

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

Our ref: NO/2022/114933/02-L01
Your ref: 4/22/2466/0F1
Date: 11 October 2023

Dear Sir/Madam

**REDEVELOPMENT OF FORMER BUILDERS YARD INTO NEW HOUSING TO
PROVIDE 35 DWELLINGS.**

LAND ADJACENT TO BORDER YARD, COACH ROAD, WHITEHAVEN

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

Environment Agency position

In our letter referenced NO/2022/114933/01-L01 and dated 5 January 2023, we objected to the development as proposed on two grounds, firstly, In the absence of an acceptable Flood Risk Assessment (FRA), and secondly, due to concerns about proximity of the development on Pow Beck Main River Culvert which runs close to the western boundary of the site.

Since this time, an updated site specific and development specific FRA has been produced and the proposals have been amended in terms of the number of units and the layout.

The planning application is now accompanied by a revised Flood Risk Assessment (FRA) prepared by A L Daines and Partners LLP (ref: 23-C-16902; dated August 2023). We have reviewed the FRA in so far as it relates to our remit, in particular the design flood event considered in the FRA and any proposed flood risk mitigation measures.

We are now in a position to remove our objection, but would wish to make the following comments:-

1. Flood Risk

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
Cont/d..

Peak River Flow Climate Change

Although the FRA includes a chapter on Climate Change (section 4) and correctly refers to the South West Lakes Management Catchment peak river flow allowances. It does not apply the 30% Central allowance to the undefended 1% AEP fluvial event to determine the design flood event. <https://www.gov.uk/guidance/flood-risk-and-coastal-change#para2>

Rather, the FRA proposes the 0.1% AEP event of 7.91 m AOD as the worst case scenario. We can have confidence that this is acceptable proxy and that the 0.1% AEP event is conservative.

The FRA confirms that proposed finished floor levels of the dwellings are to be 300mm above the 0.1% AEP flood level of 7.91m at 8.21m AOD. While we would have preferred to see a greater value of freeboard on the design flood event, with 600mm likely to become a national standard.

Access and Egress

Section 6.3 on page 20 of the FRA discusses 'Flood Alerts and Warnings'. This section says:-

'It will be important to document the flood risk to the site and residents and, more importantly, the actions to take should a flood alert or flood warning be issued. This will be documented in the form of an Emergency Flood Plan.'

We would confirm that the site is located in a Flood Alert area for Rivers Ehen, Calder, Irt and Esk. It should be understood that a flood alert often covers a very large area including many watercourse with differing hydrology and catchment size.

The alert is issued to give warning flood risk to low laying land and can be issued based on observed rainfall or river levels at our network of gauges. However, not all watercourses are gauged and not all catchments have rain gauges in them. It is therefore possible that smaller catchments will respond to localised rainfall potentially inundating areas of floodplain without an alert being issued. This is particularly true of Coach Road due to the presence of the Pow Beck entering into a culvert adjacent to the bowling green grounds.

The Environment Agency have an asset in the form of a complex self-clearing inlet screen on the culvert and Field Team cleanse this the entrance grid (which is CCTV monitored) on scheduled and reactive basis.

Contrary to information presented in the FRA, the site is not covered by a Flood Warning Area, which in Whitehaven pertains to Tidal Flooding. The site is not affected by Tidal Flooding.

The low spot on Coach Road known to be affected by surface water flooding which could frustrate access and egress to and from the site.

The National Planning Policy Framework (NPPF) states: *'local planning authorities should ... only consider development appropriate ... if ... it can be demonstrated that... development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed,*

including by emergency planning...'. The Planning Practice Guidance (PPG) states: 'Access considerations should include the voluntary and free movement of people during a 'design flood', as well as the potential for evacuation before a more extreme flood'.

The PPG also states that: *'Wherever possible, safe access routes should be provided that are located above design flood levels and avoiding flow paths (i.e. 'dry')'.*

It should also be possible to engineer safe and dry emergency pedestrian access and egress to the site as a minimum.

Advice to LPA

The Environment Agency does not normally comment on or approve the adequacy of flood emergency response procedures accompanying development proposals, as we do not carry out these roles during a flood. Our involvement with this development during an emergency will be limited to delivering flood warnings to occupants/users covered by our flood warning network. The Planning Practice Guidance to the National Planning Policy Framework states that those proposing developments should take advice from the emergency services when producing an evacuation plan for the development as part of the flood risk assessment.

In all circumstances where warning and emergency response is fundamental to managing flood risk, we advise local planning authorities to formally consider the emergency planning and rescue implications of new development in making their decisions. As such, we recommend you consult with your Emergency Planners and the Emergency Services to determine whether the proposals are safe in accordance with the guiding principles of the Planning Practice Guidance (PPG).

Notwithstanding the above, we are generally satisfied that the development would be safe without exacerbating flood risk elsewhere if the proposed flood risk mitigation measures are implemented.

It should also be possible to engineer safe and dry emergency pedestrian access and egress to the site as a minimum.

The proposed development must proceed in strict accordance with this FRA and the mitigation measures identified as it will form part of any subsequent planning approval. Any proposed changes to the approved FRA and / or the mitigation measures identified will require the submission of a revised FRA.

2. Contaminated Land

Separate to the above matter, we also recommend that any subsequent approval includes the following conditions:-

Contamination investigation and remediation

The industrial history of the site present a risk of contamination that could be mobilised during construction to pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is located upon a secondary A aquifer.

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 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 174 of the National Planning Policy Framework.

Use of SuDs

The previous and historical use of the proposed development site and infilled ground with proposed piling methodology presents a medium risk of contamination that could be mobilised by surface water infiltration from the proposed sustainable drainage system (SuDS). This could pollute controlled waters. Controlled waters are particularly sensitive in this location because the proposed development site is located over secondary A aquifer.

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 174 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 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 174 of the National Planning Policy Framework.

PILING

Condition

Deep foundation piling techniques in made ground will require a detailed site specific risk assessment to ensure the design and operation does not cause or exacerbate existing contamination. Some techniques may not be suitable.

Reason

To ensure that the proposed [enter activity], does not harm groundwater resources in line with paragraph 174 of the National Planning Policy Framework

3. Environmental permit - advice to applicant

Pow Beck is a designated Statutory main river and runs in culvert near the western boundary of the site.

It should be noted that Environment Agency maintains the open channel sections of Pow Beck and have no responsibility to the culverted sections downstream of Coach Road and adjacent to the site. These culverted sections are 3rd Party Owned and maintained, and the responsibility of the Local Authority. The Local Authority and Planning Authority and as risk management authority will need to carefully consider any development control issues arising through planning, that could otherwise compromise the structure or function of the asset or have the potential to prevent future maintenance or improvement works being undertaken.

The development also proposes a new surface water connection to the culverted watercourse.

The Environmental Permitting (England and Wales) Regulations 2016 require a permit to be obtained for any activities which will take place:

- on or within 8 metres of a main river (16 metres if tidal)
- on or within 8 metres of a flood defence structure or culverted main river (16 metres if tidal)
- on or within 16 metres of a sea defence
- involving quarrying or excavation within 16 metres of any main river, flood defence (including a remote defence) or culvert
- in the floodplain of a main river if the activity could affect flood flow or storage and potential impacts are not controlled by a planning permission

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact our National Customer Contact Centre on 03708 506 506. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity.

4. Biodiversity Net Gain (BNG) – advice to applicant

Applicants are encouraged to include biodiversity net gain (BNG) within their proposals. Paragraphs 174 and 179 of the National Planning Policy Framework (NPPF) recognise that the planning system should provide net gains for biodiversity. By November 2023, providing a minimum 10% biodiversity net gain in new development will be 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.

Applicants can establish the pre-development and post-development biodiversity value of their proposals using the [DEFRA Biodiversity Metric](#). Where development proposals do not demonstrate a minimum 10% BNG, applicants should be encouraged to identify appropriate opportunities and enhancements to achieve it. Where an application site is adjacent to a watercourse, we would recommend applicants retain these features wherever possible and consider whether they represent opportunities to provide biodiversity net gain through restoration and / or enhancement.

Yours faithfully

Hui Zhang

Planning Advisor - Sustainable Places

e-mail clplanning@environment-agency.gov.uk