

S78 Town and Country Planning Act 1990 (as amended)

Land at Harras Moor, Whitehaven

Appeal by Homes England against a refusal of Planning Permission by Copeland Borough Council for a development of up to 370 dwellings with associated open space and infrastructure

(LPA Reference: 4/18/2287/001)

Appellant's Amended Statement of Case

April 2023

Contents

1.	Introduction.....	3
2.	Background to the Appeal.....	6
3.	Main Issues.....	9
4.	Compliance with Relevant Development Plan Policies.....	10
5.	Weight to be Afforded Relevant Development Plan Policies	24
6.	Harm Arising from Conflict with Relevant Development Plan Policies	26
7.	Other Material Considerations	27
8.	The Benefits of the Proposed Development.....	43
9.	Planning Balance.....	45
10.	Planning Conditions and S106 Contributions	46

Appendices

Appendix I	Technical Note Prepared by Vectos on Transport Matters
Appendix II	Technical Note prepared by Tetra Tech on Ecology and Biodiversity Net Gain
Appendix III	Technical Note prepared by Tetra Tech on Flood Risk and Drainage
Appendix IV	Minutes of a Meeting of Copeland Borough Council on Tuesday 21 st March 2017
Appendix V	ELP Action List prepared by the Inspector (EiP Document CBC25A)
Appendix VI	Planning Panel Report 18 September 2019
Appendix VII	Planning Panel Report 16 August 2022 (note that the date on the title page is incorrect)
Appendix VIII	Transcript of Planning Panel Meeting 16 August 2022
Appendix IX	Arup Transport and Highways Review 27 November 2019
Appendix X	Transcript of Meeting between Planning Panel Members and Arup
Appendix XI	Planning Panel Update Reports 1 September 2021 and 24 November 2021

Report Title: Statement of Case

Prepared by: Craig Alsbury and Katherine Smith

Status: Final

Draft date: 28 April 2023

For and on behalf of Avison Young (UK) Limited

1. Introduction

- 1.1 This Statement of Case ("SoC") has been prepared in accordance with the guidance set out in the Procedural Guide to Planning Appeals (England) (December 2022), published by the Planning Inspectorate ("PINS"). Appended to this main document are Technical Notes that have been prepared by Vectos on highway matters and Tetra Tech in respect of ecology and flood risk and drainage matters.

The Appellant

- 1.2 The appeal is made by Homes England against the decision of Copeland Borough Council ("the Council") to refuse to grant outline planning permission for a residential development of up to 370 dwellings with associated open space and infrastructure on land off Harras Moor, Whitehaven (LPA reference 4/18/2287/001). On 1 April 2023, Copeland Borough Council and Cumbria County Council were abolished and their functions transferred to Cumberland Council, a new unitary authority covering the former Allerdale Borough, Carlisle City, Copeland Borough and part of the former administrative area of Cumbria County Council. For the purposes of this appeal references to "the Council" refer to the former Copeland Borough Council. The new Unitary Authority will be referred to as "Cumberland".
- 1.3 Homes England is the Government's housing and regeneration agency. It was set up by the Government under the Housing and Regeneration Act 2008. Its objectives are to:
- **Unlock land** – Unlock public and private land where the market will not, to get more homes built where they are needed;
 - **Unlock investment** – Ensure a range of investment products are available to support housebuilding and infrastructure, including more affordable housing and homes for rent;
 - **Increasing productivity** – Improve construction productivity;
 - **Driving market resilience** – Create a more resilient and competitive market by supporting smaller housebuilder and new entrants, promoting higher quality homes and better design;
 - **Supporting local areas** – Offer expert support for priority locations, helping to create and deliver more ambitious plans to get more homes built; and
 - **Delivering home ownership products** – Deliver home ownership products providing an industry standard service to consumers.
- 1.4 Homes England's mission is to work proactively with its partners to ensure more homes are built in areas of the greatest need and to ensure the affordability of homes is improved. It intervenes in the market where it is necessary, thereby driving positive market change. The Government has made very clear that it expects Homes England to intervene and use its powers to deliver, or speed up the delivery of, housing and regeneration, where it is appropriate to do so.
- 1.5 The Homes England Strategic Plan 2018/19-22/23 is clear: unlocking land, making it available for development at the earliest opportunity and accelerating housing delivery are key strategic objectives of the Agency. To meet its objectives, Homes England works proactively to identify significant opportunities where it can use its resources and powers to work with developers and local authorities to deliver, or accelerate the delivery of, new homes and affordable homes.

- 1.6 The Appeal site was originally owned by the Council and the County Council. It has been promoted for residential development since 1979. Both Councils had a long-standing ambition to see the site developed with housing, consistent with adopted and emerging development plan policies, but needed help delivering the proposals. The Councils considered that Homes England would be best placed to assist and approached the Agency in 2017 for help. At a Full Council Meeting on 21st March 2017, it was resolved to sell the land to Homes England (see appendix IV). On acquisition of the site later in 2017, Homes England immediately set about compiling an application for planning permission, in line with the Council's ambitions.

The Planning Application

- 1.7 Following an active pre-application process, the planning application was submitted to the Council in May 2018 and was validated in June of that year. It sought outline planning permission for a development of up to 370 dwellings (Class C3), public open space and associated infrastructure. All matters of detail, save those in respect of means of vehicular access to the site (but not within it) were reserved for future consideration.

- 1.8 The application was refused on 18 August 2022 for the following reasons:

1. *The proposed development will result in an unacceptable impact on highway safety on the public highway network, with specific regard to the public highways known as Harras Road, Park View, Victoria Road, Albert Terrace, Solway View, Hilton Terrace and Wellington Row and the junctions of Park View with Albert Terrace, Park View with Solway View, Albert Terrace with Victoria Road and Victoria Road with the A595. Given the constraints of the public highways and junctions, the impacts of the proposed development on highway safety cannot be cost effectively mitigated to an acceptable degree.*

The development is in conflict with the requirements of Policies ST1 and T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.

2. *The proposed development will result in severe residual cumulative impacts on the road network, with specific regard to capacity and congestion on the public highways known as Harras Road, Park View, Victoria Road, Albert Terrace, Solway View, Hilton Terrace and Wellington Row and the junctions of Park View with Albert Terrace, Park View with Solway View, Albert Terrace with Victoria Road and Victoria Road with the A595. Given the constraints of the public highways and junctions the impacts of the proposed development on capacity and congestion cannot be cost effectively mitigated to an acceptable degree.*

The development is in conflict with the requirements of Policies ST1 and T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.

The Appeal

- 1.9 A Notice of Intention to appeal via Public Inquiry was submitted to PINS and Copeland Borough Council on 15 December 2022.
- 1.10 The appeal includes the full suite of planning application documents, this SoC, a Draft Statement of Common Ground ("SoCG") and the relevant Forms. The Appellant will also be seeking to agree with Cumberland a SoCG in respect of transport matters (a Mobility SoCG). Settled SoCGs will be submitted to PINS before the Hearing opens.
- 1.11 This SoC cross refers to a number of the planning application documents. However, to avoid duplication, none of the planning application documents are attached as appendices to this Statement, these have been submitted with the appeal. If it would assist the Inspector, a Core

Documents list that would include key application documents as well as appeal documentation can be prepared in advance of the hearing.

- 1.12 The appeal site and surrounding area, the proposed development and the relevant provisions of the development plan and other material considerations are all described in the Draft SoCG. None of what is said in the Draft SoCG is repeated in this SoC. If matters included in the Draft SoCG are not agreed, then Homes England reserves the right to seek to amend to or add to this SoC and/or to produce further evidence on those matters.
- 1.13 The Inspector will note that in the Vectos note, reference is made to alterations that are proposed to Park View, to the northwest of the appeal site, and a proposed crossing over the A595 Loop Road South to the west of the appeal site. These were not proposed at the planning application stage and are not necessary based on the Transport analysis that was undertaken then, or has been undertaken since, for the purposes of this appeal. However, they would both deliver benefits to future residents of the proposed development and existing residents in the vicinity and so would improve the proposals. Accordingly, the appellant would be content for these additional proposals to be made the subject of planning conditions or obligations. In addition, appended to the Vectos note is a drawing showing how the proposed estate road would connect into Caldbeck Road. The appellant would also be content for this to be the subject of a planning condition.

2. Background to the Appeal

- 2.1 Homes England's proposals for this site were the subject of extensive pre-application discussions, including with the Council, the County Council (acting as the Local Highways Authority, Lead Local Flood Authority, the Local Education Authority and County Archaeologist), National Highways, Natural England and the Environment Agency. In December 2017, Homes England submitted to the Council a request for a Screening Opinion under Regulation 5 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The Council responded with a Screening Opinion in January 2018. This confirmed that, in the opinion of the Council, the proposed development is not EIA Development.
- 2.2 In March 2018, Homes England held a public exhibition and consultation event with the local community, immediately prior to which it met with local Ward Councillors and key stakeholders. The exhibition was advertised in the local press, on Council and Mayoral websites, by way of letters to local people and stakeholders and posters displayed in local venues. Some 130 local people attended. Following the exhibition, an online consultation portal was opened which contained the material shared during the exhibition and provided a further means by which people could pass comment on the proposals.
- 2.3 During pre-application meetings held with Council Officers between October 2017 and February 2018, the parties discussed the site's constraints and opportunities, the planning policy framework and its support for the proposals, the scope and content of the planning application and the illustrative masterplan for the site. Parallel discussions were had with statutory and other consultees with a view to agreeing the scope of the various technical studies that were required and the approach to assessment.
- 2.4 As regards highway matters, Homes England and its consultants liaised with both the County Council, as local highway authority, and National Highways (previously Highways England) as highway authority for the strategic road network, with a view to agreeing the scope of the transport assessment, the proposed access arrangements into and through the site, the impact that the proposed development will have on the highway network, matters relating to highways safety, and the need for highway works to mitigate the effects of the proposals. These discussions started in September 2017 and were followed by the issuing of a Transport Technical Note and a Transport Assessment ("TA") scoping email in January 2018. Both the County Council and National Highways commented on the documents, providing advice on the scope of the TA in the process. The TA was prepared in accordance with the agreed scope and was submitted with the planning application in June 2018.
- 2.5 The County Council and National Highways provided feedback on the TA post-submission and, in November 2018, Homes England submitted to the Council an Addendum to the TA which addressed the questions that the highway authorities had posed. Further comments were then received from the County Council in February 2019 and a Technical Note was submitted by way of response in March 2019. National Highways provided additional comments also and a second Technical Note was submitted to address these in April 2019. Discussions then continued until, in the summer of 2019, agreements were reached on all relevant matters including trip generation, assignment, access, the impact of the development on the network and the highway improvements considered necessary by the highway authorities to mitigate the proposals.
- 2.6 As work on the highway matters was progressed, Officers worked through their assessment of all other relevant matters and Homes England submitted to the Council several additional technical documents to assist. These included:

- a) further Ecological Assessments dated January 2019 with surveys dating from April, May, October and November 2018);
- b) Report on the results of a geophysical survey dated February 2019;
- c) a planning policy update report addressing changes that had been made to the NPPF, dated November 2018; and
- d) a Viability Assessment, dated January 2019 (although it should be noted that viability was not a key consideration in the determination of the application).

2.7 At the conclusion of the highway discussions, and in the light of the additional submissions made by Homes England on the above-mentioned technical matters, Officers considered the application ready for determination and prepared a Report to be taken to the Council's Planning Panel on 18 September 2019. The Report was thorough. It described the site, the proposals, the representations that had been made by consultees and interested parties and the relevant provisions of the development plan and other material considerations before then setting out Officer's assessment of the proposals. The assessment concluded with the following:

- a) the NPPF tilted balance is engaged and so planning permission must be granted unless specific policies in the NPPF provide a clear reason for refusing the application or the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when the proposals are assessed against the policies in the NPPF taken as a whole;
- b) the proposals would help significantly boost the supply of housing and help meet identified housing needs in Whitehaven and the wider Borough;
- c) the proposals would be of an appropriate scale and character for Whitehaven, the Principal Service Centre in the Borough;
- d) a significant part of the site is allocated for housing in the Local Plan;
- e) it has always been envisaged that the whole Site would be allocated for housing in the emerging Local Plan and that is now in preparation;
- f) the site is in close and convenient proximity to the wide range of services and employment opportunities that Whitehaven offers – many are within walking distance;
- g) sustainable travel options are available within 1km and 2km walking catchments and the site is within 700m of a regular bus service;
- h) the development will not give rise to any issues in respect of highway safety, residential amenity, ecology, land contamination, flood risk, and drainage, subject to the imposition of conditions;
- i) the development will result in some adverse local landscape and visual impacts in conflict with Local Plan Policy ENV5; but
- j) overall, the adverse impacts in terms of landscape are not sufficiently harmful to significantly and demonstrably outweigh the significant benefits of the development.

2.8 Accordingly, the Report recommended that Officers be given delegated authority to grant outline planning permission, subject to Homes England first entering into a Planning Agreement and subject also to the imposition of planning conditions.

- 2.9 However, Members concluded that they were minded not to grant planning permission in the light of personal concerns they had about highway safety and the adequacy of the local road network to accommodate the traffic that would be generated by the proposed development. The Council's constitution provides that when Members are minded not to agree with an Officer recommendation, the determination of the application must be deferred to a future meeting of the Panel. Deferring applications in this way is intended to give Officers and applicants the opportunity to try and address the concerns that have been raised.
- 2.10 In light of the concerns raised by Members, Officers commissioned an independent review of the TA and Technical Notes, as well as the comments provided by the County Council and National Highways. The scope of the review was agreed with Members of the Planning Panel to ensure Members' concerns were fully and independently considered. The review was undertaken by Arup in October/November 2019. It is provided at Appendix IX.
- 2.11 Draft findings of the Arup review were shared with Members ahead of a meeting with them which took place on 13 November 2019. That meeting was attended by a representative of Arup who presented the assessment and took questions from Members. The traffic and transportation implications of the proposed development were discussed in detail at that meeting. The Arup work: concluded that the TA is robust; addressed Members' concerns; and concluded that there were no highway grounds for refusing planning permission. An audio recording of this meeting is provided at appendix X.
- 2.12 During 2020, updates were made to the outline drainage strategy for the site and Homes England worked with the Local Highway Authority and National Highways to agree designs for the off-site highway works and a Road Safety Audit for the site access onto Harras Road (which confirmed that the proposed arrangement is safe, subject to minor upgrades to be delivered via a s278 agreement).
- 2.13 In 2021, following revisions to the NPPF, the Council re-consulted on the application and this generated comments from Sport England, Natural England and the Woodland Trust. In response, Homes England updated ecological surveys, agreed an appropriate buffer to the adjacent Midgley Wood, carried out a Biodiversity Net Gain Assessment, and produced a shadow Habitat Regulations Assessment. The Council's Planning Panel was kept apprised of the work that was being undertaken, and the reasons for the delay in taking the application back to the Panel for determination, by way of Update Reports (See Appendix XI).
- 2.14 A final re-consultation was undertaken in 2022 in the light of the additional material that had been supplied. By July 2022, all consultee concerns had been addressed and all of the highway experts had given the proposals their approval. The application was taken back to the Planning Panel on 16 August 2022 for determination and the Officer recommendation was again that delegated authority be given to grant planning permission subject to conditions and Homes England entering into a Planning Agreement to secure various planning obligations.
- 2.15 However, at the meeting, several Members continued to voice personal concerns about the proposals, despite there being no new technical evidence presented and in spite of Members being reminded that the Transport Assessment had been subject to an independent review by consultants appointed by the Council. When the recommendation was put to the vote, five Members voted against approving the application and three voted for approval. Members then spent a further 30 minutes discussing possible reasons for refusal before settling on the two that are quoted in Section 1 above, the drafting of which provided post-committee within the Council's decision notice.

3. Main Issues

- 3.1 Having regard to (i) the submissions made by Homes England in support of the planning application; (ii) the content of the Officer's Reports to the Planning Panel; and (iii) the reasons for refusal ("RfR"), the Appellant and the Council are likely to agree that the proposals accord with the majority of the policies of the development plan, or that any conflicts are outweighed by the benefits of the proposals. Indeed, the only Policies referred to in the RfR are Core Strategy Policies ST1 and T1¹. As a consequence, the questions that need to be addressed through this appeal are:
- a) whether the proposals accord with or are at odds with these specific policies;
 - b) whether the proposals accord with or are at odds with the development plan taken as a whole;
 - c) whether the policies referred to in the decision notice may be afforded full weight in the determination of the appeal;
 - d) if there is any conflict with any of the policies referred to in the decision notice, or any other policies, what harm arises from this conflict;
 - e) whether there are other material considerations to be weighed in the planning balance including whether the NPPF tilted balance is engaged in this instance;
 - f) whether a grant of planning permission would give rise to benefits and if it would, what benefits; and
 - g) whether, on balance, and having regard to the statutory duty under s38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), the appeal should be allowed or dismissed.
- 3.2 We set out the Appellant's case on each of these points below.

¹ We note that, in accordance with Article 35(1)(b) of the Town and Country Planning (General Development Procedure) Order 2015, where planning permission is refused, the decision notice must state clearly and precisely the Council's full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.

4. Compliance with Relevant Development Plan Policies

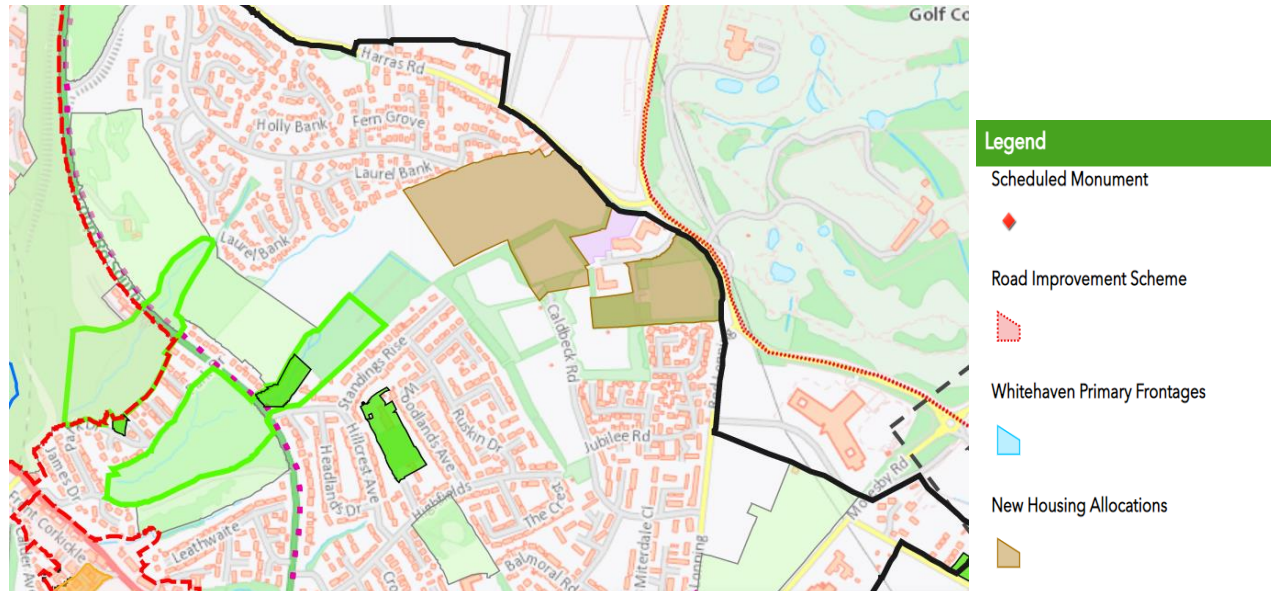
- 4.1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act, this Appeal must be determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- 4.2 The Draft SoCG lists the development plan policies that are relevant to this Appeal and notes which of these are fundamental to understanding the merits of the proposals and the matters in dispute between the Appellant and the Council.

The proposed development accords with the provisions of the development plan taken as a whole. We consider below the relevant policies of the adopted development plan and set out how the proposals respond to, and accord with their requirements.

Copeland Local Plan 2001-2016 'Saved' Policies

- 4.3 A significant part of the site is allocated for a housing development of approximately 220 dwellings under saved Policy HSG2 (Sites HA1 and HA2). The allocated land lies entirely within the settlement boundary and includes the land to the northern part of the site adjoining the Highlands estate and fronting Harras Road (allocation HA1, known as the Highlands extension) and the eastern part of the site incorporating the previously used playing field (allocation HA2, known as Red Lonning). The principle of developing a large part of the site for housing is therefore established as acceptable and necessary.

Figure 1. Extract from Adopted Local Plan (2013-2028) Proposals Map



Core Strategy – Strategic Policies

Policy ST1: Strategic Development Principles

- 4.4 Policy ST1 contains a list of strategic development principles which the Local Plan says inform and underpin the Borough's planning policies. The principles are expressed under four headings: Economic and Social Sustainability; Environmental Sustainability; Protect, Enhance and Restore the Borough's Valued Assets; and Ensure the Creation and Retention of Quality Places. The Policy concludes by saying that planning applications that accord with these principles and relevant

development management policies, and do not undermine the Plan's Spatial Development Strategy, will be approved without unnecessary delay, unless material considerations indicate otherwise.

- 4.5 The development principles listed in Policy ST1 are wide ranging. Only one, that is D(iii), can be said to be concerned with the matters that are referred to in the RfR. This part of the policy is discussed in the sections that follow. The proposals accord fully with the remaining parts of Policy ST1 as set out below.
- 4.6 Part A of Policy ST1 relates to Economic and Social Sustainability. Paragraphs iii and iv are relevant to the appeal.
- 4.7 The proposal is in outline and the housing mix will be the subject of subsequent Reserved Matters applications, but the development as a whole will make a significant contribution to the Whitehaven Housing Market Area. It will provide a mix of dwellings that responds to the need identified in the 2021 Strategic Housing Market Assessment (SHMA), or any subsequent update, and 15% of the total number of dwellings will be affordable housing.
- 4.8 The development would also make a significant contribution to the Borough's social and community infrastructure through the provision of market and affordable housing, open space, play facilities and sports provision and will enable good access to jobs, shops, services, recreation and sports facilities.
- 4.9 The proposals accord or, through Reserved Matters, will accord with the seven criteria set out under part B of Policy ST1 "Environmental Sustainability" as follows:
- the proposals are capable of being designed to minimise carbon emissions and maximise energy efficiency (part i);
 - the site is located in Flood Zone 1 and the submitted drainage Strategy demonstrates that an adequate SuDS based surface water drainage scheme can be achieved without increasing flood risk to the Site or adjacent land and so satisfies part ii;
 - the proposals will incorporate extensive areas of high quality Green Infrastructure as well as ecological enhancements (part iii);
 - part iv advises that development should reuse existing buildings and previously developed land wherever possible. The term "wherever possible" clearly recognises that there is insufficient previously developed land in the Borough to accommodate its development needs, therefore there is no conflict with part iv;
 - the Reserved Matters will provide details of how the development can respond to part v, minimising waste and maximising opportunities for recycling;
 - the transport evidence produced by Vectos (See **Appendix I**) demonstrates how the development will minimise the need to travel and support the provision of sustainable transport infrastructure and measures that support its use (part vi); and
 - the site lies within the defined settlement boundary of the main town of Whitehaven and is therefore in accordance with part vii.
- 4.10 The proposals accord with part C of Policy ST1. The technical note produced by Tetra Tech (Appendix II) that accompanies this statement, together with the documentation submitted in support of the planning application demonstrates how the proposals protect and enhance the biodiversity of the site (part i). Further, the proposals would not affect any designated heritage assets. The Archaeological

Desk based assessment accompanying the application, which was agreed by the County Historic Environment Officer, concludes that it is unlikely the archaeological features of the site are so significant that provisions should be made to secure their preservation (part ii). In accordance with part iii, the development would provide and enhance recreational opportunities on and off site.

- 4.11 In relation to parts iv to vi, the land consists of an area of steeply sloping land used periodically for grazing sheep and horses. It is not in productive agricultural use (part iv). It is not vacant or derelict, so part v is not relevant. By its nature, residential development is not a significant source of air, ground or water pollution (part vi).
- 4.12 Part D of policy ST1 seeks to ensure the creation and retention of quality places. Parts i and ii will be addressed through the Reserved Matters which will ensure a high standard of design and amenity. Part iii is discussed separately below while the condition set out in the draft SoCG will ensure that any areas of contaminated land are appropriately remediated.

Policy ST2: Spatial Development Strategy

- 4.13 The appeal site lies wholly within the defined settlement boundary of Whitehaven, the principal settlement within the Borough, where Policy ST2 seeks to concentrate the largest scale of development and the majority of new housing development. The proposal is therefore fully in accordance with the spatial development strategy of the plan as set out in Policy ST2. The Council does not dispute compliance with this policy.

Policy ST4: Providing Infrastructure

- 4.14 Policy ST4 seeks to ensure that the necessary infrastructure is in place to support new development. Part C states that until the Council adopts a Community Infrastructure Levy (not yet in place), infrastructure improvements will be secured through developer contributions. It has been agreed with the Council, Sport England and Natural England that contributions should be made towards sports facilities in mitigation of the loss of the previously used on-site sports field, and off site habitat creation. The planning obligation would also secure the delivery of 7.1ha of public open space on site and provision for its ongoing maintenance and management. No further contributions towards infrastructure provision were considered to be necessary by the Council when the application was reported to the Planning Panel in August 2022. The Council does not dispute compliance with Policy ST4.
- 4.15 It is noted that Cumbria County Council confirmed that there will be sufficient capacity within existing schools for the estimated primary and secondary pupil yield from the proposed development.

Core Strategy Sustainable Settlements Policies

Policy SS1: Improving the Housing Offer

- 4.16 Policy SS1 sets out three steps the Council will make towards improving the housing offer in Copeland. The first of these involves allocating sites for housing, which it did in respect of parts of the Appeal site. The second relates to the existing housing stock so is not relevant to this appeal and the third relates to partnership working and funding for demolition and redevelopment schemes in areas of low demand or where the stock does not meet local housing market needs.
- 4.17 The proposals support these steps by delivering housing on two of the allocated sites and the emerging residential allocation for the entire site and providing a range of new homes to meet local housing market needs. The Council does not dispute compliance with Policy SS1.

Policy SS2: Sustainable Housing Growth

- 4.18 Policy SS2 seeks to meet the housing needs of the community by allocating sufficient land for new housing development (Part A). The housing targets set out in part B are out of date and not therefore relevant to the appeal. Part C seeks a development density of over 30 dwellings per hectare (dph) but allows for detailed density requirements to be determined in relation to the character and sustainability of the surrounding area.
- 4.19 Part D seeks to achieve 50% of new housing development on previously developed sites. The site is not previously developed but is partially allocated for development. Part D applies only to non-allocated sites and as noted earlier in this Statement, a significant proportion of the appeal site is allocated for housing development under saved Policy HWG2 of the Local Plan. Insofar as it could be said to apply to the non-allocated parts of the appeal site, it is superseded by the assessment that the Council has made of the Borough's ability to accommodate development in a sustainable way for the purposes of the ELP and its proposal to allocate the appeal site in its entirety – a proposal that we deal with later but are satisfied can be afforded significant weight in the determination of this appeal. There is no conflict with Part D as drafted.
- 4.20 The proposals accord with the relevant parts of this policy by bringing forward two allocated housing sites and providing a development at a site wide average density of 25 dph which, as set out in the submitted Design and Access Statement (Revision D) by Tetra Tech, is appropriate to this site given its surroundings, existing conditions, and topography. The Council does not dispute compliance with Policy SS2.

Policy SS3: Housing Needs, Mix and Affordability

- 4.21 Policy SS3 requires applications for housing to demonstrate how they help to deliver a range and choice of good quality and affordable homes for everyone. The policy states that the development proposals will be assessed according to how well they meet the identified needs and aspiration of the Borough's individual Housing Market Areas (HMAs) and set out in the SHMA. The final market housing mix will be determined at the Reserved Matters stage but the masterplanning exercise carried out as part of the planning application was based on a policy compliant mix and the site is capable of delivering this.
- 4.22 The proposals would provide 15% of the dwellings as affordable housing. They are also capable of delivering executive and high quality family housing, which is identified as a priority for Whitehaven (Part Aii). The proposals could also deliver bungalows and apartments to meet the needs of the elderly but this is something that will need to be considered more fully at the Reserved Matters stage. The proposals accord with Policy SS3 part A. Parts B and C are not relevant.
- 4.23 The Council does not dispute compliance with Policy SS3.

Policy SS5: Provision and Access to Open Space and Green Infrastructure

- 4.24 Policy SS5 "requires adequate provision and access to open space". Part A seeks to protect against the loss of designated open space (including playing fields, play areas and allotments) within settlements, and of the access routes or wildlife corridors which protect them. The policy goes on to say that where it is necessary to build on such land, equivalent replacement provision should be made.
- 4.25 The eastern side of the site contains a former playing field to the south of Red Lonning Industrial Estate. It has not been used for a long time, is not maintained, no longer has goal posts in place, is not easily accessed and is not over-looked giving rise to concerns about how safe it is to use. However, it was considered to be a playing field by Sport England in their most recent consultation response. The

proposed development would result in the loss of the playing field and as such Policy SS5 requires that equivalent replacement provision should be made. A Sport Mitigation Strategy was submitted by Homes England during the planning application process. The mitigation strategy also addresses the requirements of paragraph 99 of the NPPF which is more up to date than Policy SS5, as well as Policy SC3PU of the ELP.

- 4.26 The proposed mitigation was agreed by both the Council and Sport England in consultation with relevant sport governing bodies. It will provide a substantial contribution towards the delivery of a new sports pitch off-site but in the local area, for which there is a clearly identified need. The making of the contribution is to be secured by Planning Obligation, the details of which the Appellant expects to agree with the Council before the Hearing.
- 4.27 It should also be noted that the area where the pitch is located, is currently allocated for residential development in accordance to Saved Policy HSG2 in the Copeland Borough Council Local Plan 2001-2016 'Saved Policies' document.
- 4.28 Part B of the policy deals with minimum open space standards which are set out in Policy DM12. This requires 0.4ha of public space per 200 dwellings on a pro rata basis. For a development of 370 dwellings that would equate to 0,74ha. This can be secured by planning condition to ensure the detailed reserved matters provides the required open space. The illustrative masterplan shows some 7ha of green space on the site by comparison, including 2 areas of equipped local play.
- 4.29 Part C promotes that establishment, improvement and protection of Green Infrastructure networks connecting open spaces with each other and with the countryside. The proposals will improve Green Infrastructure provision through the protection and enhancement of the existing woodland and tree belts and the provision of a publicly accessible and connected network of green spaces as shown on the submitted masterplan.
- 4.30 The Council does not dispute compliance with this policy.

Core Strategy Environmental Protection and Enhancement Policies

Policy ENV1: Flood Risk and Risk Management

- 4.31 Policy ENV1 seeks to ensure that development in the Borough is not prejudiced by flood risk through, permitting new build development only on sites located outside areas at risk of flooding and ensuring new development does not contribute to increased surface water run-off through measures such as Sustainable Drainage Systems.
- 4.32 The planning application was accompanied by a Flood Risk Assessment and Drainage Strategy (FRDS) by WYG (now Tetra Tech). This was updated during the application process in March 2021. This Statement of Case is accompanied by an updated technical note by Tetra Tech (Appendix III) which confirms that:
- i. the site is within flood zone 1 and not at risk of flooding from fluvial sources;
 - ii. the site can be drained using Sustainable Urban Drainage Systems (SuDS) techniques and the FRDS establishes a strategy and management regime for this;
 - iii. the 2021 FRDS remains up to date with the exception of climate change allowances which were increased in the revisions to the NPPF in July 2021 and allowances for urban creep required by SUDS Manual C753;
 - iv. even with the increased climate change allowance, and the factor for urban creep added into the calculations, the site can still satisfactorily accommodate up to 370 homes supported by a sustainable urban drainage system;

- v. a full detailed drainage design can be secured via condition;
- vi. the management regime for surface water run off from the site would ensure that flood risk to adjoining properties is not exacerbated and where possible reduced; and
- vii. the historic responses from statutory consultees (including Cumbria County Council, Copeland Borough Council, United Utilities and the Environment Agency) remain relevant in 2023 can still be relied upon.

4.33 The proposals therefore remain in accordance with Policy ENV1. This compliance is not in dispute with the Council.

Policy ENV3: Biodiversity and Geodiversity

4.34 Policy ENV3 states that the Council will contribute to the implementation of the UK and Cumbria Biodiversity Action Plan by seeking to follow a number of actions including:

- improving the condition of internationally, nationally and locally designated sites;
- ensuring that development incorporates measures to protect and enhance any biodiversity interest;
- enhancing, extending and restoring priority habitats and look for opportunities to create new habitat;
- protecting and strengthening populations of priority or other protected species;
- boosting the biodiversity value of existing wildlife corridors and creating new connected corridors; and
- restricting access and usage where appropriate and necessary to conserve an area's biodiversity value.

4.35 A suite of ecological assessments produced by Tetra Tech (formerly WYG) accompanied the planning application. These were updated during the determination period and included at the point of determination, the 2021 Ecological Appraisal, Biodiversity Net Gain (BNG) Assessment, HRA Assessment Report and Habitat Management Plan. An updated technical note by Tetra Tech (Appendix II) accompanies this Statement of Case. This confirms that the Ecological surveys submitted with the application and reviewed in the 2021 Ecological appraisal remain valid as of April 2022, as there has been no material change in the site conditions since the assessment was carried out.

4.36 Survey work has concluded that the site is generally of low ecological value with limited areas of woodland, semi-improved grassland and marshy grassland being the only habitats of notable value. The site is not used by protected species although moderate bat activity has been observed along the woodland edge. A shadow HRA was completed and submitted to the Council by the Applicant due to the proximity of the site to the Solway Firth Special Protection Area (SPA). This has been agreed by Natural England. The site was not considered to form functionally linked land for bird species whose presence merits special protection and the likely significant effects from the development are not expected to affect the SPA due to its distance from the site.

4.37 Tetra Tech identify a series of mitigation principles which will need to be adopted in the final design for the site or secured through conditions.

- 4.38 In respect of BNG, Tetra Tech conclude that while a net gain cannot be achieved on site, the loss of on-site habitat and hedgerow units can be offset through a contribution towards off site enhancement. This has been agreed with the Council.
- 4.39 The work that has been carried out by Tetra Tech demonstrates that the proposals comply with Policy ENV3. The proposals protect, and have the potential to enhance, the existing habitats on the site which have biodiversity value. They will not harm any protected species and subject to mitigation, will not harm any species which are important to the Solway Firth SPA. The Council does not dispute this position.

Policy ENV4: Heritage Assets

- 4.40 Policy ENV4 seeks to maximise the value of the Borough's heritage assets by protecting designated heritage assets and other townscape and rural features considered to be of historic, archaeological or cultural value.
- 4.41 The planning application was accompanied by an Archaeology and Heritage Desk-Based Assessment by WYG dated May 2018. This concludes that there are three recorded heritage assets located within the site boundary. These are two quarries, Windsor Terrace Public Quarry (19947) and Standing Stones Quarry (19946) which are located in the northeast of the site. These are considered to be of local importance (low value). In the south of the site, just below the current industrial estate is recorded a possible Bronze Age stone circle (1178), the location of which has been inferred from historical documents. Its recorded location is currently under trees and is not within an area of the site proposed for development by the submitted masterplan. However, its exact location is not known and there therefore remains a low potential for remains to be present. Any remains would be considered to be of local importance (low value). Archaeological evidence in the form of former field boundaries and structures which were identified during the site walkover survey, may also be of potential heritage value. These are considered to be of local importance (low value) depending on their character, extent and preservation.
- 4.42 WYG conclude that there may be potential for previously unrecorded bronze age remains on site. However, overall, the proposed development is considered to have moderate negative magnitude of impact upon any unrecorded archaeological remains which survive within the site. A proposed condition requiring a programme of archaeological work is included in the draft Statement of Common Ground. An archaeological recording programme, as required by the condition, will offset any harm to any archaeological remains given that they are likely be of only local importance.
- 4.43 There are no built heritage assets located within the proposed development. Therefore, the proposals will not cause any direct or indirect harm to the significance of any built heritage assets.
- 4.44 WYG assessed the impact of the development on the setting of the Hensingham, Cornickle and Whitehaven Conservation Areas, which contain a number of listed buildings, and two Grade II listed buildings outside the Conservation Areas. They conclude that the development will result in no change to the baseline setting of all of these assets which are all of medium, high or very high value.
- 4.45 The proposals are therefore considered to be in accordance with Policy ENV4. This is not in dispute with the Council.

Policy ENV5:- Protecting and Enhancing the Borough's Landscapes

- 4.46 Policy ENV5 seeks to protect and enhance the Borough's landscapes by protecting them from inappropriate change by ensuring that development does not threaten or detract from the distinctive characteristics of that particular area. It says that where the benefits of the development outweighs

the potential harm, it should be ensured that the impact of the development on the landscape is minimised through adequate mitigation, preferably on site.

- 4.47 The planning application was accompanied by a Landscape and Visual Appraisal (LVA) prepared by WYG in May 2018. Baseline conditions at and surrounding the site have changed very little since this time. The LVA considers the landscape effects on a number of receptors including the main landscape sub types, open greenspace, pastures, rough grassland and scrub within the site and woodland and hedgerows within the site and on the site perimeter. The assessment concludes that negligible effects are anticipated upon the setting of Landscape Sub-type 5a Ridge and Valley at both construction and operational stages due to the distance and limited intervisibility between the site and Landscape Sub-type. Negligible effects are also anticipated upon the Urban Area due to the localised change within the wider context of the urban area.
- 4.48 Minor adverse effects are anticipated upon Landscape Sub-type 5d Urban Fringe within which the site is mostly located due to the direct change in landscape features and characteristics.
- 4.49 Moderate adverse effects are anticipated to be experienced upon the Open Greenspace identified within the site area during the construction phase; however, these are anticipated to reduce to minor adverse at completion as the introduction of public open space within the development is anticipated to partially offset the loss.
- 4.50 Minor adverse effects are anticipated upon the existing woodland/woodland structure planting and hedgerows on the site perimeter and within the site as the majority of this is identified on the Illustrative Masterplan as being retained; although it is anticipated that localised removal may be required.
- 4.51 Moderate adverse effects are anticipated upon pasture land, rough grassland and scrub, and permissive footpaths within the site area as these would all experience direct adverse effects/loss of features due to the proposed development.
- 4.52 A viewpoint study assesses the visual effects of the development. It identifies a number of locations from which the proposed development might be theoretically visible including adjoining roads, open greenspace, bridleways and footpaths and nearby housing. The visual assessment anticipates that major adverse effects will be experienced by residents located immediately adjacent to the site in housing off Caldbeck Road and the Highlands estate. This is a result of the change in views experienced by residents within the properties and would be anticipated if the site were to be developed due to the loss of existing views across open pasture land to woodland and views across Pow Beck valley. Moderate adverse effects are also anticipated to be experienced by road users on Caldbeck Road.
- 4.53 From within the wider study area beyond the site boundary, the visual assessment identifies effects ranging from none and/or negligible to minor adverse at most receptor locations at day one of operation. This is due to the proposed development, in general, fitting with the existing views available towards the site from within the wider study area.
- 4.54 Overall the proposals will not result in inappropriate change to the landscape and will not threaten or detract from the distinctive characteristics of the area. The benefits of the development are set out at paragraph 8.2 of this statement. They are significant and must be balanced against the limited adverse landscape and visual effects of the development.
- 4.55 The proposals accord with Policy ENV5. And the Council does not dispute this.

Development Management Policies

4.56 The Local Plan contains a series of Development Management policies, against which, the detail of proposals are to be assessed. As the application was made in outline, parts of these policies may be more relevant at the Reserved Matters stage. The following policies are relevant to this appeal:

- Policy DM10 – Achieving Quality of Place
- Policy DM11 – Sustainable Development Standards
- Policy DM12 – Standards for New Residential Development
- Policy DM21 – Protecting Community Facilities
- Policy DM22 – Accessible Developments
- Policy DM24 – Development Proposals and Flood Risk
- Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species
- Policy DM26 – Landscaping
- Policy DM27 – Built Heritage and Archaeology
- Policy DM28 – Protection of Trees

4.57 It should be noted that the Council does not dispute compliance with any of the Development Management policies.

Policy DM10: Achieving Quality of Place

4.58 Policy DM10 is the main detailed design policy of Copeland's Local Plan. It contains basic principles to be adopted to ensure that development achieves a high standard of design and creates "quality places". It seeks to do this through ensuring that development responds positively to the character of the site and the immediate and wider setting and enhances local distinctiveness through its detailed layout, the scale and massing of buildings, the spacing between buildings, materials, incorporating existing landscape features, maintaining biodiversity, reducing crime, safeguarding amenity and providing public art where possible.

4.59 The Design and Access Statement by TetraTech (previously WYG) dated May 2022 and the revised masterplan (ref. A090070-410 03 Rev H) that accompanied the planning application demonstrate that the site is capable of being developed in a way that achieves all of these objectives and provides a high-quality development which works with the existing features of the site including the ancient woodland, tree belts and topography. The development would not provide a "complementary mix of uses" as required by part A of the policy but is not required to do so by the existing or proposed allocations policies of the plan. Further, as set out in the transport evidence at Appendix I, it is well located for access to existing services and facilities and public transport.

Policy DM11: Sustainable Development Standards

4.60 Policy DM11 seeks to ensure that development proposals reach high standards of sustainability. Most of the criteria set out in the policy will be addressed through subsequent Reserved Matters and are capable of being achieved. Those parts of the Policy relevant to the outline submission are Part A and the final paragraph.

- 4.61 Part A refers to housing density and suggests developments should provide at least 30 dwellings per hectare. It goes on to say that a lower density may be acceptable where it reflects the form and character of development in the surrounding area. The Design and Access Statement suggests a net density of 25 dwellings per hectare is deliverable for the site as a whole, based on a net developable area of 14.78 hectares and 370 dwellings. The variation in levels and gradients on some parts of the site would make a higher density very difficult to achieve. Further, the density of adjoining development on the Highlands Estate and Highfields is much lower than 30 dwellings per hectare.
- 4.62 The final paragraph of Policy DM11 seeks to ensure that development would not lead to the sterilisation of surface mineral resources, and wherever appropriate, should incorporate remediation measures to ensure that the development is not at risk from ground instability arising from mining legacy other former uses.
- 4.63 The site does not lie within a minerals consultation area or minerals safeguarding area under the provisions of the Cumbria Minerals and Waste Local Plan 2015-2030.
- 4.64 The phase I Geo-environmental and Geo-technical Desk Study Report and Coal Mining Risk Assessment by Aecom (May 2018) which accompanied the planning application identified a small, infilled sandstone quarry on the northern part of the site adjacent to the industrial estate off Red Lonning. This was not anticipated to pose a constraint to development. The majority of the site is underlain by former mine workings and the Coal Authority identifies the site as lying within a high-risk development area in relation to mining. The western part of the site which slopes down to Loop Road South is denoted as being in the potential zone of influence from past shallow coal mine workings. There are no mine shafts recorded on the site. The Coal Authority was consulted at the planning application stage and raised no objection. It considered that the Coal Mining Risk Assessment had adequately assessed the coal mining risks associated with the site and demonstrated that the site could be made safe and stable for development. A proposed condition requiring an intrusive site investigation and a scheme of remediation/mitigation is set out in the draft Statement of Common Ground.

Policy DM12: Standards for New Residential Development

- 4.65 Policy DM12 sets out minimum standards for parking provision, minimum separation distances, public open space and play space and lifetime homes. These matters will be considered at the Reserved Matters stage. However, the development shown on the submitted masterplan (ref. TTE 00 XX DR UD 03 Rev H) is capable of complying with all of these standards.

Policy DM21: Protecting Community Facilities

- 4.66 Policy DM21 seeks to resist developments which would result in the loss of an existing community, cultural or sports facility where there is evidence that there is a demand for that facility that is unlikely to be met elsewhere.
- 4.67 The loss of the disused sports field on the site is discussed in detail in paragraphs 4.24 to 4.30 above. Use of the playing field ceased well before Homes England acquired the site in 2017, it is not maintained, no longer has goal posts in place, is not easily accessed and is not over-looked, giving rise to concerns about how safe it is to use. Further, it is considered that there is adequate provision of football pitches in the area already. As a consequence, and in order to meet the requirements of Policy SS5, Homes England will make a contribution towards improving sports facilities in the area to be secured by Planning Obligation. It is likely that the contribution will be used towards a new hockey pitch at Whitehaven Academy. Such provision is currently lacking in the area. This approach has been agreed with the Council and with Sport England. The application is therefore in accordance with Policy DM21.

Policy DM22: Accessible Developments

- 4.68 Policy DM22 seeks to ensure that developments are accessible to all users. Detail of the site's layout is a Reserved Matter and as such the requirements of this policy will be satisfied at the Reserved Matters stage. However, the indicative masterplan submitted with the application shows how the site could be developed to ensure its layout is accessible to all users including pedestrians, cyclists and the disabled, emergency and service vehicles and public transport. The accompanying statement (Appendix I) by Vectos examines these matters in more detail and explains why the design of the access is appropriate to the site and the road conditions and accords with Part B(i) although the design of the access has never been raised as a concern by the Council or the Highway Authorities.

Policy DM24: Development Proposals and Flood Risk

- 4.69 Policy DM24 requires the submission of a FRA and seeks to resist development that would present an unacceptable risk of flooding, would increase the risk of flooding elsewhere or would interfere with, or prevent access to, a watercourse.
- 4.70 The planning application was accompanied by a Flood Risk Assessment and Drainage Strategy which was updated in March 2021. The technical note by Tetra Tech which forms Appendix III and is summarised at paragraphs 4.31-4.32 reconfirms that the development would not be prone to flooding and would not increase the risk of flooding elsewhere. The development can be adequately drained using SuDS.
- 4.71 The Environment Agency and the Council's Flood and Coastal Defence Engineer raised no objection to the proposal at the application stage.

Policy DM25: Protecting Nature Conservation Sites, Habitats and Species

- 4.72 Policy DM25 requires that all development proposals protect the biodiversity value of land and buildings, minimise fragmentation of habitats and conserve, restore and enhance natural habitats and create habitats for protected and important species identified in the UK and Cumbria biodiversity action plan.
- 4.73 As set out in paragraphs 4.35-4.39 above, this Statement of Case is accompanied by a technical note by Tetra Tech (Appendix II) which supports the ecological information which was submitted with the planning application and confirms that it remains relevant and up to date. This demonstrates that the site is of low ecological value, with only the woodland, semi-improved grassland and marshy grassland areas being the only habitats of notable value. The site is not used by protected species although there was moderate bat activity on the woodland edge.
- 4.74 The development would not have a direct or indirect adverse effect on locally recognised sites of biodiversity and geodiversity importance. A HRA was completed due to the proximity of the site to the Solway Firth Special Protection Area (SPA). The site was not considered to form functionally linked land for bird species whose presence merits special protection and the likely significant effects from the development are not expected to affect the SPA due to its distance from the site. Natural England's agreement with the Shadow HRA is recorded in the Officer's Report to the Planning Panel of 16 August 2022 (Appendix VII) on page 7.
- 4.75 Tetra Tech identify a series of mitigation principles which will need to be adopted in the final design for the site or secured through conditions.
- 4.76 The work that has been carried out by Tetra Tech demonstrates that the proposals comply with Policy DM25.

Policy DM26: Landscaping

- 4.77 Policy DM26 requires development proposals to be assessed in terms of their potential impact on the landscape, it seeks to protect the areas designated as Landscapes of County Importance on the proposals map, seeks to ensure that proposals relate well to the landscape and incorporate appropriate landscaping schemes.
- 4.78 A part of the appeal site, adjacent to Loop Road South is designated as Urban Greenspace on the Local Plan Proposals Map and is thus protected for its landscape quality under Policy DM26. The appeal proposals do not impact at all on the designated land. The landscape impacts of the proposal have been carefully assessed through the Landscape and Visual Appraisal (LVA) by WYG which accompanied the planning application, the findings of which are summarised at paragraphs 4.47-4.54 above. The LVA demonstrates that the proposals accord with Policy DM26. While the LVA makes some recommendations in respect of landscaping, this will be agreed as part of the Reserved Matters.

Policy DM27: Built Heritage and Archaeology

- 4.79 Policy DM27 essentially repeats the requirements of Policy ENV4 insofar as they relate to the appeal site. The findings of the Archaeology and Heritage Desk-Based Assessment by WYG dated May 2018 are summarised in paragraphs 4.41-4.44 above. This concludes that the development will result in no change to the baseline setting of the three nearby Conservation Areas and two listed buildings. In respect of archaeological remains the proposed development is considered to have moderate negative magnitude of impact upon any unrecorded archaeological remains which survive within the site. There are no other heritage assets on or in the vicinity of the site which merit further analysis. As such the proposals are in accordance with policy DM27.

Policy DM28: Protection of Trees

- 4.80 Policy DM28 requires the submission of an arboricultural assessment with applications which are likely to affect trees.
- 4.81 The application was accompanied by an Arboricultural Impact Assessment by TEP dated May 2018. This confirms that the development is unlikely to impact on any of the ancient woodland on and surrounding the site as a wide area of buffer planting is proposed along the woodland edge. Following comments from the Woodland Trust, the width of the buffer adjoining the ancient woodland was increased from 15m to 20m in the revised masterplan (Drawing No. TTE 00 XX DR UD 03 Rev H) and illustrative layout (Drawing No. TTE 00 XX DR UD 03 Rev H). The proposal does not therefore conflict with Part B of the policy.
- 4.82 The masterplan shows significant new areas of planting which the arboricultural assessment concludes will add arboricultural value to the site, particularly if more diverse planting is incorporated, including trees with a large ultimate size. The detail of new planting will be agreed at the Reserved Matters stage.
- 4.83 The report makes a series of recommendations relating to tree protection, ground protection, species and post construction tree care.
- 4.84 The proposals accord with Policy DM28.

Policies referred to in the Reasons for Refusal***Policy ST1 Part D(iii)***

- 4.85 Policy ST1 Part D(iii) is the only part of this extensive strategic policy that can be said to be concerned with the matters that are referred to in the RfR. This appears under the heading *"Ensure the Creation and Retention of Quality Places"* and reads as follows:

"Accommodate traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around"

- 4.86 This principle is concerned with both site access arrangements and traffic on the network relative to the safety and convenience of pedestrians and cyclists. It is intended to avoid situations where the traffic created by development proposals impacts adversely on the safety and convenience of those moving on foot and by bicycle.
- 4.87 There is no dispute between the Appellant and the Council, or the highway authorities, as regards the site access arrangements. These are agreed to be acceptable.
- 4.88 As regards the traffic that the proposed development will add to the local highway network, and its implications for the safety and convenience of pedestrians and cyclists, the technical note provided by Vectos which forms Appendix I demonstrates that a traditional pre-Covid 'worst case' assessment was undertaken as part of the planning application process which satisfied the local and strategic highway authorities, and an independent consultant commissioned by the Council, on these specific matters, all of whom have found the approach to the assessment, and the proposals, to be acceptable.
- 4.89 The Members of the Planning Panel should have given great weight to the views of the local and strategic highway authorities, and its own independent expert consultants. Members should only have departed from those views if there were cogent and compelling reasons for so doing: see e.g. **Visao v SSHCLG** [2019] EWHC 276. The technical note presented by Vectos reconfirms that the technical evidence presented through the planning application process is sound and that there is no technical evidence to support or justify the decision taken by the Planning Panel. The Planning Practice Guidance warns local authorities not to refuse permission based on *"vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis"* (see NPPG Paragraph: 049 Reference ID: 16-049-20140306).
- 4.90 Vectos also considers a post-Covid assessment of the development proposals in the context of the important matters of the day (i.e., climate and health). This includes 2022 survey data which demonstrates:
- a) how safe, convenient and direct active travel links will be provided by the development;
 - b) how the existing and proposed transport networks, including the active travel, shared travel including public transport and highway networks are able to support the development; and
 - c) how the existing public highway is suitable for access to the development in highway safety terms.
- 4.91 Vectos describes the methods used to assess the baseline conditions currently existing in the vicinity of the site, the direct and indirect effects of the proposed development (assessed through mathematical analysis and a policy compliant 'Vision and Validate' approach), the mitigation and improvement measures required and any residual effects as a result of mitigation.
- 4.92 In addition to the mitigation agreed with the Council and the Highway Authorities as part of the planning application, Homes England proposes the provision of a controlled crossing on the A595. This has been through a safety audit and no substantive issues were identified by this.

- 4.93 Homes England also proposes the provision of improvements at Park View Bridge and junction to provide improved lighting, new surfacing and a tightening of the carriageway bellmouth with Solway View to reduce the pedestrian crossing width and improve visibility.
- 4.94 The evidence demonstrates that the proposed development accords with part D(iii) of Policy ST1 and also paragraph 111 of the NPPF (see below).
- 4.95 As indicated above, all other relevant provisions of Policy ST1 are positively addressed by the proposed development. This is a matter it is anticipated will be addressed through the submitted SOCG and any subsequent SoCG discussions with the Council.

Policy T1

- 4.96 Policy T1 is concerned with improving accessibility and transport. It describes a number of initiatives that are intended to improve accessibility within the Borough, particularly by foot, cycle and public transport. These include: allocating or safeguarding land to facilitate specified transport priorities; supporting schemes which improve transport (e.g. park and ride facilities and freight transfer facilities); creating better connections to facilities and transport routes beyond the Borough; requiring planning obligations to minimise the impact of new development on the Borough's transport system; carrying out improvements to the transport system; and developing a parking strategy for the Borough.
- 4.97 Policy T1 says nothing about how proposals for development will be assessed and nor does it contain requirements or criteria that proposals must satisfy. As a consequence, its appearance in the RfR is erroneous and it is not relevant to this Appeal.

Conclusions on Compliance with the Development Plan

- 4.98 It is clear from the assessments completed by the Appellant, Council Officers, the Council's consultant and consultees that the proposed development accords with the development plan as a whole.
- 4.99 A number of Members of the Council's Planning Panel have taken the view that the proposals are at odds with Core Strategy Policies ST1 and T1. The above analysis and the evidence provided by Vectos demonstrate very clearly that the position adopted by the Planning Panel does not stand up to scrutiny and is not tenable. Moreover, even if the Inspector concludes that there is some limited conflict with Policies ST1 and T1 (which is not admitted), this does not mean that the proposals are at odds with the development plan read as a whole.

5. Weight to be Afforded to Relevant Development Plan Policies

Policies to be afforded significant weight

- 5.1 In spite of the age of the development plan, the majority of the Policies within it are consistent with the provisions of the NPPF and so may be afforded significant weight. These include:

Local Plan Core Strategy

- Policy ST1 – Strategic Development Principles (save as regards highway safety – see below)
- Policy ST2 – Spatial Development Strategy (save as regards settlement boundaries and Fig. 3.3)
- Policy ST4 – Providing Infrastructure
- Policy SS1 – Improving the Housing Offer
- Policy SS2 – Sustainable Housing Growth (save part B – housing requirement)
- Policy SS3 – Housing Needs, Mix and Affordability
- Policy SS5 – Provision and Access to Open Space and Green Infrastructure
- Policy ENV1 – Flood Risk and Risk Management
- Policy ENV3 – Biodiversity and Geodiversity

Local Plan Development Management Policies

- Policy DM10 – Achieving Quality of Place
- Policy DM11 – Sustainable Development Standards
- Policy DM12 – Standards for New Residential Development
- Policy DM21 – Protecting Community Facilities
- Policy DM22 – Accessible Developments
- Policy DM24 – Development Proposals and Flood
- Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species
- Policy DM26 – Landscaping
- Policy DM28 – Protection of Trees

Copeland Local Plan 2001-2016

- Policy HSG2 – New Housing Allocations

Policies (or parts of policies) to be afforded reduced or no weight

- 5.2 Those relevant Policies or parts of relevant policies that are either out of date or not consistent with the NPPF, and so must be afforded reduced weight or no weight at all are:

- Policy ST1 part D(iii) - as set out above, the proposals are fully in accordance with this part of Policy ST1, however Part D(iii) of ST1 appears to the Appellant to require the Council to apply of a different test to the one that appears in the NPPF at paragraph 111. The wording in ST1 is as follows:

“Accommodate traffic and access arrangements in ways that make it safe and convenient for pedestrians and cyclists to move around”.

The wording in the NPPF is as follows:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.....” (Paragraph 111).

Policy ST1 suggests that if a development has any kind of adverse effect on the ability of pedestrians and cyclists to move around in a safe and convenient way, it may be deemed unacceptable. This is not what the NPPF says. The NPPF set the bar considerably higher when it refers to 'unacceptable impact on highway safety' and residual impacts on the network that are 'severe'. ST1 is plainly not consistent with the NPPF. As a consequence, this part of ST1 must be afforded reduced weight in the determination of this appeal. That said, as set out above and in the Vectos Note, the proposals are fully in accordance with ST1.

- Policy ST2 – whilst the general principles of ST2 are consistent with the NPPF, the Policy, the distribution of development that it promotes are all based on an assessment of housing need and a housing requirement that are out of date;
- Policy SS2 – which specifies a housing requirement that is out of date;
- Policy SS3 – which fails to specify the level of affordable housing required in new developments in accordance with paragraph 34 of the NPPF;
- Policies ENV4 and DM27 – which are not consistent with the NPPF's content for the assessment of the impact that new development has on heritage assets; and
- Policy ENV5 – which is not consistent with the NPPF's content as regards the protection of landscapes and the countryside.

5.3 As noted above, and for the reasons already set out, Policy T1 is not relevant to this appeal and may not be afforded any significant weight in the assessment of the proposed development.

5.4 The relevant policies that the Appellant considers are most important for determining the appeal are: ST1; ST2; SS3; SS5; ENV1; ENV5; DM21; and HSG2. As noted above, several of these are out of date or are not consistent with the NPPF.

6. Harm Arising from Conflict with Relevant Development Plan Policies

- 6.1 As noted above, the Appellant does not accept that there is any significant conflict with relevant development plan policies.
- 6.2 The Appellant notes that the Council is asserting a conflict with ST1 however and so, for completeness, will consider the amount of harm that would be caused if the Council is correct.
- 6.3 As noted above, the test that is set out in Part D(iii) of Policy ST1 is not consistent with paragraph 111 of the NPPF and as a consequence, Policy ST1 must be afforded reduced weight. For the reasons given above and set out in the Technical Note produced by Vectos, the Appellant does not accept that the proposals are in breach of Policy ST1 but if the Inspector concludes otherwise, it must be the case that the harm caused by such a breach is very limited.

7. Other Material Considerations

- 7.1 There are other material considerations to be weighed in the planning balance. These indicate that planning permission should be granted, rather than refused. These are as follows.

The NPPF

- 7.2 The Local Plan 2001 – 2016 was adopted in 2006 and the Local Plan (Core Strategy and DMP DPD) 2013-2028 was adopted in 2013. Only limited parts of the 2006 Local Plan have been ‘saved’, and the Core Strategy contains a development strategy that is designed to address development requirements, including a housing requirement, which is out of date. The Council is in the process of preparing a new Local Plan (see below) and, when this is adopted, it will replace both the 2006 and 2013 Local Plans.
- 7.3 As a consequence of the age of the development plan, the changes that have been made to national planning policy since it was adopted, and the changes in circumstances that have arisen as regards development needs and requirements; a number of the development plan policies which are most important for determining this Appeal are out-of-date. Accordingly, paragraph 11(d) of the NPPF is engaged. This states that planning permission must be granted unless:
- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (see NPPF paragraph 11 footnote 7); or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole
- 7.4 There are no Footnote 7 policies in the NPPF that provide a clear reason for refusing planning permission in this instance and the proposals accord with all other relevant provisions of the NPPF, including its policies on:
- a) delivering a sufficient supply of new homes (paragraphs 60, 63 and 65);
 - b) promoting healthy and safe communities (paragraphs 92 and 93);
 - c) open space and recreation (paragraphs 98, 99 and 100);
 - d) promoting sustainable transport (paragraphs 104, 105, 110, 111, 112 and 113); and
 - e) achieving appropriate densities (paragraphs 124 and 125);
 - f) achieving well designed places (paragraphs 130 and 132);
 - g) planning for climate change (paragraphs 154 and 157);
 - h) planning and flood risk (paragraphs 159, 164 and 169);
 - i) conserving the natural environment (paragraph 174);
 - j) ground conditions and pollution (paragraphs 183 and 185); and
 - k) conserving and enhancing the historic environment (paragraphs 194, 199, 203 and 205).

- 7.5 As regards the matters referred to in the RfR (congestion and safety), we note that paragraph 111 states as follows:

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

- 7.6 The transport work undertaken by WYG/TetraTech at the planning application stage, and further work undertaken by Vectos for the purposes of this appeal, clearly demonstrates that the proposed development would not give rise to any unacceptable impacts as regards highway safety and neither would it have cumulative residual impacts on the road network that could be said to be 'severe'. As noted earlier in this Statement, the Local Highway Authority, National Highways and the independent consultant appointed by the Council to assessed the proposals all agree with this position.

The Emerging Local Plan

- 7.7 The Council is in the process of preparing a new Local Plan ("ELP"). The Draft SoCG contains a list of those ELP Policies that are relevant to this appeal (see SoCG paragraph 8.7).

- 7.8 The NPPF provides that:

"Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);*
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)" (paragraph 48)*

- 7.9 The ELP is currently at Examination. Hearing Sessions commenced on 31 January 2023 and concluded on 9 March 2023. On 17 March 2023, the Inspector appointed to examine the Plan published a consolidated list of work that needs to be done / matters that need to be addressed, before the Council produces a definitive schedule of Main Modifications (see copy attached at Appendix V). We refer to some of this work below. Notwithstanding the work that remains to be done by the Council, the Plan is at an advanced stage of preparation.

- 7.10 A number of the Policies in the Plan are the subject of unresolved objections but, so far as we can tell, very few of these are significant and / or go to the soundness of the plan and all are likely to be resolved by way of Main Modifications.

- 7.11 The policies within the ELP that are of most relevance to the Appeal proposals are generally consistent with the provisions of the NPPF.

- 7.12 Accordingly, and unless stated otherwise below, the relevant policies of the ELP may be afforded significant weight in the determination of this appeal.

Policy DS2PU – Reducing the impacts of development on Climate Change

- 7.13 Under Policy DS2PU, developers are encouraged to consider a range of factors when choosing a suitable location for their proposals and when designing their schemes. The proposals address the

matters highlighted in DS2PU, insofar as it is possible to do so at the outline application stage. Specifically, the proposals:

- a) are located within the boundary of the main settlement in the Borough and thus will help to minimise fossil fuel use in transport;
- b) will deliver infrastructure to support active and low carbon travel options;
- c) minimise tree loss, incorporate SuDS and will not result in development taking place in a location that is at high risk of flooding;
- d) make efficient use of the site by striking an appropriate balance between homes and green and blue infrastructure and building at appropriate densities; and
- e) will include substantial amounts of green infrastructure, will enhance adjacent tree belts, and will contribute to the provision of improved green spaces off site.

7.14 Other matters referred to in Policy DS2PU, such as high-quality design and energy efficiency, will be addressed in detail at the Reserved Matters Stage.

7.15 The Appellant is not aware of any outstanding objections which relate to the principle of Policy DS2PU.

Policy DS3PU: Settlement Hierarchy

7.16 Policy DS3PU states that the Council will support development within the settlements listed in the settlement hierarchy but goes on to say that development must be proportionate in terms of nature and scale to the role and function of the settlement, unless it has been identified within the Plan to meet the strategic growth needs of the Borough. Whitehaven is identified as the Borough's Principal Town with the largest population and, by a considerable margin, the greatest range of services and facilities. The Policy states that Whitehaven will continue to be the primary focus for new development in the Borough.

7.17 The Appeal site is within the settlement boundary of Whitehaven (as defined under Policy DS4PU) and the proposals are of a scale that is appropriate to the Town.

7.18 The Appellant is not aware of any outstanding objections which suggest that Whitehaven has been incorrectly categorised as the Principal Town, which suggest that it should not be the main focus for new development or which challenge the settlement boundary insofar as it affects the Appeal proposals.

Policy DS5PU: Planning Obligations

7.19 Policy DS5PU states that the Council will secure infrastructure provision/enhancements through planning obligations where it is reasonable, necessary and directly related to the development proposed. It also states that when determining the nature and scale of any planning obligations to be sought, account will be taken of specific site conditions, the Infrastructure Delivery Plan and other material considerations. In its representations to the Local Plan examination, the Appellant has objected to the reference to the IDP, which contains erroneous information in respect of the Appeal site (it refers to a need for infrastructure that the planning application has concluded is not necessary). The Local Plan Inspector has instructed the Council to (i) consider whether it should update the IDP requirements for the Appeal site to reflect the requirements agreed through the determination of the planning application; and (ii) amend the supporting text to Policy DS5PU to

reflect the need for the IDP to be kept up to date. Until (i) is resolved, there remains a significant outstanding objection to this Policy and so it may only be afforded limited weight at this time.

Policy DS6PU: Design and Development Standards

- 7.20 Policy DS6PU sets a series of design related criteria that new developments must satisfy. These cover matters such as: creating locally distinctive places; using good quality materials; creating layouts that encourage walking and cycling; providing safe, accessible and convenient pedestrian routes; and building at appropriate densities.
- 7.21 Compliance with Policy DS6PU can only be properly tested at the Reserved Matters stage. However, the Appellant has produced an Illustrative Masterplan and an Illustrative Layout which give an indication as to how these various factors could be addressed. It is clear from the illustrative material that the site can accommodate an appropriate form development that satisfies the requirements of Policy DS6PU and there are no design related objections to the proposals.
- 7.22 The Appellant is not aware of any outstanding objections which go to the principle of Policy DS6PU. Accordingly, it may be afforded significant weight in this Appeal.

Policy DS7PU: Hard and Soft Landscaping

- 7.23 The planning application included an arboricultural assessment which identified all existing trees within the site and immediately adjacent to it. It assessed the quality of these and gave an indication as to which might need to be removed, having regard to the Illustrative Layout referred to above. Within the Design and Access Statement, the Appellant has provided an indication as to where new planting might be incorporated. The provision of this information accords with the requirements of Policy DS7PU. A full and detailed landscaping scheme will be provided at the Reserved Matters stage.
- 7.24 The Appellant is not aware of any outstanding objections which go to the principle of Policy DS7PU. Accordingly, it may be afforded significant weight in this Appeal.

Policies DS8PU and DS9PU: Reducing Flood Risk and Sustainable Drainage

- 7.25 As noted earlier in this Statement, the planning application included a Flood Risk Assessment and Drainage Strategy (FRDS). The latter included proposals for surface water runoff mitigation, watercourse works and a surface water drainage strategy including SuDS. The drainage strategy has been embedded within the Illustrative Layout. The proposals have been assessed by the Environment Agency and the LLFA and have been found to be acceptable. The technical note by Tetra Tech at Appendix III concludes that the 2021 FRDS remains up to date, with the exception of climate change allowances which were increased in the revisions to the NPPF in July 2021 and allowances for urban creep as required by SUDS Manual C753. However, even with the increased climate change allowance, and a factor for urban creep added into the calculations, the Tetra Tech update confirms that the site can still satisfactorily accommodate a development of up to 370 homes, supported by a sustainable urban drainage scheme.
- 7.26 The Appellant is satisfied, therefore, that the proposals accord with Policies DS7PU and DS8PU.
- 7.27 The Appellant is not aware of any outstanding objections which go to the principle of Policies DS8PU and DS9PU. Accordingly, it may be afforded significant weight in this Appeal.

DS10PU: Soils, Contamination and Land Stability

- 7.28 Policy DS10PU is concerned with: directing development to locations that avoid the best and most versatile agricultural land; guarding against impacts on land quality; and ensuring that development

can be accommodated safely from a land contamination and stability perspective. The planning application included a Geo-environmental and Geo-technical Desk Study and Coal Mining Risk Assessment in accordance with Policy DS10PU and these have been assessed by the Council and its consultees. The land within the site is not of the best and most versatile agricultural quality and although the submitted Desk Study and Risk Assessment have concluded that the site may contain mined coal seams and an infilled quarry, the Study indicates that it will be possible to manage any associated risks posed to and by the development. Planning conditions are proposed requiring further site investigations and strategies to ensure full compliance with Policy DS10PU prior to development commencing.

- 7.29 The Appellant is not aware of any outstanding objections which go to the principle of Policy DS10PU. Accordingly, it may be afforded significant weight in this Appeal.

Policy H2PU: Housing Requirement

- 7.30 Policy H2PU proposes a housing requirement of a minimum of 2,483 net additional dwellings (148dpa) in the period 2021 – 2038. This, the Policy states, is the figure that will be used when calculating the Council's housing land supply for development management purposes. However, Policy H2PU goes on to note that, to plan positively and support employment growth over the Plan period, the Plan identifies a range of allocated housing sites sufficient to deliver at least 3,400 dwellings (200dpa) in the period to 2038².
- 7.31 The housing requirement specified in the ELP is significantly higher than the need calculated using the Standard Method (which is about 8dpa) and although the Council has been clear (and the Plan is clear) that a higher requirement is needed to bring the housing strategy for the Borough into line with its economic strategy, the Local Plan Inspector asked the Council during the EiP to provide a Note on the justification / reasoning for the higher requirement *"linking back to the circumstances / situation set out in the PGG where it may be appropriate to plan for a higher housing need figure"*. That Note was submitted to the Inspector on 27 February 2023.
- 7.32 As noted below, the Appeal site is allocated in full for housing development in the ELP and thus delivering housing here is entirely consistent with Policy H2PU.
- 7.33 The Appellant is not aware of the Inspector having sought further information from the Council on the matter of housing need / requirement and the Appellant is not aware of any significant outstanding objections to the proposed housing requirement. Accordingly, it may be afforded significant weight in this Appeal.

Policy H3PU: Housing Delivery

- 7.34 Policy H3PU states that housing delivery will be monitored closely and where development is not coming forward as anticipated (i.e. in line with the Council's housing trajectory), the Council will take one of 4 actions. These include liaising with the developers of allocated sites to identify the reasons for delays and to help identify solutions to problems.
- 7.35 The Council's trajectory assumes that the Appeal site will begin to see housing completions in 2026. This was the subject of discussion at the Matter 15 EiP Hearing Session. It was noted during that Session that the Council has amended the trajectory for the site to take account of this Appeal. Homes England agreed the trajectory, The Inspector considered it perhaps cautious and that the site could possibly yield new homes sooner.

² When added to completions, sites with planning permission and windfalls

- 7.36 The Appellant is not aware of any outstanding objections which go to the principle of Policy H3PU. Accordingly, it may be afforded significant weight in this Appeal.

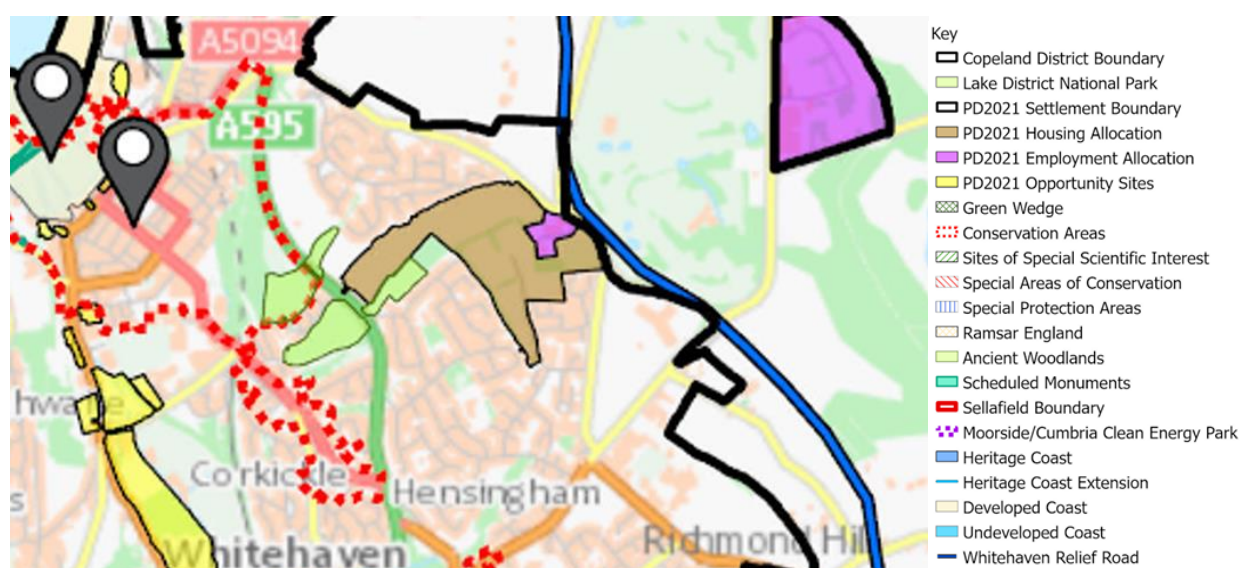
Strategic Policy H4PU: Distribution of Housing

- 7.37 Policy H4PU states that the distribution of housing in the Borough will be broadly in line with the settlement hierarchy. It goes on to say that additional housing will be supported within settlement boundaries of the towns, Key Service Centres and Local Service Centres where it accords with the Development Plan. The distribution within H4PU indicates that the Council expects 993 dwellings to be delivered within Whitehaven. This is 40% of the minimum 2,482 dwelling housing requirement. It also notes that Whitehaven is expected to accommodate 40% of the 3,400 dwellings referred to above (i.e. 1,360 dwellings). The Key Service Centres are expected to accommodate 30% of the housing requirement, the Local Service Centres 17% and so on. Delivering housing on the Appeal site is entirely consistent with the ELP settlement hierarchy and accords with Policy H4PU.
- 7.38 Again, The Appellant is not aware of any outstanding objections which go to the principle of Policy H3PU. Accordingly, it may be afforded significant weight in this Appeal.

Strategic Policy H5PU: Housing Allocations

- 7.39 The Appeal site is allocated for housing development under Policy H5PU. The site is given reference HWH2 and the ELP estimates its capacity at 370 dwellings³. Developing the site for housing would, therefore, be consistent with Policy H5PU.

Figure 2. Extract from ELP Proposals Map (North) showing allocation HWH2.



- 7.40 The Appellant is not aware of any outstanding objections in respect of the allocation of site HWH2 and so this part of Policy H5PU may be afforded significant weight in this Appeal.

Strategic Policy H6PU: New Housing Development

- 7.41 Like Policy SC1PU (see below), this Policy contains a list of criteria that the Council will use to determine whether, as a matter of principle, it can support development proposals on allocated or non-allocated sites. Because developers can only demonstrate that the criteria are met with the benefit of a detailed layout and design to which they are committed to delivering, compliance with SC1PU can only be judged at the Reserved Matters stage. However, the Design and Access Statement,

³ Based on the work undertaken in connection with Homes England's planning application.

the Illustrative Masterplan and the Illustrative Layout submitted with the planning application all indicate how it will be possible at that later stage to satisfy the requirements of Policy SC1PU. For example, the Illustrative Layout demonstrates that it is possible to design a scheme that:

- a) is appropriate to its locality and, more specifically, respects / addresses the topography of the site, and the existing housing adjacent;
- b) respects the natural assets within and adjacent to the site and minimises its impact on the landscape by keeping storey heights to a minimum and incorporating substantial areas of green and blue infrastructure;
- c) delivers appropriate levels of amenity space and avoids impacts on daylighting and sunlighting;
- d) avoids unnecessary / unacceptable impacts associated with building close to existing homes, such as being overbearing causing issues in respect of privacy; and
- e) promotes active travel by providing appropriate footpath and cycle links through the site to the town centre and other destinations.

7.42 The Appellant is satisfied that it is possible to design a scheme for this site which satisfies all of the requirements of Policy H6PU. But this is clearly a Policy that has limited relevance to this Appeal.

Strategic Policy H7PU: Housing Density and Mix

7.43 Policy H7PU notes that developments should make the most effective use of land and that, when considering the matter of density, proposals should clearly demonstrate that consideration has been given to the shape and size of the site and the requirement for non-developable areas (such as open space). It adds that developers must also demonstrate that their proposals meet local housing needs as defined in the latest SHMA.

7.44 These are all matters that can only be properly addressed at the Reserved Matters stage. However, as noted elsewhere in this Statement, the planning application included a Design and Access Statement, an Illustrative Masterplan and an Illustrative Layout which, together, explain both the constraints and opportunities presented by the site and describe a way in which the site could be developed that takes appropriate account of its physical form, makes the most effective use of the parts of the site that are developable, and could deliver an appropriate mix of housing. As a consequence, the proposals are clearly capable of satisfying the requirements of Policy H7PU.

7.45 So far as we can tell, there have been no significant objections, only requests for minor amendments and questions asked about the densities assumed for the purposes of the proposed allocations. Accordingly, Policy H7PU may be afforded significant weight in this Appeal.

Strategic Policy H8PU: Housing Density and Mix

7.46 In Whitehaven, the ELP requires 10% of the homes that are to be provided on sites of more than 10 dwellings to be affordable. As noted earlier in this Statement, Homes England is proposing that a minimum of 15% of the homes delivered on this site are affordable – significantly in excess of the ELP requirement. This is a substantial benefit of the proposals.

7.47 The Inspector appointed to examine the ELP has asked the Council a number of questions about Policy H8PU, several of which reflect comments made by representors. However, we have not been able to identify any significant objections which go to the application of a 10% requirement in Whitehaven and so this element of the Policy, at least, may be afforded significant weight in this Appeal.

Strategic Policy SC1PU: Health and Wellbeing

- 7.48 Policy SC1PU states that the Council will support developments that accord with a series of criteria seeking to promote health and wellbeing. Some of the requirements identified in the Policy may only be addressed at the Reserved Matters stage, when a detailed design for the scheme emerges. But there are a number of SC1PU requirements that the Appellant can safely say the proposals satisfy now. These are:
- a) enhancing the natural environment through improved air and water quality – there have been no concerns raised in either regard in connection with the Appeal proposals and by locating the development within the Principal Town, the development will minimise the number and length of polluting trips;
 - b) protecting or delivering green infrastructure, open spaces, sports, cultural and community facilities or seek developer contributions for such facilities – the proposals will: protect open spaces in the western part of the site; create new publicly accessible open spaces and green infrastructure (to a level the exceeds development plan and ELP requirements); and provide contributions towards the provision of improved sports facilities off-site;
 - c) supporting access to open spaces and the countryside – the proposals will provide existing and future residents with access to open spaces on site that are not currently accessible and will provide future residents with access to the countryside to the north (there are public footpaths across Harras Moor within 60m and 120m of the northern boundary of the site);
 - d) improves health, social and cultural well-being – as a consequence of being within Whitehaven, the development will provide future residents with safe and convenient access to a wide range of services and facilities that will enhance their wellbeing. The development itself will also provide material benefits in this regard by delivering spaces on site that existing and future residents will be able to use for recreation and informal social gatherings;
 - e) creates mixed communities through new or improved developments that are located in areas with access to key services to reduce social isolation and create community resilience – the development will foster a mixed community by delivering a range of market and affordable house types and by linking to existing communities adjacent. In addition, the Appeal site is in a location that provides excellent access to key services and will significantly reduce the risk of residents feeling isolated; and
 - f) promotes active travel – the proposals are ideally located to promote walking and cycling as the primary modes of travel between the site and the services and facilities within Whitehaven and the final design of the scheme will ensure the delivery of safe and convenient routes through the site which link to other routes to the town centre.

7.49 It is clear from the above that the proposals already do satisfy the requirement of Policy SC1PU or are capable of doing so at the Reserved Matters stage.

7.50 The EiP Inspector has identified the need or changes to be made to Policy SC1PU but, so far as we can tell, these will not go to the requirements referred to above and there are no significant objections to the Policy per se. Accordingly, it is a Policy, the relevant aspect of which may be afforded significant weight in this appeal.

Strategic Policy SC3PU: Playing Fields and Pitches

7.51 Policy SC3PU will replace and update Policy SS5 of the Core Strategy when it is adopted. It provides that proposals affecting playing fields will only be permitted where one of 6 criteria are met. None of

these are satisfied by the Appeal proposals. However, the Policy goes on to list 6 'exceptions' or circumstances in which development will be allowed notwithstanding a failure to satisfy one of the 6 criteria. These include: the area of playing field being lost to development being replaced by a new facility of equivalent or better quality, of the same size or bigger, in a suitable location that is at least as accessible as the existing facility. The exceptions also allow for replacement facilities where the loss of a pitch for one sport will result in the provision of another for a sport that generates greater demand.

- 7.52 As noted above, the playing pitch on the Appeal site has not been used for a long time, is not maintained, no longer has goal posts in place, is not easily accessed and is not over-looked, giving rise to concerns about how safe it is to use. Notwithstanding this, the Appellant has accepted that it is technically a playing field, albeit disused, for policy purposes and has agreed with the Council and Sport England a mitigation strategy for its loss to development that will help deliver a new playing pitch of better quality, at least the same size and in a better, more accessible location. Subject to controlling the making of the agreed financial contribution by planning obligation, the proposals will satisfy exception (iii) of Policy SC3PU.
- 7.53 The EiP Inspector has asked the Council to consider making amendments to this Policy and to discuss these with Sport England before proposing new wording. It is not clear how extensive the proposed changes will be but the Inspector has noted the need for an updated Playing Pitch Study and for the Council to consider its approach to securing developer contributions to playing fields/pitches in the light of what this says. She has also specifically referenced the need for consideration to be given to open space standards, whether replacement provision should be on-site or off site and how matters such as maintenance are to be dealt with. None of this has yet been done so, as things stand, we consider that Policy SC3PU may only be afforded limited weight in the determination of the Appeal.

Strategic Policy N1PU: Conserving and Enhancing Biodiversity and Geodiversity

- 7.54 Policy N1PU requires potentially harmful effects in respect of biodiversity and geodiversity to be identified and considered at the earliest opportunity. It also requires developers to demonstrate that they have adopted a mitigation strategy that follows the 'avoid', 'mitigate', 'compensate' hierarchy. We describe at paragraphs 4.35-4.39 above the approach that the Appellant has taken to assessing the natural assets within and adjacent to the site, its planning of the development and, in particular, the roles that green and blue infrastructure and landscape management played in this, the update work that has been done in respect of ecology, and the approach that is proposed to be taken as regards biodiversity. None of that needs to be repeated here. Suffice it to say that the Appellant has had appropriate regard to the consequences that developing this site might have for biodiversity and geodiversity and has demonstrated that it is possible to develop the land in a way that keeps adverse effects to a minimum, delivers high quality green spaces and planting and, ultimately, delivers a net gain in terms of biodiversity. Therefore, the proposals accord with Policy N1PU.
- 7.55 So far as we can tell, there have been no significant objections to this emerging Policy and the EiP Inspector has not raised any issues with it. Accordingly, it may be afforded significant weight in the determination of this Appeal.

Strategic Policy N3PU: Biodiversity Net Gain

- 7.56 Policy N3PU states that: all development, with the exception of that listed in the Environment Act must provide a minimum of 10% biodiversity net gain over and above existing site levels, following the application of the mitigation hierarchy set out in Policy N1PU. It goes on to say that, where possible, net gain should be delivered on-site and where that is not achievable, provision must be made elsewhere with the preference being areas identified as being part of the Local Nature

Recovery Network, then other suitable sites in the Borough and finally through the purchase of national biodiversity units / credits.

- 7.57 As reported in the application documentation⁴, even with habitat retention, enhancement and creation, the Appeal proposals will likely give rise to a loss of 48.53 habitat units (-36.71%) and a gain of 1.31 hedgerow units (123.83%).
- 7.58 The Appellant is committed to delivering a net gain in terms of biodiversity but this cannot be fully achieved on site. Accordingly, an offsite provision will be made. This was agreed with the Council during the planning application process.
- 7.59 Policy N3PU introduces a requirement (10% net gain) that derives from the anticipation of the requirements of regulations accompanying the Environment Act 2021. But this does not yet apply to decisions on planning applications or appeals and there is no basis for a 10% requirement in the NPPF. Accordingly, the requirements of Policy N3PU may not be afforded anything other than limited weight in the determination of this Appeal.

Strategic Policy N5PU: Protection of Water Resources

- 7.60 Policy N5PU is concerned with ensuring that new developments are adequately served by appropriate water infrastructure so as to avoid adverse effects on existing surface and ground water resources. Whilst plainly relevant to the Appeal proposals, Policy N5PU is one that can only be addressed at the Reserved Matters stage.

Strategic Policy N6PU: Landscape Protection

- 7.61 Policy N6PU is very similar to Policy ENV5 of the Core Strategy which we have already addressed at paragraphs 4.47-4.54 above. The only additional requirement that N6PU introduces, that ENV5 does not mention specifically, is the need to ensure that development proposals demonstrate that their location, scale, design and materials will conserve and where possible enhance the natural beauty, wildlife and cultural heritage of the Lake District National Park and Heritage Coast (where proposals could impact on its setting and views into and from the National Park or Heritage Coast). However, the Heritage Coast is just under 4km from the Appeal site and is thus beyond the study area for visual effects and the National Park is even further away. Therefore, the analysis provided in respect of ENV5 applies equally to N6PU and the proposals accord with this Policy also.
- 7.62 There have been no significant objections to Policy N6PU and so it may be afforded significant weight in the determination of this appeal.

Strategic Policy N9PU: Green Infrastructure

- 7.63 Policy N9PU states that the amount of green infrastructure on the development site should be maximised and developers should take opportunities to create new connections, expand networks and enhance existing green infrastructure to support the movement of plants and animals. It also states that green infrastructure should be multi-functional where possible and should be considered at the start of the design process. Clearly, these requirements can only be properly addressed when a firm and detailed layout is produced at the Reserved Matters stage. However, the Design and Access Statement, the Illustrative Masterplan and the Illustrative layout all demonstrate how the development of the Appeal site could be designed so as to maximise the green infrastructure delivered on-site and how these could be laid out and configured so as to be multi-functional (providing spaces for habitat creation, recreation, play and active travel) and create / maintain links to

⁴ BNG Assessment (March 2022)

other open spaces and the countryside beyond the site to the north. The proposals indicate that the development is capable of satisfying the requirements of Policy N6PU at the Reserved Matters stage.

- 7.64 There have been no significant objections to Policy N6PU and so it may be afforded significant weight in the determination of this appeal.

Strategic Policy N11PU: Protected Green Spaces

- 7.65 Policy N11PU states that:

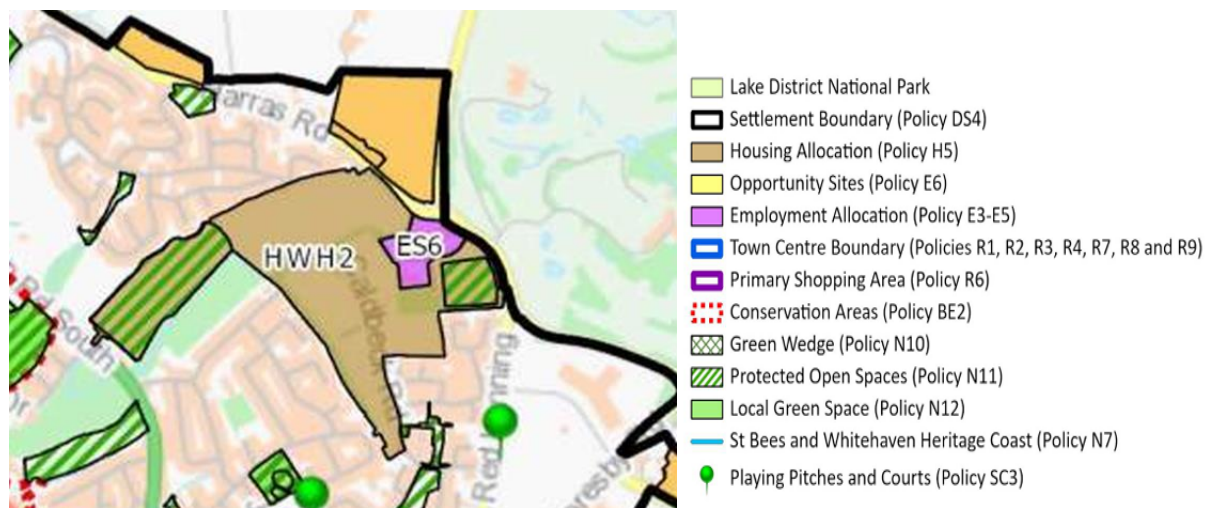
The Local Plan Proposals Map identifies Protected Green spaces which are of a high quality and/or value.

Development proposals that enhance Protected Green Spaces will be supported where they accord with the Development Plan. The loss of such Protected Green Spaces will be resisted unless equivalent replacement provision of the same or better quality is provided within the same settlement.

Proposals to develop other green spaces, including play areas and allotments not identified on the Proposals Map, should also comply with this policy where there is evidence that they are of value to the community.

- 7.66 The Proposals Maps do not identify Protected Green Spaces.
- 7.67 The Settlement Maps that sit within Draft Appendix B to the ELP identify Protected Open Spaces and indicate that there are two such Spaces lying within the Appeal site – the playing field already discussed in this Statement and fields in the western half of the site running down to the A595 (see Map extract below – the Protected Open Spaces are the green hatched areas).

Figure 3. ELP Settlement Map, Whitehaven



- 7.68 In its representations to the ELP EiP, Homes England has raised significant concerns about both of the designations within the Appeal site, noting a lack of evidence justifying their protection (neither reaches the Council's self-generated threshold scores for quality or value) and a lack of consistency in the way that open spaces have been assessed. In the light of the points made by Homes England, the EiP Inspector has instructed the Council to:

- a) amend the title of the Policy so that it reads 'Protected Open Space' (not green space);

- b) set out the rationale/process for carrying forward identified open spaces into the plan (from the current plan) and identifying new sites for protection, taking account of the evidence base;
- c) check sites protected in current plan for landscape value under Policy DM26, shown on current policies map adjacent to the A595, which appear not to have been carried forward for protection. Clarify any anomalies and consider whether these sites have been carried forward;
- d) clarify how the scores have been arrived at for the site assessment proformas and spreadsheets-maths behind how the overall quality and value scores have been arrived at;
- e) explain the methodology/rationale of the overall approach to the setting of quality and value thresholds as the thresholds appear to be low;
- f) explain why some sites are recommended to be protected even when they fall short of the quality/value threshold;
- g) explain the approach in areas where a shortfall of a particular typology of open space has been identified, of retaining all open spaces even where the scores of a particular site may be low. Under these circumstances, has there been any assessment of which of the lower scoring sites has the most potential to be enhanced and hence taken forward as opposed to a more blanket approach;
- h) confirm whether site visits undertaken for sites 72 and 179 (the sites proposed to be protected within the Appeal site);
- i) check the scoring of Site 72 (the space adjacent to the A595); and
- j) review and set out justification for the protection of open spaces 72 and 179 (in the form of a note), bearing in mind the points raised by Homes England.

7.69 In addition, the Inspector has instructed the Council to consider drafting a new standalone Policy which deals explicitly with the open space requirements associated with new developments and the mechanisms that will be used to secure this.

7.70 The Appellant's submissions in respect of Policy N11PU constitute a significant unresolved objection. It is not clear whether the Policy will be retained in its current form and / or whether the designations currently affecting the Appeal site will be retained but, in the light of the submissions made and discussion held at EiP, the Appellant considers that there is a significant chance that both designations will be removed. Either way, given the uncertainty attached to this Policy at the current time, and the flaws in the evidence base underpinning it, the Appellant considers that it cannot be afforded any weight in the determination of this Appeal.

7.71 In any event, it should be noted that the total area of land on the site identified as Protected Green Space amounts to just under 5.5ha. The proposals would provide 7.1ha of open space including leaving open much of the steeply sloping area above Loop Road South which is identified as part of the western area of Protected Green Space.

Strategic Policy N13PU: Woodlands, Trees and Hedgerows

7.72 Policy N13PU is almost identical to Policy DM28 of the Core Strategy, which we deal with at paragraphs 4.81-4.83 above. The wording is slightly different in places but, like DM28, N13PU still requires: that an arboricultural assessment be submitted with proposals that are likely to affect trees; proposals for the planting of replacement trees at a minimum ratio of 2:1; and that there be no loss or damage to ancient woodland or veteran trees, albeit the exceptions in N13PU are limited to cases

where there are exceptional reasons and a compensation strategy (rather than benefits which outweigh the loss as set out in DM28). We explain earlier why the proposals accord with the requirements of DM28 and for those same reasons the proposals also accord with N13PU.

- 7.73 The EiP Inspector is proposing only a very modest amendment to Policy N13PU and we are not aware of any significant outstanding objections to it. Accordingly, it may be afforded significant weight in the determination of this Appeal.

Strategic Policy BE3PU: Archaeology

- 7.74 Policy BE3PU is an updated version of Part E of Core Strategy Policy DM27. We explain at paragraphs 4.41-4.42 and 4.79 above the work that has been undertaken in respect of archaeology, and its findings. Conditions are proposed which require a Written Scheme of Investigation for the site and then a programme of works that will ensure that any archaeological remains that are found on site are preserved in accordance with Policy BE3PU. The proposals accord with this Policy of the ELP.
- 7.75 There have been no significant objections to Policy BE3PU and so it may be afforded significant weight in the determination of this appeal.

Strategic Policy CO4PU: Sustainable Travel

- 7.76 Policy CO4PU states that development proposals must include safe and direct connections to routes that promote active travel and states that the Council will support development proposals which encourage the use of sustainable modes of transport. Some of the requirements of this Policy, such as those concerned with the provision of charging points for electric vehicles, will be addressed at the Reserved Matters stage. The others, concerned with active and shared travel have been addressed at paragraphs 4.86-4.88 above and are explored in more detail in the Vectos Note at Appendix I. The proposals very clearly accord with the provisions of Policy CO4PU.
- 7.77 The EiP Inspector has noted the need to relocate an element of Policy CO7PU to CO4PU but this is of no consequence for this Appeal. There are no significant outstanding objections to Policy CO4PU and so it may be afforded significant weight in the determination of this appeal.

Strategic Policy CO5PU: Transport Hierarchy

- 7.78 Policy CO5PU states that, where possible, new developments should promote the following hierarchy of users:
- a) pedestrians;
 - b) cyclists;
 - c) public and Community Transport Users;
 - d) vehicles that facilitate car sharing; and
 - e) all other vehicles
- 7.79 It goes on to state that developments should be designed to maximise the use of transport modes towards the top of the hierarchy and ensure the needs of disabled people are considered at all stages of the transport hierarchy.
- 7.80 Only when a firm detailed layout for the Appeal proposals is produced will the developer be able to demonstrate exactly how the development prioritises movements by pedestrians and cyclists but the

Illustrative Layout gives a good indication as to how this may be achieved through the provision of: (i) a variety of safe, attractive and convenient off-road links through the development; and (ii) pedestrian and cycle connections to surrounding roads, residential areas and services and facilities to the west, south and east. Of course, the proposals benefit significantly, from a sustainable travel perspective, by being located within the settlement boundary of Whitehaven where, as we have said elsewhere in this Statement, there is a far greater ability to access key services and facilities by sustainable means. The accompanying Vectos Note (Appendix I) describes in more detail how the development facilitates / encourages active and shared travel more widely.

7.81 The proposals accord with Policy CO7PU.

7.82 The EiP Inspector has not noted any issues with this Policy and, so far as we can tell, it is not the subject of any significant outstanding objections. Accordingly, it may be afforded significant weight in the determination of this Appeal.

Strategic Policy CO7PU: Parking Standards and Electric Vehicle Charging Infrastructure

7.83 The Illustrative Layout shows how the Appeal site could be developed in a manner that makes appropriate / adequate provision for the parking of vehicles, in accordance with the Cumbria Development Design Guide. However, the details of the proposed parking arrangements will only be fixed at the Reserved Matters stage. The EV requirements of Policy CO7P are to be relocated to Policy CO4PU as noted above and will also be addressed at the Reserved Matters stage. So whilst clearly relevant, Policy CO7PU is not a Policy that should have a material bearing on the determination of this Appeal.

Conclusions on Compliance with the ELP

7.84 It is clear from the assessment above that the proposed development accords with the ELP taken as a whole. The Appellant's assessment is consistent with that of Members, Officers and consultees, none of whom found any conflict with the ELP at the planning application stage.

Proposed Changes to the NPPF

7.85 The Appellant notes that the Government has recently consulted on proposed changes to the NPPF. These may not be afforded anything other than limited weight at present but the Appellant notes that it may be necessary to comment in due course on the implications of any changes made to the NPPF before the Appeal is determined.

Issues Raised by Third Parties

7.86 The 16 August 2022 Report to the Council's Planning Panel records members of the public raised concerns about a number of matters including:

- a) flood risk and drainage;
- b) the scope of the TA and assumptions made within it about trip generation, the capacity of the highway network, the safety of the proposed accesses, and the potential for rat running through nearby estates;
- c) the location of the site relative to walking and cycling routes and public transport links and impacts on public rights of way;
- d) the scale of the development, being excessive / overly intensive and it representing urban sprawl;

- e) the need for the development;
- f) landscape effects;
- g) the loss of green spaces and public open spaces;
- h) impacts on wildlife and protected species;
- i) the loss of hedgerows;
- j) additional pressure being placed on already stretched infrastructure such as healthcare facilities and schools;
- k) the potential for overlooking of adjacent existing homes and impacts by way of overshadowing;
- l) antisocial behaviour; and
- m) construction noise.

7.87 All of these matters were addressed by the Appellant in the documents that it submitted with the application, or by consultees and / or by Officers when they set out their assessment of the proposals in their Reports to the Council's Planning Panel. Most have also been addressed again in this Statement and the Notes that are appended to it. However, for completeness, we would add the following:

- a) **the scale of the proposed development** – is entirely appropriate. The site extends to 23ha, only 14.78ha is proposed to be developed with housing and the proposal is to construct new homes at a net density of approximately 25 dph. A further 7.1 ha of open space will be provided. This is all entirely consistent with the site's context, the provisions of the development plan and other material considerations;
- b) **urban sprawl** – is the spread of a town or city, usually into open countryside and usually without planning. The development of the Appeal site is neither unplanned (it has been a feature of the adopted development plan for many years) and nor would it result in the expansion of Whitehaven beyond its defined settlement limits into the open countryside (as reviewed within the latest Local Plan). It would fill a gap between the two existing residential areas but would ensure their individual characteristics remain unaffected;
- c) **housing need** – notwithstanding sale of the site to Homes England for the intended purpose of housing delivery, the ELP has established that there is a need for the delivery of a significant number of new homes in Copeland Borough, to balance with planned economic growth and ensure sustainable outcomes, and the objective is to focus the majority of the housing that is needed within Whitehaven. The Appeal site is proposed for allocation to meet these needs. The development of the Appeal site is an important part of this strategy and is plainly therefore needed;
- d) **existing infrastructure** - there is no evidence of existing social infrastructure including primary and secondary schools and health care services being under pressure, or that the proposed development will impact on existing infrastructure to the extent that mitigation is required. All relevant consultees have assessed the likely effects of the proposals on their assets and services and none have requested contributions to support infrastructure delivery or enhancements;
- e) **overlooking** – the illustrative layout demonstrates that the Appeal site can be developed in a manner that avoids overlooking and loss of privacy / amenity and this will be reflected upon

further at the Reserved Matters stage. There is no prospect at all of the proposed development causing overshadowing; and

- f) **noise / anti-social behaviour** - there is no evidence to suggest that the proposed development will bring with it issues linked to **anti-social behaviour** and all **construction** related impacts will be controlled by way of a management plan required by planning condition.

7.88 The representations made by Interested Parties at the planning application stage have not yet been made available to the Appellant by the Council despite several requests. The summary provided at paragraph 7.86 above is based on the Planning Panel reports. The actual letters of representation will be submitted to the Inspector with the appeal questionnaire and the appellant reserves the right to make further comments on these should they raise matters not summarised in the Planning Panel reports. In the event that Interested Parties raise other matters pursuant to consultation on this appeal, the Appellant reserves the right to make further submissions in response to these also.

8. The Benefits of the Proposed Development

- 8.1 The proposed development would give rise to a number of benefits. The Appellant has assessed the weight that each of these should be afforded in the planning balance, applying the following scale:
- a) limited;
 - b) moderate;
 - c) significant; and
 - d) substantial
- 8.2 The Appellant has also considered the weight that should be afforded to these benefits when looked at together. A summary of the Appellant's assessment is as follows:
- a) the delivery of up to 314 market homes on land that is already part allocated for housing in the current development plan, is proposed to be allocated in full in the ELP and is within the settlement boundary of the Borough's Principal Town – substantial weight;
 - b) the delivery of up to 56 affordable homes (15% of the total dwellings proposed, 5% more than required by the ELP) – substantial weight;
 - c) improved choice of homes for the local housing market available to meet different population needs including single bedroom homes and larger family homes – substantial weight;
 - d) provision of executive style homes for which there is an identified need – substantial weight;
 - e) the provision of 7.1 hectares of public open space (some 6.3ha more than the development plan requires), that would be accessible to both existing residents of Whitehaven as well as the residents of the proposed development – substantial weight;
 - f) provision of two Locally Equipped Areas of Play (LEAPs) which will benefit existing as well as new residents (there are no LEAPs within the Highlands estate or the Caldbeck Road estate) – substantial weight;
 - g) a reduction in the risk of surface water flooding downstream and adjacent to the application site in extreme rainfall events through the introduction of flow control measures and managed sustainable drainage features – substantial weight;
 - h) the creation of jobs during the construction period in an area (Whitehaven) that has a higher unemployment rate than both Copeland Borough and Cumbria – moderate weight;
 - i) the enhancement of existing planting and the planting of new areas of native woodland – moderate weight;
 - j) provision of a network of publicly accessible footpaths and green spaces providing active travel routes across / through the site – moderate weight;
 - k) economic benefits flowing from the generation of additional spend in the local economy, both during construction and post-occupation – moderate weight;
 - l) the delivery of improvements to two key road junctions that will benefit existing road users as well as accommodate traffic generated by the proposed development – moderate weight;

- m) the generation of additional Council Tax revenue and New Homes Bonus supporting local services and infrastructure – moderate weight; and
- n) the making of financial contributions towards local sports facilities and off-site habitat creation through planning obligations – moderate weight.

8.3 Together, the Appellant considers that the above benefits of the development should be afforded substantial weight in the planning balance.

9. Planning Balance

- 9.1 This appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development complies with the development plan read as a whole. However, some of the development plan Policies that are most important to the determination of this appeal are out of date.
- 9.2 Paragraph 11d of the NPPF provides that where the development plan policies which are most important for determining the appeal are out-of-date, planning permission must be granted unless either:
- i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole
- 9.3 There are no Footnote 7 policies in the NPPF that indicate that planning permission should be refused. Accordingly, the tilted balance is engaged and the appeal should be allowed unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 9.4 There is no prospect at all in this case of the adverse impacts of the development significantly and demonstrably outweighing the benefits of the proposals when assessed against the policies in the NPPF taken as a whole. Homes England have pursued the proposed development in a diligent and thorough manner. All substantive issues raised throughout the planning application process have been addressed. No objections from statutory consultees were outstanding. The professional officers of the Council recommended that planning permission be granted. Considered on balance, the adverse effects of granting permission would be very modest indeed and the benefits of the proposals, which include those flowing from its compliance with the provisions of the development plan and the ELP, would be substantial.
- 9.5 The Appellant considers that the case for the appeal is compelling. It therefore respectfully requests that the appeal is allowed subject to appropriate obligations and conditions.

10. Planning Conditions and S106 Contributions

- 10.1 The Officer's Report to the Council's Planning Panel meeting of 16 August 2022 contained a list of planning conditions that would likely have been imposed if Members had resolved to grant planning permission. It also described several planning obligations that will need to be included within a S106 Agreement should the appeal be allowed. These are all listed in the Draft SoCG and, as necessary, will be the subject of further discussion with the Council before the Hearing.

Appendix I

Technical Note Prepared by Vectos on Transport Matters

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix II

Technical Note prepared by Tetra Tech on Ecology and Biodiversity Net Gain

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix III

Technical Note prepared by Tetra Tech on Flood Risk and Drainage

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix IV

Minutes of a Meeting of Copeland Borough Council on Tuesday 21st March 2017

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix V

ELP Action List prepared by the Inspector (EiP
Document CBC25A)

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix VI

Planning Panel Report 18 September 2019

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix VII

Planning Panel Report 16 August 2022 (note that the date on the title page is incorrect)

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix VIII

Transcript of Planning Panel Meeting 16 August 2022

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix IX

Arup Transport and Highways Review 27 November
2019

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix X

Transcript of Meeting between Planning Panel Members and Arup

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Appendix XI

Planning Panel Update Reports 1 September 2021 and 24 November 2021

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.

Contact details

Enquiries

Craig Alsbury MRTPI
Craig.alsbury@avisonyoung.com

Visit us online

[avisonyoung.com](https://www.avisonyoung.com)

Avison Young

3 Brindleyplace, Birmingham B1 2JB

Copyright © 2022. Avison Young. Information contained in this report was obtained from sources deemed reliable and, while thought to be correct, have not been verified. Avison Young does not guarantee the accuracy or completeness of the information presented, nor assumes any responsibility or liability for any errors or omissions therein. All opinions expressed and data provided herein are subject to change without notice. This report cannot be reproduced, in part or in full, in any format, without the prior written consent of Avison Young.