



Appeal Decision

Site visit made on 21 October 2025

by **P Hanna PGDip MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 February 2026

Appeal Ref: APP/F0935/W/25/3368804

Land to the south of Grange House, Aaronstown Lonning, Brampton CA8 1QR

- 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 Gerald Nixon against Cumberland Council.
- The application reference is 25/0069.
- The application sought planning permission for erection of 1 no. dormer bungalow, detached garage and associated parking and access without complying with conditions attached to planning permission reference 20/0457 dated 1 September 2020.
- The conditions in dispute are Nos 2 and 8 which state that:
 - (2) The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
 1. the submitted planning application form, received 8 July 2020;
 2. the location plan (Dwg no. 20-16-03), received 8 July 2020;
 3. the site plan and sections plan (Dwg no. 20-16-02), received 8 July 2020;
 4. the proposed floor, elevations and section plan (Dwg no. 20-16-01), received 8 July 2020;
 5. the design and access statement, received 8 July 2020;
 6. the planning statement, received 8 July 2020;
 7. the junction verge plan, received 8 July 2020;
 8. the contamination statement, received 8 July 2020;
 9. the Notice of Decision;
 10. any such variation as may subsequently be approved in writing by the Local Planning Authority.
 - (8) No development approved by this permission shall be commenced until a scheme for the conveyance of foul drainage to has been submitted to and approved in writing by the local planning authority. The development shall then be undertaken in accordance with the approved details.
- The reasons given for the conditions are:
 - (2) To define the permission.
 - (8) To prevent pollution of the water environment in accordance with Policy IP6 of the Carlisle District Local Plan 2015-2030.

Decision

1. The appeal is allowed and planning permission is granted for erection of 1 no. dormer bungalow, detached garage and associated parking and access at land to the south of Grange House, Aaronstown Lonning, Brampton CA8 1QR in accordance with the application ref 25/0069, without compliance with condition numbers 2 and 8 previously imposed on planning permission Ref 20/0457 dated 1 September 2020 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The original planning permission was granted on 1 September 2020, subject to commencement of the development within three years. The appellant indicates on the application form that development was commenced on 1 January 2021, and this is clarified in the Statement of Case as groundworks having commenced in April 2021 with foundations laid on 28th April. At my site visit in October 2025, I noted that the building was nearing completion.
3. The application subject to the appeal is described on the application form as removal or variation of a condition following grant of planning permission. Section 73 of the Town and Country Planning Act 1990 (the Act) allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted, in other words, the same development only subject to different conditions.
4. The scope of such applications is limited to consideration only of what conditions a grant of planning permission should be subject to.
5. The Council decided not to determine that application on the basis that there was no valid permission to vary, with reference to section 73(4). The reason given was that the development was not formally commenced, as pre-commencement conditions on the original planning permission had not been discharged.
6. However, section 73A of the Act concerns appeals against conditions where development has already been carried out. In *Lawson Builders Ltd v SSCLG [2015] EWCA Civ122* the Court of Appeal confirmed that there is a fluidity between sections 73 and 73A such that a decision maker considering an application under section 73 can proceed to determine the application under section 73A and consider the grant of retrospective permission for development already carried out and in addition impose conditions.
7. During the handling of the appeal, the Council conceded that, although the application form did not distinguish between sections 73 and 73A, the works were at least partly retrospective and that section 73A applies. The Council further accept, with reference to *Lawson*, that unauthorised development can be regularised under section 73A even where the original application was made under section 73. In other words, that the power given by section 73A can be used to grant permission retrospectively.

Main Issues

8. The Council was provided with the opportunity to update its appeal statement further to its concession that section 73A was applicable to the appeal. However, no concerns were raised. On that basis there are no main issues.

Other matters

9. The original permission was for erection of one dormer bungalow, detached garage and associated parking and access. The appeal proposal remains of the same description. Minor amendments are proposed to the design through non-compliance with original condition 2. The revisions include the removal of a dormer and its replacement with a rooflight on the south elevation, alterations to the fenestration arrangements on the north and west elevations, and grey slate tiles for the roof instead of slate. The design amendments are in keeping with the overall house design and sympathetic with the wider locality, and no heritage or other designation has been

brought to my attention that would otherwise suggest the design or materials as inappropriate. There is no suggestion by the Council that the appeal scheme is significantly different from that previously approved, and my judgement is that these amendments are not material changes to the original permission.

10. Non-compliance with original condition 8 is proposed in respect of the pre-commencement requirement for a foul drainage scheme and, in this respect, a scheme was submitted with the application. The scheme provides a 6-person packaged treatment plant with drainage field along with surface water soakaway. No concerns have been raised by the Council regarding the suitability of the scheme and, furthermore, the Council does not dispute that the scheme has been approved by the Building Control department. Interested parties assert that the capacity and functioning of the soakaways may have been compromised by heavy traffic. However, I have not been presented with substantive evidence to outweigh the Council's position on this matter. Therefore, I conclude that the foul drainage scheme is acceptable and meets the substantive requirements of original condition 8.

11. Surface water drainage is also proposed, in respect of which the Council's flooding team conclude that there will be no material impact on the existing highways nor any increase in flood risk at the site or elsewhere. Improvements to the access junction secured by original condition 5 would remain to be implemented prior to occupation, notwithstanding the ownership or otherwise of the road verges. If the appellant was unable to either discharge the requirements of the condition or obtain approval for alternative arrangements, the dwelling could not be occupied and no prejudice to road safety would occur. No revised site layout is proposed, meaning that the original site layout indicating lawns and retention of some hedgerows and trees would remain as the relevant approved plan for the purposes of the appeal permission, notwithstanding removal of trees to the west of the site, the absence of which I do not find to be harmful. The Council raise no objection in any of these respects.

12. As noted above, the scope of this application is limited to consideration only of what conditions a grant of planning permission should be subject to. In other words, it is not necessary for me to consider matters that go to the heart of the original planning permission. This includes representations made in respect of the increase in traffic in the locality, agricultural use or otherwise of the land, previous construction management and other activities at the appeal site and elsewhere, and suspected future uses of the land.

Conditions

13. Paragraph 57 of the Framework sets out that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Amendments have been made to the wording of the conditions attached to the original planning permission to ensure they remain appropriate to the appeal permission, as well as for clarity, brevity, or to avoid duplication, and to ensure accordance with the tests. Given that the development is not yet completed, where further details are required, the triggers for submission have been amended to prior to occupation.

14. There is evidently no need for a condition restricting commencement of development. A condition requiring the development to be carried out in accordance with approved plans remains necessary as the development is not yet complete. Allowing variation of approved plans as provided for in clause 10 of original condition 2

would risk significant changes being made to the development that circumvent the statutory routes to vary conditions, so this clause has been removed (condition 1). Conditions regarding gates, driveway surfacing and junction improvements are necessary in the interests of road safety (conditions 2, 3 and 4). Whilst some details of surface water drainage have been provided, a fully conceived scheme including maintenance is still required (condition 5).

15. The condition attached to the original permission requiring measures to prevent surface water discharge to the highway is not necessary given the consultation response from the flood and highways team. Original condition 8 is no longer necessary as a result of my above findings. As the development has not been completed, conditions for ground and floor levels, fencing, hours of operations, services and contamination remain necessary (conditions 6, 7, 9 and 10).

Conclusion

16. For the above reasons, I conclude that the appeal should be allowed and planning permission granted subject to the conditions in the attached schedule.

P Hanna

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall be undertaken in strict accordance with the approved documents for this planning permission which comprise the following:
 - a. submitted application form;
 - b. location plan (dwg no 20-16-03);
 - c. site plan and sections plan (dwg no 20-16-02) (approved under planning permission reference 20/0457);
 - d. proposed floor plans, elevations and section plan (dwg no 20-16-01 Rev A);
 - e. drainage arrangements layout plan (dwg no 20-412-DWG001);
 - f. drainage arrangements manhole schedule (dwg no 20-412-DWG002);
 - g. drainage arrangements pipe schedules (dwg no 20-412-DWG003);
 - h. design and access statement (approved under planning permission reference 20/0457);
 - i. planning statement (approved under planning permission reference 20/0457);
 - j. junction verge plan (approved under planning permission reference 20/0457);
 - k. contamination statement (approved under planning permission reference 20/0457); and
 - l. notice of decision.
- 2) Any access gates shall be hung to open inwards only away from the highway.
- 3) The surfacing of the access drive shall extend for at least 5 metres inside the site, as measured from the highway boundary prior to the dwelling being occupied and shall be carried out in accordance with details of construction and specification which shall have been submitted to and approved in writing by the local planning authority. The access drive shall be constructed in accordance with the approved details.
- 4) There shall be no occupation of the dwelling hereby approved until the works at the access junction of the Lonning, Paving Brow and Capon Tree Road have been completed in accordance with the approved land junction plan (approved under planning permission reference 20/0457).
- 5) Prior to occupation of the dwelling, a surface water drainage scheme, based on the hierarchy of drainage options in the Planning Practice Guidance and with evidence of an assessment of site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the local planning authority. The said scheme shall be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement standards and no surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed, maintained and managed in accordance with the approved details.
- 6) Prior to the occupation of the dwelling, a scheme detailing the relative heights of the existing and proposed ground levels and the height of the proposed finished floor levels of the dwelling and the detached garage, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

- 7) Before commencement of any further development or groundworks at the site, a protective fence in accordance with Figure 2 in BS5837:2012 shall be erected around the trees and hedges to be retained at the extent of the root protection area as calculated using the formula set out in BS5837:2012. Within the fenced off areas, no fires shall be lit, the existing ground levels shall not be raised or lowered, and no materials, temporary buildings or surplus soil or material of any kind shall be placed or stored thereon. The fence shall be retained at all times during construction works on the site.
- 8) No work associated with the construction of the residential unit hereby approved shall be carried out before 0730 hours on weekdays and Saturdays nor after 1800 hours on weekdays and 1300 hours on Saturdays nor at any times on Sundays or statutory holidays.
- 9) As part of the development hereby approved, adequate infrastructure shall be installed to enable telephone, broadband, electricity, and television services to be connected to the premises within the application site and shall be completed prior to the occupation of the dwelling.
- 10) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it shall be reported in writing immediately to the local planning authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be submitted and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to and approved in writing by the local planning authority prior to the occupation of the dwelling.

End of schedule