation, but rather provide clarity to all parties, I am satisfied that no prejudice would be caused and that it could be made under the provisions of Section 176 of the above Act. I shall correct the Notice accordingly.

The Appeal under Ground (d)

4. The appeal is proceeding solely under the grounds set out under Section 172(2)(d) of the Act. This is that, at the time the Notice was issued, it was too late for the Council to take enforcement action against the matters that constitute the alleged breach. The planning merits of the development are not therefore material to the determination of the appeal and would need to be considered through a separate planning application.
5. The appellant contends that the decking was constructed by the previous owner in around 2004/ 2005. It was maintained by that same owner until the property was subsequently sold to the appellant in 2023. A statutory declaration signed by the former owner supports this general assertion, noting however that the decked area *"...was repaired in certain parts since construction as areas had become rotten and dangerous"*. The statutory declaration also states *"...that there has been no objection to the construction of the decking and no further objection when certain parts were upgraded"*.
6. The Local Planning Authority's (LPA's) evidence outlines that the enforcement investigation commenced in 2023, following a complaint. The LPA contends that, at that time, *"...the complainant provided credible and reliable evidence to show that the decking was installed in May 2021"*. Whilst this evidence served to satisfy the LPA that the structure was not immune from enforcement action, the Council has since confirmed that it no longer has the necessary consent to share this evidence as part of the appeal proceedings. Nonetheless, it wishes to proceed with the enforcement action in light of the alleged public harm.
7. In the absence of consent to use the evidence that led to enforcement proceedings commencing, the LPA has provided a screenshot from an online platform that specialises in property sales, rents and values that appears to confirm that the decking attacked by the Notice was substantially complete in June 2023. This is then contrasted with a screenshot from a similar online platform that appears to illustrate a materially different decked area in 2013. Further evidence, in the form of aerial photography, also appears to demonstrate a material difference in the extent of the decked area between the years 2020 and 2023, with the 2020 photograph showing areas of vegetation that are consistent with the 2013 screenshot, but in contrast to the 2023 images. Collectively, this evidence suggests the decked area is significantly larger in 2023, replacing previous vegetated areas. The base boards also appear to be affixed in a different orientation to that of the original construction, with the balustrade also comprised of a different design.
8. I am satisfied that the evidence is sufficiently clear to confirm the Council's position that the decking has materially changed since the original decked area was constructed. The decking subject of the appeal has not, therefore, been in situ for a period that exceeds 20 years as alleged by the appellant. There is no doubt that the evidence falls short of categorically confirming that the works were undertaken in May 2021, as alleged by the Council. Nonetheless, the available evidence does not contradict the Council's case and there is nothing that leads me to conclude that the structure attacked by the Notice was

substantially complete prior to the date of immunity. In contrast, the available evidence fails to support the appellant's arguments and, despite the fact that it is well-established in law that the burden of proof is on the appellant in such cases, no substantive evidence has been submitted to discredit the Council's critical argument that "*...whilst there may have been a decked area prior to 2021, the new decking currently in situ represents a fresh breach of planning control*".

9. On the basis of the foregoing, and having had regard to the relevant principles established through case law, I find that on the balance of probability it was not too late for the Council to take enforcement action at the time the Notice was issued. It follows therefore that the appeal under ground (d) must fail.

Overall Conclusion

10. For the aforementioned reasons, and having considered all matters raised, I find that the Enforcement Notice should be corrected. Subject to that correction, the appeal should be dismissed and the Enforcement Notice upheld.

Richard E. Jenkins

INSPECTOR