

JERICO PLANTATION, REAR OF HILLCREST AVENUE AND WOODLANDS AVENUE, WHITEHAVEN – DISPOSAL OF LAND

LEAD MEMBER: Councillor A Holiday, Portfolio Holder for Effective Leadership/Asset Management.

LEAD OFFICER: Cath Coombs, Acting Head of Leisure and Environmental Services.

REPORT AUTHOR: Clinton Boyce, Legal Services Manager.

SUMMARY AND RECOMMENDATION:

Summary: Resolution B of Executive decision EXE/08/0060 (16/09/08) requested that a further report be made to the November meeting of the Executive detailing the outcome of negotiations and proposing a way forward in respect of the disposal of land forming Jericho Plantation at Hillcrest. This report deals with such matters and makes appropriate recommendations.

Recommendations:

(a) that the land shown hatched on the attached plan and forming part of the Jericho Plantation be disposed of on the terms set out in Appendix A to the report and contained in paragraph 1 of the supplementary report in part II of the agenda;

(b) that any amendment to the terms, other than price and non-minor boundary changes, be delegated to the Chief Executive in consultation with the Portfolio Holder; any amendment to price or other boundary changes to be referred back to the Executive; and

(c) that the sum of £15,500 from the capital receipt be set aside for minor capital improvements to the retained woodland; that the balance of the capital receipt be credited to the land management budget.

1. BACKGROUND

1.1 Members will recall that the Executive at its meeting on the 16th September 2008 received a report from the OSC Economic Development and Enterprise Committee regarding the proposed disposal of land forming the Jericho Plantation which is located between Hillcrest Avenue and Woodlands Avenue, Whitehaven and is shown by a bold black line on the plan attached as Appendix B to this report.

1.2 Following consideration of the OSC report the Executive resolved that:

- "A. That the recommendations set out in the report be noted and that a further report be submitted to the Executive at a later date on implications arising from the recommendations; and
- B. That in respect of the proposed disposal of land that:
 - (i) the proposed disposal be advertised in accordance with section 123(2A) of the Local Government Act 1972;
 - (ii) that negotiations take place with Abbeyfield for the disposal to them of the land which they require for development;
 - (iii) that negotiations take place with the residents group for the disposal of the woodland to them with a view to implementing a sustainable woodland management plan;
 - (iv) that should recommendation set out in (iii) above be unsuccessful negotiations take place with Abbeyfield for the disposal of the woodland area; and
 - (v) that a report be made to the Executive meeting on the 11th November detailing the outcome of negotiations and proposing a way forward for the disposal of the land".
- 1.3 This report takes members through each of the above recommendations at B above and then makes appropriate recommendation to conclude this matter.

2. STATUTORY ADVERTISEMENT

- 2.1 Where a local authority wishes to dispose of open space land it must give public notice of its intention to dispose. The notice must appear in a local newspaper on two consecutive weeks and in this case appeared in the Whitehaven News on the 25th September and the 2nd October, with a closing date of the 13th October for comments to be made.
- 2.2 Seventeen replies were received within time, one on the 16th October. Paragraph 2 of the supplementary report in part II of the agenda lists the names and addresses of those making comments. Copies of the replies are available on request to members of the Executive and ward councillors from the Legal Services Manager.
- 2.3 All eighteen replies are unanimously against any kind of disposal to the owners of Johnson House ("Abbeyfield"). Many simply state that they object to the sale. Others specify reasons and these can be summarised as follows:
 - (1) Present drainage problems would be exacerbated, the drains are not fully adopted and further use will put additional pressure on the drainage system; damage could be caused to the water table;
 - (2) the area is covered by a tree preservation order; it is an ancient woodland;
 - (3) wildlife would be affected; there have been recent sightings of red squirrels and their habitat will be disturbed by the extension work; bats live in the woodland; many species of birds have been seen;
 - (4) the land is supposed to be for the use of the people residing on the Hillcrest Estate (chiefly as a play area for children within sight and sound of residents' houses); it is also used by elderly people for walking;
 - (5) what would happen to the land in the future if use changed or Abbeyfield were unable to sustain the building in the future;

- (6) in 1999 the Council refused planning permission for another piece of this land on the basis that it would result in the loss of a significant number of mature broadleaf trees to the detriment of the general amenity value of Jericho Plantation; and
- (7) loss of privacy and light.

2.4 Various comments can be made on the representations as follows:

- (1) The planning permission for the extension requires at condition 7 a detailed scheme for the disposal of foul and surface water to be submitted to the local planning authority prior to any work commencing. The development should be carried out in accordance with that scheme. This allows the Council to assess the drainage position and ensure that the development does not cause flooding. Abbeyfield are cautious of the drainage issues through historical litigation and are quite adamant that no development will occur unless proper drainage is in place for the new development and that the water table will not be affected by such;
- (2) Tree preservation orders are not affected by a sale and would remain in place. Planning condition 2 set outs certain requirements to protect specified trees during development work;
- (3) If the recommendation is agreed most, if not all, wildlife would be unaffected;
- (4) The land has over the years developed as a public woodland. At the outset it started as an area of land which could not be built on. The former Whitehaven Borough Council purchased the land from J & W Robson Limited in 1967. No covenants however restricting use or requiring the land to be used as a woodland were included;
- (5) This cannot be predicted. This risk already exists with the existing building and the extension is unlikely to increase this risk;
- (6) If the recommendation is agreed most, if not all, trees would remain; and
- (7) If the recommendation is agreed two, possibly three properties would be affected. The planning process seeks to minimise the loss of privacy; the three properties are set back some distance from the development itself.

3.0 NEGOTIATIONS WITH ABBEYFIELD

3.1 Officers met with Abbeyfield to discuss terms for the disposal of the land required for their development and the woodland. The meeting was conducive with Abbeyfield being very helpful in trying to meet the needs of residents and heads of terms were settled for the disposal of both areas of land, the woodland being conditional upon the wishes of the residents. As it turned out the heads of terms had to be revised following the meeting with the residents, the revised terms then proving to be unacceptable to Abbeyfield due to legal and practical issues.

4.0 NEGOTIATIONS WITH THE RESIDENTS

4.1 Officers met with some of the residents affected by the proposals and a ward councillor. The meeting was helpful in that it allowed residents to be advised of what measures the Council was putting in place to protect the woodland and ensure that public access and residents' accesses were maintained. The meeting

allowed for the heads of terms proposed to Abbeyfield (other than price) to be discussed. The residents wished to see amendments to the location of the access path and to the method in which the woodland was maintained. In respect of the access path this was placed alongside the boundary of number 18 and was relocated to a more central location in the access strip away from the boundary. In respect of the maintenance of the woodland the residents wished to see a woodland management plan put in place with that plan being approved by the Council's Landscape Technical Officer following consultation with residents whose properties adjoin the woodland. The residents wished to see the woodland protected as far as possible.

- 4.2 The residents indicated that they did not wish to purchase or lease the woodland. This was based on the legal difficulties in holding together a residents group and the practical difficulties of undertaking work themselves or raising funds to employ a contractor to manage the woodland. These reservations are understandable.
- 4.3 The residents concluded that they did not wish to see the Council dispose of the land. However if a sale must proceed then the various covenants being imposed would alleviate many of the residents' concerns. Overall the residents approached negotiations and dealt with the matter in a professional and objective way.

5.0 FURTHER NEGOTIATIONS WITH ABBEYFIELD

- 5.1 Unfortunately the revised terms proved unacceptable to Abbeyfield. The realignment of the access path was not a concern. The problems arose from the woodland management plan. Abbeyfield sought advice from their regional and national bodies, the former grant funding the development, both of whom now raised concerns about the woodland being taken on at all. This was for two reasons.

Firstly purchasing woodland for public use introduced an element of woodland management or the provision of woodland for third party use and this may exceed Abbeyfield's legal powers. Purchasing land as part of a garden for one of their residential homes is one thing; purchasing woodland for use by the general public another. Abbeyfield's governing document is dated the 20th June 1963 and cites its objects as being the 'relief of aged impotent and poor persons of all classes, for the advancement of religion and education and for other charitable purposes beneficial to the community including the provision of houses, etc for lonely, old or handicapped persons'.

Secondly the cost, time and energy which would be required in maintaining the woodland would be prohibitive. Whilst the current management committee were enthusiastic about the woodland this may change over time as the committee changes.

Overall they were advised not to purchase the woodland. It is disappointing that this point was not resolved earlier. Of greater concern was that Abbeyfield also indicated that due to the reduction in house prices generally that they also wished to see a reduction in the price previously offered.

- 5.2 A further discussion was held with Abbeyfield. Disappointment was expressed at Abbeyfield's wish to reduce the price. Negotiations proved conducive with Abbeyfield standing by their original price. Abbeyfield asked that the Council sells them the land required for the development and that the woodland be retained by the Council. They state that this would see benefits all round, namely:

- (1) the residents' concerns are met in relation to the woodland and drainage;
- (2) the Council obtains a capital receipt;
- (3) an investment of almost £1,000,000 is made into the local economy as a result of the new build;
- (4) sheltered accommodation is provided for 9 lonely elderly people; and
- (5) the Council will receive ongoing revenue income from additional council tax/NNDR brought about by the extension.

6.0 OPTIONS

6.1 The options for members to consider are:

- (1) That there is no disposal of any land. This means that the benefits mentioned by Abbeyfield in 5.1 above will not occur. Conversely it achieves the residents' wishes who do not wish to see any development occur. Mention has been made in the past that a part disposal would be against policy. There is a garden land disposal policy adopted by the Community Services Committee on the 9th April 1997 which reads:

"In order to provide a consistent response to enquiries it is proposed that a policy be implemented whereby enquiries for sales of garden land extensions are resisted unless there are good estate management grounds to the contrary. These grounds would be as follows:

(a) If disposed of the land parcel would improve this Council's land boundaries.

(b) Where it would be in the best interests of this Council by reducing maintenance costs significantly.

(c) Where the land has no potential future use.

(d) Where the request is for the Council to sell the whole of its piece of land and the land has no other potential use".

This policy has been applied to other land disposals to prevent fragments being sold. However the policy as written is restricted to garden extensions. Also in this case grounds (b) and (c) could apply to justify the disposal even if the policy did apply. Other than the above there is no specific policy which prevents part disposal. Any difficulties in gaining access, if they did exist, could be overcome by the grant of easements;

- (2) That Abbeyfield are advised that the Council will only sell the development area and the woodland. In other words- all or nothing. This may leave Abbeyfield with a legal problem which could be insurmountable without an amendment to their charitable objectives being made to include woodland management. It could also cause Abbeyfield future problems. If a new management committee was not as enthusiastic as the present one then the Council may end up having to enforce covenants and undertake work in default. Members will also recall that the OSC investigating group commented that 'it could be considered an unreasonable request to ask a

not for profit organisation to take over the management of the woodland when they do not have the staff or resources to do this'; and

- 6.1.3 Sell Abbeyfield the area they need and retain the woodland. This is the option recommended to members and is considered in detail in paragraph 7.

7.0 RECOMMENDATION

- 7.1 It is recommended that the land shown hatched on the plan is sold to Abbeyfield on the terms set out in Appendix A to this report and paragraph 1 of the part II report. This means that the Council retains the woodland and the access area. The Council's surveyor has confirmed that the price offered is the best consideration that can reasonably be obtained.
- 7.2 The Overview and Scrutiny Committee commented that if a disposal took place that the Council should ensure that the woodland is in a reasonable condition prior to transfer. Following an inspection of the site works costing in the region of £2,400 have been identified as necessary. These include pruning dead wood and hung up branches and the section felling of a dying large ash and a large sycamore suffering from honey fungus. There are 32 sycamores, 4 ash and 2 oaks overhanging the network of paths within the woodland. Six days work at £400/day is estimated. This work has been ordered on health and safety grounds.
- 7.3 The problem with the woodland is that it has over the years developed into a public amenity which residents now enjoy whilst the Council, on the other hand, has allowed the woodland to develop as a natural woodland and wildlife habitat with limited intervention. Unfortunately the two do not go together very well and precautions need to be taken to protect the public enjoying the woodland. Now that the Council is aware of the extent of the use made by residents a proper woodland management plan needs to be put in place with regular inspections and ongoing maintenance work being undertaken. Ideally a proper access path being laid in the location shown by crosshatching on the plan would allow access to be taken by residents rather than residents using the Johnson House access way.
- 7.4 If the sale of the development land takes place then part of the proceeds can be used to carry out minor capital improvements and enhancements to the woodland in the short and medium term. Immediate capital improvements/enhancements to be funded would be:
- 7.4.1 the £2,400 referred to above, but allow £3,000 to include one day's work contingency;
- 7.4.2 the laying out of a proper access path using gravel compound along the cross-hatched area- one off cost of £2,000 – together with any other enhancements to existing paths required for health and safety purposes – allow £1,000; and
- 7.4.3 hygiene formative pruning, relaying of the access path and any other improvement works identified as a result of a woodland management plan review- allow £500 per year.

In the first year the minor capital improvements will amount to approximately £6,000; in subsequent years they could vary with various improvements being identified as a result of a woodland management plan and its review. Allowing £500 per annum is reasonable. Over the remaining 19 years this would amount to £9,500 providing a total expenditure of around £15,500. As the money derives

from a capital receipt it can only be spent on capital expenditure and not revenue expenditure. It seems reasonable however that the woodland itself should benefit from the capital receipt particularly given that only a limited amount of works have been undertaken in recent years. This expenditure for capital purposes will allow the woodland to be preserved and to allow residents to continue to use the woodland safely.

- 7.5 This recommendation will allow Abbeyfield to proceed with the development, the Council to receive a capital receipt part of which can be applied for immediate and future minor capital improvements and the residents to have some reassurance that the important and larger part of the woodland remains in local authority ownership to be preserved as a woodland. The recommendation is a fair compromise all round.

8.0 RECOMMENDATION APPROVED BUT DEVELOPMENT FAILS

- 8.1 If the recommendation is approved but the sale does not take place due to Abbeyfield not having their grant application approved or due to other budgetary issues then the initial capital expenditure referred to in 7.4.1 will be unplanned expenditure and borne by the aboricultural budget. Other than basic improvements from time to time identified as being necessary no other works will be carried out including improvements to the access path.

List of Appendices

Appendix A: Proposed head of terms; and
Appendix B: Plan.

List of Background Documents

Responses to statutory consultation;
Appendices A and B; and
Details of works costs.

List of Consultees

Head of Development Operations (reference CAL)
Head of Finance and Business Development (reference JC and PR)
Head of Legal and Democratic Services
Acting Director of Quality of Life
Acting Head of Leisure and Environmental Services
Open Spaces Manager
Landscape Technical Officer
Capita Symonds (reference BG)
Portfolio Holder.

CHECKLIST FOR DEALING WITH KEY ISSUES

Please confirm against the issue if the key issues below have been addressed. This can be by either a short narrative or quoting the paragraph number in the report in which it has been covered.

Impact on Crime and Disorder	No such issues have been identified
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Impact on Sustainability	The recommendation supports sustainability
Impact on Rural Proofing	Not applicable as area is urban
Health and Safety Implications	Addressed within report
Project and Risk Management	Not applicable as issue is one-off land disposal
Impact on Equality and Diversity Issues	The recommendation does not support access for disabled persons. Whilst the access way could be made up to enable wheelchair access the terrain of the woodland does not facilitate comfortable wheelchair use
Children and Young Persons Implications	As health and safety
Human Rights Act Implications	Not applicable
Monitoring Officer comments	Nothing to add
Section 151 Officer comments	Only minor capital improvements are permitted; delete reference to contingencies funding immediate works if sale does not proceed

Please say if this report will require the making of a Key Decision NO

HEADS OF TERMS

LAND AT JERICHO PLANTATION, WHITEHAVEN

**112/PO/BG
09/10/08**

- Vendor: Copeland Borough Council, The Copeland Centre, Catherine Street, Whitehaven CA28 7SJ.
- Purchaser: The Abbeyfield (Whitehaven) Society Limited, whose registered office is Johnson House, Hillcrest Avenue, Hillcrest, Whitehaven, Cumbria CA28 6SU (company registration number 00766744).
- Land: The plot of land shown hatched black on the attached plan, the north boundary being contiguous with the south boundary of the property transferred to the Purchaser by the Vendor on the 21st February 1985.
- Price: Part II report.
- Use: Use shall be for the development of an extension to the current Johnson House;
- Planning: The extension to be constructed on the land shown hatched black on the attached plan is to be constructed in accordance with the planning permission application dated 6th March 2008 and subsequent Notice of Grant dated 29th May 2008, reference 4/08/2107/0 – the Purchaser shall conform to all conditions of grant stated therein.
- Boundaries: The Purchaser is to be responsible for those boundaries which are currently the responsibility of the Vendor in the title deeds. Note- there is a fencing covenant contained in the Conveyance of land to the Vendor in respect of the boundary marked with an inward 'T' on the plan.
- Covenants: The Property is sold subject to all existing covenants, conditions, easements, reservations and other matters contained or referred to in the documents of title.
- Indemnity: The Purchaser is to indemnify the Vendor against any costs, claims or actions howsoever arising out of the Vendor's use and development of the land. In particular the Purchaser shall indemnify the Vendor against all or any claims, actions or liabilities arising from the condition of un-adopted sewers, drains, culverts, pipes or other watercourses including the water table laid or located

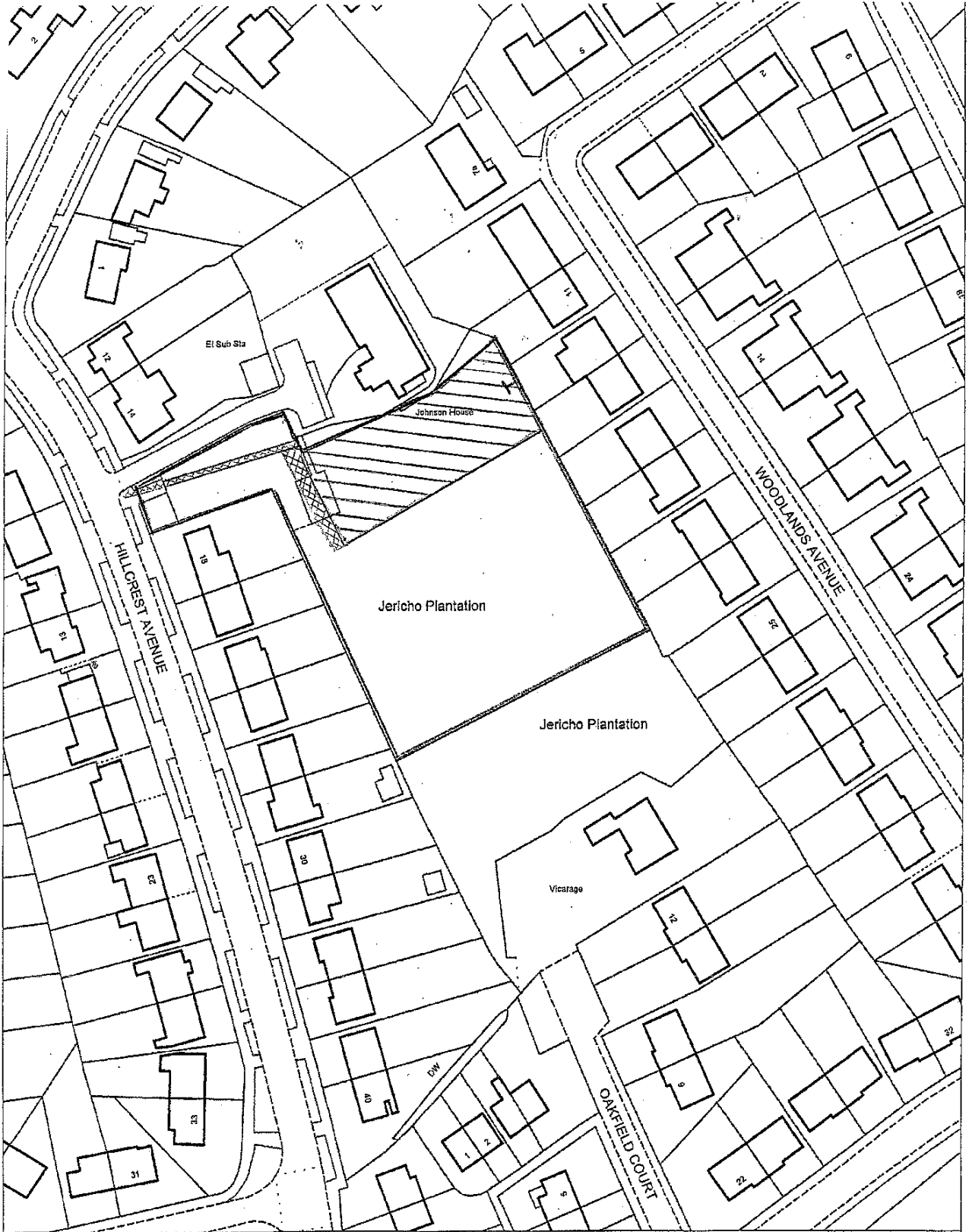
within the Property or arising from any flooding on the Property which is caused by the negligence of the Purchaser.

Costs: The Purchaser is to bear the Vendor's reasonable legal and surveyor's fees in agreeing and documenting the transfer of the Property such costs to be capped at a maximum of £1,000.00.

Residents' access: The Purchaser is not to interfere with the accesses currently in place from those properties which abut the Property provided that:

- (a) if the person having the benefit of the fencing covenant referred to in the above Conveyance tries to enforce that covenant and that such enforcement, in the opinion of a solicitor, is likely to be successful, then the Purchaser shall use reasonable endeavours to seek an amendment of the covenant to allow such accesses to continue; and
- (b) if such endeavours fail then the Purchaser shall assist (provided that the same does not result in the Purchaser incurring expenditure) the residents of the properties affected in negotiating with the person having the benefit of the covenant to secure continued access.

Access for Maintenance The Purchaser is to allow vehicular access over its existing access way to Johnson House to enable the Vendor to obtain, if necessary, access to the woodland for maintenance purposes.



JERICO PLANTATION
 HILLCREST
 WHITEHAVEN

Regeneration
 Copeland Borough Council
 The Copeland Centre
 Catherine Street
 Whitehaven
 Cumbria CA28 7SJ



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Date: 10/09/08 Scale: 1:1,000