



## COPELAND BOROUGH COUNCIL DELEGATED PLANNING DECISION

1.	<b>Reference No:</b>	4/20/2486/OB1
2.	<b>Proposed Development:</b>	VARIATION OF CONDITION 2 (LANDSCAPE LAYOUT) OF PLANNING APPROVAL 4/16/2246/OF1 RELATING TO REVISED ALIGNMENT OF FOOTPATH
3.	<b>Location:</b>	THE MOUNT, 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>	Neighbour Notification Letter: YES Site Notice: Yes Press Notice: NO Consultation Responses: See report Relevant Planning Policies: See report
7.	<b>Report:</b>  <b>Site and Location:</b>  <p>The site is located to the northeast of the town of Whitehaven, the site is bounded by residential dwellings to the south and west and open countryside to the north and east.</p> <b>Recent Planning Application History:</b>  <p>A planning application was approved in 2016 under the reference 4/16/2246/OF1 for the residential development of 12 detached dwellings with associated infrastructure and landscaping.</p> <b>Proposal:</b>  <p>This application seeks to vary Planning Condition 2 attached to application reference 4/16/2246/OF1.</p> <p>The proposed revisions relate to:</p> <ul style="list-style-type: none"> <li>• The revised alignment of footpath</li> </ul>	

The proposal seeks to amend the location of the footpath that was originally proposed to run within the existing stone boundary wall along the eastern boundary of the site to a much shorter version that would connect the access road to the existing pedestrian access on Victoria Road to the south of the site.

## **CONSULTATION RESPONSES**

### **Whitehaven Town Council**

Whitehaven Town Council confirmed that they had no objection to the proposal when it was considered at their meeting on the 6<sup>th</sup> January 2021

### **Cumbria Highways**

Cumbria County Council as the Highways Authority and the Lead Local Flood Authority (LLFA) were consulted on the 9<sup>th</sup> December 2020. They have responded in an email received on the 29<sup>th</sup> January 2021 with the following comments:

*"I can confirm that the Highway Authority and Lead Local Flood Authority has no objection to the proposed development as it is considered that the proposal will not have a material affect on existing highway conditions nor does it increase the flood Risk on the site or elsewhere."*

### Public Representation

The application has been advertised by way of a site notice erected on the 21<sup>st</sup> December 2020 and neighbour notification letters issued to 6 no. properties.

As a result of the above public consultation process, 4 letters of objection have been received, the issues raised are as follows:

- The application does not provide information as to why it wasn't built to the previously approved plans in 4/16/2246/OF1.
- The footpath was supposed to be installed prior to the occupation of plots 1,2,3 and 4 of phase 1 which occurred 2-3 years ago.
- The application offers no apology for the disregard to public safety (which is the reason why the path was is required) and disrespect to Copeland Planning.
- There are further planning conditions of the original planning application that are still not completed - all these long overdue outstanding issues should be completed as a whole.
- There is no lighting on the path and it is not very wide with an uneven surface.

- The top access to the foot path from the Cul du Sac presents a hazard to both vehicles and pedestrians.
- The proposed path does not meet the planning requirement. Specifically it does not form the required continuous footpath link on The Mount.
- The as built status of the footpath does not reflect the quality of the footpaths that have been require to be installed through phase 1, 2 and 3.
- Is this a private path for residents only who obviously will have to start paying for its upkeep and maintenance when the estate is finished.
- If it was not possible because of the lay of the land then due diligence has not been followed.
- How was this noncompliance with a planning condition allowed to happen?

## **PLANNING POLICY**

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 (Adopted December 2013)

Core Strategy

Policy ST1 – Strategic Development Principles

Policy ST2 – Spatial Development Strategy

Policy ST4 – Providing Infrastructure

Policy SS4 – Community and Cultural Facilities and Services

Policy T1 – Improving Accessibility and Transport

Policy ENV1 – Flood Risk and Risk Management

Policy ENV3 – Biodiversity and Geodiversity

Policy ENV5 – Protecting and Enhancing the Borough's Landscapes

### Development Management Policies (DMP):

Policy DM10 – Achieving Quality of Place

Policy DM11 – Sustainable Development Standards

Policy DM12 – Standards for New Residential Developments

Policy DM22 – Accessible Developments

Policy DM24 – Development Proposals and Flood Risk

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM26 – Landscaping  
Policy DM28 – Protection of Trees

Copeland Local Plan 2001-2016 (LP):

Saved Policy TSP8 - Parking Requirements

Emerging Copeland Local Plan (ELP):

The emerging Copeland Local Plan 2017-2035 has recently been 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.

**Other Material Planning Considerations**

Cumbria Development Design Guide (CDG)  
National Planning Policy Framework (NPPF).

National Planning Practice Guidance (NPPG)

Section 73 Material Amendment

This web based resource was launched in March 2014 by the DCLG. This outlines that an application can be made under [section 73 of the Town and Country Planning Act 1990](#) to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

The effect of an application under Section 73 is the issue of a new permission sitting alongside the original permission which remains intact and unamended. To assist with clarity it states that decision notices should also repeat the relevant conditions from the original permission unless they have already been discharged. As a Section 73 application cannot be used to vary the time limit for implementation this condition must remain unchanged from the original permission.

**Assessment:**

This application seeks permission to encompass a minor change to the originally approved scheme. The change sought is for the revised alignment of the footpath that was originally proposed along the inside of the existing stone boundary and to join up with a new pedestrian access onto Victoria Road.

The new route of the footpath would but much shorter and would run from the cul de sac to the front of No.3 The Mount and join up with the newly created pedestrian access onto Victoria in the location as previously proposed.

The original landscaping plan approved for the 2016 planning application 4/16/2246/0F1 confirmed that the surface of this footpath would be constructed with a gravel finish with tanalised timber

	<p>edging. The new footpath as created uses the same construction materials and so the only difference is that the footpath takes a shorter route.</p> <p>The applicant has confirmed that the reason for this change of route was due to the low height of the existing boundary wall and for the resulting potential that pedestrians may topple over the wall and into the highway on the other side of the boundary.</p> <p>In terms of the concerns raised, a common theme within these concerns raised are not material planning consideration but relate more to concerns over the lack of formal enforcement action. Whilst the Council does work in order to secure compliance with all conditions attached to an application, there are certain conditions that in planning practice, that go to the heart of the application i.e. these are fundamental to the development, such as a pre-commencement drainage condition. Whilst this footpath is an important element and one worthy of resolving, it does not go to the heart of the application.</p> <p>When sites are monitored for compliance, it is these pre-commencement conditions that go to the heart of the application that are the main focus of the monitoring that takes place. Whilst there has been a breach of planning control in that the footpath was not created in accordance with the approved plans, planning enforcement must never be used as a punitive measure and it was considered that the best way in which to resolve this matter was via the submission of a revised Landscape Plan.</p> <p>The construction method, use of materials and lighting scheme have not changed and on that basis, it is considered that amended route for the footpath does not cause a harmful impact upon the amenity or character of the local area.</p> <p>The applicant has already submitted an application to discharge the conditions 8 and 14 from the previous permission so it is not necessary to repeat them on this permission.</p> <p><b>Conclusion</b></p> <p>The proposed revision is appropriate to the scale, form and character of the development and thus accords with the relevant provisions of the Development Plan.</p>
8.	<p><b>Recommendation:</b></p> <p>Approve amendment of condition</p>
9.	<p><b>Condition(s):</b></p> <ol style="list-style-type: none"> <li>1. Permission shall relate to the following plans and documents as received on the respective dates and development shall be carried out in accordance with them: - Reference to submitted plans with this application?</li> </ol>

- Location Plan, scale 1:2500, drawing number 15/10/863 -01, received on 13<sup>th</sup> July 2016
- Site Construction Plan, drawing number 15/10/863-CP, received on 13<sup>th</sup> July 2016
- Landscape Layout Plan, scale 1:200, drawing number M2647.02K, received on 7<sup>th</sup> December 2020
- Plots 7 and 8 Enlarged Site Plan, scale 1:200, drawing number 15/10/863-15, received on 13<sup>th</sup> September 2016
- Dwelling Type B Elevations Plots 5 and 8, scale 1:50, drawing number 15/10/863-11A, received on 13<sup>th</sup> September 2016
- Dwelling Type B Floor Plans, scale 1:50, drawing number 15/10/863 – 10A, received on 13<sup>th</sup> September 2016
- Dwelling Type A Floor Plans, scale 1:50, drawing number 15/10/863 -04, received on 13<sup>th</sup> July 2016
- Dwelling Type A Alternative GF Plan, scale 1:50, drawing number 15/10/863 – 05, received on 13<sup>th</sup> July 2016
- Dwelling Type A Elevations Plot 2, scale 1:50, drawing number 15/10/863-06, received on 13<sup>th</sup> July 2016
- Dwelling Type A Elevations Plots 4 and 7, scale 1:50, drawing number 15/10/863-07, received on 13<sup>th</sup> July 2016
- Dwelling Type A Elevations Plot 9, scale 1:50, drawing number 15/10/863-08, received on 13<sup>th</sup> July 2016
- Dwelling Type A Elevations Plot 12, scale 1:50, drawing number 15/10/863-09, received on 13<sup>th</sup> July 2016
- Dwelling Type C Floor Plans, scale 1:50, drawing number 15/10/863-12, received on 13<sup>th</sup> July 2016
- Dwelling Type C, Plots 3 and 10, scale 1:50, drawing number 15/10/863-13, received on 13<sup>th</sup> July 2016
- Dwelling Type C Elevations Plots 1, 6, 11, scale 1:50, drawing number 15/10/863, received on 13<sup>th</sup> July 2016
- Proposed Drainage, scale 1:200, drawing number 115487/2002/Rev B, received on 13<sup>th</sup> July 2016
- Proposed Spot Levels, scale 1:200, drawing number 115487/2003/Rev A, received on 13<sup>th</sup> July 2016
- Proposed Surface Finishes, scale 1:200, drawing number 115487/2004, received on 13<sup>th</sup> July 2016
- Proposed Geometry and Setting Out, scale 1:200, drawing number 115487/2005/Rev A, received on 13<sup>th</sup> July 2016
- Constructions Details Sheets 1, drawing number 115487/2007, received on 13<sup>th</sup> July 2016?
- Construction Details Sheet 2, drawing number 115487/2008, received on 13<sup>th</sup> July 2016
- Construction details Sheet 3, drawing number 115487/2009, received on 13<sup>th</sup> July 2016
- Road and Drainage Long Sections, drawing number 115487/2010, received on 13<sup>th</sup> July 2016

- Manhole Schedule, drawing number 115487/2011, received on 13<sup>th</sup> July 2016
- Transport Statement prepared by Alpha Design dated July 2016
- Preliminary Environmental Risk Assessment Parts 1, 2 and 3, prepared by Elliott Environmental Surveyors Ltd, reference EES13-136, dated 11<sup>th</sup> February 2016
- Preliminary Ecological Appraisal. Reference EES13-136, prepared by Elliott Environmental Surveys Ltd, dated 25<sup>th</sup> November 2016
- Sketch Masterplan 3D Viewpoints, drawing number M2647.02, received on 18<sup>th</sup> July 2016
- External Material Schedule, reference 15/10/863-Em, prepared by Alpha Design, dated 27<sup>th</sup> June 2016
- Flood Risk and Drainage Strategy, reference D/I/D/115487/01, prepared by Fairhurst, dated August 2016
- Geophysical Survey Report, reference CP10860, prepared by Wardell Armstrong, dated March 2014
- Supporting Planning Statement prepared by Alpha Design dated July 2016
- Design and Access Statement, reference 15/10/863-DAS, prepared by Alpha Design, dated 22<sup>nd</sup> June 2016

Reason

To conform with the requirement of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The existing visibility splays providing clear visibility of 54.4 x 41.0 x 2.4 metres measured down the centre of the access road and the nearside channel line of the major road must be retained at the junction of the access road with the county highway for the lifetime of the development. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays.

Reason:

In the interests of highway safety and to safeguard all traffic including construction traffic.

4. Access to the site from the public highway must be retained in accordance with the approved details for the lifetime of the development

Reason

In the interests of highway safety

4. The stone wall fronting the highway on the eastern boundary of the site shall be retained at the agreed 1 metre height at all times for the lifetime of the development.

Reason:

In the interests of highway safety.

5. Pedestrian footways within and to and from the site shall be retained so that they are convenient to use and should include improvements to the current footway on Victoria Road connecting the new estate to the town.

Reason

In the interests of highway safety, accessibility by sustainable transport modes and to minimise potential hazards.

6. The drainage for the approved development must be retained in accordance with principles set out in the submitted proposed drainage, ref: 115487/2002 rev B, dated 17 June 2016 which was prepared by Fairhurst. No surface water will be permitted to drain directly or indirectly into the public sewer.

Reason

To ensure a satisfactory form of development and to prevent an undue increase in surface water run-off and to reduce the risk of flooding.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or re-enacting that Order with or without modification) no external alterations, including replacement windows, doors or skylights and roof coverings shall be carried out to the dwellings nor shall any building, enclosure, extension, porch, domestic fuel container, pool or hardstanding be constructed within the curtilage without the prior written consent of the Local Planning Authority.



	<p>Reason</p> <p>To safeguard the appearance of the buildings in the interests of visual amenity.</p> <p>8. Once implemented the approved landscaping shall be maintained in accordance with the maintenance schedule set out on the Landscape Layout Plan, drawing number M2647.02k, received on 7<sup>th</sup> December 2020. Should any plants be found to be dead, diseased or dying within 5 years following completion of the planting season, these shall be replaced within the first available planting season.</p> <p>Reason</p> <p>To ensure the planting scheme becomes appropriately established in the interests of visual amenity.</p> <p>9. The approved boundary treatments shall be maintained at all times thereafter in accordance with the Landscape Layout Plan, drawing number M2647.02k, received on 7<sup>th</sup> December 2020.</p> <p>Reason</p> <p>For the avoidance of doubt and to ensure a satisfactory form of boundary treatment in the interests of visual amenity.</p> <p><b>Informative - Coal</b></p> <p>Statement</p> <p>The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and negotiating with the applicants acceptable amendments to address them. As a result the Local Planning Authority has been able to grant planning permission for an acceptable proposal in accordance with Copeland Local Plan policies and the presumption in favour of sustainable development as set out in the National Planning Policy Framework.</p>	
<p><b>Case Officer: Adrian Adams</b></p>	<p><b>Date : 28.01.2021</b></p>	
<p><b>Authorising Officer:</b></p>	<p><b>Date :</b></p>	

Dedicated responses to:- **Letters to objectors**