

Cumberland Council  
Development Control  
The Copeland Centre Catherine Street  
Whitehaven  
Cumbria  
CA28 7SJ

**Our ref:** NO/2021/113990/03-L01  
**Your ref:** 4/21/2432/0F1  
**Date:** 06 February 2024

Dear Sir/Madam

**HYBRID APPLICATION SEEKING FULL PLANNING PERMISSION FOR THE ERECTION OF 139 RESIDENTIAL DWELLINGS (C3), NEW VEHICULAR ACCESSES OFF HIGH ROAD, PUBLIC OPEN SPACE AND ANCILLARY INFRASTRUCTURE AND OUTLINE PLANNING PERMISSION FOR RESIDENTIAL DEVELOPMENT UNITS, RETAIL (E(A,B,C,E,F), F2(A) AND ANCILLARY INFRASTRUCTURE WITH ALL MATTERS RESERVED OTHER THAN ACCESS.**

**FORMER MARCHON CHEMICAL FACTORY, HIGH ROAD, WHITEHAVEN**

Thank you for re-consulting us on the above planning application.

### **Environment Agency position**

The conditions recommended in the EA consultation response to the Cumberland Council of 15 December 2023 are still applicable and recommended to ensure protection of water quality from development at this site.

We have reviewed the Remediation Strategy prepared by Betts GEO (report No. 22PER008/RS, dated August 2023) and we consider it is acceptable in principle, but further detail as identified in the report should be agreed with the Planning Authority.

There is reference in 6.2 for a need to notify the Local Authority Contaminated Land officer in the contingency for unknown contamination. Notification should also include EA in the event of a risk to water quality.

A specific condition is recommended to account for such uncertainty:

### **Previously Unidentified Contamination**

#### Condition

Environment Agency  
Ghyll Mount (Gillan Way) Penrith 40 Business Park, Penrith, Cumbria, CA11 9BP.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)

Cont/d..

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

#### Reason

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site. This is in line with paragraph 180 of the National Planning Policy Framework.

Apart from the above, our conditions outlined in our previous responses (copied below) still apply.

### **Remediation Strategy**

#### Condition

No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority.

This strategy will include the following components:

1. A site investigation scheme, based on the desk study and conceptual plan to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

#### Reason

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 180 of the National Planning Policy

### **SuDS Infiltration of surface water into ground**

The previous use of the proposed development site as chemical works presents a risk

of contamination that could be mobilised by surface water infiltration from the proposed sustainable drainage system (SuDS). Conceptual models have identified pollutant linkages to controlled waters. In light of the above, we do not believe that the use of infiltration SuDS is appropriate in this location. We therefore request that the following planning condition is included as part of any permission granted. Without this condition we would object to the proposal in line with paragraph 180 of the National Planning Policy Framework because it cannot be guaranteed that the development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

#### Condition

No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for Cont/d.. 3 such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.

#### Reason

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants. This is in line with paragraph 170 of the National Planning Policy.

### **Piling / Foundation**

The remediation strategy has accepted that some forms of deep piled foundations are not suitable, i.e. vertical, deep vibro-replacement piles- these are not acceptable.

Piling and other foundation designs using penetrative methods can result in risks of pollution/turbidity, risk of mobilising contamination, drilling through different aquifers and creating preferential pathways.

Groundwater is particularly sensitive in this location because of the karstic geology and rapid transmission of groundwater.

In light of the above, the proposed development will only be acceptable if a planning condition controlling disturbance of the aquifer is imposed. Without this condition we would object to the proposal in line with paragraph 180 of the National Planning Policy Framework because it cannot be guaranteed that the development will not present unacceptable risks to groundwater resources.

#### Condition

Piling or other foundation designs using penetrative methods shall not be carried out other than with the written consent of the local planning authority. The development shall be carried out in accordance with the approved details.

#### Reason

To ensure that the proposed foundation design, does not harm groundwater resources in line with paragraph 180 of the National Planning Policy Framework

## **Waste on site – advice to applicant**

The CL:AIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/ or land development works is waste or has ceased to be waste. Under the Code of Practice:

- excavated materials that are recovered via a treatment operation can be reused on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution
- treated materials can be transferred between sites as part of a hub and cluster project
- some naturally occurring clean material can be transferred directly between site.

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on-site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. We recommends that developers should refer to:

- the position statement on the Definition of Waste: Development Industry Code of Practice
- the [waste management page](#) on gov.uk

## **Waste to be taken off site – advice to applicant**

Contaminated soil that is (or must be) disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:

- Duty of Care Regulations 1991
- Hazardous Waste (England and Wales) Regulations 2005 • Environmental Permitting (England and Wales) Regulations 2016
- The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays.

If the total quantity of hazardous waste material produced or taken off-site is 500kg or greater in any 12-month period, the developer will need to register with us as a hazardous waste producer. Refer to the [hazardous waste pages](#) on gov.uk for more information.

## **Biodiversity Net Gain (BNG) – advice to applicant**

Applicants are encouraged to include biodiversity net gain (BNG) within their proposals. Paragraphs 180 and 185 of the National Planning Policy Framework (NPPF) recognise that the planning system should provide net gains for biodiversity. In England, providing a minimum 10% biodiversity net gain in new development is becoming a legal

requirement due to provisions within the Environment Act 2021. Applicants should have regard to the [latest planning practice guidance](#) on BNG in new development proposals.

Yours faithfully

**Hui Zhang**  
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