



Appeal Decision

Site visit made on 8 July 2025

by **C Livingstone MA(SocSci) (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 August 2025

Appeal Ref: APP/K0940/W/25/3365216

Plot of land adjacent to The Langdales, Levens, Kendal, Westmorland and Furness LA8 8PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dawn Osliff against the decision of Westmorland and Furness Council.
 - The application Ref is 2024/2299/FPA.
 - The application sought planning permission for erection of dwelling including access, design, landscaping, layout and scale (Revised scheme SL/2018/0938) without complying with a condition attached to planning permission Ref SL/2019/0735, dated 25 September 2020.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Site/Block Plan Revision 3, Principal Elevation and Internal Layout Revision 3 & Proposed Elevations Revision 3.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for erection of dwelling including access, design, landscaping, layout and scale (Revised scheme SL/2018/0938) at The Langdales, Levens, Kendal, Westmorland and Furness LA8 8PJ without complying with Condition 1 (Approved plans) attached to planning permission Ref SL/2019/0735, dated 25 September 2020 and subject to the conditions in the attached schedule.

Preliminary Matters

2. An appeal was allowed in 2022 without compliance with Conditions 1,2 and 4 on reserved matters approval SL/2019/0735¹. Conditions 1 and 4 sought to retain the beech hedge on the site boundary varying these conditions allowed for the replacement of the hedge. Condition 2 sought to restrict permitted development rights, and the Inspector found that this condition was not necessary or reasonable and concluded that it should be removed.
3. The appellant has provided details of groundworks carried out to install a drainage connection. In light of this information the Council are satisfied that the development has commenced. Based on the evidence before me I have no reason to disagree with the Council in this regard.

¹ APP/M0933/W/22/3299726

Background and Main Issues

4. In 2020 planning permission was granted, subject to a number of conditions, for erection of dwelling including access, design, landscaping, layout and scale. The planning permission included condition 1 which specified the approved plans. The proposal seeks the variation of Condition 1 to allow the amendment of the approved plans to allow for a two storey section to the side of the approved dwellinghouse.
5. The main issues are:
 - the effect of the development on the character and appearance of the area; and
 - the effect of the development on the living conditions of the occupants of neighbouring property Applegarth in regard to outlook.

Reasons

Character and appearance

6. The appeal site is located on a part of Underhill Road characterised by detached dwellings on one side of the road opposite mature trees and planting. The dwellings are unique in terms of design, and their layout is varied in terms of both their position within their respective plots and their separation distances. The dwelling subject to this appeal would be constructed on the side garden of 'The Langdales'. A high hedge separates the appeal site from neighbouring property Applegarth.
7. The proposed amendment would allow for the erection of an additional two storey element on the side elevation. The ridge height of the additional section would be lower than the main roof of the approved dwelling and it would be set back from the building line of the front elevation.
8. A defining characteristic of Uphill Drive is the varied layout and architecture along its length. While some dwellings are positioned within generous plots others are built close to the boundary with neighbouring properties.
9. The proposed building as currently approved is of significant scale and massing. However, the amendment would appear subservient as it would be set down from the ridge and relatively narrow. While it would reduce the gap between the proposed dwelling and Applegarth, given the varied layout in the area this would not be to the extent that it would appear overly dominant or constrained.
10. For the reasons detailed above the proposed development would not have a harmful effect on the character and appearance of the area. Therefore the amended scheme would not conflict with Policies CS1.1 and CS8.10 of the South Lakeland Local Development Framework Core Strategy 2010 (CS) and Policies DM1 and DM2 of the Local Plan Development Management Policies 2019 (DMP) which seek to ensure that a developments retain distinctive character and sense of place, maintains or enhances the quality of the landscape or townscape and responds appropriately to a site's locational context.

Living conditions

11. There are no windows on the side elevation of Applegarth that is set at an angle facing the appeal site. As detailed above the boundary between the proposed

dwelling and this neighbour is marked by a high boundary hedge with is protected by condition.

12. The amended scheme would be closer to the boundary with Applegarth than originally approved. However, the added side element would not extend from the entire width of the proposed dwelling and would not extend forward of the front elevation, or significantly behind the rear elevation of Applegarth. Further, the existing boundary hedge currently restricts the outlook from this property and while the side addition would be higher than the hedge it would be lower than the ridge of the approved dwelling. Given the relationship between Applegarth and the proposed dwelling it would not have a significantly overbearing impact on the occupants of this property over what is approved.
13. For the reasons detailed above the proposed development would not have a harmful effect on the living conditions of the occupants of neighbouring property Applegarth in regard to outlook. Therefore, the amended scheme would not conflict with Policies DM1 and DM2 of the DMP, which reflect the National Planning Policy Framework in seeking to ensure that acceptable levels of amenity for neighbouring and future occupants, through ensuring adequate spatial separation distances between existing and proposed buildings; and ensuring that development creates a positive relationship with surrounding uses.
14. Policy CS1.1 of the CS relates to the Council's sustainable development principles and is not determinative in my assessment of living conditions.

Other Matters

15. Levens Parish Council and four members of the public have submitted representations which objected to the proposal and their concerns are a material consideration in my assessment. Concerns regarding layout, density and outlook are addressed above. The amended scheme includes a high level window on the side elevation which would be fitted with obscure glass and would not harm the privacy of neighbouring occupants. Also, the proposed boundary treatments would mitigate general overlooking issues. Therefore, I afford only limited weight in regard to these concerns.
16. The Levens Parish Council also highlighted that the amended scheme should not be considered as a 'minor material amendment'. Section 73 of the Town and Country Planning Act allows the appellant an opportunity to amend or vary conditions and this includes the amendment of the plans condition to amend the approved design of a development.
17. My attention has been drawn to the number of revisions that have been submitted in relation to the appeal scheme and non-compliance with conditions. However, as detailed above the appellant can apply for revisions to a previously approved development and non-compliance with conditions is an enforcement matter.
18. The submitted representations also raise concerns that the planning application was not publicised appropriately. I am not certain that the appeal scheme would have required an advert in the local paper. Within their report the Council state that a site notice was erected. I have no reason to doubt that this was the case.
19. Concerns regarding ownership of a boundary fence at the appeal site is a civil matter between the relevant parties and not within my jurisdiction.

Conditions

20. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on reserved matters approval SL/2019/0735, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. I have amended the wording of Condition 1 to reflect the amendments as approved. Condition 2 has been retained in order to protect the character and appearance of the area. Condition 3 has been included in order to preserve the living conditions of neighbouring occupants and Condition 4 has been included to in the interests of highway safety.
22. The Council recommended a condition to restrict permitted development rights. However, as detailed above an Inspector has previously determined that such a restriction is not necessary or reasonable. There is no substantive information before me that would lead me to a different view, as such this condition has not been included.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

C Livingstone

INSPECTOR

Schedule 1 – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed internal layout - Rev:5, Principal elevations & visuals - Rev:5, Proposed elevations - Rev:5, Proposed Site/Block Plan – Rev:5;
- 2) No development above ground level shall take place until samples and details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details of materials unless otherwise agreed in writing with the Local Planning Authority.
- 3) The boundary hedge situated on the southern boundary of the site shall be retained and shall not be removed or reduced in height to less than 2 metres unless written approval is given by the Local Planning Authority.
- 4) Notwithstanding the approved plans, the proposed access shall comprise a minimum width of 4.7 metres and there shall be provision for two car parking spaces and a turning area within the site in order for vehicles to enter and leave the site in forward gear.