

## COPELAND BOROUGH COUNCIL DELEGATED PLANNING DECISION

1.	<b>Reference No:</b>	4/22/2261/OF1
2.	<b>Proposed Development:</b>	APPLICATION TO MODIFY DESIGN OF SURFACE WATER RETENTION BASIN
3.	<b>Location:</b>	LAND TO NORTH WEST OF THE MOUNT, WHITEHAVEN
4.	<b>Parish:</b>	Moresby
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change
6.	<b>Publicity Representations &amp;Policy</b>	See Report.
7.	<b>Report:</b>  <b>Site and Location:</b>  <p>This application relates to a small parcel of open grassland located on the north-eastern edge of Whitehaven.</p> <p>The Application Site occupies rising land located adjacent to Phase 3 and Phase 4 of the residential development known as The Mount.</p> <b>Proposal:</b>  <p>Full Planning Permission has previously been approved for the creation of a surface water attenuation basin on the Application Site under the planning permissions for Phase 3 and Phase 4.</p> <p>This application seeks retrospective Full Planning Permission for the creation of a surface water attenuation basin of a revised design on the Application Site.</p> <p>The surface water attenuation basin has been completed and is currently operational, which is the reasoning for the application being retrospective.</p> <p>The proposed attenuation basin comprises an earth banked structure partially constructed above the</p>	

levels of the prevailing landform.

The proposed attenuation basin includes a clay liner, concrete headwalls, erosion matting and rip-rap rock armour.

A scheme of landscaping has previously been approved on land surrounding the Application Site.

The Applicant has stated that the surface water attenuation basin was not constructed in accordance with the approved details as bedrock was encountered during excavations, which prevented outfall headwall being located at the approved level and required the construction partially above the levels of the prevailing landform.

The proposed scheme has been amended during the course of the application following the completion of works during the summer.

Consultee:	Nature of Response:
Town Council	None received.
Cumbria County Council – Highways and LLFA	<p><i>19<sup>th</sup> July 2022</i></p> <p>Cumbria County Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) can confirm we have concerns regarding the modification of the existing surface water retention basin.</p> <p>During heavy rainfall it has been evident that surface water has been penetrating the bedrock within the existing basin and causing flooding issues within the surrounding area. As the Basin is not retaining surface water in its current form improvements need to be made with the ground lining of the proposed new retention basin and any swales that sit on bedrock.</p> <p>Until such time that the applicant can demonstrate that the surface water retention basin will be effectively lined, as per original specification, the LHA and LLFA are not content with application and deem it unsatisfactory.</p> <p>Once the issues regarding the lining of the exposed bedrock has been addressed I will be able to give a full response.</p> <p><i>4<sup>th</sup> October 2022</i></p> <p>Cumbria County Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) has reviewed and site inspected the above planning</p>

		<p>reference, the site inspection was completed during heavy rainfall to which the proposed managed sufficiently. I can therefore confirm that we have no objection to the proposed modification of the surface water basin as it is considered that it will not have a material effect on existing highway conditions nor will it increase the flood risk on the site or elsewhere.</p> <p><i>14<sup>th</sup> October 2022</i></p> <p>Thank you for your consultation on 22 September 2022 regarding the above Planning Application.</p> <p>Cumbria County Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) has reviewed the above planning reference and our findings are detailed below.</p> <p>I can confirm that the response made to the previous application on the 04/10/22 should still apply.</p> <p><i>1<sup>st</sup> December 2022</i></p> <p>With the applicant and agent not willing to carry out a Dye Test sets alarm bells off for me, as you said if they are confident that the basin has been constructed to design specification why would they object to the proposal of a Dye Test. Did the applicant give a reason as to why they would not accept the proposal ?</p> <p><i>6<sup>th</sup> December 2022</i></p> <p>Reading through Glens summary we feel it's a fair assumption and being out on site during heavy rainfall it was evident that the swale and basin were working as planned, However we don't know if the construction under the surface has been built to specification as I'm not aware of any investigations were carried out during the construction phase. Any evidence the applicant may have photos etc during construction would be most welcome at this point.</p>
	<p>Copeland Flood and Coastal Defence Engineer</p>	<p><i>28<sup>th</sup> June 2022</i></p> <p>I really don't believe this application addresses the issue that I understand it was submitted for.</p> <p>Following a complaint that the water that should be retained in the basin draining through the bedrock and streaming through a property, I understood that the application that was originally due to be submitted by the end of</p>

		<p>February was to address the issue of the bedrock being encountered.</p> <p>The application may address the slightly altered location and profile of the basin, but in no way does it even attempt to consider the issue of lining the basin.</p> <p>The drawing submitted dates back to 2018 and calculations submitted date back to 2021.</p> <p>I really can't even understand how this application was even accepted on the basis of the complaint that it was meant to address.</p> <p>Have I actually missed something?</p> <p><i>4<sup>th</sup> October 2022</i></p> <p>When I've had a look at the additional information on the application, there wasn't anything I hadn't seen.</p> <p>I did mention of site that the drawings needed to be update and I'm not sure what the originals showed.</p> <p>I think that the rip rap in concrete and grass matting is a an improvement over what was there originally.</p> <p>Due to the gradients, this would be considered a better solution.</p> <p>However, I don't think this has been reflected in any drawings.</p> <p>Would a suggestion that the developer has to submit "as built" drawings satisfy your requirements, as it is all that I think is missing.</p> <p><i>6<sup>th</sup> October 2022</i></p> <p>I would suggest drawings to include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> A plan showing levels of major features and the odd spot level.</li> <li><input type="checkbox"/> A longitudinal section along the open section channel leading to the pond to the pond outfall.</li> <li><input type="checkbox"/> Typical cross sections of the different types of construction of the channel to the pond basin.</li> </ul>
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*18<sup>th</sup> October 2022*

I've read the covering e-mail and viewed the updated drawing.

The latter is just a photo of a hand drawn additions to the previous version.

Whilst some of the amendments are fine, the clarity isn't sufficient, either on a printed version or zooming in on the digital version.

I understand from the site visit that changes to the levels around the pond outlet were made, but these are evident on the drawing.

*20<sup>th</sup> October 2022*

To my knowledge there are no powers I can use for this matter, does Copeland have any under planning legislation?

I think there is a general gap in terms of inspection of SUDS and whilst this may be addressed when the SUDS adoption schedule is enacted and the LLFA will become a SUDS adoption body.

In the meantime I'm not sure if the LLFA has any powers.

Last year when the issue of the pond was raised by one of the neighbours, I did suggest to the developer that the pond was dye tested, but this idea was rebuffed.

Following the recent work, the pond should now not be leaking to the ground.

This doesn't mean the development hasn't indirectly caused the issues, as it will have obviously impacted how water travels through and over the ground naturally.

Proving this is not a practical option though.

Paul and I are out tomorrow looking at a few issues, so will hopefully be able to discuss this and visit the objector, if time permits.

*21<sup>st</sup> October 2022*

Paul and I did visit the objector this morning.

		<p>His main concern was that the lining of the pond may not be effective.</p> <p>Going back to the original complaint raised by a neighbour, the only way I can realistically think that the effectiveness of the liner can be checked is by dye testing the pond during a high rainfall event.</p> <p>As this was rebuffed by the developer last year, is this something the Planning Authority can use powers to allows this to be undertaken?</p> <p>If this can be arranged, Paul and I can undertake the dye testing and inform the objector and his neighbour to keep an watch for the water that does come out onto their properties.</p> <p>The objector thinks that there may have been some recent dye testing, is this something that you can check with the developer to see if they had undertaken this work?</p> <p>The design of the pond was undertaken by a professional consultant, but the question is who is competent to say that the design is actually compliant with regulations / guidance and that the pond was constructed as per design?</p> <p>Whilst last year there clearly was an issue with the pond, as there was bedrock encountered, the work recently undertaken should have addressed the lining of the pond, but with a change in design the pond itself, it isn't clear to me that the original design consultant has been involved.</p> <p>The date on the calculations submitted with the above application is 14.04.2021, well before the first complaint was made.</p> <p>One further point at this time, is that it appears that the pond wasn't actually completed before much of the development, which is likely to cause problems.</p> <p><i>31<sup>st</sup> October 2022</i></p> <p>The latest version of the drawing is now clear, so I'm happy with this.</p> <p>I also not that Revision A of the Detention Basin drawing was to show the as built levels, which I had missed and addresses my other outstanding query.</p> <p><i>6<sup>th</sup> December 2022</i></p> <p>Based on the visit jointly with the LLFA during very poor weather, I am happy</p>
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		<p>with what was seen.</p> <p>However, this is based on surface features only, so it is not possible to state that was 1m depth of clay liner installed.</p> <p>This boils down to inspecting features as they are constructed, which may become the norm should the legislation be enacted and the LLFA bevy's SUDS adoption body.</p> <p>Until then it remains with the Local Planning Authority to take responsibility for compliance.</p> <p>I haven't heard back from the objector, which can only be a good thing with some of the rain we've been experiencing.</p>
	United Utilities	<p>7<sup>th</sup> July 2022</p> <p>United Utilities wish to make the following comments regarding the proposal detailed above.</p> <p><b>REQUEST FOR FURTHER INFORMATION</b></p> <p>We request that the applicant submits a plan outlining the overall drainage strategy for the site, including the basin, rather than solely the basin. This plan should include the proposed levels (including finished floor levels and ground levels) shown in metres above Ordnance Datum and an indicative foul and surface water drainage strategy (including cover and invert levels). It is our recommendation this information is submitted for our review so that any risk of sewer surcharge can be further assessed. The applicant should note that it may be necessary to raise finished floor and ground levels and / or include mitigation measures to manage the risk of sewer surcharge.</p> <p><b>DRAINAGE</b></p> <p>We request the following drainage condition is attached to any subsequent approval:</p> <p><i><b>Prior to the commencement of development, details of a sustainable surface water drainage scheme and a foul water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The drainage schemes must include:</b></i></p> <p><i><b>(i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This</b></i></p>

	<p><b><i>investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water in accordance with BRE365; (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations);</i></b></p> <p><i>26<sup>th</sup> October 2022</i></p> <p>United Utilities have no further comments to add to our email dated 4 Oct 2022.</p> <p><i>14<sup>th</sup> November 2022</i></p> <p>United Utilities have no further comment to make on the additional information.</p>
	<p><b>Neighbour Responses:</b></p> <p>The application has been advertised by way of a planning application site notice.</p> <p>Representations have been received from one interested party in objection to the Full Planning Application.</p> <p>The representations are outlined below:</p> <p><i>4<sup>th</sup> July 2022</i></p> <p>On the 27th and 28th October 2021, there was heavy rainfall.</p> <p>Unlike other times when there has been heavy rainfall, we experienced a greater flow of water through the water drainage holes in the 6 foot wall directly behind our bungalow @ 4 0Alder Close CA28 6LD, which is directly below this basin and the above development at The Mount.</p> <p>We have had rain in the past 30 years of the same magnitude as there was in October 2021, but never had any problems as experienced since The Mount developments was introduced.</p> <p>The flow and build-up of the water caused it to wash across the path and rise above the ventilation bricks in the damp course of the house.</p> <p>I had to place a temporary brick barrier across the water flow to divert the flow away from the vent bricks.</p> <p>However the flow was so great that the normal surface water drains could not take away all the</p>



flood water flow and subsequently the front garden became engulfed and started pooling across the lawn.

I have concern that this will happen again during heavy rainfall and would like to know what has been done since October 2021 to stop any unprecedented floodwater flow happening again which could place unnecessary pressure on the wall, either weakening it or damaging it and the water ingress into my home causing any damage, due to a diversion of flood water from this development.

I have video evidence of the water flow, which I repeat has never ever happened before the Mount was built.

I therefore object to any further building work or excavation work being carried out until an explanation of this event by Copeland Planning Department and checks on flood drainage routes and calculations have been carried out.

Summary of response: Object

*23<sup>rd</sup> September 2022*

Nothing to my knowledge has changed since my last objection or to prove that there were no changes in direction of any water courses due to this new basin.

I have never received any information with regard to the objection for the last application for this basin, so what has changed?

I have video evidence that there has been a greater amount of water running from wall drainage holes in the garden retaining wall directly behind my house, when there is a storm.

Water flow has been great enough to cover air vents in the damp course brickwork of the house.

Something that has never ever happened/changed in the 30+ years we have lived here.

There is concern also for additional build-up of water behind all retaining walls increasing in additional pressure to collapse those walls.

Has adequate calculations been done for that additional water flow toward homes on Alder Close, because of those water course changes?

To my knowledge, no one has been to look at the problem, let alone discuss the matter or give information to householders on Alder Close.

Summary of response: Object

*27<sup>th</sup> September 2022*

Thank you for all the correspondence with regard to this planning matter : 4/22/2261/0F1 - LAND TO NORTH WEST OF THE MOUNT, WHITEHAVEN

In reply, and in addition to Mr Bechelli's concern:-

If the bedrock has at times of excess rainfall encountered flooding and has changed the water course, could this be the run off we are experiencing at the back of our home?

If a liner is placed within the basin, the content of the basin would increase with rainwater making that amount of water in the basin greater. What if there is a breach of that liner? Would we encounter a greater flow of water through the garden wall and/or build up un-necessary pressure behind any of the retaining wall?

I'm concerned that if there are new bouts of heavy rainfall or storms and this excess run off continues or increases, or due to a liner failure, I would need to inform my house insurance, which would make my premiums so much more. Is this the way forward? ... or am I too missing something here?

Please include the above statement alongside my concerns for this planning application for: 4/22/2261/0F1 - LAND TO NORTH WEST OF THE MOUNT, WHITEHAVEN.

We have lived at this address for 30+ years without encountering anything like this additional outflow during heavy rainfall.

*18<sup>th</sup> October 2022*

With further regard to the above planning application/development of properties at The Mount housing estate.

We again this October 14<sup>th</sup> 2022, experienced yet again heavy rainfall and excess water again came though the weep holes of the garden wall directly behind my house. Although it was not as excessive as the amount of water flow we experienced last October 2021, of which I have video evidence, it was still concerning.

Having lived at 4, Alder Close for over 30 years, we have never experienced this kind of water coming from the garden wall and can only assume it is directly the cause of land and draining changes made during construction of the properties and land at The Mount. I also have reservation with regard to the retention basin installed by the construction company at The

Mount, of its design and purpose, even if it will help or make the situation worse should it fail.

Having expressed my concerns over the last 12 months with regard to the construction works and these successive planning applications, no one from Swift Homes, CBC Planning Dept or Cumbria Flood Defence have addressed any of my concerns either in person at my home or by phone to discuss this problem we now have encountered.

2/3 weeks ago, after a heavy rainfall we noticed a red coloured substance coming from one of the weep holes and thought there may have been some attempt to lay down some dye and to look for outlets of the excess water course that may be exuding this dye. But, no one came to our property to look or examine any water outlets.

I know from my own experiences from ground work at Sellafield where we used 'fluorozine dye' when looking for burst pipes etc.

My greatest concern is for the excess build-up of water behind our retaining wall and that wall not being able to withstand the pressure from the weight of water. I am not a Civil Engineer or have the knowledge to calculate if the retaining walls are safe or not and rely on being supported by people in charge of allowing the construction of developments near their homes to ensure nothing like this is allowed to happen inadvertently. I know that a cubic metre of water weighs a metric tonne and that equates to 2,200 lbs approximately and what that weight of water could be like in construction.

I have attempted to attach the video from October 2021 to this mail for your attention.

Should you be able to view the video, please note that the flow of water was so great that it was lapping over the ventilation grid, set into the damp course of the house. Only by placing the loose bricks could I divert it down the path towards the drain. This also had to have loose bricks placed around it to get the majority of the flow into the surface water drain. But, as you can see the front garden and borders were saturated and show signs of flooding.

Having spoken to some of my neighbours, one or two of them have had some show of excess water, but that was during the heavy rain storms in Oct 2021.

Thank you for speaking to me yesterday with regard to this problem, but I still have concerns and fears that there could be severe damage caused if this problem is neglected and not addressed properly.

I look forward to your reply and course of action.

## **Development Plan Policies:**

### Copeland Local Plan 2013-2028 (Adopted December 2013):

#### Core Strategy (CS):

Policy ST1 – Strategic Development Principles  
Policy ST2 – Spatial Development Strategy  
Policy ST4 – Providing Infrastructure  
Policy ENV1 – Flood Risk and Risk Management  
Policy ENV3 – Biodiversity and Geodiversity  
Policy ENV5 – Protecting and Enhancing the Boroughs Landscapes

#### Development Management Policies (DMP):

Policy DM10 – Achieving Quality of Place  
Policy DM11 – Sustainable Development Standards  
Policy DM24 – Development Proposals and Flood  
Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species  
Policy DM26 - Landscaping

#### Emerging Copeland Local Plan (ELP):

The emerging Copeland Local Plan 2017-2038 comprising the Publication Draft (January 2022) and Addendum (July 2022) have recently been submitted for examination by the Planning Inspector.

As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF.

Given the stage of preparation of the emerging Copeland Local Plan 2017-2038 some weight can be attached to policies where no objections have been received or objections have been resolved. The Publication Draft (January 2022) and Addendum (July 2022) 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 NPPF.

Policy DS1PU - Presumption in favour of Sustainable Development  
Policy DS2PU - Reducing the impacts of development on Climate Change  
Policy DS6PU - Design and Development Standards  
Policy DS7PU - Hard and Soft Landscaping  
Policy DS8PU - Reducing Flood Risk  
Policy DS9PU - Sustainable Drainage  
Policy DS10PU - Soils, Contamination and Land Stability

Policy H6PU - New Housing Development  
Policy N1PU - Conserving and Enhancing Biodiversity and Geodiversity Strategic  
Policy N2PU - Local Nature Recovery Networks Strategic  
Policy N3PU - Biodiversity Net Gain  
Policy N5PU - Protection of Water Resources  
Policy N6PU - Landscape Protection

### **Other Material Planning Considerations**

National Planning Policy Framework (NPPF).  
Planning Practice Guidance (PPG).  
National Design Guide (NDG).  
The Conservation of Habitats and Species Regulations 2017 (CHSR).  
Cumbria Development Design Guide (CDDG).

### **Assessment:**

#### *Principle*

The principle of creating a surface water attenuation basin on the Application Site has been established under application ref. 4/18/2118/OF1 (Phase 3) and application ref. 4/20/2179/OF1 (Phase 4).

The Applicant has stated that the surface water attenuation basin was not constructed in accordance with the approved details as bedrock was encountered during excavations, which prevented outfall headwall being located at the approved level and required the construction partially above the levels of the prevailing landform.

This Full Planning Application seeks to regularise the surface water attenuation basin as constructed on the Application Site.

#### *Landscape Impact*

In respect of landscape impacts, the proposed does not generate any higher levels of adverse landscape effect. The lower levels of adverse effect are very much localised, affecting the character of the site and its immediate surroundings rather than affecting the wider agricultural landscape or the townscape of Whitehaven to any great extent.

In respect of visual impacts, the Application Site has a visual prominence; however, only moderate levels of adverse effect will occur to a minor number of receptors.

The proposed is located adjacent to and is well related to the existing approved and completed

residential development known as The Mount.

The proposed results in changes to the contours of the Application Site, which are visible in localised views. The proposed scheme of landscaping will soften the contours of the development and will assist in assimilating the earth mounds into the wider development and landscape.

The proposed scheme of landscaping comprises a continuation of the approach adopted across the wider approved development.

#### *Drainage*

The principle of creating a surface water attenuation basin on the Application Site has been established under application ref. 4/18/2118/OF1 (Phase 3) and application ref. 4/20/2179/OF1 (Phase 4).

The approved surface water attenuation basin was designed and approved initially under application ref. 4/18/2118/OF1 (Phase 3). The basin comprises part of a scheme of drainage that sought to attenuate and control the flow of surface water from the residential development prior to discharge into the watercourse, with infiltration having been discounted.

The approved basin was then re-assessed and approved under application ref. 4/20/2179/OF1 (Phase 4) and deemed capable of accepting the flows from that development without revision of the original design.

The as constructed basin has been designed and assessed as having the appropriate capacity to accommodate flows from approved Phase 3 and approved Phase 4.

Queries have been raised by the Objector in relation to the design and construction of the basin.

Cumbria County Council – LLFA and Flood and Coastal Defence Engineer have been consulted in respect of the proposals and raise no objections to the design of the basin. They have confirmed that they cannot definitively confirm that the basin has been constructed in accordance with the submitted details without invasive works; however, have viewed the basin operating correctly during inclement weather.

Clearly if issues are existing in terms of water flow and flooding, an investigation of the construction of the surface water attenuation basin can be pursued via a planning enforcement investigation/action separate to this Full Planning Application if required. Any such failing does not impact the technical acceptability of the proposed which is the key issue in the assessment of this Full Planning Application.

The approval of any Full Planning Application will not undermine any enforcement investigation

	<p>relating to the construction of the basin not being in accordance with the currently proposed details and specifications.</p> <p>The management and maintenance of the drainage system including detention basin is secured via the planning permission for Phase 4.</p> <p><i>Ecology</i></p> <p>The Application Site comprised short grazed fields, which have been impacted by the construction of the approved development and was therefore generally species poor.</p> <p>The proposed revisions will not cause materially greater impacts on existing ecology than the approved development.</p> <p>The proposed scheme of planting will deliver comparable levels of biodiversity to the previously approved scheme.</p> <p><i>Conclusion</i></p> <p>The principle of the development is acceptable.</p> <p>The scale, form and design of the proposed system are appropriate to the Application Site.</p> <p>The development is acceptable in respect of technical drainage design and ecology.</p> <p>Clearly if issues are existing in terms of water flow and flooding, an investigation of the construction of the surface water attenuation basin can be pursued via a planning enforcement investigation/action separate to this Full Planning Application if required.</p>
8.	<p><b>Recommendation:</b></p> <p>Approve</p>
9.	<p><b>Conditions:</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: <p>Planning Application Form  Location Plan – Drawing No. 15/10/863 - 01  Detention Basin/Swale – Plan &amp; Cross Sections – Drawing No. 124826/2005 Rev. C  Construction Details Sheet 3 – Drawing No. 124826/2008 Rev. B</p> </li> </ol>

	<p>Reason</p> <p>To conform to the requirement of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.</p> <p><b>Statement</b></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:</b> Chris Harrison</p>	<p><b>Date :</b> 13.01.2023</p>	
<p><b>Authorising Officer:</b> N.J. Hayhurst</p>	<p><b>Date :</b> 16.01.2023</p>	
<p><b>Dedicated responses to:-</b></p>		