

Land to the rear of 108 Victoria Road Whitehaven

784-B030271

**Planning Application 4/23/2164/PIP
Informal Hearing Appeal
Full Statement of Case**

Mr Roy Donnan

December 2024

**Document prepared on behalf of Tetra Tech Environment Planning Transport Limited.
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1.0 INTRODUCTION

- 1.1 This Statement of Case has been prepared by Tetra Tech Planning on behalf of Mr Roy Donnan ('the Appellant') in support of an Informal Hearing planning appeal against the refusal of planning permission by Cumberland Council for residential development comprising:

"A Technical Details Consent (TDC) application for three dwellings pursuant to a Planning-in-Principle permission granted on appeal on the 9th July 2020 under reference APP/Z0923/W/20/3246227 (Copeland Borough Council Reference 4/19/2246/PIP). This TDC application seeks to provide the necessary technical details to support development of the scheme."
- 1.2 The TDC application (4/23/2164/PIP) was determined under Officer's delegated powers and the decision notice was dated 27th September 2024.
- 1.3 The appeal site has the benefit of a 'Permission-in-Principle' approval under application 4/19/2246/PIP described as "Residential Development", and which was granted on appeal under reference APP/Z0923/W/20/3246227 on the 09 July 2020 (see Appendix 1).
- 1.4 This Statement of Case is to be read in conjunction with the Technical Details Covering Letter dated 17th May 2023 and all the supporting documents that accompanied the planning application. It demonstrates that the Local Planning Authority (LPA) did not determine the application in accordance with the relevant national and local planning policy guidance, and material planning considerations specific to the site and surrounding area.
- 1.5 This Statement demonstrates that the proposed development complies with relevant national and local planning policy and guidance. It shows that the proposed development would contribute towards meeting the Council's and the Government's objective of delivering new housing to meet the needs of society against a backdrop of significant national under-delivery of housing in England.
- 1.6 It will also show that the Council's Planning Officers failed to properly consider the specific circumstances on site and the inter-relationship between the proposed three new dwellings and existing adjoining housing in the area.
- 1.7 In this regard, it is our contention that Planning Officers have incorrectly assessed the likely effects of the proposed three dwellings in terms of their location, levels, scale, form, massing and design. We do not agree that the proposed dwellings by virtue of their overall height, levels, expansive glazing and raised balcony areas will result in unacceptable impacts upon the living conditions of existing nearby residents.

2.0 REASONS FOR REFUSAL

- 2.1 There are two reasons for the Council's decision to refuse planning permission, which are:

"Reason 1

The proposed development by virtue of its location, levels, scale, form, massing and design does not respond positively to the character of the application site and its developed context, does not enhance local distinctiveness and does not deliver high quality design in conflict with the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework.

Reason 2

The proposed dwellings by virtue of their overall height, levels, expansive glazing and raised balcony areas will result in unacceptable impacts upon the living conditions of existing residents of 106 – 110 Victoria Road through physical overlooking and perception of overlooking. This is in conflict with the provisions of Policy ST1 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework."

- 2.2 The decision was made under Planning Officer's delegated powers and the decision notice is dated 27th September 2024.
- 2.3 This planning appeal sets out that the proposed three dwellings would not have an adverse effect on the character of the application site and its developed context to warrant the refusal of planning permission. Contrary to refusal reason number 1, it is our opinion that the proposed dwellings would enhance local distinctiveness and would deliver a high-quality design to the benefit of the local area.
- 2.4 There would be no adverse effects on the landscape of the area as implied by the reference to adopted Local Plan Policy ENV5 and the three dwellings would not be contrary to adopted Local Plan Policy DM10, which seeks to achieve quality of place. Furthermore, the proposed dwellings would relate well in terms of visual impact, scale, character, amenity value and local distinctiveness of the landscape in which the proposals would sit thereby satisfying adopted Local Plan Policy DM26.
- 2.5 It is also contended that contrary to refusal reason number 2, the three proposed dwellings would not have an unacceptable impact upon the living conditions of existing residents in 106-110 Victoria Road through physical and perceived overlooking. Given that Permission-in-Principle has already been granted for up to five dwellings within the site, the proposed layout has been carefully designed to provide an appropriate size and arrangement of development plots and an appropriate provision, orientation, proportion, scale and massing of buildings within the site and so would accord with adopted Local Plan Policy DM10.
- 2.6 The three dwellings would also be set into the site and so they would skilfully incorporate existing features of interest, including the landscape and topography to create a viable scheme attractive to the market. The details of the level of the acceptability of the scheme are set out the following sections 5.0 and 7.0 of this Statement of Case.

3.0 SITE AND SURROUNDING AREA

- 3.1 The appeal site is located on the south-east side of Victoria Road, Whitehaven, Cumbria. The site lies to the rear of 108 Victoria Road on rising ground and comprises a moderate-sized plot of grassland, trees and scrub.
- 3.2 The appeal site would be accessed off Victoria Road using an existing entrance onto the road, which would be widened (including demolition of the existing garage for No. 108) to enable passing traffic.
- 3.3 The appeal site is surrounded by residential development to the immediate north, west and east. Existing residential properties are located on much higher ground to the rear of the appeal site in Rosemary Close, which afford impressive views over the surrounding residential area to the west and further out to the sea.
- 3.4 There is scrub land and trees to the immediate east and grassland further to the south with farmland beyond. The site and its context with surrounding area is demonstrated by Figure 1 below.

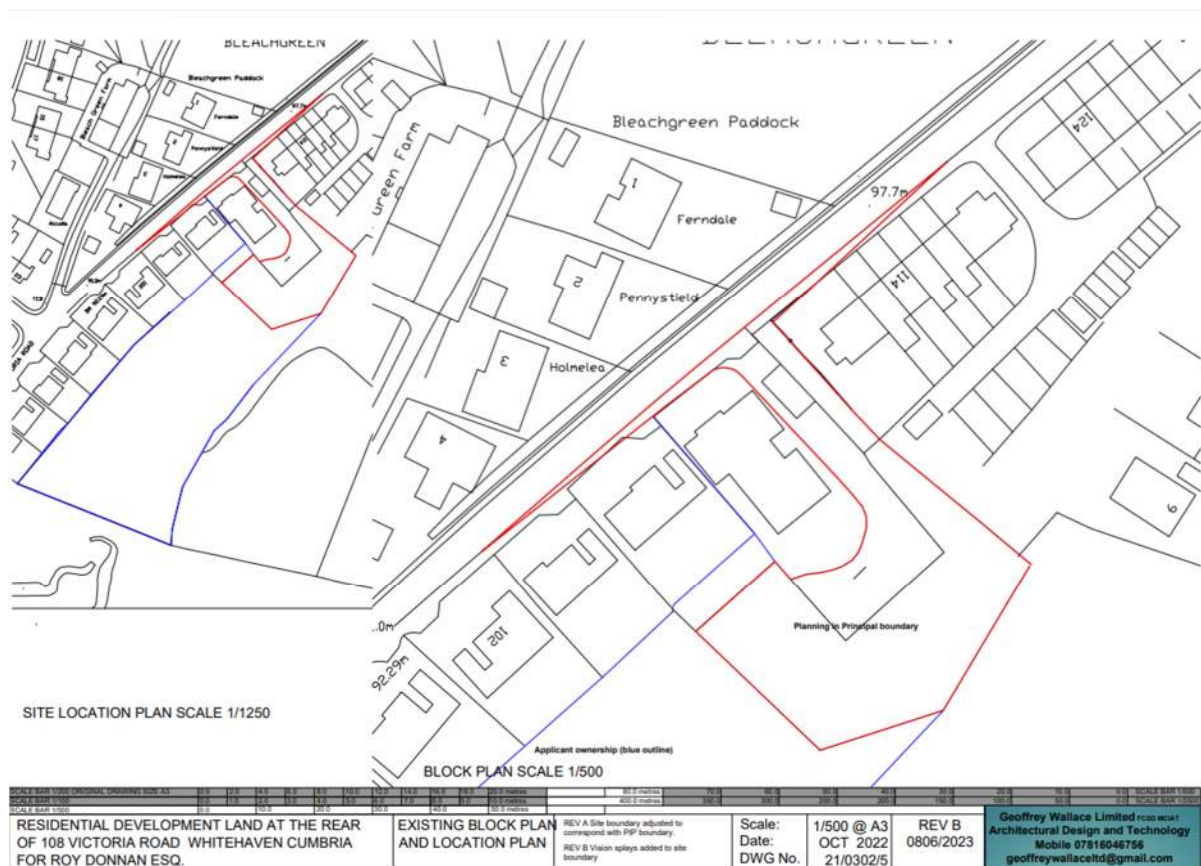


Figure 1 – Extract from the submitted plans showing general site location within the wider built-up urban area of Whitehaven

- 3.5 The appeal site area amounts to 0.19163 Hectares.
- 3.6 The adopted Copeland Borough Council Local Plan (2013-2028) Proposal Map clearly shows the appeal site lying within the defined settlement boundary, and therefore where new development is considered acceptable (see extract below). Within the Cumbria Landscape Character Guidance and Toolkit (2011), the appeal site, therefore, lies on the edge of and on the boundary between the urban area and Sub-Type 5d Lowland Urban Fringe.

- 3.7 In 2021 Hankinson Duckett undertook a review of the 2011 Cumbria Landscape Character Assessment (LCA), on behalf of Copeland Borough Council, updating it where necessary to provide an assessment of the landscape beyond the main areas of settlement, suitable for the Copeland Local Plan area as part of the Council's preparation of a new Local Plan for the period 2021- 2038.
- 3.8 This review (Copeland Local Plan Area Landscape Character Assessment of Landscapes Beyond the Main Areas of Settlement) also identifies the site as lying on the edge of and on the boundary between the urban area and Sub-Type 5d iv 'Whitehaven Hillsides'.
- 3.9 Sub-Type 5d is found around the edges of Carlisle, Workington and Whitehaven. These agricultural landscapes have been subjected to urban and industrial influences for a long time and in many parts maintain a rural character. The Hankinson Duckett review does not provide any further guidance relevant to Sub-Type 5d iv related to the appeal site.
- 3.10 The appeal site does not lie in any designated landscape or ecological site, such as Area of Outstanding Natural Beauty (AONB), Local Nature Reserve (LNR), Ramsar site, Site of Special Scientific Interest (SSSI), Special Area of Conservation (SAC), or Special Protection Area (SPA).

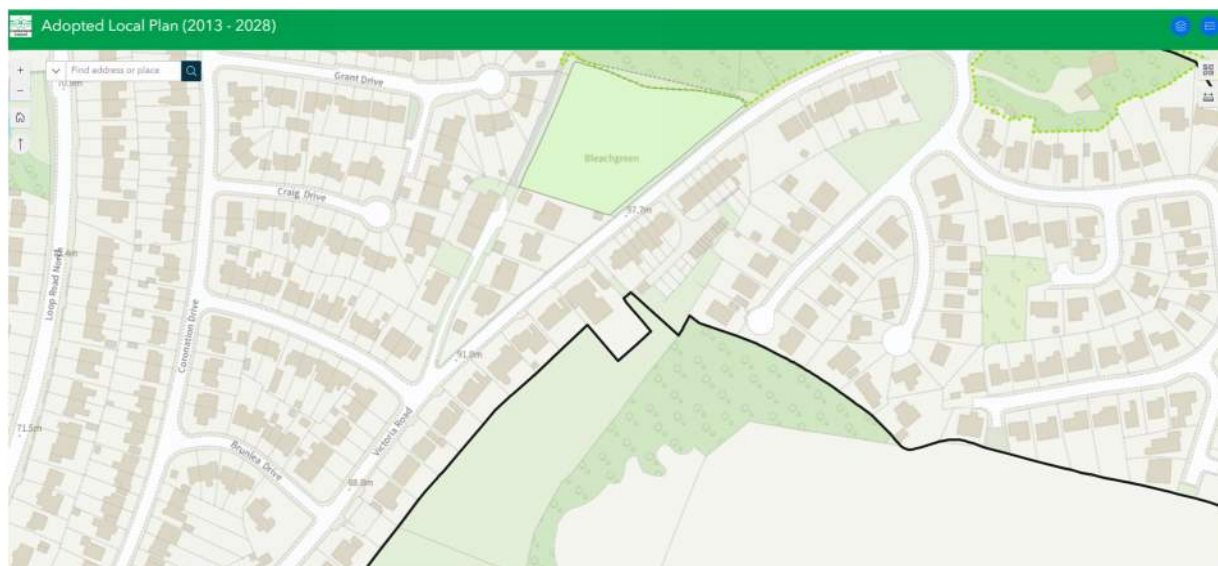


Figure 2 - Extract of the Copeland BC Local Plan (2023-2028) Proposals Map confirming site lies within the settlement limits

4.0 PLANNING HISTORY

- 4.1 The appeal site has been subject to the following planning applications:
- 4/88/0052/0 – House. Field 4013/4620, Victoria Road, Whitehaven. Refused 11th March 1988;
 - 4/91/1052/0 – Extension for covered swimming pool. 108, Victoria Road, Whitehaven. Approved (date not known);
 - 4/19/2246/PIP – Application for permission in principle for residential development. Land adjacent to 108 Victoria Road, Whitehaven. Refused 15th August 2019. Appeal reference Appeal Ref: APP/Z0923/W/20/3246227. Allowed on 9th July 2020;
 - 4/22/2492/0F1 – Housing development for 4 no. 4 bedroomed dwellings roads and services and replacement double garage at field to rear of 108 Victoria Road, Whitehaven. Withdrawn 20th March 2023.
- 4.2 The relevant planning application relating to this TDC submission is application 4/19/2246/PIP and the subsequent appeal decision reference Appeal Ref: APP/Z0923/W/20/3246227. The latter appeal decision granted a Planning-in-Principle permission for up to 5 dwellings to the rear of 108 Victoria Road Whitehaven.
- 4.3 The appeal decision notice from the Planning Inspector for Appeal Ref: APP/Z0923/W/20/3246227 is attached in Appendix 1 to this Statement of Case.

5.0 PROPOSED DEVELOPMENT

5.1 DETAILS OF THE PLANNING APPLICATION

- 5.1 The appeal proposal was submitted on the 17th May 2023. The application (4/23/2164/PIP) sought planning permission for:

“Technical Details Consent (TDC) application for three dwellings pursuant to a Planning-in-Principle permission granted on appeal on 9th July 2020 under reference APP/Z0923/W/20/3246227 (Copeland Borough Council reference 4/19/2246/PIP. This TDC application seeks to provide the necessary technical details to support development of the scheme.”

on land adjacent to the rear of 108 Victoria Road, Whitehaven (The “Site”).

- 5.2 The planning application was determined under Officer delegated powers and the decision notice is dated the 27th September 2024.

- 5.3 In addition to a Technical Details Consent Planning Covering Letter, the application was initially supported by the following information/documentation:

- 10-05-2023 Victoria Road Proposed Layout A;
- 10-05-2023 Victoria Road Proposed Layout A-05 Site Plan Existing;
- Proposed Drainage Arrangements Plan (Drawing 23-191 DWG001 DRAFT);
- Drainage Report (23-191r001);
- Topography Plan (Drawing 3918-P-01 A.);
- Proposed Development Access long Section (Drawing B030271-020 REV P02);
- Proposed Development Access Cross Sections (Drawing B030271-030 REV P02);
- Potential Site Access Visibility Checks (Drawing B030271-050 REV P02);
- Potential Site Access General Arrangement and Chainage Plan (Drawing B030271-100 REV P02);
- Potential Site Access Vehicle Tracking (Drawing B030271-TTE-00-ZZ-DR-H-SK03 Swept Path); and
- J007 108 Victoria Road Whitehaven Preliminary Ecological Appraisal 16 05 23 Final;

- 5.4 Following dialogue with the Head of Planning and Place at Cumberland Council on the 1st June 2023 to:

- a) correct inaccuracies of the red-line boundary to be consistent with the red-line boundary defined in the PIP appeal submission/decision;

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- b) changing the application form from a reserved matters to full planning application form and for the ownership Certificates to be signed, as per paragraph 44 of the Planning Policy Guidance;
 - c) confirming with the Head of Planning and Place that the TDC application should not be subject to an application fee as it had followed a full application that was withdrawn on the 20th March 2023 (i.e. 4/22/2492/0F1), and as this revised TDC application was submitted within 12 months;
 - d) confirming that a Flood Risk Assessment (FRA) is not required for this proposed development because it involves a site that is less than 1 ha in Flood Zone 1, and it would not be affected by sources of flooding; and
 - e) clarification on the status of the Drainage Plan.

the following updated documents were submitted:

- 07-06-2023 Victoria Road Proposed Layout A;
- 07-06-2023 Victoria Road Proposed Layout A-05 Site Plan Existing;
- 12 06 2023 Technical Details Consent Covering Letter Victoria Rd Whitehaven Final Combined;
- 12-06-2023 Victoria Road Proposed Layout A-06 Site Plan Privacy Arc Block Plan;
- Proposed Drainage Arrangements Site Plan (Drawing 23-191 DWG001B FINAL FOR REPORT);
- Drainage Report (23-191r001 Drainage Report compressed);

5.5 As a result of the submission of these documents, the TDC application was validated by Cumberland Council on the 14th June 2023.

5.6 During the determination period and after subsequent dialogue with the Planning Case Officer relating to the detailed design of the proposed dwellings led to further consideration and amendments to the planning drawings by the appellant. Amendments to the design were submitted to Cumberland Council on the 17th January 2024 as follows:

- 08-01-2024 Victoria Road Proposed Layout A;
- 17 01 24 Rebuttal letter Letter Victoria Rd Whitehaven Final Compressed;
- Proposed Drainage Arrangements Plan (Drawing 23-191 DWG001C);
- Kingmoor Consulting Drainage letter (Drawing 23-191c002);
- Updated Drainage Report (23-191r001 Drainage Report compressed);
- Potential Site Access Vehicle Tracking (Drawing B030271-TTE-00-ZZ-DR-H-SK04).

5.7 Due to queries raised by the Council about the visibility splays, further clarifications were submitted on the 4th April 2024 containing the following documents:

- Email dated 4th April 2024;
- Revised Planning Application Form 108 Victoria Rd Whitehaven;

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- 29-03-2024 Victoria Road Proposed Layout A;
 - Potential Site Access Visibility Checks (Drawing 784-B030271-050 P05).

5.8 Due to the clarifications made to the visibility splays, the appellant confirmed to Cumberland Council's Planning Officers in a number of emails between the 4th April 2024 – 15th April 2024 that the occupier of 110 Victoria Road had been served notice that the application would be likely to affect a small parcel of their land. The occupier of No: 110 Victoria Road subsequently confirmed in correspondence that they had no objection to the use of part of the front boundary of their property for the visibility splay for the development to the rear of No: 108 Victoria Road. The additional submissions to Cumberland Council comprised of:

- 07-10-2024 Victoria Road Proposed Layout A 07 Site Plan Proposed (1);
- 08 04 2024 Notice Letter 110 Victoria Road Whitehaven;
- Letter from the Occupier of No: 110 Victoria Road confirming no objection.

5.9 In addition, a site meeting was held on Wednesday 22nd May 2024, which involved Mr Shamus Giles (Cumberland Council's LLFA Officer), Mr Colin Aimers (Kingmoor Consulting – Drainage representing the applicant) and the applicant's father - Mr Richard Donnan. At the meeting, it was pointed out to Mr Giles that there had been recent repairs carried out to a land drain on site by United Utilities, which meant that previous apparent issues of water draining into properties below in Victoria Road had now been resolved. Mr Aimers amended the drainage drawings to include new manholes to allow inspection of the land drain in future. This amendment had led us to believe the outstanding drainage issues and concerns raised by the LLFA on the proposal had been resolved. The additional plans submitted on the 25th May 2024 were:

- Proposed Drainage Arrangements Site Plan (23-191 DWG001D).

5.10 On the 4th June 2024, the planning application form was amended to include the third party occupiers of No: 110 Victoria Road on the Certificates:

- 04 06 2024 Updated Planning Application Form 108 Victoria Rd Whitehaven

5.2 THE PROPOSED DEVELOPMENT

5.1 The proposed development would involve the construction of three detached dwellings within the confines of the red-lined area defined by the Planning-in-Principle (PIP) approval granted on appeal under reference APP/Z0923/W/20/3246227.

Proposed design principles

5.2 The dwellings would be of a modern design, comprising split level units with 2 bedrooms on the ground floor plus bathroom, which would be stepped above a living-room, dining room, kitchen and utility room. At first floor level, the accommodation would provide two bedrooms, each with ensuite bathrooms. Each dwelling would have a linked double garage separated by an external staircase, which provides access to a terrace above the garage with timber balustrading painted to match the windows. Two car parking spaces would be provided in front of each of the garages.

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- 5.3 The front elevations would feature glazed panel units coloured green, whilst the rear elevations would be seen as single storey with the lower split-level set into the ground due to the rising change in topography. The proposed elevations would comprise a brick plinth, K-render, and mineral fibre cladding boards on battens. The proposed roof would be Marley Modern flat coloured grey roofing tiles with propriety matching ridge tiles and verge trims. Velux roof lights would be provided on the rear roof planes at 1st floor level to provide necessary light to the proposed staircases and roof store area.
- 5.4 The doors and windows would be dark grey uPVC framed double/triple glazed windows with modern pattern doors to owner's choice. All windows to be from one manufacturer for consistency. Garage doors would be vertical pattern timber or composite steel door colour to match the front door and for approval by the Local Planning Authority.
- 5.5 The boundary fencing would be natural larch single boarded timber fencing not exceeding 2.m in height from ground level.
- 5.6 The total height of the dwellings from ground to ridge height would be 10.2m. The total floor area of each dwelling would be 220 sqm including the garage floor area. Each dwelling would have rear terrace gardens, which would back onto un-developed land, and extend into countryside to the south-east as described above. This outlook would provide an attractive backdrop and setting for occupiers of the dwellings.

Highways matters

- 5.7 The proposed vehicular access would utilise an existing vehicular access onto Victoria Road, which would be widened following the demolition of the existing garage serving No. 108 Victoria Road.
- 5.8 A new service road would be constructed to serve the three dwellings, which would include a Y-shaped turning area to allow vehicles to enter in forward gear and to turn around and exit in forward gear. A separate planning application would be made for a replacement double garage to serve No.108 Victoria Road but would not be part of this appeal proposal.
- 5.9 The Cumberland Council Highways and Lead Local Flood Authority (LLFA) has raised no objections to the proposed vehicular access following detailed consideration of the site lines, gradient and turning areas. This was confirmed in an email from Cumberland Council's Highways Officer (Shamus Giles) dated 2nd August 2024.

Drainage matters

- 5.10 There would be no risk of flooding as the site lies in Flood Zone 1, which means that it has a low probability of flooding from rivers and the sea. A Flood Risk Assessment (FRA) is not required for this proposed development because it involves a site that is less than 1 ha in Flood Zone 1, and it would not be affected by sources of flooding.
- 5.11 The appeal documentation includes a Drainage Strategy that confirms a United Utilities combined sewer is present on Victoria Road, which carries both surface and foul drainage from the area. At present a surface water cut off drain is present along the rear of the properties in Victoria Road, which connects with the combined sewer. In terms of foul drainage, it is proposed that the site shall drain into the adjacent combined sewer. In terms of surface water drainage, it is proposed to

discharge the surface water from the development to the existing combined sewer present on Victoria Road. The Drainage Strategy contains a Proposed Drainage Site Plan accordingly.

- 5.12 The Planning Case Officer confirmed in an email on the 2nd August 2024 that the objections raised by United Utilities in respect of drainage:

“can be satisfactorily addressed through the imposition of a pre-commencement planning condition.”

6.0 NATIONAL AND LOCAL PLANNING POLICY RELEVANT TO THIS APPEAL

- 6.1 The following sets out the relevant National and Local Planning Policies, which address the matters raised in the refusal reason.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 6.2 The National Planning Policy Framework (NPPF) was revised in December 2023. It continues to give support to the three objectives of sustainable development: economic, social, and environmental.

Achieving Sustainable Development

- 6.3 At the heart of the Framework is the ‘*presumption in favour of sustainable development*’, which is key for both plan-making and decision taking.
- 6.4 The NPPF defines ‘sustainable development’ and highlights that it has three interrelated dimensions; economic, social, and environmental. These three dimensions give rise to the need for the planning system to perform a number of 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 well-designed, beautiful and safe places, 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 protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”** (paragraph 8).

- 6.5 For decision taking on planning applications, the NPPF is clear that the ‘presumption in favour of sustainable development’ means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

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- i. “the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or**
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”**
(paragraph 11).

6.6 The reference above to ‘out-of-date’ policies is clarified in the footnote 8 which states:

“This includes, for applications involving the provision of housing, situations where: (a) the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years”.

Decision Taking

- 6.7 The NPPF states that Local planning authorities should approach decisions on proposed development in a positive and creative way. Decision-makers at every level should seek to approve applications for sustainable development where possible. (Paragraph 38)
- 6.8 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise (paragraph 47).
- 6.9 Local planning authorities may give weight to relevant policies in emerging plans according to:
- a) “the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);**
 - b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and**
 - c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”** (paragraph 48).
- 6.10 The NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition (paragraph 55).
- 6.11 Planning conditions should be kept to a minimum and only imposed where they are:

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- **“necessary,**
 - **relevant to planning and to the development to be permitted,**
 - **enforceable,**
 - **precise and**
 - **reasonable in all other respects”** (paragraph 56).

6.12 Planning obligations must only be sought where they meet all of the following tests:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development* (paragraph 57).

6.13 The NPPF advises that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.

6.14 All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

Delivering a sufficient supply of homes

6.15 The NPPF states that to support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

6.16 The NPPF advises that to determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance. Establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies.

6.17 Where major development involving the provision of housing is proposed, the NPPF advises that planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

6.18 The NPPF states that local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing for decision making purposes if the following criteria are met:

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- a. “their adopted plan is less than five years old; and**
- b. that adopted plan identified at least a five-year supply of specific, deliverable sites at the time that its examination concluded.”** (paragraph 76)

- 6.19 In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years’ worth of housing, or a minimum of four years’ worth of housing if the provisions in paragraph 226 apply.
- 6.20 Where the criteria in paragraph 76 are not met, the NPPF states that a local planning authority may confirm the existence of a five-year supply of deliverable housing sites (with a 20% buffer if applicable) through an annual position statement. To maintain the supply of housing, local planning authorities should monitor progress in building out sites which have permission. Where the Housing Delivery Test indicates that delivery has fallen below the local planning authority’s housing requirement over the previous three years, a number of policy consequences should apply (paragraph 79).

Promoting sustainable transport

- 6.21 The NPPF advises that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions, and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
- 6.22 The NPPF states that:
- “Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”** (paragraph 115)
- 6.23 Applications for development should:
- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;**
 - b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;**
 - c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;**
 - d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and**
 - e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.”** (paragraph 116)

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- 6.24 All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed (paragraph 117).

Making effective use of land

- 6.25 Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions (paragraph 123).
- 6.26 The NPPF states that local planning authorities should also take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs (paragraph 127).

Achieving well-designed and beautiful places

- 6.27 The NPPF states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities (paragraph 131).
- 6.28 The NPPF advises that decisions should ensure that developments: will function well and add to the overall quality of the area; are sympathetic to local character and history, including the surrounding built environment and landscape setting; establish or maintain a strong sense of place; optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development; and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users (paragraph 135).
- 6.29 The NPPF advises that trees make an important contribution to the character and quality of urban environments. Decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments, that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible (paragraph 136).

Meeting the challenge of climate change, flooding and coastal change

- 6.30 The NPPF advises that new development should be planned for in ways that: avoid increased vulnerability to the range of impacts arising from climate change; and can help to reduce greenhouse gas emissions, such as through its location, orientation and design (paragraph 159).
- 6.31 The NPPF states that local planning authorities should expect new development: comply with any development plan policies on local requirements for decentralised energy supply; and to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (paragraph 162).
- 6.32 When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment (paragraph 173). Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (paragraph 175).

Conserving and enhancing the natural environment

- 6.33 Planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures (paragraph 180).
- 6.34 The NPPF advises that when determining planning applications, local planning authorities should apply the following principles.....if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused (paragraph 186).
- 6.35 The NPPF also states in paragraph 186 that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons, and a suitable compensation strategy exists. It goes on to state that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

Ground conditions and pollution

- 6.36 The NPPF requires decisions on planning applications should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. It is noted that where a site is affected by contamination or land stability issues, responsibility for securing a safe development, rests with the developer and/or landowner (paragraphs 189 and 190).
- 6.37 The NPPF states that decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development (paragraph 191).

NATIONAL PLANNING POLICY FRAMEWORK (NPPF) CONSULTATION JULY-SEPTEMBER 2024

- 6.38 The new Government published a draft consultation on a revised NPPF, which ran from 2pm on 30th July 2024 to 11:45pm on the 24th September 2024. This consultation sought views on the new Government's proposed approach to revising the National Planning Policy Framework. The Government is currently reviewing the feedback on the public consultation, and therefore for the time being it carries limited weight in decision making.
- 6.39 Notwithstanding the outcome of the NPPF consultation, the new Labour Government has set itself the bold target of building 1.5 million homes in five years to deal with the critical shortage of housing. To achieve this, it will have to deliver 50% more than the previous government managed over the same period.

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- 6.40 The Labour Government has made it clear that reform of the planning system is an important element of plans to foster growth in the economy, and at the same time deal with issues that have been slowing down the pace of new development.

RELEVANT ADOPTED LOCAL PLAN POLICIES

- 6.41 As referred to above, planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 6.42 The Local Development Plan consists of the current adopted Copeland Local Plan 2013-2028 – Core Strategy and Development Management Policies DPD (Adopted December 2013). The planning application was principally determined under this adopted Local Plan. However, please note that since the application was determined the Local Planning Authority has recently adopted a replacement Local Plan as set out in paragraph 6.60 below.
- 6.43 Core Strategy Policy ST1 – ‘Strategic Development Principles’ seeks to ensure development creates a residential offer which meets the needs and aspirations of the Borough’s housing markets.
- 6.44 Policy ST2 – ‘Spatial Development Strategy’ seeks to concentrate development to be located in the Borough’s settlements at an appropriate scale, within defined settlement boundaries, in accordance with the Borough’s settlement hierarchy focussing the largest scale development and regeneration (at least 45%) on Whitehaven (defined as the Principal Town).
- 6.45 The Local Plan (paragraph 3.5.13) confirms that the settlement boundaries denote the existing and permissible built-up area of each town and local centre village. They thus indicate where development is encouraged within the framework of Policy ST2 and Figure 3.3. The application site lies within the defined settlement boundary of Whitehaven.
- 6.46 Policy SS3 – ‘Housing Needs, Mix and Affordability’ states that applications for housing development should demonstrate how the proposal helps to deliver a range and choice of good quality and affordable homes for everyone. Development proposals will be assessed according to how well they meet the identified needs and aspirations of the Borough’s individual Housing Market Areas as set out in the Strategic Housing Market Assessment, by:

“establishing a supply of sites suitable for executive and high quality family housing, focussing on Whitehaven and its fringes as a priority.”

- 6.47 In section ‘Implications of Core Strategy Policies on Whitehaven Locality’ it states in the Table on page 94:

“rebalancing housing markets in the Whitehaven Locality means a substantial increase in the supply of larger and more expensive homes as well as some modern affordable housing with different tenure options.”

- 6.48 Paragraph 5.4.4, states that the SHMA at the time indicated an unsatisfied demand for larger (especially four bedroom) houses in the north of the Borough.
- 6.49 Policy ENV1 – ‘Flood Risk and Risk Management’ seeks to permit new build development only on sites located outside areas at risk of flooding.

6.50 Policy ENV5 – ‘Protecting and Enhancing the Borough’s Landscapes’ 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.

6.51 Development Management Policy DM10 – ‘Achieving Quality of Place’ expects a high standard of design and the fostering of ‘quality places’. Development proposals will be required to:

“Respond positively to the character of the site and the immediate and wider setting and enhance local distinctiveness through:

- i) An appropriate size and arrangement of development plots;***
- ii) The appropriate provision, orientation, proportion, scale and massing of buildings;***
- iii) Careful attention to the design of spaces between buildings, including provision for efficient and unobtrusive recycling and waste storage;***
- iv) Careful selection and use of building materials which reflects local character and vernacular.”***

6.52 Development is also required to incorporate existing features of interest including landscape, topography, local vernacular styles and building materials; and in doing so, have regard to the maintenance of biodiversity.

6.53 Criteria E of Policy DM10 states that development proposals will be required to:

“Create and maintain reasonable standards of general amenity” (my underlining)

6.54 Policy DM11 – ‘Sustainable Development Standards’ seeks to ensure that development proposals reach high standards of sustainability by encouraging developers to achieve high energy efficiency standards in relation to the Code for Sustainable Homes and BREEAM.

6.55 Policy DM12 – ‘Standards for New Residential Developments’ states that proposals for new residential developments should incorporate:

“Minimum separation distances whereby:

- i) Detached and end of group dwellings retain at least 1.0m distance between dwelling walls and side boundaries;***
- ii) a minimum of 21.0m is retained between directly facing elevations of dwellings containing windows of habitable rooms;***
- iii) a minimum of 12.0m is retained between directly facing elevations of dwellings containing windows of habitable rooms and a gable or windowless elevation.”***

6.56 Policy DM22 – ‘Accessible Developments’ requires development proposals to be accessible to all users and incorporate innovative approaches to managing vehicular access and parking with:

- i) Standards incorporated into the design of the development which manage traffic access and speeds without excessive engineering measures;***

ii) ii) Incorporate car parking, through a variety of on street and off-street arrangements which avoid vehicles dominating the street scene, whilst meeting adopted car parking standards which reflect the needs of the Borough in its rural context.

- 6.57 Policy DM24 – ‘Development Proposals and Flood Risk’ states that development will not be permitted where it is found that: there is an unacceptable risk of flooding; or the development would increase the risk of flooding elsewhere; or the development would cause interference with or loss of access to a watercourse.
- 6.58 Policy DM25 – ‘Protecting Nature Conservation Sites, Habitats and Species’ aims for all development proposals should protect the biodiversity value of land and buildings.
- 6.59 Policy DM26 – ‘Landscaping’ requires all development proposals to be assessed in terms of their potential impact on the landscape by referring to the Cumbria Landscape Character Assessment and Cumbria Historic Landscape Characterisation. Proposals will be assessed according to whether the proposed structures and associated landscaping relate well in terms of visual impact, scale, character, amenity value and local distinctiveness and the cumulative impact of developments will be taken into account as part of this assessment.

EMERGING LOCAL PLAN POLICIES

- 6.60 The Copeland Local Plan Publication Draft 2021 (January 2022) and Addendum (July 2022) were submitted for independent Examination on 16th September 2022. The Examination was held in early March 2023. The Public Examination of the Copeland Local Plan has now been concluded and the independent Planning Inspector published her Report on the Examination of the Copeland Local Plan 2021-2038 Publication Draft.
- 6.61 The Local Plan that was examined has now been amended by the Council to incorporate the modifications identified by the Planning Inspector as being needed for the Local Plan to be ‘sound’. The modified Local Plan was presented to Cumberland Council’s Executive in October 2024 and was adopted on the 5th November 2024. The Local Plan 2021 -2038 is relevant in so far as it sets out material planning policies at the time the planning application was determined because of the advanced state of the Plan.
- 6.62 In this regard, draft Policy DS6PU: ‘Design and Development Standards’ expects all new development to meet high-quality design standards which contribute positively to the health and well-being of residents (see Main Modifications MM16 of the Planning Inspector’s report). This means that development must:
- a) Make use of existing buildings on site wherever practicable and deliverable, unless they have a negative impact upon the street scene;
 - b) Create and enhance locally distinctive places which are sympathetic to the surrounding context of the built, historic and natural environment and local landscape character;
 - c) Use good quality building materials that reflect local character and vernacular and are sourced locally where possible;
 - d) Incorporate high quality, inclusive and useful open spaces;

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- e) Create layouts that provide safe, accessible and convenient pedestrian and cycling routes that encourage walking and cycling based on Active Design principles and provide connections to existing walking and cycling routes where possible;
 - f) Not give rise to severe impacts on highway safety and/ or a severe impact on the capacity of the highway network and allow for safe access and manoeuvring of refuse and recycling vehicles. Should a development create such an impact then mitigation measures will be sought;
 - g) Take the needs of people with mental and physical disabilities into consideration, including through adopting dementia friendly principles;
 - h) Create opportunities for social interaction;
 - i) Be built to an appropriate density that enables effective use of land whilst maintaining suitable high levels of amenity;
 - j) Be of flexible and adaptive design where appropriate;
 - k) Incorporate measures to design out crime and reduce the fear of crime taking into consideration secured by design principles;
 - l) Be laid out in a way that maximises collar gain to internal spaces to promote energy efficiency and sustainable solutions;
 - m) Use appropriate levels and types of external lighting that does not create light pollution and helps to maintain dark skies in line with up to date good lighting guidance;
 - n) Mitigates noise pollution through good layout design and appropriate screening;
 - o) Address land contamination and land stability issues with appropriate remediation measures;
 - p) Include water efficiency measures such as rainwater recycling measures, green roofs and water butts where possible and appropriate; and
 - q) Ensure there is appropriate provision to allow residents to recycle household waste.

6.63 Draft Policy H2PU – ‘Housing Requirement’ proposes a housing requirement for a minimum of 2,628 net additional dwellings (an average of 146 dwellings per annum) to be provided between 2021 and 2039 (see Main Modifications MM60 of the Planning Inspector’s report). The Policy also states that:

“In order to plan positively and support employment growth over the Plan period, the Plan identifies a range of attractive allocated housing sites, which when combined with future windfall development, previous completions and extant permissions, would allow for a minimum of 3,600 dwellings (an average of 200 dwellings per annum) over the Plan period.”

6.64 It is expected that the three dwellings proposed by this appeal would make a positive contribution to meeting the overall expected housing need in future years, in accordance with Policy H2PU.

6.65 Draft Strategic Policy H4PU – ‘Distribution of Housing’, requires 40% of the housing requirement would have to be located in Whitehaven equating to 1,440 dwellings minimum (see Main

Modifications MM62 of the Planning Inspector's report). This is slightly lower than the current adopted Local Plan Core Strategy figure.

6.66 Draft Policy H6PU – 'New Housing Development' states that proposals for housing development on allocated and windfall sites will be supported in principle providing that criteria are met (see Main Modifications MM67 of the Planning Inspector's report). The criteria include matters covering:

- design, layout, scale and appearance of the development is appropriate to the locality;
- consideration has been given to surrounding natural, cultural and historical assets and local landscape character;
- an acceptable level of amenity is provided for future residents and maintained for existing neighbouring residents;
- privacy is protected through distance or good design;
- the development will have no unacceptable overbearing impact upon neighbouring residents due to its scale, height and/or proximity;
- layout promotes active travel, linking new development with existing footpaths and cycleways, where possible; adequate external amenity space is provided, including for the storage of waste and recycling bins;
- Adequate space for parking is provided; and
- the proposal does not constitute inappropriate development of a residential garden, which would harm the character of the area).

7.0 GROUNDS OF APPEAL

INTRODUCTION

- 7.1 The following section sets out the reasons why we consider the Local Planning Authority has not determined the application in accordance with all relevant national and local planning policy guidance, material considerations and expert professional advice.
- 7.2 The proposed development would help to contribute towards the Government's national objective to deliver the bold target of building 1.5 million homes in five years to deal with the critical shortage of housing in the UK.
- 7.3 The main issues to consider in this appeal, based on the refusal reasons No's 1 and 2 under the decision notice for application 4/23/2164/PIP, are:
- 1) whether the likely impact of the proposed dwellings (by virtue of their location, levels, scale, form, massing, and design) on the character of the application site and its developed context, would be so significant to warrant refusal under the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework (first part of refusal reason No: 1);
 - 2) whether the proposed dwellings would fail to enhance local distinctiveness and not deliver high quality design to warrant refusal under the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework (second part of refusal reason No: 1); and
 - 3) whether the likely impacts of the proposed three dwellings (by virtue of their overall height, levels, expansive glazing and raised balcony areas) upon the living conditions of existing residents of No's: 106 – 110 Victoria Road, in terms of physical overlooking and the perception of overlooking, would be so significant to warrant refusal under the provisions of Policy ST1 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework (refusal reason No: 2).

1) WHETHER THE LIKELY IMPACT OF THE PROPOSED DWELLINGS ON THE CHARACTER OF THE APPLICATION SITE AND ITS DEVELOPED CONTEXT WOULD BE SO SIGNIFICANT TO WARRANT REFUSAL?

- 7.4 This question relates to the first half of refusal reason no: 1. The description of the site and surrounding area is set out in Section 3.0 above. We have established that the appeal site lies within the defined settlement limits of Whitehaven. The appeal site does not lie in any designated landscape or natural habitat.
- 7.5 The adjoining land which is outside the settlement limits is also likewise not located within any designated landscape or habitat. This area, outwith the defined settlement limits, is described in the

Cumbria Landscape Character Guidance and Toolkit (2011) as lying on the edge of and on the boundary between the urban area and Sub-Type 5d Lowland Urban Fringe.

- 7.6 In addition, to the existing dwellings either side of the appeal site in Victoria Road, there are existing residential properties to the east of the appeal site located in Rosemary Close. All of these properties are situated on rising ground, which means that properties in Rosemary Close all overlook those below in Victoria Road.
- 7.7 The photograph in Figure 3 below confirms the rising ground and in-between the garage of No: 108 and the flank elevation of No: 110 Victoria Road it is just visible to see the top of one of the dwellings in Rosemary Close, which is three storeys in height. A detached building is located in the rear garden of No: 110 Victoria Road.



Figure 3 – Photograph taken from Victoria Road showing the existing entrance to the appeal site and one of the two-storey dwellings in Rosemary Close visible behind

- 7.8 The appeal site has the benefit of a ‘Permission-in-Principle’ (PIP) approval under application 4/19/2246/PIP and is described as “Residential Development”. This PIP approval was granted on appeal under reference APP/Z0923/W/20/3246227 on the 09 July 2020.
- 7.9 Permission-in-Principle was sought for the erection of 1-5 residential dwellings at the appeal site. The Planning Inspector considered the main issues were the effect of the proposed development on the character and appearance of the area and on highway safety, with particular regards to access. Under section ‘*Character and Appearance*’ in the Planning Inspector’s report, it stated:

“....the site is generally sloping with some levelled ground. The site is bound by built development on two sides, by the rear of properties fronting on to Victoria Road and by properties on Rosemary Close.....

At the site visit I saw that the site is generally concealed from views from Victoria Road by the properties that front on to it. The appellant has submitted an image taken from South View Road that shows a long-distance view of the appeal site and at the site visit I saw that the

proposed development would be viewed in the context of the adjacent existing built development of the settlement.

Consequently, by virtue of the modest scale of the proposed development, the relationship of the appeal site to existing built development and acknowledging that the submitted plans show only a potential scheme, I am satisfied that on the basis of the evidence before me the proposed development will not harm the character and appearance of the area.

I therefore find that the proposed development is not contrary to Policy ST1, ENV5 and DM10 that, amongst other matters, relate to design principles and the protection of landscapes.”

- 7.10 The Planning Inspector for the PIP appeal clearly accepted a residential development involving up to 5 dwelling units on the site, and he accepted that they would be located on rising ground within a back land setting. The implication of this is that the ‘location, levels, and scale’ of development was considered acceptable in principle by the previous Planning Inspector. It is, therefore, contended as part of this appeal that the Local Planning Authority’s reference in refusal reason 1 of the decision notice for the Technical Details Consent (TDC) application (4/23/2164/PIP) to ‘location, levels, and scale’ is neither relevant nor justified.
- 7.11 In terms of the reference to ‘form, massing and design’ in refusal reason 1, the previous Planning Inspector considered the modest scale of the proposed development involving up to 5 dwellings would not harm the character and appearance of the area. The Planning Inspector had taken into account the relationship of the appeal site to existing built development surrounding the site. The Planning Inspector had also acknowledged that whilst the submitted plans (see extract in Figure 4 below) showed only a potential scheme, he was satisfied that the proposed development would be acceptable.



Figure 4 - Extract from the illustrative layout plans submitted for application 4/19/2246/PIP and appeal decision APP/Z0923/W/20/3246227

- 7.12 The layout proposed in application 4/23/2164/PIP also shows three dwellings in an arrangement very similar to that approved under application 4/19/2246/PIP with the three dwellings oriented towards the east facing towards the rear of properties located in Victoria Road. This is confirmed in the extract below in Figure 5.

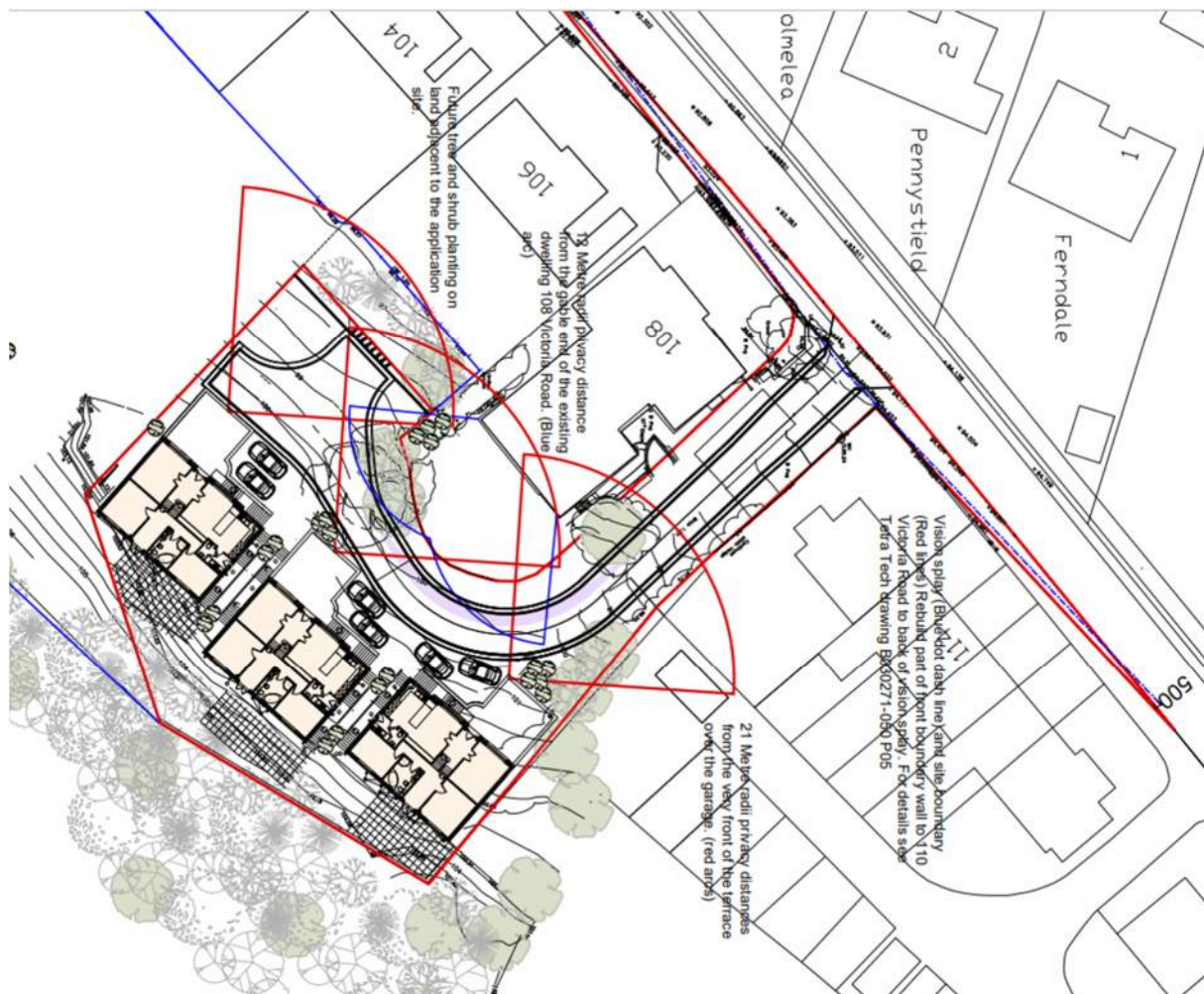


Figure 5 - Extract from the submitted layout plans for the Technical Details Consent (TDC) application (4/23/2164/PIP)

- 7.13 In the appeal decision, the Planning Inspector did not give any indication as to what type of external design, form or massing would be acceptable, or whether the dwellings should be single or two-storey in height. Nonetheless, in accepting some form of residential development based on the illustrative layout plans, the Planning Inspector must have accepted that at least three dwellings would be likely to take the form of either a bungalow or two-storey design.
- 7.14 The Planning Officer's Delegated Report into planning application 4/23/2164/PIP suggests that the proposed dwellings would have *"a three-storey visual appearance/massing by virtue of the garage and under build and the gable dormer features that add visual mass in views from Victoria Road"*. However, this idea is clearly wrong and misunderstands how a suitable design could reasonably be created with sufficient internal accommodation on a constrained, steeply sloping site.
- 7.15 The Planning Officer's report goes on to state: *"The proposed dwellings would be read as a large linear block of development and would not be concealed by the existing dwellings on Victoria Road."* However, this would be no different from other existing examples in the locality as demonstrated by

the photograph below in Figure 6. To also suggest that the “*proposed dwellings by virtue of their location and form would be at considerably odds with the prevailing developed form and character in this area of the Victoria Road to its detriment*” is clearly wrong.



Figure 6 – Photograph of existing dwellings in the locality showing how existing dwellings sit in the landscape

- 7.16 This point is further illustrated by the recently completed residential development in ‘The Mount’, which is located further up Victoria Road, Whitehaven as shown in Figure 7 below. This clearly shows newly built dwellings located on higher ground than other existing properties and the consequential potential for overlooking. If this situation is acceptable in this location, it should equally apply to the case of the appeal site to the rear of No: 110 Victoria Road.



Figure 7 – Photograph of existing dwellings located in The Mount, Whitehaven

- 7.17 In the case of this appeal proposal, the architect has purposely chosen a split-level design so that the rear elevations take the form of a bungalow, whilst the front elevation appears two-storey with an underground basement level. This allows the dwellings to be sensibly set into the rising ground level of the site, and it facilitates a practical way to create internal floor space but keep the overall height of the design as low as reasonably possible.
- 7.18 Any bungalow design would likewise be required to have the rear elevation situated above ground level to avoid necessary tanking to protect against damp. The extract from the submitted drawings below in Figure 8 shows the practical way the Architect for the current appeal has created a split-level design utilising the rising ground levels.
- 7.19 We would argue there is no other practical way of designing this scheme because if the ground levels were not utilised in this manner, it would effectively mean that the rear elevations would have to be under-ground. This would not allow for sufficient internal lighting, and it would otherwise result in poor living conditions for the occupants.
- 7.20 The 'form, massing and design' of the proposed dwellings was therefore dictated by the rising ground levels, which the Planning Inspector for application 4/19/2246/PIP would have been fully aware of at the time in accepting the principle of this development. This fact seems to have been ignored by the Planning Officer in reaching his decision on application 4/23/2164/PIP.

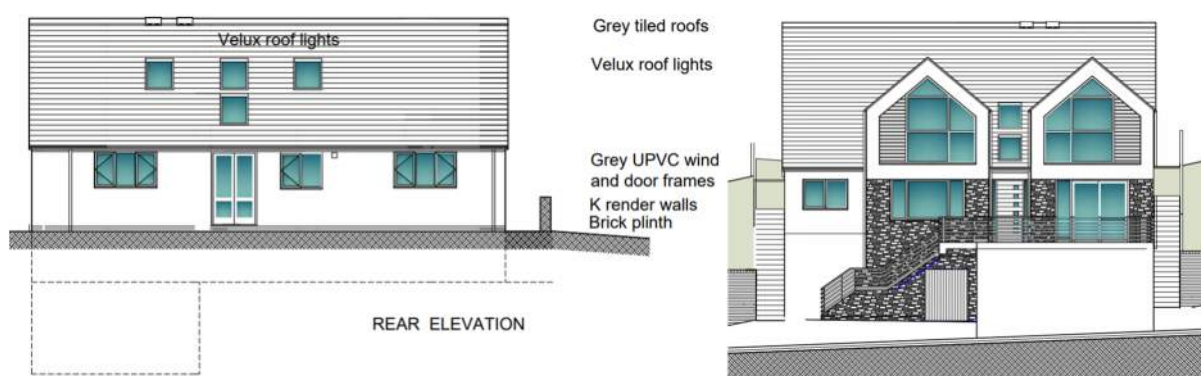


Figure 8 - Extract from the submitted elevations for the Technical Details Consent (TDC) application (4/23/2164/PIP) showing the front and rear elevations.

- 7.21 Having established that the rising ground level of the site dictates the overall 'form, massing and design' of the split-level dwellings, it leaves consideration of the front elevations. In this regard, the appellant's Architect has deliberately chosen a modern design because there is no strong influencing design or pattern to existing dwellings in the immediate area.
- 7.22 The ground floor would accommodate two bedrooms facing towards the front. The upper main floor would contain the living, dining and kitchen areas facing forward with two further bedrooms on the rear elevation. These primary rooms on the front would be served with attractive glazed areas in a modern style complementary to its coastal location as shown in Figure 8 above. A double garage would sit in front of these primary rooms helping to reduce any sense of imposing visual impact from below.



Figure 9 – Appellant’s photograph of No: 5 Rosemary Close adjacent to the rear of the appeal site and viewed from Rosemary Close

- 7.23 The overall ‘form, massing and design’ of the proposed three dwellings would not be dissimilar to other properties also situated on rising ground to the rear in Rosemary Close. The photographs shown in Figure 9 above show the front and rear elevations to No’s 5 and 6 Rosemary Close – No: 5 being the closest to the appeal site.
- 7.24 The photographs demonstrate the successful use of the changing ground levels to achieve a 2½ storey design to the elevation facing east and a single storey design (with rooms in the loft) facing west so that the buildings are set into the site in the same way as the proposed appeal dwellings.



Figure 10 – Appellant’s photographs showing the mix of dwelling types immediately adjacent to the appeal site

- 7.25 Within Victoria Road itself and adjacent to the appeal site, there are a variety of dwelling types, comprising groups of terraces of 6x two-storey dwellings to the north-east and detached bungalows to the south-west. There is no consistent dwelling type in the area that would enforce any particular form, massing and design style. It is clear that the existing dwelling types would have been built at different times designed by different architects and so there is no clear homogeneity as demonstrated in Figure 10 above.
- 7.26 Given the range of different types of dwellings in the immediate local area, it lends flexibility to create a design that utilises the landform in a positive way. The only differentiating factor might be the use of the proposed glazing to the front elevations, however this adds interest in a modern contemporary style. The ‘form, massing and design’ of the proposed layout would not be out of step with adjoining

properties and the character of the site, which is upon rising ground situated within the defined settlement limits.

- 7.27 The proposed scheme would positively respond to the character of the site and the immediate and wider setting and would enhance local distinctiveness through:
- an appropriate size and arrangement of development plots;
 - appropriate provision, orientation, proportion, scale and massing of the buildings; and
 - by careful attention to the design of spaces between the proposed buildings.
- 7.28 The scheme would also utilise the landscape features of the rising topography of the site, and the dwellings would be set into the slope to minimise overlooking and loss of privacy for occupiers of adjoining existing properties on Victoria Road. The detailed design of the proposed development would not undermine the protection of the surrounding landscapes from inappropriate change and would not threaten or detract from the distinctive characteristics of this particular area.
- 7.29 We would argue that given the above clear evidence, the proposed three dwellings would be entirely acceptable in accordance with the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework.

2. WHETHER THE PROPOSED DWELLINGS WOULD FAIL TO ENHANCE LOCAL DISTINCTIVENESS AND NOT DELIVER HIGH QUALITY DESIGN TO WARRANT REFUSAL?

- 7.30 This question is the second part to refusal reason No: 1 and considers as to whether the proposed dwellings would fail to enhance local distinctiveness and not deliver high quality design.
- 7.31 We have demonstrated above that there is no distinctive or dominating design or style to existing residential development in the local area. There is a range of different dwelling types, quality and styles in the area. They reflect when they were designed and built and the character of the area, which is set on steeply rising ground. We have shown that the scale, form and massing of the proposed appeal dwellings would complement adjoining properties in the locality.
- 7.32 However, there can be no doubt that the design of the proposed appeal dwellings has been thoughtful and considered in relation to how best to utilise the physical constraints of the site. The design has used the character of the site and the rising ground levels to great effect to create an efficient use of space internally within the buildings, as well as providing suitable open space to the rear and front for future occupiers.
- 7.33 The external appearance of the dwellings has also involved careful design to create a modern, contemporary style of its period, with well-balanced proportions. The front facade is relatively traditional but with two subordinate dormer windows, whose lines continue to ground floor and broken by the clever use of different materials. The large green glazed surface areas give the design a contemporary feel. The glazed areas would provide much needed light in a northern UK climate and would give a feeling of spaciousness to the first-floor living, dining and kitchen areas. The ground floor would feature more standard type windows using the same manufacturer to match the first floor.

- 7.34 The proposed elevations would use a palette of different materials and mainly comprise a brick plinth, K-render, and mineral fibre cladding boards on battens. The proposed roof would be Marley Modern flat coloured grey roofing tiles with propriety matching ridge tiles and verge trims. Velux roof lights would be provided on the front and rear roof planes at 1st floor level to provide necessary light to the proposed ensuite bathrooms, staircases and store.
- 7.35 None of this would indicate to us that the proposed dwellings would result in a poor-quality design. The external appearance of the proposed dwellings would be complementary to and enhance local distinctiveness for the reasons outlined above that there is no homogeneous design in the locality. The proposed dwellings would bring benefits to the locality by introducing something that would be unique, contemporary and attractive.
- 7.36 Overall, we argue that the appeal proposals would enhance local distinctiveness and deliver high quality design in accordance with the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework.

3. WHETHER THE LIKELY IMPACTS OF THE PROPOSED DWELLINGS (BY VIRTUE OF THEIR OVERALL HEIGHT, LEVELS, EXPANSIVE GLAZING AND RAISED BALCONY AREAS) UPON THE LIVING CONDITIONS OF EXISTING RESIDENTS OF NO'S: 106 – 110 VICTORIA ROAD, IN TERMS OF PHYSICAL OVERLOOKING AND THE PERCEPTION OF OVERLOOKING, WOULD BE SO SIGNIFICANT TO WARRANT REFUSAL

Amenity issue 1 - Overall height and levels

- 7.37 The above evidence has established that there are already existing dwellings in Rosemary Close, which are situated on much higher ground to Victoria Road. Victoria Road itself is on an incline and the character of the residential area surrounding it is constructed upon rising ground levels. The very nature of this hilly area means that dwellings have to be placed at different height levels in order to be accommodated in the topography of the landform. The placement and orientation of existing dwellings in the area have all been considered acceptable to occupiers, without significant adverse amenity effects.
- 7.38 The Planning Inspector, in coming to his conclusions on application 4/19/2246/PIP, will have been very mindful of the positioning and the likely floor plate levels of the proposed three dwellings within the red-lined boundary (shown on the illustrative layout). This is demonstrated by the Planning Inspector's Appeal decision letter when he stated under the section dealing with Character and Appearance:

“The appellant has submitted an image taken from South View Road that shows a long-distance view of the appeal site and at the site visit I saw that the proposed development would be viewed in the context of the adjacent existing built development of the settlement.”
(paragraph 7)

And by:

“Consequently, by virtue of the modest scale of the proposed development, the relationship of the appeal site to existing built development and acknowledging that the submitted plans show only a potential scheme, I am satisfied that on the basis of the evidence before me the

proposed development will not harm the character and appearance of the area.” (paragraph 8)

- 7.39 There are also very clear similarities between the positioning of the three dwellings shown in the illustrative layout supporting application 4/19/2246/PIP and the positioning of the three dwellings proposed in the TDC application. Due to the need to accommodate sufficient space for vehicle turning areas (i.e. HGV waste vehicles etc), there would also be no other reasonable alternative place within the approved re-line boundary to locate the dwellings, but within the areas shown in the submitted appeal drawings.
- 7.40 It is, therefore, entirely wrong for the Local Planning Authority to argue in refusal reason 2 that the proposed dwellings by virtue of their overall height and levels would result in unacceptable impacts upon the living conditions of existing residents of 106 – 110 Victoria Road through overlooking. Such an argument cannot be sustained because those technical factors are effectively fixed by the topography and the need to accommodate the dwellings within a defined site area established by the approval granted on the PIP appeal. To do so would be arguing against the principle, which has already been established.

Amenity issue 2 - Expansive glazing and raised balcony areas

- 7.41 Adopted Copeland Local Plan (2103-2028) Development Management Policy DM12 – ‘Standards for New Residential Developments’ requires minimum separation distances whereby:
- i) “Detached and end of group dwellings retain at least 1.0m distance between dwelling walls and side boundaries;***
 - ii) a minimum of 21.0m is retained between directly facing elevations of dwellings containing windows of habitable rooms;***
 - iii) a minimum of 12.0m is retained between directly facing elevations of dwellings containing windows of habitable rooms and a gable or windowless elevation.”***
- 7.42 In terms of satisfying criteria to Policy DM12, the distances between each of the proposed dwelling (Plots 1-3) walls would be 3,160 mm, thereby satisfying criteria B i) of adopted Local Plan Policy DM12.
- 7.43 With regard to criteria B ii) and B iii), the submitted appeal drawings helpfully show the 21m privacy distances (red arcs) measured from the very front of the terraces of the three proposed dwellings, as well as the 12m privacy distance (blue arc) from the gable end of the rear of the extension at No: 108 Victoria Road.
- 7.44 The drawings demonstrate that there would be in excess of 21m radii distance when measured from the front facing elevation of the proposed dwellings containing a habitable room, to any window or habitable room of any existing property in Victoria Road.
- 7.45 The shortest distances between the front windows of the proposed dwellings to a rear gable end window would be to No: 108 Victoria Road (being the nearest adjoining property and which is owned by the appellant’s father). These distances are summarised in Table 1 below. The distances to the other nearest dwellings (i.e. No’s 106 and 110) would be even greater than the distances shown below for No:108:

Proposed House Plot	Shortest distance from a proposed habitable room to the nearest rear gable end window at No: 108 Victoria Road
Plot 1	21.995 metres from the gable window
Plot 2	23.120 metres from the gable window
Plot 3	23.832 metres from the gable window

Table 1

- 7.46 The Table 1 above demonstrates that the appeal proposals would therefore satisfy criteria B ii) of adopted Local Plan Policy DM12.
- 7.47 The shortest distances between the very front of the terraces above the garaging of the proposed dwellings (i.e. a gable or windowless elevation) and the nearest dwelling (No: 108 Victoria Road) are summarised in Table 2 below.

Proposed House Plot	Shortest distance between the terraces to the nearest rear gable end window (swimming pool) at No: 108 Victoria Road
Plot 1	17.496 metres
Plot 2	17.800 metres
Plot 3	22.848 metres.

Table 2

- 7.48 It is important to note that the rear extension to No: 108 Victoria Road encloses a swimming pool and therefore does not comprise a traditional habitable room. This property is also owned by the Appellant's father, who is in support of the proposed development.
- 7.49 The appeal drawings confirm that every other property in Victoria Road is located well in excess of the minimum distances required in Policy DM12.
- 7.50 In the case of No: 110, the 21m distance from the very front of the terraces above the garaging of the proposed dwellings only reaches into part of the rear garden of that property, and so therefore no habitable rooms of that property would be affected. It is understood that the occupiers of that property have raised no objections to the proposals, and indeed they are content to allow a small section of their front boundary wall to be relocated to enable suitable visibility splays to be provided for the proposed scheme, as required by the Local Highways Authority.
- 7.51 It was confirmed in correspondence with the Planning Case Officer that the owner of No: 110 Victoria Road has confirmed their willingness to sell the land required to deliver the visibility splays to the Appellant and correspondence was submitted from the owners of No: 110 Victoria Road to this effect.

The Planning Officer accepted in his Delegated Report that a Grampian Planning Condition could reasonably be imposed to secure details of the works required to achieve the visibility splays and its implementation.

- 7.52 Moreover, there are a number of trees and vegetation plus an intervening single storey detached garage building (served by an access road) located to the rear of the boundary of No: 110, which would help obscure any potential for over-looking into No: 110. The trees and the intervening garage can be seen in Figure 3 above, and more clearly in Figures 11 and 12 below.



Figure 11 – Appellant’s photograph showing the detached garage, vehicle access and planting to the rear of No: 110 Victoria Road



Figure 12 – Appellant’s photograph showing the detached garage when viewed from Victoria Road behind No: 110 and significant vegetation to the rear

- 7.53 With regard to No: 106 Victoria Road, the submitted drawings confirm that proposed Plot 3 would be positioned well in excess of 21m from any habitable room. The red arc marked on the appeal drawing confirms that only a very small portion of the rear garden would be within the 21m measured from the shortest distance between the very front of the terrace above the garaging of proposed Plot 3. As the appellant’s family own the adjoining land to the rear of No: 110, it is possible that additional trees and shrubs (albeit outwith the red-lined boundary) could be planted to help screen the proposed development. This is shown on the appeal drawings.
- 7.54 The submitted drawings also show the possible sight lines from the proposed dwellings to the rear of No: 108 Victoria Road. A 2m high boarded fence is proposed to be erected at the turning hammer level on the north boundary of the proposed development. The submitted drawings demonstrate that any opportunity for the future occupants of Plots 1, 2 or 3 to see into any habitable rooms on the rear elevation to No: 108 Victoria Road would be at such a distance and angle to be very limited.
- 7.55 Likewise, any opportunity for future occupiers of Plot 3 to see into any habitable room on the rear of No: 106 Victoria Road would be limited by distance and both vertical and horizontal angles – any inter-visibility would be oblique. It would be no worse than other existing examples elsewhere of properties located in Rosemary Close.

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- 7.56 All of these measurements are confirmed in the drawing (No 07-10-2024 Victoria Road Proposed Layout A 07 Site Plan Proposed (1).pdf) attached in Appendix 2, which validate the submitted drawings.
- 7.57 The appeal proposals would therefore satisfy criteria B iii) of adopted Local Plan Policy DM12 and the reasons for refusal suggesting that the proposed dwellings by virtue of their expansive glazing and raised balcony areas will result in unacceptable impacts upon the living conditions of existing residents of 106 – 110 Victoria Road through physical overlooking and perception of overlooking cannot be substantiated by the facts of the case.
- 7.58 Given the aforementioned detailed evidence, we contend that the refusal reason 2 is groundless and cannot be substantiated. We contend that the likely impacts of the proposed three dwellings (by virtue of their overall height, levels, expansive glazing and raised balcony areas) upon the living conditions of existing residents of No's: 106 – 110 Victoria Road, in terms of physical overlooking and the perception of overlooking, would not be so significant to warrant refusal under the provisions of Policy ST1 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework.

Detached Garage

- 7.59 It is also the intention of the Appellant's father to erect a replacement garage on land he owns between the boundary of No: 108 and the red-lined boundary of the appeal site. This garage would replace the existing one situated in the laning between No: 108 and No: 110 and would have to be demolished to allow space for the proposed access to serve the three new dwellings, the subject of this appeal. This garage is not the subject of this appeal but provides a long-term aspiration for the applicant and his father.
- 7.60 A replacement garage was originally proposed as part of application 4/22/2492/0F1 (please see Section 4.0 - Planning History above) but as that proposal was for four dwellings with an expanded red-line area compared to the red-lined boundary approved under application 4/19/2246/PIP, it was decided to withdraw this application (Housing development for 4 no. 4 bedroomed dwellings roads and services and replacement double garage at field to rear of 108 Victoria Road, Whitehaven. Withdrawn 20th March 2023).
- 7.61 It was not possible to retain the replacement garage as part of the current appeal proposal because it would have included land out with the approved boundary of application 4/19/2246/PIP. The Technical Details Consent application (4/23/2164/PIP – this appeal) had to strictly adhere to the boundary approved under application 4/19/2246/PIP.
- 7.62 Figure 13 below shows an extract of the submitted plans for the withdrawn application 4/22/2492/0F1, which had included a proposed garage.

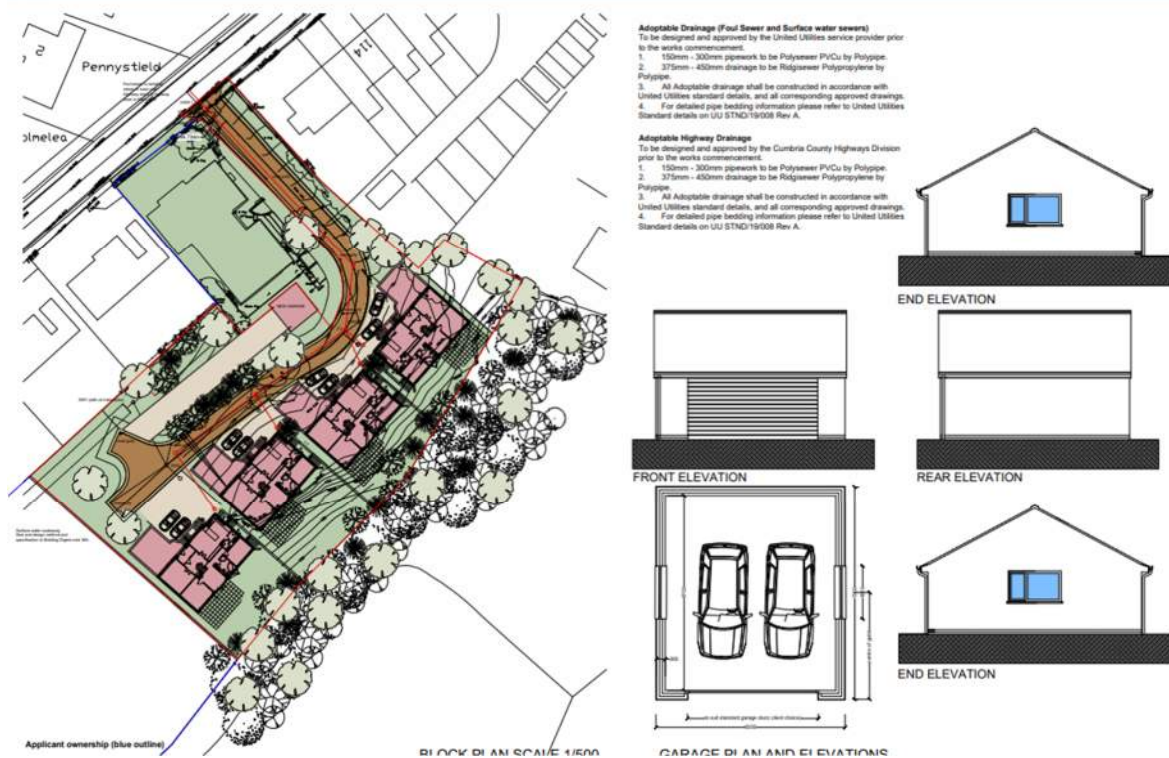


Figure 13 - Extract from the submitted drawings for withdrawn application 4/22/2492/0F1 showing the replacement garage

8.0 CONCLUSIONS

- 8.1 In light of the above, we contend that there are no planning grounds to dismiss this appeal and refuse planning permission.
- 8.2 We have demonstrated that contrary to refusal reason 1, the likely impact of the proposed dwellings by virtue of their location, levels, scale, form, massing, and design on the character of the application site and its developed context, would be positive.
- 8.3 We have shown that the proposed dwellings would also enhance local distinctiveness and would deliver a high-quality design that would be beneficial to the area. The proposed development would therefore accord with the provisions of Policy ST1, Policy ENV5, Policy DM26 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy DS6PU and Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework
- 8.4 We have also demonstrated that contrary to refusal reason 2, the likely impacts of the proposed three dwellings by virtue of their overall height, levels, expansive glazing and raised balcony areas upon the living conditions of existing residents of No's: 106 – 110 Victoria Road, in terms of physical overlooking and the perception of overlooking would be entirely acceptable in accordance with the provisions of Policy ST1 and Policy DM10 of the Copeland Local Plan 2013-2028, Policy H6PU of the emerging Copeland Local Plan 2017-2038 and Section 12 of the National Planning Policy Framework.
- 8.5 For the reasons outlined above, we request that this appeal be **allowed**.



Appeal Decision

Site visit made on 23 June 2020

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2020

Appeal Ref: APP/Z0923/W/20/3246227

108 Victoria Road, Whitehaven, Cumbria CA28 6JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Roy Donan against the decision of Copeland Borough Council.
 - The application Ref 4/19/2246/PIP, dated 3 July 2019, was refused by notice dated 15 August 2019.
 - The development proposed is described as "Residential Development".
-

Decision

1. The appeal is allowed and permission in principle is granted for the development described as "Residential Development" in accordance with the terms of the application Ref 4/19/2246/PIP, dated 3 July 2019.

Procedural Matters and Main Issue

2. As set out in the Planning Practice Guidance (PPG), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved.
3. This appeal relates to the first of these 2 stages. The scope of the first stage, that is to establish whether a site is suitable in principle for development, is limited to location, land use and the amount of development. As the appeal does not relate to technical details, I have taken the submitted plans to be illustrative only, showing what a residential development on this site might look like.
4. In respect of residential development, an applicant can apply for permission in principle (PIP) for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of 1-5 residential dwellings at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the PPG.
5. The main issues are the effect of the proposed development on the character and appearance of the area and on highway safety, with particular regards to access.

Reasons

Character and appearance

6. The appeal site consists of land to the rear of 108 Victoria Road, the site is generally sloping with some levelled ground. The site is bound by built development on two sides, by the rear of properties fronting on to Victoria Road and by properties on Rosemary Close. With the remaining boundaries consisting of open grassed and wooded land.
7. At the site visit I saw that the site is generally concealed from views from Victoria Road by the properties that front on to it. The appellant has submitted an image taken from South View Road that shows a long-distance view of the appeal site and at the site visit I saw that the proposed development would be viewed in the context of the adjacent existing built development of the settlement.
8. Consequently, by virtue of the modest scale of the proposed development, the relationship of the appeal site to existing built development and acknowledging that the submitted plans show only a potential scheme, I am satisfied that on the basis of the evidence before me the proposed development will not harm the character and appearance of the area.
9. I therefore find that the proposed development is not contrary to Policy ST1, ENV5 and DM10 that, amongst other matters, relate to design principles and the protection of landscapes.

Highway Safety

10. The submitted plans show that access to the proposed development would be via the existing driveway and would also incorporate the garage and driveway of no.108.
11. Cumbria County Council, the Local Highway Authority (LHA), objected to the application referring to concerns about the visibility splays for the access to both the east and west along Victoria Road. The appellant has provided pre-application correspondence with the LHA that, while overall more positive, raised concerns that were not dissimilar to those raised in respect of the application. The LHA response specifically referred to the sightlines interaction with the garden of 110 Victoria Road, a telegraph pole and a lighting column. Furthermore, the response also requested specific additional information and evidence to support the proposals to overcome these concerns.
12. As detailed previously, the appeal scheme seeks permission in principle only. As such, the principle of the development, that is location, land use, and the amount of development are at issue only, other matters are considered at technical detail consent stage.
13. On the basis of the evidence before me I find that the concerns raised in respect of highway safety, with particular regards to access, while not unreasonable are nonetheless technical details to be considered at the second technical detail consent stage. Therefore, I find that the proposed development is not contrary to criteria C of the Council's Interim Housing Policy

and the proposal complies with the provisions of paragraphs 108 and 109 of the National Planning Policy Framework.

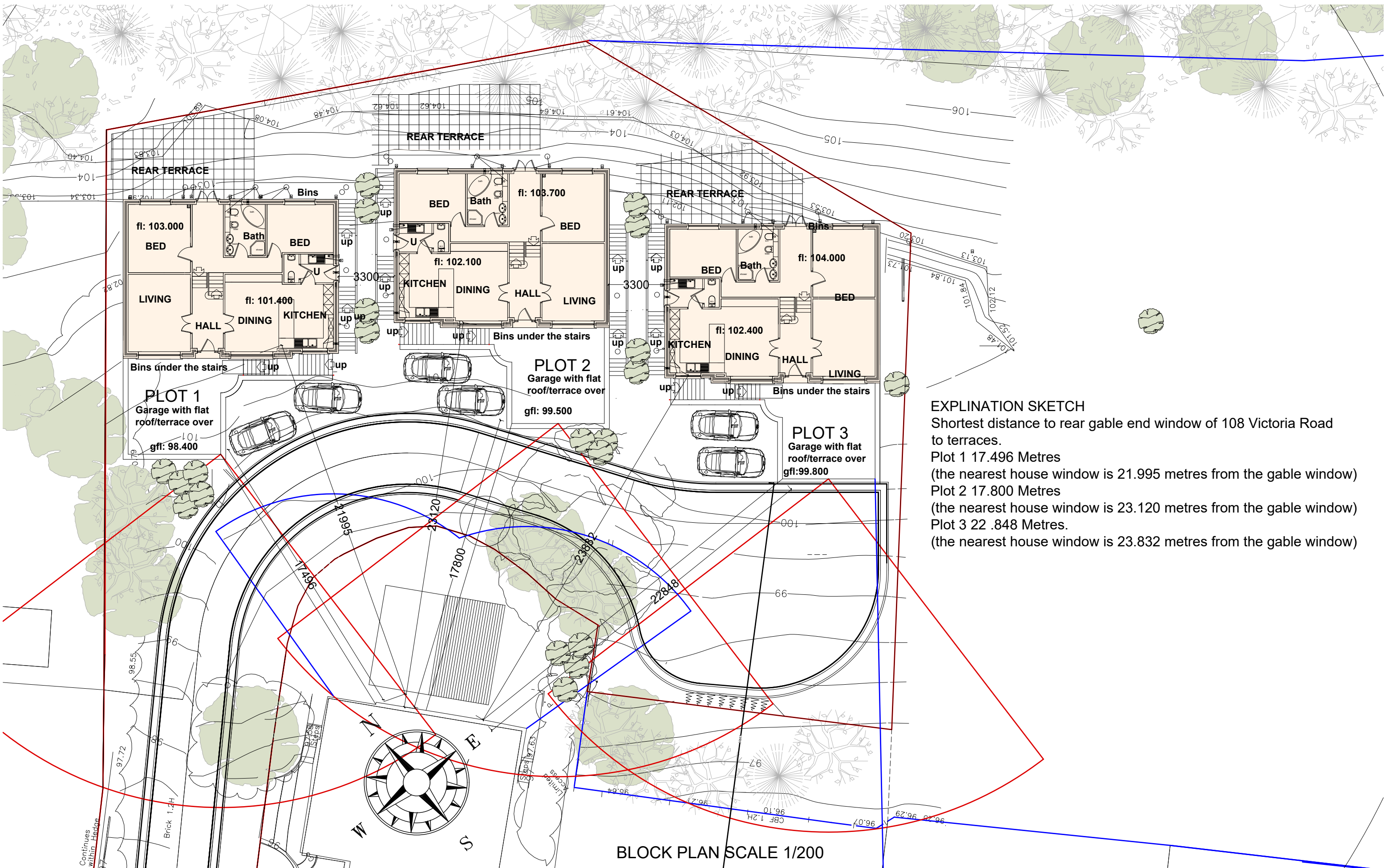
Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed.

Mark Brooker

INSPECTOR

Appendix 2 – Measured distances between the front elevations of the proposed dwellings and the nearest existing dwelling



EXPLANATION SKETCH
Shortest distance to rear gable end window of 108 Victoria Road to terraces.
Plot 1 17.496 Metres
(the nearest house window is 21.995 metres from the gable window)
Plot 2 17.800 Metres
(the nearest house window is 23.120 metres from the gable window)
Plot 3 22.848 Metres.
(the nearest house window is 23.832 metres from the gable window)

SCALE BAR 1/200 ORIGINAL DRAWING SIZE A3	0.0	2.0	4.0	6.0	8.0	10.0	12.0	14.0	16.0	18.0	20.0 metres	80.0 metres	70.0	60.0	50.0	40.0	30.0	20.0	10.0	0.0	SCALE BAR 1/500
SCALE BAR 1/100	0.0	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0 metres	40.0 metres	35.0	30.0	25.0	20.0	15.0	10.0	5.0	0.0	SCALE BAR 1/2500
SCALE BAR 1/500	0.0	10.0	20.0	30.0	40.0	50.0 metres															

4/23/2164/PIP - LAND TO THE REAR OF 108 VICTORIA ROAD, WHITEHAVEN

DESIGN JUSTIFICATIONS

Description.

The design was commissioned to meet the requirements of the Planning in Principle application originally refused by Copeland Borough Council and approved under appeal to the Secretary of State.

Appeal Decision by Mr M Brooker Dip TP MRTPI an Inspector appointed by the Secretary of State
Decision date: 09 July 2020 Appeal Ref: APP/Z0923/W/20/3246227

108 Victoria Road, Whitehaven, Cumbria CA28 6JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
- The appeal is made by Mr Roy Donan against the decision of Copeland Borough Council.
- The application Ref 4/19/2246/PIP, dated 3 July 2019, was refused by notice dated 15 August 2019.
- The development proposed is described as "Residential Development".

The following is a critique of the key elements of the Planning Inspector's appeal decision. The key paragraphs from the Planning Inspector's report are in *italics*, with my comment below each in the bulleted points.

Decision

1. The appeal is allowed and permission in principle is granted for the development described as "Residential Development" in accordance with the terms of the application Ref 4/19/2246/PIP, dated 3 July 2019.

- The development is to be a residential development based upon the original plans submitted as guidance to the council on how the development may proceed.

Procedural Matters and Main Issue

2. As set out in the Planning Practice Guidance (PPG), the Town and Country Planning (Permission in Principle) (Amendment) Order 2017 (the Order) is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for the proposed development from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved.

- This form of planning procedure was entirely new to me the designer and the Planning Consultant who worked with the applicant both before and during the original designs were developed. Bob Metcalf was the planning agent involved. Mr Metcalf had many years of experience as a Town Planner working in Local Government and private practice and has now retired due to ill health.

- During his time in Local Government, he was for many years the head of planning and building services at the very same Copeland Borough council and in all his years in that position had never once come across and planning in principle application!
- Both he and I were then breaking new ground in the design development to meet the criteria of the agreed appeal decisions. The problems as were, as will become clear, not insignificant.

3. This appeal relates to the first of these 2 stages. The scope of the first stage, that is to establish whether a site is suitable in principle for development, is limited to location, land use and the amount of development. As the appeal does not relate to technical details, I have taken the submitted plans to be illustrative only, showing what a residential development on this site might look like.

- At this stage the design brief formulated with the client adhered to this view. The illustrative plan needed to be backed up by some technical details, but it was clear from an early stage that the illustrative plan was not based on and measured topographic survey and that the site offered a range of challenges that would need to be overcome to meet the exacting technical requirements laid out in the appeal decision.

4. In respect of residential development, an applicant can apply for permission in principle (PIP) for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of 1-5 residential dwellings at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the above referenced Order and the PPG.

- The original sketch plan showed three dwellings on the site, and it was clear from an early stage that the site could not accommodate any more than this.

5. The main issues are the effect of the proposed development on the character and appearance of the area and on highway safety, with regards to access

- The character and appearance of the area was considered in the design of the dwellings. See below.
- This is inspectors' description of the Character and appearance!

Character and appearance

6. The appeal site consists of land to the rear of 108 Victoria Road, the site is generally sloping with some levelled ground. The site is bound by built development on two sides, by the rear of properties fronting on to Victoria Road and by properties on Rosemary Close. With the remaining boundaries consisting of open grassed and wooded land.

- This obviously needs to be explained There is in fact no description of the site character or appearance merely a profound general description.
- The design however was based on much more nuanced investigation and considerations.
- Victoria Road as the name suggests has a place in time the original housing at the south end of the road was built in Victorian times and reflects that history but that historic footprint diminishes significantly as the road moves north and the design and quality of the subsequent development reflects this.
- In general, the Victorian houses continue north to Number 76 Victoria Road and at that point there has been no development until perhaps the 1960's and the form of

development changes abruptly from elegantly proportioned town housing to prosaic functional bungalows and garages with no coherent style or form that could be considered anything other than linear urban sprawl.

- This sporadic and undistinguished sprawl continues from number 76 in linear fashion (Ribbon Development) along the east side of Victoria Road for a further 500 Metres with various bungalows and garages and terraced houses, all of no particular design merit or defining era. The application site approximately in the middle of this ribbon development is at least 250 mm away from any design that reflects any era defining features. The parent property and the surrounding dwellings therefor are plumb in the middle of the architecturally undistinguished urban sprawl.
- Adjacent to the site is an estate of 1960's and 1970's dwellings and again they may show their period but are totally undistinguished architecturally. They rise high on a bank behind Victoria terrace and can be clearly seen rising over the roof tops of the bungalows on Victoria terrace. The long views are distinguished by the gable ends of the dwellings looking out southwest over the properties in front of them and down towards the town centre and seascape.
- In the inserted photographs below the predominance of gables can clearly be seen and are not only a significant feature but also act as a touchstone if not outright inspiration in the subsequent design of the dwellings. Such small nuggets of inspiration are what designers depend upon to get a feel for the character of an area where there is no clear and obvious landmark style to follow adhere to harmonies with or even counterbalance.
- The site itself is situated behind the parent dwelling 108 Victoria Road and extends to the rear boundary of 106 Victoria Road. It is rough sloping piece of pasture. It is too steep to farm in any other way than pasture and in recent years has been left fallow and could be described more as coarse unused ground which is becoming overgrown with weeds and brambles and self-seeded saplings, mainly sycamore, an invasive species.
- To the rear of the site the inspector has describe the land as "wooded land" but a fairer description would be wasteland with some trees and shrubs. In most areas of the country, it would not be considered as having any strategic ecological or other amenity value.
- The design process therefore took a considered view of all of these prevailing factors
- There are no architectural reference points from the surrounding architecture such as style and scale. Generally, the closest dwellings on Victoria Road are both single and two storeys. The dwellings behind on Rosemary Close are generally two storeys but the two closest dwelling to the site do in fact show that the gable roof spaces have rooms with windows in the gable overlooking the rear of Victoria Road towards the town centre and the sea.
- When making design considerations to reflect the character and appearance of the area it is logical to study what are the predominant and accepted features of the existing built environment that may influence the planning authority in their assessment of the design proposals. Clearly the Authority have found the housing estate to the rear at Rosemary Close acceptable on all counts in the past including prominent gables, loft windows and risk of overlooking the rear of Victoria Road.
- These inspirational features acted as a starting point for the design inspiration.
- In 2010 Hurd Rolland the renowned firm of Edinburgh architects who designed the Albion Square Project in the centre of the town described Whitehaven as an historic town with a predominance of gables in its historic design and based their scheme around this premise which won plaudits at the time not least from the planning authority who promoted it and recommend its approval based on the design and access statement and designs relying on these observations.
- I also had experience of a similar challenging site in Copeland actually in the St. Bees Conservation area which also reflected the same or similar design challenges and design accepted there could offer part of the solution and these would form a touchstone for the design solution to this site as they had solved some of the problems anticipated by the steepness of the site.





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7. At the site visit I saw that the site is generally concealed from views from Victoria Road by the properties that front on to it. The appellant has submitted an image taken from South View Road that shows a long-distance view of the appeal site and at the site visit I saw that the proposed development would be viewed in the context of the adjacent existing built development of the settlement.

- I believe this condition is probably covered by how the existing development informed the visual designs of the houses.

8. Consequently, by virtue of the modest scale of the proposed development, the relationship of the appeal site to existing built development and acknowledging that the submitted plans show only a potential scheme, I am satisfied that on the basis of the evidence before me the proposed development will not harm the character and appearance of the area.

- The designs were developed to do just that taking into account detailed analysis of the indigenous landscape and built environment in the direct surrounding area.

9. I therefore find that the proposed development is not contrary to Policy ST1, ENV5 and DM10 that, amongst other matters, relate to design principles and the protection of landscapes.

Highway Safety

- Highway issues were a big part of the holistic design collaboration with the Consultant Highway Engineers and Site Civil Engineering Consultants.
- The original designs submitted indicated that the vision splays requested by then Cumbria County Highways could be achieved in principle, but the site engineers designed in detail to prove they could be achieved in practice.
- A significant problem in the design of the highway was the steepness of the site and the Highway Engineers also delivered designs which would meet all the requirements of the Cumbria County Highways Planning and Engineering Division.
- The road design involved a deep cut into the land, and this was a significant factor in the final design of the dwellings adjacent to the highway.

10. The submitted plans show that access to the proposed development would be via the existing driveway and would also incorporate the garage and driveway of no.108.

- There were minimal options for the exact route of the access road, and it did to a large degree follow the original design layout proposals.

11. Cumbria County Council, the Local Highway Authority (LHA), objected to the application referring to concerns about the visibility splays for the access to both the east and west along Victoria Road. The appellant has provided preapplication correspondence with the LHA that, while overall more positive, raised concerns that were not dissimilar to those raised in respect of the application. The LHA response specifically referred to the sightline's interaction with the garden of 110 Victoria Road, a telegraph pole and a lighting column. Furthermore, the response also requested specific additional information and evidence to support the proposals to overcome these concerns.

These issues were all considered by the Road Design Engineers including the side on driveways. It is understood Cumberland Council Planning Department accepted these were satisfactorily based on the Professional advice of their own Highways Planning Division.

- No comment

12. As detailed previously, the appeal scheme seeks permission in principle only. As such, the principle of the development, that is location, land use, and the amount of development are at issue only, other matters are considered at technical detail consent stage.

- No comment

13. On the basis of the evidence before me I find that the concerns raised in respect of highway safety, with particular regards to access, while not unreasonable are nonetheless technical details to be considered at the second technical detail consent stage. Therefore, I find that the proposed development is not contrary to criteria C of the Council' Interim Housing Policy Appeal Decision APP/Z0923/W/20/3246227 <https://www.gov.uk/planning-inspectorate> 3 and the proposal complies with the provisions of paragraphs 108 and 109 of the National Planning Policy Framework.

- No comment

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed.

- No comment

Previous works by others.

- The original site layout sketch was based on the ordinance Survey plan.
- The original surveyors plan of Victoria Road frontage showing the vision splays. (This would subsequently be superseded by the revised highway details.)

Topographic survey

- Topographic survey of the whole site

Client brief, summary

- My client briefing only goes back as far as when I was appointed which was after the Planning in Principle was approved by appeal
- Bob Metcalf was appointed at or around the same time to have watching brief on the planning procedural process
- On the planning side we understood that it may be just a reserved matters application that was required.
- The client Robert Donnan represented by his brother Richard advised that he wished to proceed to resolve the issued and get the conditions as laid out in the appeal resolved with some suitable speculatively designed housing.
- The development cost for the site would be relatively high and the properties would need to be high end. The appointment of the plots high on the hill overlooking the town harbour and seascape beyond would probably justify this assessment and create a suitable market.

Knowledge of PIP

- As suggested above our knowledge of how to proceed with the Pip approval was very limited and there were some technical problems which cropped up.

- In the end Bob and I decided that the easiest way to resolve some if not all the problems was to submit a new full planning application
- This would resolve some important planning matters that did not form part of the original PIP appeal approval.
- Some of these were:
- The accurate topographic survey of the site was not the same as the OS map the original plans was based on.
- At the time we thought this would not be a problem and indeed we made decisions to change the shape of the land to better suite our original proposals.
- For instance, the PIP site proposal showed that the applicants existing garage would be demolished to allow for the access road and the client wish to have his garage replaced to be accessed from the new road, but it was on land outside that included in the Pip approval and Copeland would not consider it.
- This garage served two purposes one was to replace the existing garage and the other was to protect there being any overlooking from the new development directly into the gable end window of the applicants swimming pool. An alternative to protecting the privacy would also have been to block up the swimming pool window or fit glass obscuration or opaque glass both of which were acceptable to the applicant, but the garage solution was considered the most suitable option at the time.
- This came back to bite in the most ironic way. Copeland insisted the garage could not form part of the application details and then used the lack of privacy to the pool as a major part of the reason to turn down the application!
- Copeland demanded that any plans that referred to the Pip must the same as the PIP boundary
- Various versions of the plans were submitted to agree a consensus on the exact PIP boundary
- The designs may have benefited in some flexibility on the implementation of the exact boundary and may have been a better design solution, but the solution reached met all the criteria in the final version.

Challenges

The initial design challenges were considered as follows:

- **Site Access and Vision splays.**

The only access to the site was a narrow agricultural lane between 108 and 110 Victoria Road. The entrance point would need to be widened, and the original application included a topographic survey of Victoria Road showing an achievable vision splay both ways. It would be the Consultant Traffic Engineers role to prove this and design the access to acceptable standards of the then Cumbria County Highways division It was understood that the road would need to cut into the rise to achieve an acceptable gradient which would be less than the gradient of the land.

- **Depth of cut**

At the point where the housing starts the road cut would be at it deepest into the existing terrain. The house designs would have to take this into account. The site also rises up steeply behind this creating an additional challenge to the house designs which would need to not only be cut into the land but multi-levelled to ensure the rear of the dwelling would relate to the terrain and allow for functional rear gardens and access area.

Site layout

- A major factor in the site layout was the practical solution to the access road. Once the levels were determined this established the levels of the road kerbs adjacent to the building plots and re valued the change in level from the back of the site to these kerbs

Road's design and layout

- (Traffic engineer to comment here) "the roads have been designed to the set criteria of Cumberland Highways division after close consultation with them regarding vision splays turning for refuse trucks and emergency service transport domestic parking arrangements and acceptable gradients.

Surface water drainage.

- The appointed Consultant Civil engineers designed the drainage and surface water to meet the criteria of the local authority.

Housing design.

The original house plans were based loosely on plans that had been approved elsewhere in Copeland on a very similar site in the St. Bees conservation area, it is not uncommon to use experience solving problems on one site to solve problems the same way on another site particularly where they have found favour with the planners and have been successful visually and also commercially.

The main problems were the physical topography of the site, which was a steep rise to the rear. This was exasperated by the road design which required a deep cut at its deepest where the housing was to begin.

This meant the relationship of the garages and drive to the road would take on a major significance in achieving a highways department acceptable solution to vehicular access to the highway from the site.

This problem was solved at St. Bees by bringing the garaging out to the roadside and entering the garages from the side, with the drive and parking spaces adjacent to the garages, not in front of them, which is the traditional way and this was also adopted on the appeal site.

This had the added advantage of allowing the housing to sit comfortably into the rising ground behind the garages. Even so, the house floor levels were to be approximately level with the flat garage roof tops and the houses had to be split level to avoid going too deep into the bank at the rear and diminishing the amenity value of the rear gardens. That is to say, the gardens at the rear need to have an area of level ground to make them attractive and useable by the future owners as an amenity area.

Another problem was getting the houses far enough apart as to represent a satisfactory privacy space between the dwellings. The planning authority were quick to recognise this and asked us to amend the plans to have a valuable privacy space between the properties. Having recently completed a self-build site for 20 homes with the same Council and the same planning officer we agreed that 3 metres was enough between the properties on the self-build site about two miles from the appeal site then it would be reasonable to assume the same privacy distance would be acceptable on the application site. The plans were amended accordingly.

We added some specimen trees on the plans to further emphasise the individual plots

The planning officer was sceptical that small trees could be established in a space of three metres.

The use of the existing house types also allowed for the introduction of gables to the front elevations of the new dwellings which followed the designers own analysis of the site surroundings dwellings appearance and the findings of previous architects when assessing the local Whitehaven vernacular.

The traditional gables were designed to be more contemporary than the elevations on similar designs at St. Bees. The St. Bees designs were in a conservation area in a very sensitive position

between Norman Church and the Victorian Abbotts Court Hotel and the materials and style were designed the blend in with these remarkable features.

During the planning consultation period the planning officer seemed to have deep concerns about the privacy and overlooking of the parent property and the house and bungalow either side. The terraces over the garage were his main concern. We illustrated the 21-meter rule on the plans and showed via sectional analysis that the properties could not be overlooked from the terraces.

We could not show the applicant proposals for a new garage on his own land as this would be outside the land boundary established by the PIP application details. If this could have been shown it would clearly illustrate that overlooking of the applicant's own property would be blinkered by the garage.

Terraces concern planners deeply, but they should be seen in context. This is England how often in reality will terraces get used? These terraces have an 1100 mm balustrade around them. The horizontal rails are design to be 150 mm deep and 50 mm thick horizontal rails with 90 mm spaces between them. The effect is designed to blinker the view through the balustrade to just the horizontal view, thus taking away any risk of anyone deep into the terrace, sitting or lying on the terrace seeing anything but the sky or the horizon from the terrace.

The final analysis would be that in the very few occasions that the terrace could be used for any practical amenity, most of that would be carried out in a relaxed position deep into the terrace, not concentrated around the sides.

There would perhaps be the very odd occasion when someone would walk to the balustrade to admire the view to the horizon and the town, even then we have illustrated that they would be well outside the privacy parameters generally accepted by most planning authorities.

Where this effects the swimming pool of the applicants' own home we have already suggested simple solutions to this problem. One was the garage which we were not allows to include in the application which seem counter intuitive.



Wire sketch of how the proposed garage would appear from Plot 1 of the development preventing overseeing into the applicants swimming pool.

We were never given the opportunity to discuss the other simpler solution such as glass obscuration or blocking up the windows

Overall given the difficulties of the site I believe the final solution to the design was of high quality and met all the aspirations of the applicant and met all the criteria of the appeal decision conditions.

This design analysis was requested to support the applicants appeal of the Copeland (Cumberland) Council decision to refuse the application. It may contain design information that is not relevant to the appeal but is intrinsic to the complex issues that must be resolved in reaching an aesthetic and practical solution. In dealing with all these issues it is understood that the client's needs are of paramount importance and that the works must not only meet their requirements but also the local Planning Authorities. The local Planning Authority had already had their policy decisions questioned by appeal and overturned. It was therefore important that the designs were to resolve the outstanding issues could stand up to rigorous scrutiny.

The design believes this has been achieved and stands by the designs as being at very least satisfactory in meeting the published policies of the council.

12th November 2024.