

# Lawful development certificate supporting statement

*Plot 4 North Lane Haverigg*

**Submitted by Fellpath Planning on behalf of Dilys Butler**

| Application particulars  | Details                                                                                                                        |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Application              | Certificate of lawfulness of existing operations under section 191 of the Town and Country Planning Act 1990                   |
| Local planning authority | Cumberland Council                                                                                                             |
| Site                     | Plot 4 ("Meadowcroft"), land at North Lane, Haverigg, Millom, LA18 4LX                                                         |
| Permission               | 4/26/2057/0B1, granted 13 April 2026                                                                                           |
| Operation relied upon    | Frontage drain excavation and pipe laying on 4 September 2026 and stone access-bed construction completed on 11 September 2026 |
| Material operation date  | 4 September 2026 drainage works; 11 September 2026 stone-bed completion                                                        |
| Statement                | David Wright MRTPI   Fellpath Planning   Draft 2   15 September 2026                                                           |

## The certificate sought

Fellpath Planning submits this statement on behalf of Dilys Butler in support of a certificate of lawfulness of existing operations under section 191 of the Town and Country Planning Act 1990. We ask Cumberland Council to certify that the access construction operations identified below and on the accompanying plan lawfully commenced permission 4/26/2057/0B1 before 13 October 2026.

The applicant relies on frontage drainage work undertaken on 4 September 2026 and the construction of a stone access bed completed on 11 September 2026. The material-operation case is advanced under section 56(4)(d), concerning operations in laying out or constructing a road or part of a road. It depends on the works forming part of the approved permanent access, not merely a temporary machinery route.

## 1 The site and planning permission

- 1.1 Plot 4 (Meadowcroft), land at North Lane, Haverigg, Millom, LA18 4LX, forms part of the permitted eight-dwelling development and associated infrastructure. The permission includes access arrangements, drainage and frontage works.
- 1.2 Permission 4/26/2057/0B1 was granted on 13 April 2026 under section 73 to vary Condition 2 of 4/24/2318/0B1 and amend the approved Plot 4 plans. The current approved master plan is drawing 25-38-P-09 Revision A, received by the Council on 8 April 2026. The Plot 4 drawings identified in Condition 2 were received on 17 March 2026.
- 1.3 Condition 1 requires the development to be commenced before 13 October 2026. The earlier permission chain comprises 4/23/2082/0F1 and 4/24/2318/0B1. We rely on operations undertaken after the April 2026 grant and comprised in its approved development. The case therefore does not depend solely on whether historical works implemented an earlier consent.
- 1.4 The approved master plan includes asphalt access surfacing and threshold drainage channels, marked “DC”, preventing runoff onto the highway. The approved Construction Traffic Management Plan (CTMP) identifies a shared entrance serving Plots 3 and 4. The September photographs show drainage excavation along the Plot 4 highway frontage.

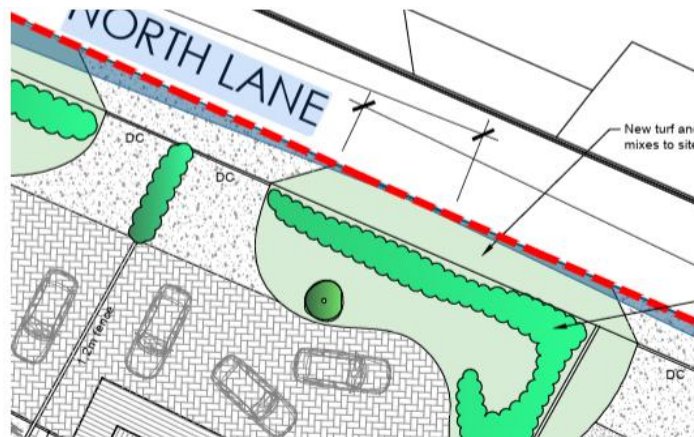


Figure 1 Master-plan extract supplied with the client correspondence showing the North Lane access and “DC” drainage notation. Not to scale.

- 1.5 We advance the September works as an initial phase of constructing the access authorised by the current permission. The CTMP specifies compacted MOT Type 1 sub-base beneath the access surfacing, with a drainage channel connected to the surface-water system.

## **2 The operations undertaken and supporting evidence**

- 2.1 Drainage works work along the front of the property was undertaken on 4 September 2026. The installed pipe is a perforated land drain. Two accompanying photographs carry a visible “4 Sep 2026” annotation and show an excavated frontage trench containing a black corrugated pipe. These images are reproduced as B1 and B2.
- 2.2 The images show excavated soil, sections of exposed pipe and coarse broken material within part of the trench. They do not show a completed proprietary threshold channel, asphalt surfacing or an identifiable final drainage connection. The operation presently evidenced is excavation and pipe placement.
- 2.3 The laying of a bed of stones to create a driveway for groundworks machinery was completed on 11 September 2026. Laydon of JJL Construction, Millom, as the applicant’s builder.
- 2.4 As well as this application being made before planning permission would be set to expire in October, we have provided an email chain dated 15<sup>th</sup> September, copies of the original photos where the copies digital dates state 16<sup>th</sup> September. Furthermore officers can carry out a site visit if they wish to see the commencement of development in person themselves. We assert that the works carried out are development as defined by the Town and Country Planning Act 1990 and they are in accordance with the approved planning permission.

### **3 Why the works constitute material commencement**

- 3.1 Section 56(2) of the Town and Country Planning Act 1990 treats development as begun when a material operation comprised in it first begins to be carried out. Section 56(4)(d) includes an operation in the course of laying out or constructing a road or part of a road. The statute addresses the beginning of the qualifying operation; it does not require completion of the entire residential scheme.
- 3.2 Our case is that excavation and installation of access drainage, together with laying the access formation, are physical operations in the course of constructing the approved access road. The master plan authorises access works, and the CTMP describes the access sub-base and drainage construction. Completion of the final asphalt surface is distinct from beginning the access construction operation.
- 3.3 We rely on the actual drainage and stone-bed operations described in Section 2, with their approved location and retained construction purpose.
- 3.4 The frontage trench is not presented as a trench intended to contain building foundations under section 56(4)(b). Nor is a perforated land drain automatically a main or pipe to building foundations under section 56(4)(c). The application relies on the access-road construction category and the specific evidence establishing that category here.
- 3.5 The September operations postdate the grant on 13 April 2026 and precede the implementation deadline. A section 73 permission is a separate permission, so those dates connect this application to the current consent rather than solely to an earlier start.
- 3.6 A lawful material start on part of a unitary permission can implement the permitted development without each dwelling being started separately. We ask the Council to determine the effect of these identified operations within the eight-dwelling permission. Separate plot ownership is not relied upon as severing the permission or excluding site-wide conditions.

## 4 The effect of the conditions on lawful commencement

- 4.1 The statutory material-operation question must be considered alongside the permission's conditions. Our case is that the identified access operation is authorised by the permission read as a whole, including the requirements governing drainage, visibility and the North Lane boundary. We do not invite the Council simply to disregard those conditions because they use the expression "no further works".
- 4.2 Whitley & Sons Co Ltd v Secretary of State for Wales (1992) 64 P&CR 296 establishes that operations must be permitted by the permission read with its conditions. R (Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin) distinguishes a timing requirement from a condition whose breach prevents implementation of the permitted scheme.
- 4.3 Greyfort Properties Ltd v Secretary of State for Communities and Local Government [2011] EWCA Civ 908 confirms that wording and substance matter. Access works were material operations in that case but did not lawfully implement the permission because of an unmet ground-level approval condition. The Court considered both the condition's express restriction and its importance to the permitted development. Greyfort also discusses Whitley and Hart Aggregates; paragraphs 6–19 and 23–34 are relevant.
- 4.4 This application differs in an important respect. Conditions 4–6 prescribe physical measures or an existing physical state against approved details. They do not require a new scheme to be submitted to and approved in writing before the described measures can be undertaken. There is therefore no outstanding formal discharge requirement under those conditions merely because no separate approval-of-details decision has been obtained.
- 4.5 We submit that Condition 4 allows the physical operations necessary to implement its specified runoff measures, while preventing unrelated further construction until all those measures are in place. That construction allows the condition to be performed. Our reliance on the 4 September drainage operation therefore requires proof that it actually delivers part of the approved access/runoff infrastructure. The stone-bed operation must separately be related to that construction sequence; it is not exempt from the condition merely because machinery uses it.
- 4.6 The material-operation and condition-compliance questions are addressed together in Sections 5–6.
- 4.7 The application consequently rests on a particular approved access operation and the proper scope and satisfaction of the conditions.

## **5 Condition 4 and the approved drainage measures**

- 5.1 Condition 4 requires all measures shown on master plan 25-38-P-09 Revision A to prevent surface water discharging onto or off the highway to be implemented before further works. Those measures must remain operational and be maintained for the lifetime of the development. The master-plan key identifies asphalt driveways to highway standards with threshold drains preventing surface-water discharge onto the highway.
- 5.2 The applicant has undertaken frontage drainage excavation and pipe placement, supported by dated photographs and her email.
- 5.3 The sequence is drainage work on 4 September and stone-bed completion on 11 September 2026. These dates evidence construction activity, not necessarily the date when all runoff protection became operational.
- 5.4 Conditions 3 and 16 require conformity with the Kingmoor Consulting June 2023 Flood Risk Assessment and Drainage Report, with no surface water draining directly or indirectly to the public sewer.
- 5.5 Conditions 13 and 14 require completion of the approved accesses before the relevant occupation/use and bound surfacing for at least five metres inside the site. We do not rely on the stone bed as finished asphalt or bound surfacing. Those later triggers do not postpone Condition 4 runoff measures or the construction-period controls in the CTMP. The certificate sought leaves those continuing obligations in place.

## **6 Conditions 5 and 6 and other operative requirements**

- 6.1 Condition 5 requires 60-metre visibility in both directions at each approved access, measured from 2.4 metres down its centre with reference to the nearside channel line. It requires the splays before general development and prevents structures, vehicles, objects or vegetation obstructing them thereafter.
- 6.2 B1 and B2 show a post-and-wire/gate frontage without a continuous wall on the Plot 4 side. Where the approved sightlines are already provided, no additional clearance work or separate approval-of-details application is required. Vehicles, neighbouring walls, materials and vegetation visible in the images must nevertheless be assessed against the actual splay geometry.
- 6.3 Condition 6 concerns the existing North Lane site boundary wall identified by the approved plans. B1 and B2 show fencing/gate posts rather than a continuous wall at Plot 4; a wall on the opposite side of the road is not automatically the wall controlled by this condition. No wall needs to be erected merely to lower it.
- 6.4 Condition 7 requires implementation of the approved FOX-AD CTMP throughout construction. It specifies power-washer cleaning of wheels and entrances, daily review of the road, contained parking/turning and sheeting of relevant loads. The wheel wash facilities remain in situ and where present when works were carried out between the 4<sup>th</sup> and 11<sup>th</sup> September.
- 6.5 Conditions 3, 16 and 17 also govern drainage, flood-risk and ecological measures during relevant work. Conditions with later installation, occupation or use triggers remain applicable, including the written agreement required by Condition 12 before biodiversity measures are installed.
- 6.6 This application seeks planning-law certification of identified existing operations. It does not certify compliance with separate highway consents, landownership rights, Building Regulations or environmental-permitting requirements, nor authorise future works without the permission's continuing conditions.

## **7 The evidence and requested certificate**

- 7.1 This is an application under section 191 for existing operations. The applicant relies on express permission and authorised implementation. The question is the lawfulness of the identified operations at the application date. The application does not seek a fresh assessment of the planning merits of the approved eight-dwelling scheme.
- 7.2 The applicant bears the burden of establishing the case on the balance of probabilities. A contemporaneous email dated 15<sup>th</sup> September gives a specific 4 September drainage-work date and 11 September stone-bed completion date, identifies her builder and explains the photographic chronology. B1 and B2 corroborate excavation and pipe placement with a visible 4 September date annotation. The completed factual accounts and plan comparison connect these events to the approved access and the operative conditions.
- 7.3 The construction sequence is advanced as implementation of access infrastructure comprised in the April 2026 consent, not mere clearance or an intention to build.
- 7.4 We submit that the evidenced works, once their retained access-construction purpose and the applicable condition state are established as set out above, are operations in the course of constructing the approved access under section 56(4)(d). They were undertaken in September 2026, before 13 October 2026.
- 7.5 Conditions 4–6 prescribe physical compliance rather than a new approval-of-details submission. The absence of a conventional discharge decision is not, of itself, an outstanding approval requirement under those conditions. We ask the Council to determine the lawfulness of the described operations on the actual construction and condition evidence, without treating the application as a fresh assessment of the scheme’s planning merits.

### **Proposed certificate description**

“Existing operations comprising excavation and pipe laying for frontage access drainage undertaken on 4 September 2026 and construction of the access stone formation completed on 11 September 2026 at Plot 4, North Lane, Haverigg, being operations comprised in permission 4/26/2057/0B1 and constituting lawful material commencement of that permission on 11<sup>th</sup> September 2026.”

### **Conclusion**

- 7.6 We respectfully request that Cumberland Council issue a certificate under section 191 for the precisely identified existing operations, recording their lawful implementation of permission 4/26/2057/0B1 before its deadline. The applicant has carried out works that constitutes development and that is in accordance with their grant of planning permission.

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For and on behalf of Dilys Butler  
September 2026

## Appendix A Supporting documents and authorities

| Exhibit | Document                                                                                       |
|---------|------------------------------------------------------------------------------------------------|
| A1      | Appendix B: two dated 4 September drainage-work images (B1 and B2).                            |
| A2      | Dilys Butler's email of 15 September 2026 at 19:16, supplied in email and photos 15-09-26.pdf. |

### Legislation and guidance

[Town and Country Planning Act 1990 section 56](#)

[Town and Country Planning Act 1990 section 191](#)

[Planning Practice Guidance lawful development certificates](#)

[Planning Practice Guidance section 73 permissions](#)

### Court authority

[Greyfort Properties Ltd v Secretary of State \[2011\] EWCA Civ 908](#)

Whitley & Sons Co Ltd v Secretary of State for Wales (1992) 64 P&CR 296 and R (Hart Aggregates Ltd) v Hartlepool BC [2005] EWHC 840 (Admin) are addressed through the Court of Appeal's discussion in Greyfort.

### Approved local authority documents

[4/26/2057/0B1 decision notice](#)

[Approved master plan 25-38-P-09 Revision A](#)

## Appendix B Photographic evidence

B1 and B2 are reproduced from the photographs supplied with Dilys Butler's email of 15 September 2026. Each carries a visible 4 September 2026 annotation. Her email independently identifies that as the drain-work date. The captions describe only the features visible; the complete original files will establish filenames, capture times and viewpoints.

### B1 Frontage drainage excavation beside North Lane



Source: supplied PDF page 2. Annotated 4 Sep 2026. The image shows a black corrugated pipe in an excavated trench beside North Lane, adjacent to a metal gate and timber post. It records excavation and pipe placement, not a finished threshold channel or proven outlet.

### B2 Frontage trench and pipe from the opposite view



Source: supplied PDF page 3. Annotated 4 Sep 2026. The image shows exposed corrugated pipe, coarse broken material and excavated ground along the post-and-wire frontage. It records a different view of the drain-work stage. Vehicles, walls and materials visible along the road need assessment against the measured splays.