



## Appeal Decision

Hearing held on 10 September 2025

Site visit made on 10 September 2025

by **Mr W Johnson BA(Hons) DipTP DipUDR MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 January 2026

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### Appeal Ref: APP/K0940/W/25/3367317

#### Land at Raiselands Farm, Penrith, CA11 9JW

- 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 Persimmon Homes against the decision of Westmorland and Furness Council.
  - The application Ref is 2024/0796/FPA.
  - The application sought planning permission for the erection of 229 new build homes, including 30% affordable homes to include 9 no. 2 bed homes, 106 no. 3 bed homes and 114 no. 4 bed homes
  - without complying with a condition attached to planning permission Ref 14/0405, dated 14/08/2017.
  - The condition in dispute is No 27 which states that: *Where the noise insulation scheme relies on windows being closed to achieve the above-stated criteria, non-opening windows shall be installed in the relevant rooms and a ventilation scheme for the affected rooms shall be submitted and approved in writing by the LPA prior to the occupation of each of the dwellings and thereafter retained. NB It will be necessary for an adequate means of escape in case of fire to be achieved for these rooms in order to meet current Building Regulation requirements.*
  - The reason given for the condition is: *To protect the future residents from the adverse impact of noise.*
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 229 new build homes, including 30% affordable homes to include 9 no. 2 bed homes, 106 no. 3 bed homes and 114 no. 4 bed homes at Land at Raiselands Farm, Penrith, CA11 9JW in accordance with the application Ref: 2024/0796/FPA, without compliance with condition 27 previously imposed on planning permission Ref: 14/0405 (the original permission) dated 14 August 2017 and subject to the conditions set out in the schedule.

### Preliminary Matters

2. It was agreed verbally with the main parties at the event that as I had already visited the site prior to the commencement of the hearing, there was no need to re-visit the site on an accompanied basis, particularly as I had already gained sufficient information from my observations.

3. Whilst the condition in dispute is no. 27 on the original permission, it is common ground between the main parties that the application subject of this appeal also seeks to combine conditions 26, 27 and 28 of the original permission into one condition, referencing the submitted Noise Mitigation Plan. I have dealt with the appeal on this basis.

4. At the time of its decision the Council referred to paragraph 191 of the National Planning Policy Framework (the Framework). However, this was in reference to the

2023 version of the Framework, which was then replaced by a revised version, published in December 2024. For the purpose of this appeal and for the avoidance of doubt, any reference in this decision towards the Framework, is the 2024 version.

5. On 16 December 2025, the Government published a consultation on proposed reforms to the Framework. Whilst broad changes to the structure of the Framework are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the changes, and in reaching my decision.

### **Main Issue**

6. At the start of the event the wording of the suggested main issue was discussed. This was subsequently amended following these discussions and the acceptance of additional wording to make it more precise. The wording below, reflects what was agreed.

- Whether the variation of condition 27 (non-opening windows) to allow the option of opening windows in place of non-opening windows, attached to approval 14/0405 would provide satisfactory accommodation for occupiers of the approved development, with particular regard to bedroom windows from rail noise at night.

### **Reasons**

#### *Background*

7. Since the approval of the original permission, there have been numerous applications submitted and determined, including an application<sup>1</sup> to vary condition 2 on the original permission that was approved on 28 February 2005. This application sought to amend the approved plans, particularly aspects of the scheme relating to boundary treatments, floor levels, landscaping and cross section plans. It also involved the removal of condition 18 for hard and soft landscaping, attached to the original permission too.

8. As part of the original permission, it is the Council's view that the original planning application was agreed, then subsequently approved on the basis that the development would include a condition that required non-opening windows to be accepted, even though the applicant considered that acoustic screening and mechanical ventilation would provide future residents sufficient protection. Like the reason for refusal, on the application subject of this appeal, no properties/plots were specifically listed.

9. The original permission required prior approval of acoustic modelling and details of mechanical ventilation and acoustic glazing as shown to be necessary by the acoustic modelling. An application was submitted to the Council for the approval of several pre-commencement conditions, including numbers 26, 27 and 28. The Council approved the details subject of this application 15 May 2020. At 7.15 of the Statement of Common Ground (SoCG) the appellant has confirmed that they are implementing the varied permission.

#### *Living conditions*

10. Whilst the wording of Condition 27 of the original permission encompasses the entire site, it is an agreed position between the main parties that only the bedroom

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<sup>1</sup> 2024/2214/FPA (the varied permission)

windows are currently affected through its imposition. It has also been established through the SoCG and at the event that the concern from the Council specifically relates primarily to noise during the night from the nearby main line railway, with the elderly and children being referenced as those susceptible to disturbed sleep as a result of them being less inclined to close windows.

11. The Council does not dispute the data supplied by the appellant, nor does the appellant seek to dispute that properties could be affected by rail noise through the night. There is also no doubt that it is the intention of the appellant to still provide mechanical ventilation to properties, so that the occupiers have the ability to close their bedroom windows to avoid potential instances of excessive noise through the night. However, the basis of the Council's objection in this regard would appear to be on the inability of children or elderly to make such a choice to prevent any disturbance or loss of sleep.

12. The appellant confirms that the approved development comprises of family housing, so it is likely that children will be present in some of the properties. It is also likely that older people may occupy some of the properties too. It is an agreed position that none of the properties will provide any form of specialist accommodation, such as extra care or sheltered housing. Therefore, it is highly unlikely that occupants that are so vulnerable to the extent where they are unable to make their own basic decisions, such as closing the window and using the mechanical ventilation instead, would be living alone. Even if, children or elderly do occupy the properties, and they require assistance with day to day living due to their age and/or condition, they are likely to be supported by parents and/or carers respectively, particularly if they are classed as a dependant.

13. I acknowledge the concerns of the Council raised in its Committee Report<sup>2</sup> (the Report) for its meeting on 9 October 2024 with regards to the possibility of future complaints from residents arising. I would share this view, if the appellant was proposing no form of mitigation. However, the appellant is still proposing to keep mechanical ventilation as an alternative for residents. Therefore, whilst occupiers may wish to open their bedroom windows, they would also have a genuine alternative that would allow them to keep their windows closed too, whilst not preventing adequate ventilation. This scenario is not clearly referenced in this section of the Report and as a consequence, I find that any such complaints would not be justified or create an adverse situation through the 'agent of change' principle.

14. I also note that currently residents have the ability to change the glazing on their properties should they wish, due to an oversight in the wording of conditions attached to the varied permission. There is no doubt that this existing situation clearly undermines the Council's current position in ensuring satisfactory living conditions for occupiers of the development and represents a material planning consideration that attracts significant weight. During discussions at the event, the appellant also referenced the latest noise maps. This included discussing a Defra noise map<sup>3</sup> that predicts LA10,18h levels close to the appeal site. The Council was given an opportunity to comment on this noise map, but declined.

15. Therefore, in the absence of substantive evidence to the contrary, I find that the levels predicted at the appeal site in the noise map are significantly below the threshold required for the declaration of a Noise Important Area and that rail noise levels are

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<sup>2</sup> 9.3.37 to 9.3.39

<sup>3</sup> Appendix F of Noise Statement of Case, dated June 2025

significantly below the SOAEL<sup>4</sup> across the entirety of the appeal site. Whilst the Council did initially refer to noise from the road network at the event, particularly from the M6 and A6, these concerns were later withdrawn by the Council during the proceedings. Overall, taking the site specific circumstances and the retention of mitigation measures into account, there is sufficient evidence to demonstrate that allowing occupiers to open their bedroom windows, particularly through the night, poses no significant risk to their health.

16. For the reasons above, the variation of condition 27 on the original permission to give occupiers of the development the option to open their bedroom windows (in place of non-opening windows) would not result in unacceptable living conditions with particular regard to noise and disturbance through the night. Consequently, I do not find condition 27 as worded on the original permission to be reasonable or necessary to comply with Policy ENV9 of the Eden Local Plan 2014-2032, which seeks to deal with the issue of noise and how it may affect potential occupiers and ensure occupiers are not adversely affected by noise which may give rise to significant impacts on health and the quality of life, amongst other things. The proposal also complies with the requirements of the Framework, in particular paragraph 198.

### **Other Matters**

17. Condition 9 on the original permission secured the delivery of a link road, including footway, to the land to the north of the appeal site. However, the approval of the varied permission removed this condition. Consequently, there is uncertainty whether the appellant is still obliged to deliver the link road, including footway, to the land to the north. The SoCG and the main parties agreed verbally at the event that this omission on the varied permission was done in error.

18. Whilst the main parties are in agreement with this suggested condition, I am also satisfied that it would be appropriate to include it, as it does not materially alter the development that was subject to the original permission and was imposed on this earlier planning permission. There would also be no conflict with the 'six tests' as set out in the Planning Practice Guidance<sup>5</sup> (PPG).

### **Conditions**

19. A list of planning conditions has been agreed between the parties. In the main the conditions replicate those imposed on the original permission and I have made minor amendments where necessary. In all cases I am satisfied that the conditions are reasonable and necessary and meet the tests set out in paragraph 57 of the Framework. I have information before me about the status of the other conditions imposed on the original permission, which have been satisfied. Given the agreement between the main parties on this matter, which gives greater certainty, I shall only impose those that I consider relevant and continue to have effect.

### **Conclusion**

20. For the reasons given above, I conclude the appeal should be allowed.

*W Johnson*

INSPECTOR

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<sup>4</sup> Significant Observed Adverse Effect Level

<sup>5</sup> Paragraph: 003 Reference ID: 21a-003-20190723

## **APPEARANCES**

### FOR THE APPELLANT:

Matthew Symons (Agent)	Associate Director, Edgeplan
Rachael Graham (Appellant)	Planning Director, Persimmon (Lancashire)
Toby Lewis	Technical Director, WSP
Josh Kitson	Director, Walker Morris

### FOR THE LOCAL PLANNING AUTHORITY:

Mat Wilson	Principal Planning Officer
Heather Deane	Senior Environmental Health Officer

### INTERESTED PARTIES:

David Evans	Local resident
William Williams	Local resident

## **HEARING DOCUMENTS**

- A re-worded version of suggested Condition 17, submitted by the appellant by email on 12 September 2025.

## SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

- Durapost Kingpost Wall Typical Sections - SK23-5745-01 - Rev:P02 21/11/2024
- Standard Fence Detail - 21/11/2024
- Sections A-A / B-B - SLF.PL01.11 - 26/11/2024
- Sections C-C / D-D - SLF.PL01.10 - 26/11/2024
- External Works Layout Sheet 2 - 30083/16/2 - Rev:D - 26/11/2024
- Landscape Proposal Sheet 4 of 4 - 4462.10 - Rev:F - 23/01/2025
- Landscape Proposal Sheet 3 of 4 - 4462.09 - Rev:F - 23/01/2025
- Landscape Proposal Sheet 2 of 4 - 4462.08 - Rev:F - 23/01/2025
- Landscape Proposal Sheet 1 of 4 - 4462.07 - Rev:F - 23/01/2025
- Boundary Treatment Plan - 616.302 - Rev:01 - 23/01/2025
  
- Location Plan: PL02
- Planning layout PL01 Rev E
- Affordable Housing Rev. B Check
- RSF AR Adopted Roads
- RSF BC Bin Collection
- CPT-187 PL03 Boundary Treatments
- Noise Assessment
- Sm-rg-001-A065546 Noise Addendum 9sept16
- Sm-rg-002-A065546 Noise Response 1jul16
- Sm-rg-003-A065546 Noise Further Information 5aug16
- Topographical Survey
- A6 scheme - A065546 C001Rev a (plus RSA Stage 1)
- Site Investigation Desk Top Study DTS 13-339
- Phase 2 Ground Investigation Report 14-446
- 30083\_202\_2B Detailed Cross sections
- Proposed Site Levels 30083\_200 Rev A
- Highways & Drainage layout 30083.1A
- Longitudinal Sections 1-6: 30083.3.1-6
- Typical Highway detail: 30083.4.1; 30083.4.2
- Surface Water manhole Schedules: 30083.5.1; 30083.5.2; 30083.5.3;
- 30083.5.4; 30083.5.5; 30083.5.6; 30083.5.7; 30083.5.8
- Foul Manhole Schedules: 30038.6.1; 30038.6.2; 30038.6.3; 30038.6.4;
- 30038.6.5; 30038.6.6
- Control Manhole details; 30038.7.1; 30038.7.2; 30038.7.3
- Detailed Site/Cross Sections 30083/202/1, 2B and 3
- CCTV Survey - 2166\_001, 2166\_007, 2166\_012
  
- Flood Risk Assessment Nov 13
- Archaeology - RPF14 DBA, 10403 Geophysics Report Sept 14
- Air Quality Assessment
- 34096r3 AQA and 34096c1 AQA Tech note
- Tree survey: 1006-01 and Tree Survey Report Aug 13

- Extended Habitat Phase survey Assessment Rev A
  - Bat Survey Oct 2013
  - Design & Access Statement
  - Interim Travel Plan v1
  - Material Plot Layout Rev C
  - Housetypes:
    - Character – Chedworth, Clandon, Clayton, Hanbury, Hatfield, Leicester, Lumley, Roseberry, Rufford, Souter
    - Feature – Chedworth, Clandon plus, Clayton Corner
    - Render - Clayton Corner, Hatfield, Leicester, Lumley, Roseberry, Runswick
    - Standard – Chedworth, Clayton, Layton Corner, Hanbury, Hatfield, Leicester, Lumley, Morden, Moseley, Roseberry, Rufford, Runswick, Souter
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or reenacting that order) relating to permitted development, no structure or vehicle shall be parked or placed and no trees, bushes or other plants shall be planted or be permitted to grow within the agreed visibility splays which obstruct the visibility splays.
- 3) The carriageway, footways, footpaths and cycleway design shall be implemented in accordance with the design approved under condition discharge 18/0625. No dwelling comprised in the development shall be occupied until the approved works have been carried out.
- 4) The external works (pedestrian island, village gateway, lining et cetera) shall be constructed, drained and lit in accordance with the design approved under condition discharge 18/0625. No dwelling comprised in the development shall be occupied until the approved works have been carried out.
- 5) No dwelling comprised in the development shall be occupied until the access and parking requirements for each phase have been constructed in accordance with the approved plan for that phase, and thereafter shall not be removed or altered.
- 6) The development shall be constructed in accordance with the Construction Method Statement approved under condition discharge 18/0625. The Construction Management Plan shall be implemented during all construction Periods.
- 7) The development shall be completed, maintained and managed in accordance with the approved Foul and Surface Water Drainage Scheme approved under condition discharge 18/0625.
- 8) The development shall be completed, maintained and managed in accordance with the sustainable drainage maintenance and management plan for the lifetime of the development approved under condition discharge 18/0625.
- 9) Development on site shall accord with the construction surface water management plan approved under condition discharge 18/0625.

- 10) The submitted landscaping scheme shall be fully implemented concurrently with the carrying out of the development, and any trees or plants/grassed areas which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planning season with others of similar size and species and quality.
- 11) The scheme for the provision and maintenance of open space and play equipment shall be implemented in accordance with the details agreed under condition discharge 18/0625.
- 12) The existing trees on the site shall not be lopped, felled or otherwise affected in any way (including raising or lowering soil levels under the crown spread of the trees) and no excavation shall be cut under the crown spread of the trees.
- 13) The entire root system of trees to be retained, as shown in approved Tree Survey Report ref.BS5837:2012 (August 2013), shall be protected by stout exclusion fencing until completion of the development.
- 14) The area beneath the spread of the branches of the trees to be retained as detailed in the approved Tree Survey Report ref.BS5837:2012 (August 2013) shall not be used for the storage of building materials, plant, machinery or other items, or for vehicular access or for the burning of materials of any kind.
- 15) The development shall be completed in accordance with the archaeological written scheme of investigation approved under condition discharge 18/0625.
- 16) The development shall be completed in accordance with the acoustic measures set out in Noise Mitigation Plans (ref: 616.NMP.PA, 616.NMP.01.PA and 616.NMP.02.PA) (dated May 2025). The acoustic measures shall be maintained and retained thereafter.
- 17) Notwithstanding the details on the approved plans, the developer shall provide a highway and footway(s) to the northern site boundary midway between plots 67 and 102, to enable general access to be provided into the adjoining land to the north.

A scheme for the works involved in the formation of this highway with footway(s), shall be first submitted to and approved by the LPA. The approved scheme shall then be fully implemented/completed prior to the occupation of the 218th dwelling.

**\*\*End of Conditions\*\***