
Appeal Decision

Site visit made on 6 January 2026

by **Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

Appeal Ref: APP/U2750/W/25/3374515

Station House, Station Road, Thirsk, North Yorkshire YO7 4LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for 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 Mr Michael Jones against North Yorkshire Council.
 - The application Ref is ZB25/01254/MRC.
 - The application sought planning permission for the conversion of existing dwelling to three 2 bed dwellings and construction of two, 2 bedroom cottages without complying with conditions attached to planning permission Ref ZB23/02102/FUL, dated 15 April 2025.
 - The conditions in dispute are Nos 3 and 5 which state that:
(3) Prior to commencement of the any part of the permitted use, a continuous acoustic barrier with a minimum effective height of 2 metres measured from the ground level along the northern boundary and 3.5 metres along the western boundary and all with a minimum surface density of 10 kg/m2 shall be provided. The acoustic barrier shall be retained throughout the life of the development.
(5) No development shall be commenced until a Phase 2 assessment of the risks posed by contamination, carried out in line with the Environment Agency's Procedures for Land Contamination Risk Management (LCRM), has been submitted to and approved by the local planning authority.
 - The reasons given for the conditions are:
(3) To protect the amenities of future residents in accordance with Local Plan Policies S1 and E2.
(5) To protect the amenities of future residents in accordance with Local Plan Policies S1, E2 and RM5
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of existing dwelling to three 2 bed dwellings and construction of two, 2 bedroom cottages at Station House, Station Road, Thirsk, North Yorkshire YO7 4LS in accordance with the application Ref ZB25/01254/MRC, without compliance with condition number 3 previously imposed on planning permission Ref ZB23/02102/FUL dated 15 April 2025 and subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission was granted in April 2025 to convert the existing dwelling to three dwellings and for the construction of two cottages at the appeal site. Following this approval, the appellant applied under section 73 of the Town and Country Planning Act 1990 (as amended) to vary the wording of conditions 3 and 5 which refer to the matters of acoustic barriers and land contamination respectively. The Council did not issue a decision on that application and therefore this appeal is against their non-determination.

3. The purpose of varying the wording of condition 3 was to address an error in the condition which referred to the height of the acoustic barrier required along the western boundary, as this did not take the lower ground level of the commercial use adjacent to the appeal site into account. The Council raises no objection to that variation and therefore I have not considered this matter further.
4. There is however a dispute between the parties as to whether adequate information has been provided to allow for condition 5 to be varied in the way that the appellant proposes. This relates in essence to whether a ground gas risk assessment is needed to satisfy the requirements of the condition. This is the main issue in the appeal.

Reasons

5. A Phase 2 Intrusive Contamination Risk Assessment has been submitted. The appellant states that the scope of that report was agreed with the Council prior to it being undertaken. If that is the case and if it could have been foreseen that a ground gas risk assessment would be necessary prior to investigations commencing, it is regrettable that the appellant now finds themselves in the position whereas they are being advised that the submitted Phase 2 is not adequate to allow for the variation of condition 5 in the way they seek.
6. Whatever the scenario, the professional advice of the Council's Environmental Health Officer is that the ground gas assessment is needed to ensure that the required level of ground gas mitigation is incorporated into the development. I would not expect that a request would be made for an assessment that is not essential to inform the mitigation that is necessary. Accordingly, on the basis of the information that is before me, the condition cannot be amended in the way that the appellant seeks.
7. The appellant refers to several considerations relating to the former refuse tip which they suggest support their position that a ground gas risk assessment should not be required. However, this does not appear to be a formal assessment and there is no clarification as to whether the observations are made or informed by an appropriately qualified person. This does not therefore satisfy what would be required in terms of a ground gas risk assessment.
8. For these reasons, I conclude that condition 5 should not be varied.

Conditions

9. The effect of allowing the appeal with respect to condition 3 is that a new planning permission will be created. The guidance in the Planning Practice Guidance 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.
10. As I have no information before me about the status of the other conditions imposed on the original planning permission, 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.
11. The appellant has stated that they stand firm on their proposed re-wording of condition 5. As I have found that not to be acceptable and I have no indication of

there being any alternative wording that they would find agreeable, I will reimpose condition 5 in its original form.

12. An appeal under section 73 cannot extend the time period for commencement of a planning permission. I have worded condition 1 to reflect this.

Conclusion

13. For the reasons given above, the appeal is allowed on the basis set out.

Graham Wright

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun by 15 April 2028.
- 2) The permission hereby granted shall not be undertaken other than in complete accordance with the drawing(s) received by the Local Planning Authority on 04.10.23 unless otherwise approved in writing by the Local Planning Authority.
- 3) Prior to commencement of any part of the permitted use, a continuous acoustic barrier with a minimum effective height of 2 metres measured from the ground level along the northern and western boundaries and all with a minimum surface density of 10 kg/m² shall be provided. The acoustic barrier shall be retained throughout the life of the development.
- 4) Before the development is first brought into use all works which form part of the noise and ventilation mitigation measures as identified in the Noise impact assessment Report dated June 2023 Reference: SHF.849.001.NO.R.001 produced by Enzygo:-

a) shall be completed; and

b) written evidence to demonstrate that the specified noise levels have been achieved shall be submitted to and approved in writing by the local planning authority.

If it cannot be demonstrated that the noise levels specified in the Noise Report have been achieved, then a further scheme shall be submitted for the written approval of the local planning authority incorporating further measures to achieve those noise levels.

All works comprised within those further measures shall be completed and written evidence to demonstrate that the noise levels have been achieved shall be submitted to and approved in writing by the Local Planning Authority before the development is first brought into use.

The noise and ventilation mitigation measures employed shall be retained throughout the life of the development.

- 5) No development shall be commenced until a Phase 2 assessment of the risks posed by contamination, carried out in line with the Environment Agency's Procedures for Land Contamination Risk Management (LCRM), has been submitted to and approved by the local planning authority.
- 6) Prior to development, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) must be prepared, if required by the Phase 2 assessment, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under

Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- 7) Prior to first occupation or use, the approved remediation scheme must be carried out in accordance with its terms and a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.
- 8) In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.
- 9) No above ground construction work shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted in writing to the Local Planning Authority for approval and samples have been made available on the application site for inspection (and the Local Planning Authority have been advised that the materials are on site) and the materials have been approved in writing by the Local Planning Authority. The development shall be constructed of the approved materials in accordance with the approved method.
- 10) Above ground construction of dwellings shall not be commenced until a detailed landscaping scheme indicating the type height, species and location of all new trees and shrubs has been submitted to and approved in writing by the Local Planning Authority. Regard shall be had to Network Rail's comments of 30.10.23.

The dwellings shown within the plan labelled "Proposed Two Cottages" received by the Council 04.10.23 shall not be occupied until after the end of the first planting and seeding seasons following the approval of the landscaping scheme, unless those elements of the approved scheme situated within the curtilage of that dwelling have been implemented. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.

- 11) Prior to above ground works a landscaping and biodiversity net gain scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide a) a landscape scheme including details of any change in surfacing materials and any planting schemes and shall show the retention of any significant existing landscape features and shall provide b) details to show how a 10% net gain of biodiversity will be achieved on site using the DEFRA biodiversity metric 3.1 (or the latest published version) and include a programme of work and subsequent maintenance arrangements. The development shall thereafter be carried out in accordance with the approved scheme.

- 12) Development shall not take place until details of the implementation, adoption, maintenance and management of a sustainable drainage system shall have been submitted to and approved in writing by the local planning authority.

Those details shall include:

- i) details of separate systems of drainage for foul and surface water on and off site. The separate systems should extend to the points of discharge to be agreed.
- ii) details of new areas of hard surfacing to be formed using porous materials or an alternative solution that allows direct run-off water from the hard surface to an area that allows the water to drain away naturally within the site.
- iii) a timetable for its implementation; and,
- iv) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 13) No part of the development must be brought into use until the access, parking, manoeuvring and turning areas for all users (marked as Areas A, B and C on the plan labelled "Block Plan" received on 04.10.23) have been constructed in accordance with the submitted drawing. Once created these areas must be maintained clear of any obstruction and retained for their intended purpose at all times.

- 14) No development must commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved plan.

The Plan must include, but not be limited to, arrangements for the following in respect of each phase of the works:

- details of any temporary construction access to the site including measures for removal following completion of construction works;
- wheel washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
- the parking of contractors' vehicles;
- areas for storage of plant and materials used in constructing the development clear of the highway;
- contact details for the responsible person (site manager/office) who can be

contacted in the event of any issue.

15) There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. If discharge to public sewer is proposed, the information shall include, but not be exclusive to:

i) evidence that other means of surface water drainage have been properly considered and why they have been discounted; and

ii) the means of discharging to the public sewer network at a rate to be agreed by the Local Planning Authority in consultation with the statutory sewerage undertaker.

16) Notwithstanding the provision of any Town and Country Planning General or Special Development Order for the time being in force relating to "permitted development", no extension or alteration of the dwellings hereby approved, including the installation or replacement of windows, doors and rooflights, shall be undertaken without the express written consent of the local planning authority.

17) Notwithstanding the provision of any Town and Country Planning General or Special Development Order for the time being in force relating to "permitted development", no erection of or alterations to boundary treatments shall be undertaken without the express written consent of the local planning authority.

18) Prior to the commencement of above ground works, the number and siting of swift bricks/boxes within the approved scheme shall be submitted to the Local Planning Authority for written approval. Once approved, the works shall be undertaken in full compliance with the approved details.

Once installed, the swift bricks and tree mounted boxes shall remain in place and free of obstruction for the lifetime of the development.

19) Prior to the commencement of works of demolition, details of:

a) measures to allow the use of the Network Rail car park at Thirsk Station;

b) measures to prevent the deposit of debris on adjacent land;

c) details of how the works are to be undertaken;

d) measures relating to the removal of material from site and associated timescales;

shall be submitted to and approved in writing by the Local Planning Authority. All demolition shall be undertaken in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

-----End of Conditions-----