



Appeal Decisions

Site visit made on 2 December 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2026

Appeal A Ref: APP/X1355/C/24/3353506

Appeal B Ref: APP/X1355/C/24/3353507

**Four parcels of land at Fitzhugh Court to the west of Marwood View Cotherstone
Barnard Castle County Durham DL12 9PP**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Stephen Litherland of Nixon Acland Cotherstone Ltd and Appeal B by Mr Jamie Allison against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 23 September 2024.
 - The breach of planning control as alleged in the notice is failure to comply with conditions subject to which planning permission has been granted by the Council as Local Planning Authority: - Reference number - DM/14/01322/FPA Date granted - 28/05/2015 by appeal APP/X1355/W/15/3002666
Description of development - Erection of 8 no. dwellings. The following condition(s) have not been complied with: - Condition - 6 Implementation of approved landscaping scheme.
 - The requirements of the notice are to:
A. Complete all planting, seeding or turfing comprised in the approved details of the landscaping shown on approved plan CM197-01F (attached) from the 2018 Discharge of Conditions approval DRC/18/00100 on the Land. [Any trees or plants which within a period of 5 years from planting die, are removed, are severely damaged or become seriously diseased shall be replaced in the next planting season with others of similar size and species.]
 - The period for compliance with the requirements is 10 weeks.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended).
 - Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 (as amended).
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Appeal C Ref: APP/X1355/W/24/3353344

Land to the West of Marwood Terrace, Cotherstone, Barnard Castle DL12 9PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Stephen Litherland of Nixon Acland Cotherstone Ltd against the decision of Durham County Council.
 - The application Ref DM/24/01383/VOC, dated 23 May 2024, was refused by notice dated 17 July 2024.
 - The application sought planning permission for a residential development comprising 4 no houses and 4 no dormer bungalows without complying with a condition attached to planning permission Ref DM/14/01322/FPA dated 7 May 2015.
 - The condition in dispute is number six which states that: No development shall take place until full details of hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. These details shall include proposed hard surfacing materials; all trees to be retained; a detailed planting plan for the ornamental shrub and herbaceous planting showing exact plant numbers and locations and giving plant species, sizes and the maintenance regime.
 - The reason given for the condition is in the interests of local character.
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Decisions

Appeal A and B

1. It is directed that the enforcement notice is varied by; the deletion of (*attached*) in section five of the enforcement notice and the deletion of the landscaping plan attached to the notice, reference CM197-01.
2. Subject to the variation, the appeals are 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.

Appeal C

3. The appeal is dismissed.

The Enforcement Notice – Appeals A and B

4. The notice requires the completion of the landscaping shown on approved plan reference CM197-01F. However, the Council attached the wrong plan to the notice. Nevertheless, I can delete the plan from the notice without injustice since the requirements refer to the correct plan and the appellants are evidently aware which plan that is.

Preliminary Matters - Appeal C

5. The application proposes the removal of condition five and in submissions the appellant refers to removing the trees from the approved landscaping scheme. There is no power under section 73/S73A to approve details required by condition. Essentially the appellant is seeking to retain the development as completed, without complying with condition five, and consequently six. It is on this basis that I have considered the appeal.

Appeal A on ground (a) the deemed planning application and Appeal C

Background and Main Issue

6. Planning permission was conditionally granted on appeal¹ on 28 May 2015 for a residential development consisting of four houses and four dormer bungalows, planning permission reference DM/14/01322/FPA.
7. A landscaping scheme was subsequently submitted, in accordance with condition five of the permission, and approved by the Council. The plan detailed hard and soft landscaping works including the planting of around 15 trees/shrubs including specimens of Holly, Rowan, and Silver Birch on the broadly eastern boundary of the site.
8. Condition six of the permission required the implementation and maintenance of the approved landscaping.
9. These appeals seek the retention of the landscaping as completed, which does not include the planting of the trees/shrubs, with those areas given over to grass.

¹ APP/X1355/W/15/3002666

10. On the basis of the above, the main issue in each appeal is whether the conditions are necessary to preserve or enhance the character or appearance of the Cotherstone Conservation Area (CCA).

Reasons

11. The site is located within the CCA, which is characterised by dwellings of varying age, within a countryside setting. Two village greens provide a distinctive focal point, and the varying types of period properties provide an attractive built environment. Trees are evident throughout the Conservation Area, both individually and in groups, in gardens and along streets and make a positive contribution to the distinctly rural character and appearance of the village.
12. The site was previously a green field with trees on the boundary but otherwise open. However, as noted by the previous Inspector, any form of development would inevitably alter the character of the site and, it is evident that the overall development was only considered to be acceptable with a sensitive approach to landscaping, to ensure that the proposal retained the attractive rural character of Cotherstone.
13. As completed the hard landscaping generally consists of paved areas to the front and sides of the dwellings to provide parking, with the soft landscaping consisting of open plan lawns to the front of dwellings, some hedging separating gardens and a grass verge of varying width along the broadly eastern boundary of the development. I also saw that a few trees have been planted in a small number of front gardens.
14. The design of the dwellings is in keeping with local character however, the resulting development has a largely open and somewhat sterile, suburban character which does not preserve or enhance the attractive rural character of the Conservation Area.
15. The development is obviously a modern housing development however, the approved tree planting, whilst relatively modest in its extent, would help to soften the appearance of and provide a degree of maturity to the development so that it better assimilates with the attractive rural character of the Conservation Area.
16. That the trees would largely only be seen from within the estate is a matter of little weight since the statutory requirement relating to the desirability of preserving or enhancing the character or appearance of conservation areas is not dependent on public views of relevant changes.
17. In terms of the phraseology used in the National Planning Policy Framework (Framework) the harm identified to the significance of the CCA, which is a designated heritage asset, is less than substantial. Nevertheless, any harm to such assets should require clear and convincing justification. This requires a balancing exercise of harm against the public benefits of the proposal.
18. The appellant stated that the area is likely to be too small for the number of trees proposed and it is likely that a number of trees would not survive. They also raised matters relating to the potential effect of tree roots on the dry-stone wall and that this may pose a serious risk of harm to people and their property, as well as the cost of maintenance and the potential effect on the living conditions of occupiers of

neighbouring properties to the north, in respect of the shading of south facing gardens.

19. However, there is no substantive evidence to support the argument that some trees may not survive because of the size of the area, nor that they are likely to damage the drystone wall and pose a risk to safety. In my view, along with the potential for shading of gardens, there is no reason to consider that with appropriate maintenance these matters could not be managed. The appellant has provided no explanation why costs associated with such maintenance would be prohibitive. These are therefore matters of little weight.
20. The appellant stated on their appeal form that the Council would soon adopt the area of land, and the Council's maintenance team confirmed that they did not want trees to be planted. However, they provided no evidence to support this assertion, and the Council provided evidence from their Highways Adoption Team, that adoption would be limited to the hard paved edge up to the lampposts. This is therefore a matter of little weight.
21. The benefits envisaged by the original scheme, namely the contribution of eight additional homes to the supply of housing have been realised, since the dwellings are complete and occupied. Considering the purpose of the condition/s, for the reasons given, there are no public benefits to outweigh the identified harm.
22. Overall, for the reasons given I find the breach of condition six has caused harm to the character and appearance of the CCA and there are no public benefits to outweigh the harm, contrary to policies 29 and 44 of the County Durham Plan Adopted 2020 (County Durham Plan) and Policy CNP7 of Cotherstone Parish Neighbourhood Plan 2020 – 2035.
23. Together these policies require that landscape proposals reflect features characteristic of the locality and that development conserve or enhance heritage assets, reinforce positive characteristics of the area, and be designed to be appealing and foster a sense of delight and wellbeing for occupants, visitors, and passers-by. It also conflicts with the design and heritage protection aims of the Framework.
24. It follows that in respect of Appeal C I find that conditions five and six are necessary in the interests of local character.

Other Matters

25. The site falls within the Area of Higher Landscape Value. However, I note that in respect of the original application and appeal, the Council and Inspector were satisfied that the contained nature of the site meant that it is viewed in the context of the village rather than the surrounding countryside. In the absence of contrary explanation, I see no reason to take a different view and there is therefore no conflict with Policy 39 of the County Durham Plan. The lack of harm in this regard is a neutral matter.
26. Similarly, since there is no evidence that trees, woodland, or hedges have been removed there is no conflict with Policy 40 of the County Durham Plan.
27. The Parish Council originally supported the application, subject of Appeal C, suggesting that replacing the trees with shrubs/low-maintenance wildflowers would

be a better alternative than replacing them with just grass. However, they have since withdrawn their support.

Appeals A and B on ground (f)

28. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
29. In this case the enforcement notice requires the completion of all planting, seeding or turfing comprised in the approved details of the landscaping shown on approved plan CM197-01F, in effect requiring compliance with condition six on planning permission DM/14/01322/FPA, as such I find its purpose is to remedy the breach of planning control. That purpose can only be achieved by compliance with condition six.
30. The appellants did not suggest any lesser steps. Consequently, since the purpose of the notice is to remedy the breach of planning control, it is not excessive to require compliance with the condition. No lesser steps other than those set out in the notice would achieve that purpose. Accordingly, the appeals on ground (f) fail.

Conclusions

31. For the reasons given above, I conclude that Appeal A and B should not succeed. I shall uphold the enforcement notice with a variation.
32. For the reasons given above Appeal C should be dismissed.

Felicity Thompson

INSPECTOR