

**COPELAND BOROUGH COUNCIL  
DELEGATED PLANNING DECISION**

1.	<b>Reference No:</b>	4/20/2251/001
2.	<b>Proposed Development:</b>	OUTLINE APPLICATION (WITH ALL MATTERS RESERVED) FOR A SINGLE DWELLING
3.	<b>Location:</b>	LAND AT 1 SOUTH ROW, WHITEHAVEN
4.	<b>Parish:</b>	Whitehaven
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change
6.	<b>Publicity Representations &amp; Policy</b>	<p>Neighbour Notification Letter: YES</p> <p>Site Notice: YES</p> <p>Press Notice: NO</p> <p>Consultation Responses: See report</p> <p>Relevant Planning Policies: See report</p>
7.	<b>Report:</b>	<p><b>SITE AND LOCATION</b></p> <p>This application relates to an area of land adjacent to 1 South Row in the Kells area of Whitehaven. The site is currently used as a residential garden associated with the parent property which is dual fronted to face both to the west and the south. The site includes an existing double garage. There are other gardens to the north and south, the terrace of houses on West Row to the east and open space stretching to the coast to the west.</p> <p>The site is currently bound by a concrete block wall and fence. The site slopes from east to west and is accessed from West Row. There is a Public Right of Way (PROW) situated to the south of the site (431066), another PROW 150m to the west of the site (431046) and a popular footpath immediately adjacent to the site to the west.</p> <p><b>PROPOSAL</b></p> <p>Outline Planning Permission is sought for the erection of a single dwelling on the site with all matters</p>

reserved for future approval. The application includes the retention of the existing double garage.

#### RELEVANT PLANNING APPLICATION HISTORY

There have been no previous applications on the site.

#### CONSULTATION RESPONSES

##### Consultees

Whitehaven Town Council – No objections.

Cumbria County Highways – No objections, provided that the double garage and existing concreted area is retained in order to provide off street parking. All details of the access must be approved prior to it being brought into use.

Flood and Coastal Defence Engineer – raised no objections, provided that a condition is added to any approval to ensure that suitable drainage can be demonstrated in accordance with the hierarchy.

United Utilities – No objections, subject to conditions relating to drainage and an ongoing management scheme.

Local Lead Flood Authority – The flood maps show that the site is very close to an area of flooding.

##### Public Representation

The application has been advertised by way of a site notice and neighbour notification letters issued 3 no. properties.

No responses have been received as a result of this advertisement.

#### PLANNING POLICIES

Planning law requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

##### **Development Plan**

###### **Copeland Local Plan 2013 – 2028**

The Core Strategy and Development Management Policies DPD (known as the Copeland Local Plan 2013-2028) was adopted by the Council in December 2013.

The Policies in the Core Strategy and Development Management Policies DPD are a material consideration when determining planning applications and carry significant weight.

##### Core Strategy

The Borough's Strategic Development Principles are set out in Policy ST1 where the emphasis is for

the creation and retention of quality places is on high quality design and the safeguarding of residential amenity. There is also a preference to re-use previously developed land. Part A ensures that development creates a residential offer which meets the needs and aspirations of the Borough's housing markets. Part B directs development away from greenfield sites.

Policy ST2 sets out a settlement hierarchy for the Borough which aims to concentrate development within the Borough's settlement boundaries and particularly Whitehaven which is designated as Copelands Principal Town. Whitehaven is targeted with accommodating the greatest level of development to reflect its status as the largest settlement within the Borough.

Policy SS1 seeks to improve the housing offer across the Borough.

Policy SS2 seeks to achieve sustainable housing growth by focussing new housing development within accessible locations to meet the needs of the community.

Policy SS3 requires developers to demonstrate the provision of a balanced mix of housing types.

Policy ENV2 reinforces the Coastal Zone's assets and opportunities and seeks to protect the undeveloped areas and maximize opportunities for tourism and outdoor recreation.

Policy ENV5 seeks to protect and enhance the Borough's landscapes by ensuring that there is no inappropriate development and that the distinctive characteristics of a particular area are not threatened or reduced as a result of new development.

#### Development Management Policies (DMP)

Policy DM10 seeks to achieve a high standard of design. It also seeks to foster 'quality places' addressing vulnerability to and fear of crime and anti-social behavior and create and maintain reasonable standards of general amenity.

Policy DM11 requires housing to be developed in accordance with sustainable development standards.

Policy DM12 sets out the standards for new residential development incorporating car parking provision in accordance with adopted residential parking standards and minimum separation distances between dwellings.

Policy DM22 relates to the requirement for developments to incorporate a suitable and safe access and provide convenience for pedestrians, cyclists and disabled people.

Policy DM24 seeks to ensure that new development is not at unacceptable risk of flooding and appropriate mitigation measures should be provided where necessary.

#### **Other Material Planning Considerations**

## National Planning Policy Framework 2019 (NPPF)

The Governments Planning Policies are set out in the National Planning Policy Framework (NPPF) which was introduced in July 2018.

The NPPF outlines that the purpose of the planning system is to contribute to the achievement of sustainable development.

Paragraph 8 states that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and

c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Paragraph 9 of the NPPF states that planning policies and decisions should play an active role in guiding development towards sustainable solutions and in doing so should “take local circumstances into account, to reflect the character, needs and opportunities of each area”.

Paragraph 11 outlines that development should be approved that accords with the development plan; and where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or
- Specific policies in this Framework indicate development should be restricted.

Paragraph 12 looks to deliver a wide choice of high quality homes by considering housing applications in the context of the presumption in favour of sustainable development. Housing applications should be considered in the context of the presumption in favour of sustainable development and relevant

policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable housing sites. In turn where a five year supply of deliverable housing sites cannot be demonstrated then paragraph 11 of the NPPF is engaged and an application is to be assessed in this context.

Part 15 contributes to and enhances the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and
- f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Paragraph 17 of the NPPF covers the 12 key principles of the planning framework. One principle states that planning should always seek to secure high quality design and a good standard of amenity for all occupants of the land and buildings.

Paragraph 49 looks to deliver a wide choice of high quality homes by considering housing applications in the context of the presumption in favour of sustainable development.

Part 12 requires good design. Paragraph 127 aims to ensure that development functions well and adds to the overall quality of the area, establishes a strong sense of place and is visually attractive as a result of good architecture and appropriate landscaping.

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most versatile agricultural land, and of trees and woodland;

c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

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f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Annexe 2 relating to previously developed land specifically excludes private residential gardens.

The NPPF constitutes guidance for local planning authorities and in respect of development control is a material consideration in determining planning applications. It does not change the status of the development plan and the planning system remains plan led – requiring that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

#### Interim Housing Policy 2017 (IHP)

As of the 9th May 2017, the Council announced that it cannot demonstrate a five-year supply of housing sites. Policies for the supply of housing set out within the Copeland Local Plan 2013 – 2028 (Core Strategy and Development Management Policies) will no longer be deemed up-to-date; and these policies carry less than full weight in decision-making.

The lack of five-year housing land supply means that local plan policies related to the supply of housing are out-of-date and carry less weight. This also introduces paragraph 11 of the National Planning Policy Framework (NPPF) 2018 into the decision-making process. Paragraph 11 states that, for decision-taking, where some policies of the development plan may be out-of-date the LPA should grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF.

The Copeland Local Plan remains the starting point for considering planning applications and proposals that conform with the Local Plan should be approved. If a proposal does not conform with the Core Strategy then the Preferred Options Site Allocations and Policies Plan and Interim Housing Policy should be considered in the planning balance, along with all other material planning considerations. The Interim Housing Policy sets out the following criteria which are to be used to assess proposals for residential development which are contiguous to the development boundary of

the existing built form of a settlement:-

- A. The scale of proposed development must be appropriate to the size, character and role of the settlement. In deciding whether the scale is appropriate, account will be taken of the cumulative impact of completions and permissions for the settlement concerned.
- B. The level of services and facilities in the settlement, as defined in the Village Services Survey (2017). To encourage sustainable development, preference will be given to schemes which are contiguous to settlements that have the greatest concentration of facilities and services. Information provided by applicants which seeks to update the survey will be a material consideration.
- C. Proposed development should not have a significant adverse impact on the capacity and safety of the highway and transport network.
- D. Individual and cumulative impacts of development on infrastructure capacity (for example: education, health provision, surface water management, adult social care), and landscape character should be mitigated.
- E. Proposed development should create safe and accessible environments that offer good access via a range of transport modes. Sites where it is possible to walk easily to a range of facilities will be considered more sustainable than sites that are further away and which would make car journeys more likely.
- F. Proposed development sites that fall within Flood Risk Zone 3a and 3b, as defined by Environment Agency's latest data, will be discounted unless robust evidence can prove that the flood zoning for the site is incorrect, or that there is a robust mitigation plan signed off by the Environment Agency.
- G. Proposed development should not have an adverse impact on the Lake District National Park, and should demonstrate how they conserve or enhance the natural beauty, wildlife and cultural heritage of the Lake District National Park, or its setting.
- H. Proposed development should, subject to viability, include a proportion of affordable housing which makes the maximum contribution to meeting identified needs in that market area.
- I. Proposed development for Executive Housing will be supported where it delivers significant and demonstrable economic, social, and environmental benefits.
- J. Proposed development should be of a high quality design, enhancing local distinctiveness; and, where relevant, respecting the rural character of the settlement.
- K. Proposed development should not result in significant intrusion into the open countryside, or result in any settlements merging.
- L. Proposed development should not result in significant and demonstrable harm to the landscape character of Copeland, and applicants should have regard to those landscape areas as defined in the Cumbria Landscape Guidance and Toolkit (2011), or any subsequent update.
- M. Major developments should be supported by a masterplan (to include a phasing scheme), which will demonstrate what proportion of development will be deliverable within the five year supply period relevant to the date of determination of the planning application.

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housing are out-of-date and carry less weight. This also introduces paragraph 11 of the National Planning Policy Framework (NPPF) 2018 into the decision-making process. Paragraph 11 states that, for decision-taking, where some policies of the development plan may be out-of-date the LPA should grant planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF.

#### Cumbria Landscape Character Toolkit (2011)

The Cumbria Landscape Character Guidance and Toolkit maps describes the character of different landscape types across the county and provides guidance to help maintain their distinctiveness.

This site falls within the urban area category with the land immediately to the west designated as type 4 – Coastal Sandstone. The key characteristics of this location are for coastal sandstone cliffs and sandstone rolling hills.

#### Copeland Landscape Settlement Study 2020 (Draft)

This emerging document is due to be published in October 2020 and provides a landscape character and sensitivity assessment to provide a tool for decision making in the development management process. This document has been produced as part of the evidence base to support the new Copeland Local Plan 2017-2028).

The site lies within the urban area category in this document, but the land immediately to the west is sub categorised as character type 4i – Coastal Urban Fringe Cliffs which provides an informal and formal recreation space for the town.

#### Planning Practice Guidance – Design: process and tools (2014)

Sets out the 10 characteristics of good design, as set out in the National Design Guide to include context, identity, built form, nature and public spaces.

#### The Copeland Local Plan 2017-2035 (Preferred Options 2020)

The Council has commenced work on its new Local Plan which will contain strategic policies, site allocations and development management policies. The Plan will consider how much development should be supported over the plan period 2017-2035, where such development should go and what it should look like and which areas should be protected from development.

The emerging Copeland Local Plan 2017-2035 is currently the subject of a Preferred Options Consultation. The Preferred Options Consultation builds upon the completed Issues and Options Consultation which finished in January 2020. Given the stage of preparation, the emerging Copeland Local Plan 2017-2035 has only limited weight in decision making, but provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the National Planning Policy Framework.

ASSESSMENT



## Introduction

This is an outline application with all matters reserved for subsequent approval and therefore this proposal only seeks to determine the principle of residential development on the site. The application is accompanied only by a red line plan, with no indicative plans to demonstrate how a dwelling may be sited within the plot. The Applicant has indicated that they intend to retain the double garage and hardstanding which is sited to the north east of the site.

The main issues raised by this application are the principle of the development, the greenfield nature of the land, impact on the local landscape, impacts on the settlement character and the impacts on existing residential amenity. These concerns were raised with the applicant prior to the determination of the application.

## Principle of the development

Policy ST2 within the Copeland Local Plan designates Whitehaven as the Borough's Principal Town whereby most development should be undertaken. This site is located within the settlement boundary for Whitehaven.

The principle of the development is therefore acceptable, subject to a detailed site assessment.

## Designation of the land as Greenfield

The land is currently used as garden amenity land associated with 1 South Row. Recent case law (Dartford High Court case) has designated garden areas within settlements as greenfield land as set out in the National Planning Policy Framework (NPPF), Annex 2 and the definition of brownfield land. Further to this, the NPPF considers that residential gardens should not be included as windfall sites for residential use, further emphasizing that garden land should be considered in a similar fashion to plots in the open countryside whereby the potential benefits of the development must outweigh the harm caused.

This application is considered to be an unacceptable form of "garden grabbing". It is considered that this type of development will destroy vital green space therefore losing quality of life for the surrounding occupants.

## Landscape impacts

The site proposed for development falls within the urban area, however it is considered that the landscape impacts will be significant from wider views within the locality. Policies ENV5 and DM26 seek to protect the landscape from potential impact ensuring that the harm created by the development does not outweigh the benefits.

The site is on the edge of the urban area adjacent to the coast and cliffs at Kells. The Cumbria Landscape Character Toolkit (CLCT) defines this adjacent area as Type 4 – Coastal Sandstone. The guidelines within the document for future development intend to strengthen the definition between town and country and reduce the impact of any new buildings by careful siting and design. It is

considered that the garden land on this site provides a buffer between urban and rural and therefore the impact of any development is likely to be great.

The CLCT defines the key characteristics of this particular area to include coastal sandstone cliffs, large open fields and wide, uninterrupted views across to sea horizons and along the coast. The document states that the main objective is to *“manage, enhance and restore the landscape”* with concern that urban development could *“erode the undeveloped and rural character”* of the landscape. Furthermore, Policy ENV5 seeks to *“protect all landscapes from inappropriate change by ensuring that development does not threaten or detract from the distinctive characteristics of that particular area”*. The character of the landscape in this area would be altered with the long views of the coast affected. The recent Copeland Landscape Settlement Study (January 2020) (CLSS) identifies the open exposed character of this coast line which provides a recreational resource close to the urban area. It states that *“the views across the landscape towards open sea and views of expansive skies are sensitive to development that would enclose or interrupt these views”*.

Public Right of Way (PROW) number 431046 runs close to the site along the coast approximately 165 metres to the west. There is also an undesignated footpath, commonly used by dog walkers directly adjacent to the western boundary of the site. The footpaths are at a lower level than the site and therefore any dwelling erected would be elevated and highly visible from the public viewpoints. Furthermore, the retention of the garage would push to development further west on the site, increasing the visibility of the dwelling on the landscape when viewed from the footpaths. This would be likely to have a negative effect on the users of the footpath and their enjoyment of the path and local landscape.

Based on this assessment, the proposal is therefore considered to be contrary to Policies ST1, ENV2, ENV3 and DM26 of the Copeland Local Plan.

#### Impacts on the settlement character

Although matters of design are not relevant to the current application, when considering whether a location is suitable for development it is also necessary to consider the impact on the settlement pattern. Policy ST1 of the Copeland Local Plan seeks to protect and enhance the undeveloped coast. The residential gardens on this strip of land opposite West Row provide a softened edge to the coastline and is a definite point of transition from urban to rural in character.

The settlement character of the locality is defined by terraces of small cottages which provide strong and definite frontages. The projection of development beyond this strong building line would have a negative effect on this character, causing sprawl outside the urban area. The CLSS states that in this area of Coastal Urban Fringe Cliffs, *“small scale development [is] possible to help define [the] urban edge, but otherwise little capacity for development without causing change to landscape qualities of openness”*. It is considered that the development would cause intrusion to the openness of the current landscape which would have a detrimental effect. A residential property on this site would also create a dangerous precedent for further development on the adjacent garden land which would

completely alter the settlement character in this location and have an irreversible negative effect that would change the character and appearance on this part of the settlement and urban edge.

Overall it is considered that there is likely to be a substantial impact on the characteristics of the area and the undeveloped coast which would be in conflict with Policies ST1 and ENV5 of the Copeland Local Plan.

#### Impact on the existing residential amenity

Policy DM10 seeks to ensure that reasonable standards of general amenity are created and maintained. The loss of the garden is likely to have a negative effect on 1 South Row which will be left without any available amenity space. This would be in conflict with Policy DM10 and would have a detrimental impact on the occupiers of 1 South Row.

Policy DM12 of the Local Plan seeks to ensure suitable development standards for new dwellings in order to protect the amenity of the new dwelling and any existing dwellings. 1 South Row is dual fronted with strong fenestration on two elevations, designed to take advantage of the openness and coastal views. There are windows serving habitable rooms on the side elevation of 1 South Row and the front elevation of 18 West Row, facing west which would require a separation distance of at least 21m from facing habitable rooms on the proposed property in order to meet Policy DM12 and protect the amenity of both properties. This requirement would be very difficult to achieve in this location and it is considered that there will be likely to be a loss of privacy and overlooking issues for 1 South Row and the proposed dwelling as a result. Furthermore, the existing dwellings on both South Row and West Row are in an elevated position in comparison to the proposed site, therefore allowing for a greater field of vision. The difference in levels would also make it very difficult to screen the development with any boundary treatments, further accentuating the prominence of a dwelling on this site. Policy ST1 of the Copeland Local Plan, in accordance with The National Planning Policy Framework states that the amenity of both current and any future occupiers must be considered when assessing planning proposals, therefore although 1 South Row may be under the same ownership at present, this cannot be relied upon in the future.

On the basis of the above the occupiers of the proposed dwelling and the existing dwellings on West Row and South Row would be likely to suffer from a poor standard of amenity which would have a significant impact on the occupiers of the dwellings. As a consequence this proposal would be contrary to paragraph 17 of the NPPF and Policy ST1, DM10 and DM12 of the Copeland Local Plan.

#### Benefits

The provision of one dwelling would only make a very small contribution to the supply and delivery of housing within the Borough.

Although there would be some economic benefits this would be limited to the construction phase which would only be apparent on a temporary basis. Consequently little weight can be attached to this benefit in the planning balance.

Planning Balance and Conclusions

The application site is situated within the settlement boundary for Copeland’s Principal Town, whereby it is considered that the principle of the development is acceptable. As the Local Planning Authority cannot demonstrate a 5 year land supply, the NPPF paragraph 11 states that decisions should apply a presumption in favour of sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

In terms of the overarching objectives within the NPPF, there would be some social benefit in providing a dwelling which would provide a limited contribution to the housing land supply. However, it is considered that there would be a substantial detrimental impact on the character and appearance of this attractive open coastal landscape and detract from the highly distinctive character of this part of Kells. The development would relate poorly to the existing settlement pattern and appear as an incongruous projection into the largely open and undeveloped garden land, eroding the strong definition between built and open space. The development would be prominent when viewed from surrounding public viewpoints and create harm to the expansive views from West Row as well as creating amenity issues for these dwellings due to the inability to provide acceptable separation distances. Furthermore, the development would create a harmful precedent which would result in further cumulative harm to the character and appearance of the locality.

Taking into account the above factors, it is considered that the adverse impacts of granting permission would significantly and demonstrably outweigh the very limited benefits, when assessed against the policies in Copeland Local Plan and NPPF as a whole. On this basis the proposal is considered to be an unacceptable form development and should be resisted.

8. **Recommendation:**  
Refuse

9. **Statement:**

The Local Planning Authority has acted positively and proactively in accordance with Copeland Local Plan policies and the National Planning Policy Framework in determining this application by identifying matters of concern with the proposal and raising those with the applicant. However, in this case it has not been possible to arrive at a satisfactory resolution for the reasons set out in the reason for refusal.

Reasons for Refusal

- 1) A dwelling on this prominent greenfield site would have a detrimental impact on the character and appearance of this attractive open coastal landscape, and detract from the

highly distinctive character of this part of Kells, where it would relate poorly to the existing settlement pattern. It would appear as an incongruous projection into the largely open and undeveloped garden land fronting West Row, eroding the strong definition between the built form of Kells and the open space to the west.

The development would be conspicuous when viewed from the well-used footpath immediately adjoining the site and other public rights of way along the cliff top to the west, as well as being harmful to the expansive views from West Row.

The proposal is therefore contrary to policies ST1, ENV2 and ENV5 of the adopted Copeland Local plan 2013 – 2035 and paragraphs 8 and 17, Part 15 and Annexe 2 of the National Planning Policy Framework.

- 2) Development in this location could easily be replicated on adjoining garden land. Approval would therefore make it difficult to resist further similar applications, setting a undesirable precedent that would result in further cumulative harm to the character and appearance of this edge of settlement location.
- 3) As a result of the size, topography, and close relationship of the application site to existing dwellings, the new development would be unable to provide acceptable levels of amenity for occupiers of the proposed and existing dwellings, contrary to policies ST1, DM10 and DM12 of the adopted Copeland Local Plan and paragraph 17 of the NPPF.

**Case Officer: Sarah Papaleo**

**Date : 11/09/2020**

**Authorising Officer:**

**Date :**

**Dedicated responses to:-**