

Written Representations Appeal

Planning application 4/26/2115/0F1



Site	Land adjacent to 20 Lingmell Crescent, Seascale
Appellant	Mr Martin Rigg
Date	July 2026

Document Control

Document	Appellant's Full Statement of Case
Client	Mr Martin Rigg
Site	20 Lingmell Crescent, Seascale
Application	4/26/2115/0F1
Author	David Wright MRTPI, Fellpath Planning
Date	5 th September 2026

1.0 Introduction

- 1.1** This Statement of Case is submitted on behalf of Mr Martin Rigg in support of an appeal under section 78 of the Town and Country Planning Act 1990 against Cumberland Council's refusal of planning application 4/26/2115/0F1.
- 1.2** The application sought the change of use of a small triangular parcel of informal amenity grass adjacent to 20 Lingmell Crescent to residential garden, together with relocation of the existing pedestrian route to the site perimeter.
- 1.3** The Council refused permission on 2 June 2026 for one reason, alleging that the loss of an important area of open space would significantly erode estate character and cause landscape and visual harm, contrary to Policies DS4, N6 and N12 of the Copeland Local Plan 2021–2039, the National Planning Policy Framework and National Design Guide.
- 1.4** The appellant's case is that the Council has overstated both the function of this individual parcel and the degree of visual change. The land has no formal recreational facility, the pedestrian connection is retained, the more substantial open spaces within the estate remain unaffected, and the revised landscape-led treatment preserves the open and verdant appearance of the outer garden.

Decision sought

The appellant respectfully asks the Inspector to allow the appeal on the amended Landscape Plan WW/L01 Revision A.

2.0 Site and Surrounding Context

- 2.1** The site extends to approximately 0.03 hectares (around 311 square metres) and lies wholly within the settlement of Seascale. It is owned by the appellant and adjoins the side/rear garden of No. 20.
- 2.2** It comprises routinely mown grass with one Whitebeam tree. There is no play equipment, sports pitch, seating, formal recreation use or community facility. A pedestrian route crosses the land diagonally and connects Lingmell Crescent with Hallsenna Road.
- 2.3** The surrounding estate is a planned, mid-to-late twentieth-century residential area of semi-detached, terraced and detached homes arranged around curved streets and cul-de-sacs. Its character includes grass verges and incidental green spaces, but also established private gardens bounded by hedges, low walls and fencing. Larger and more functional open spaces remain nearby, including at Scawfell Crescent.



Figure 1: Site (highlighted in red) in the context of the wider estate and designated open spaces identified in the original Planning Statement are highlighted in green.

3.0 Appeal Proposal and Landscape Amendment

- 3.1** The planning use remains the same as the application: the land would become part of the residential garden serving No. 20. No dwelling, outbuilding, hardstanding, decking or other built structure is proposed. The appellant is willing to accept conditions controlling future development.
- 3.2** The original plan showed a 1.8 metre fence around the outer boundary. Following refusal, a Chartered Landscape Architect reviewed the site and prepared Landscape Plan WW/L01 Revision A. The revision retains the same site, use and pedestrian-route alignment but:
- limits the 1.8 metre screen fence to the private rear garden behind the principal elevation, returned to the outbuilding;
 - keeps the outer garden physically open, without a fence along the street or path edge;
 - retains the existing Whitebeam and introduces two fruit trees;
 - maintains the land as mown grass and preserves a verge between the route and highway; and
 - allows the entire visible outer area to continue contributing to the green street scene.

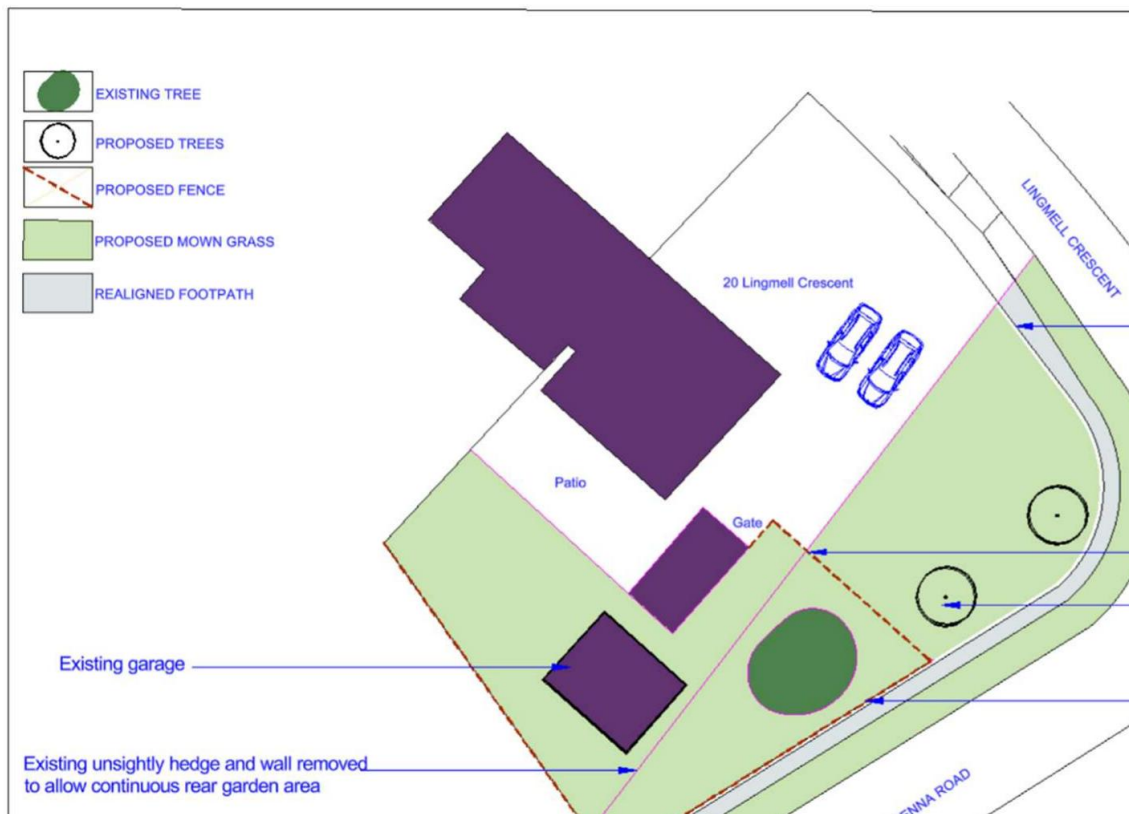


Figure 2: Landscape Plan WW/L01 Revision A – open outer garden, rear enclosure, retained route and tree planting.

4.0 Main Issue

- 4.1** The sole main issue is whether the proposal would cause unacceptable harm through the loss of open space and its effect on the character and visual amenity of the immediate locality and wider estate.
- 4.2** No reason for refusal concerns highway or pedestrian safety, residential amenity, ecology, biodiversity net gain, flood risk or drainage. Seascale Parish Council recorded a neutral response. The County Ecologist accepted the biodiversity-gain exemption and had no further comments.

5.0 Planning Policy and Legal Framework

- 5.1** Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. Policy interpretation is an objective legal exercise, while the application of policy and the conclusion on accordance with the development plan as a whole are matters of planning judgement: *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 and *R (Corbett) v Cornwall Council* [2020] EWCA Civ 508.
- 5.2** The adopted development plan includes the Copeland Local Plan 2021–2039, adopted on 5 November 2024. The most relevant policies are:
- DS4 – requires high-quality, locally distinctive development sympathetic to built and landscape character, with useful open spaces and accessible pedestrian routes;
 - N6 – protects and enhances landscape character and requires effects to be considered in proportion to the status and value of the landscape;
 - N12 – protects mapped open spaces and also applies to other open spaces where there is evidence that they are of value to the community;

- N9 – recognises that green infrastructure includes private gardens, grass verges and smaller open spaces; and
- DS5 – supports appropriate landscaping and long-term management.

- 5.3** The site is not identified as a protected open space on the adopted Policies Map. That is not conclusive: Policy N12 can protect unallocated land where community value is evidenced. It does, however, make the actual function, quality and value of this specific parcel central to the decision.
- 5.4** The national policy position changed materially after the Council's decision. The National Planning Policy Framework published on 17 August 2026 replaces the December 2024 Framework. Paragraph 3 confirms that national decision-making policies are material considerations which are to be read alongside the development plan. Annex A, paragraph 1 confirms that the policies in the August 2026 Framework must be taken into account in decision-making from the day of publication. The appeal should therefore be determined having regard to the August 2026 Framework.
- 5.5** The most directly relevant national decision-making policies are DM3 (Determining development proposals), DM6 (Use of planning conditions and obligations), S3 (Presumption in favour of sustainable development), S4 (Principle of development within settlements), HC7 (Development affecting existing recreational land and facilities), DP3 (Key principles for well-designed places), TR4 (Street design, access and parking) and N2 (Improving the natural environment).
- 5.6** Policies S3 and S4 are particularly important to the planning balance. The appeal site lies within the settlement of Seascale. S3 applies a presumption in favour of sustainable development and directs decision-makers to S4 for proposals within settlements. S4 states that development proposals within settlements should be approved unless the benefits would be substantially outweighed by adverse effects assessed against the national decision-making policies. S4 identifies a substantial adverse impact arising from the application of HC7 as one circumstance in which adverse effects are likely to outweigh benefits. The national policy question is therefore not simply whether the planning use of a grassed parcel changes, but whether the evidence demonstrates a substantial adverse impact when HC7 is properly applied.
- 5.7** Policy HC7 provides that development should not result in the loss of existing open space, sports and recreational buildings and land unless one of its stated tests is met, including where an assessment has clearly shown the land to be surplus to requirements. The NPPF glossary defines open space as open space of public value, including land which provides visual amenity. The appellant therefore proceeds on the basis that HC7 is relevant. The Westwood assessment provides proportionate, site-specific evidence on the parcel's function and value, concluding that its recreational value is low because of its small scale and that nearby open spaces continue to provide adequate recreational and amenity value. That evidence is directly relevant to the HC7 test and to the S4 assessment of whether any adverse effect is substantial.
- 5.8** In design and environmental terms, DP3 requires proposals to respond to context and integrate with and enhance their surroundings, with particular regard to nature, movement, public space and identity. N2 requires existing natural features of visual value to be conserved and enhanced where possible and appropriate landscaping to be used to integrate development into its surroundings. TR4 gives priority to walking and requires routes and streets to be safe, inclusive and attractive. The revised landscape-led arrangement directly responds to these policies by retaining the pedestrian connection, keeping the public-facing outer garden open and grassed, retaining the Whitebeam, providing additional tree planting and concentrating the 1.8 metre privacy fence adjacent to the established rear garden.

6.0 Function and Value of the Open Space

- 6.1** The Council describes the site as an “important” area of open space. Policy N12 requires that conclusion to be supported by evidence of value to the community. No evidence has been provided or cited by the Council that demonstrates this value to the community. There were no objections to the proposed development from any person or stakeholder in the community/ Furthermore there was no site-specific assessment of community use, recreational quality, deficiency, catchment or function that demonstrates this small parcel performs an important role.

- 6.2** The land provides visual greenery and accommodates a pedestrian route. Those functions are acknowledged. However, it has no formal or equipped recreational use, is small and privately owned, and sits close to larger open areas which remain available. The parish response is neutral rather than evidence of a valued community facility. Furthermore there has been plenty of verbal support from Parish Council members and the local Ward Councillor.
- 6.3** Our provided landscape assessment concludes that the site has low recreational value due to its scale and that nearby spaces continue to provide adequate amenity and recreational value. The route remains available and follows a logical perimeter alignment. The use as a well-kept, open garden would not extinguish the visible green contribution of the land.
- 6.4** The August 2026 Framework places the open-space issue within a clearer decision-making structure. HC7 is engaged on the cautious assumption that this privately owned parcel is nevertheless open space of public value because of its visual amenity and pedestrian function. The Westwood assessment is a proportionate assessment for a parcel of only around 311 square metres: it identifies low recreational value, confirms that more substantial nearby spaces continue to provide adequate recreational and amenity value, and retains the pedestrian connection. The Inspector is therefore invited to conclude that the parcel is surplus to any meaningful recreational requirement for the purposes of HC7(1)(a). In any event, the revised scheme retains the principal public-facing visual function of the land as an open, grassed and planted corner, so the practical adverse effect is limited rather than substantial. That is important when S4 is applied.

7.0 Landscape Character and Visual Amenity

- 7.1** The Council's assessment should distinguish the planning use of the land from its visible character. Residential gardens are themselves part of green infrastructure under Policy N9. A change to garden use does not necessarily result in the visual loss of green space, particularly where the land remains grassed, open and planted.
- 7.2** The revised plan retains the existing Whitebeam, adds two trees and leaves the outer boundary open. Views from Lingmell Crescent and Hallsenna Road would continue to be of a broad grassed area with trees and a curved pedestrian route. The only substantial enclosure would sit behind the principal elevation and beside existing domestic structures, where it would read as part of the established rear garden.
- 7.3** The estate is not characterised by a uniform absence of boundaries. The local area has timber fences, hedge-and-fence combinations, low stone walls and other enclosures within Lingmell Crescent and adjoining streets. The relevant question is therefore not whether any fence exists, but whether its position, height and landscape treatment preserve the defining openness of this corner.
- 7.4** The original full perimeter fence perhaps raised a concern because it created a continuous hard edge. The appeal amendment removes that feature from the outer garden. It therefore directly addresses the visual mechanism identified in dismissals such as 1 Wheelton Close and 68 Windmill Avenue (see below), where high fencing close to the highway disrupted an open, verdant pattern.

8.0 Relevant Appeal Decisions

Decision	Inspector's finding	Relevance
APP/Q3820/W/25/3376679 23 Downland Drive, Crawley Allowed, 7 April 2026	Small amenity land made a limited contribution compared with larger spaces. Limited-height enclosure and hedging retained verdant character.	Supports a site-specific assessment and the use of a 1m boundary restriction beside a path.
APP/J1915/W/22/3313455 4 Rushleigh Green Allowed, 21 September 2023	Small privately owned landscaped area had limited public benefit; retained/new landscaping could maintain its visual and green-infrastructure role.	Closely supports the proposition that garden use and landscaping can retain public-facing amenity.

Decision	Inspector's finding	Relevance
APP/X0360/W/23/3322810 1 Wheelton Close Dismissed, 24 January 2024	A hard 1.8m edge close to the highway eroded openness; revised plans were not accepted because parties had not had a fair opportunity to comment.	Distinguished by the open outer boundary and by submitting the amendment at the outset of a Part 2 appeal.
APP/B1930/W/25/3373570 68 Windmill Avenue Dismissed, 19 January 2026	A 2m fence enclosed a prominent corner verge aligned with open frontages; narrow planting was insufficient. New technical evidence was accepted where the Council could respond.	Reinforces why the removal of the outer fence is material and why the report should be considered with procedural safeguards.

- 8.1** Appeal decisions are not precedents and each case turns on its own facts. Collectively, they demonstrate that the decisive matters are the land's actual function, its relationship to larger spaces, the position and height of enclosures and whether landscaping preserves the public-facing green character.

9.0 Pedestrian Route, Highways and Accessibility

- 9.1** Pedestrian connectivity is retained rather than extinguished. The route is realigned around the perimeter on a clear and direct alignment, separated from the carriageway by a grass verge. The application evidence records that the Highway Authority raised no objection in principle subject to construction conditions.
- 9.2** A condition can require the replacement route to be constructed and made available before the existing route is obstructed and to remain unobstructed thereafter. That approach accords with Policy DS4. Policy TR4(1)(a)–(c), which gives priority to walking and requires safe, inclusive and attractive routes, and the movement and public-space principles within DP3(2).

10.0 Ecology and Biodiversity

- 10.1** The proposal retains the existing tree and introduces additional planting. The County Ecologist accepted that the development is exempt from the Biodiversity Gain Condition and raised no further comment.

11.0 Conditions and Mitigation

- 11.1** The appellant has submitted a separate schedule of suggested conditions drafted against national Policy DM6, the Planning Practice Guidance and *Newbury District Council v Secretary of State for the Environment* [1981] AC 578. DM6 requires conditions to be necessary, relevant, sufficiently precise and reasonable, and confirms that permitted development rights should only be restricted where there is clear justification.
- 11.2** The conditions would secure the approved plans, use of the land only as garden incidental to No. 20, delivery and retention of the replacement route, the open outer boundary, landscaping and replacement planting, retention of the Whitebeam and targeted removal of permitted development rights for buildings, hard surfaces and further means of enclosure within the appeal land.
- 11.3** Those controls address the Council's concerns at source and ensure that the visual character assessed by the Inspector is retained over time.

12.0 Planning Balance and Conclusion

- 12.1** The site makes a modest visual contribution as grassed land and as the location of a pedestrian route. That contribution is not ignored. The issue is whether the proposal would cause the significant harm to the character of the residential estate as alleged by the Council.
- 12.2** The land is not mapped as protected open space; there is no evidence of a formal recreational function or a site-specific community-value assessment; larger spaces remain; the route is retained; no building or

hardstanding is proposed; and ecology, highway safety and residential amenity do not give rise to refusal reasons.

- 12.3** Most importantly, the amended design preserves the outward appearance of an open grassed corner, retains the existing tree, adds new trees and limits the 1.8 metre fence to the established rear garden. It avoids the continuous hard boundary that has caused harm in dismissed appeal examples.
- 12.4** The proposal therefore complies with Policies DS4, N6, N9 and N12 when the development plan is read as a whole. It also accords with the August 2026 NPPF: DP3 because the revised treatment responds to the established estate context and preserves the open public-facing character; N2 because existing natural features are retained and enhanced through additional planting; and TR4 because the pedestrian connection is retained on a safe and legible alignment. The suggested conditions satisfy DM6 and address the Council's identified concerns at source.
- 12.5** The appellant respectfully requests that the appeal is allowed and planning permission granted on the basis of Landscape Plan WW/L01 Revision A and the suggested conditions. If the amendment is not accepted, the appellant maintains that the original scheme is capable of being allowed, subject to conditions the Inspector considers necessary.

13.0 Core Documents and Authorities

- Cumberland Council decision notice 4/26/2115/0F1, 2 June 2026.
- Fellpath Planning, Planning and Design & Access Statement, 20 March 2026.
- Westwood Landscape Design Ltd, Landscape Supporting Statement Revision A, 27 July 2026, and Landscape Plan WW/L01 Revision A.
- Copeland Local Plan 2021–2039, adopted 5 November 2024: Policies DS4, DS5, N6, N9 and N12.
- National Planning Policy Framework, August 2026: Introduction paragraph 3; Annex A paragraphs 1–2; Policies DM3, DM6, S3, S4, HC7, DP3, TR4 and N2; and the glossary definition of open space.
- National design guidance referred to by Policies DP3 and TR4 of the August 2026 NPPF, insofar as relevant to the appeal. • Planning Practice Guidance: Use of planning conditions.
- Tesco Stores Ltd v Dundee City Council [2012] UKSC 13; [2012] PTSR 983.
- R (Corbett) v Cornwall Council [2020] EWCA Civ 508.
- Newbury District Council v Secretary of State for the Environment [1981] AC 578.
- Appeal decisions APP/Q3820/W/25/3376679; APP/J1915/W/22/3313455; APP/X0360/W/23/3322810; and APP/B1930/W/25/3373570.

AI-use disclosure

This document was prepared by the appellant's planning agent with formatting assistance from generative artificial intelligence ("AI"). Furthermore AI has been utilised for initial research into appeal decisions that are related to the subject matter. Any information identified through that initial research was independently reviewed and checked against the relevant planning policy, guidance, case law and source documents before being incorporated into this submission.

The final wording, planning assessment, professional judgements and conclusions have been reviewed and approved by David Wright MRTPI, who accepts full professional responsibility for the content of the submission.

Artificial intelligence was not used to generate or alter any plans, photographs, site evidence or other visual material submitted as part of the appeal.