

CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/23/2272/0B1
2.	Proposed Development:	VARIATION OF CONDITON 2 OF PLANNING APPLICATION 4/22/2359/0F1 (CHANGE IN FINISHED FLOOR LEVELS AND REPLACEMENT OF RETAINING WALLS WITH BANKING TO REAR OF PROPERTIES) - ERECTION OF 40 DWELLINGS COMPRISING 24 NO. TWO BED BUNGALOWS, 4 NO. THREE BED BUNGALOWS AND 12 NO. TWO BED HOUSES AND ASSOCIATED EXTERNAL WORKS
3.	Location:	LAND AT FELL VIEW AND WINDERMERE AVENUE, WHITEHAVEN
4.	Parish:	Whitehaven
5.	Constraints:	ASC;Adverts - ASC;Adverts, Safeguard Zone - Safeguard Zone, Coal - Standing Advice - Data Subject To Change
6.	Publicity Representations &Policy	Neighbour Notification Letter: YES Site Notice: YES Press Notice: NO Consultation Responses: See report Relevant Planning Policies: See report
7.	Report:	<p>SITE AND LOCATION</p> <p>The application site relates to land at Fell View Avenue and Windermere Road, which cover an area of 7.5ha and 6.9ha respectively. They and are located within the residential Woodhouse area of Whitehaven.</p> <p>The sites originally contained three and four bed houses which were demolished approximately 10 years ago and are currently being used as informal green open space.</p>

Both sites at Fell View Avenue and Windermere Road are bound by two-storey residential dwellings to the sides. The entire Fell View Avenue site is bound by further green space, the Public Right of Way 431016 and allotment gardens to the rear. The northern end of the Windermere Road site is bound by residential properties from Wastwater Road to the rear and the southern end of the site is bound by an area of green space to the rear.

Both sites slope away from the highway.

PROPOSAL

In December 2022, planning permission was granted (ref: 4/22/2359/0F1) for the erection of 40 dwellings. This current application seeks to vary condition 2 relating to the submitted plans for the parent consent 4/22/2359/0F1.

The proposed amendments are as follows:

- Changes to the floor levels of the dwellings and their related patios and rear gardens.
- Replacement of retaining walls with banking to the rear of the proposed properties.
- Minor alterations to driveways and approaches to dwellings to ensure level access.

RELEVANT PLANNING APPLICATION HISTORY

- Planning Permission has previously been granted for:
- Demolition of various properties (40 in total) (ref: 4/09/2491/0);
- Demolition of 36 properties (ref: 4/09/2361/0)
- The erection of 40 dwellings (ref: 4/22/2359/0F1).

The following discharge of conditions applications have also been approved relating to 4/22/2359/0F1:

- Discharge of Condition 4 (ref: 4/23/2004/DOC);
- Discharge of Condition 5 (ref: 4/23/2008/DOC);
- Discharge of Condition 3, 6, 7 and 8 (ref: 4/23/2089/DOC).

CONSULTATION RESPONSES

Whitehaven Town Council

No objections

Highways and LLFA

Cumberland Council as the Local Highway Authority (LHA) and Lead Local Flood Authority



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(LLFA) has reviewed the above planning reference, and I can confirm that we have no objection to the proposed development as it is considered that it will not have a material effect on existing highway conditions nor will it increase the flood risk on the site or elsewhere.

United Utilities

Initial Comments:

Further to our review of the submitted comments, United Utilities would argue a plan should be provided that clearly shows the FFL's/levels for each plot so that the proposed variation can be clearly understood in the context of the recently approved drainage solution submitted for 4/23/2089/DOC. We request clarity of the approach prior to determination of this application.

Final Comments:

Further to our review of the submitted documents (Drawings 22016-PL-005F, 22016-PL-006F, 22016-PL-007G, 22016-PL-014F, 22016-PL-015F, 22016-PL-016F - all dated 06/11/2023) we can confirm the proposals are acceptable in principle.

Environment Agency

No comments received.

Environmental Health

No objections, subject to the following condition being applied – Reporting of Unexpected Contamination.

Footpath Officer

No comments received.

Natural England

No comments received.

Public Representations

The application has been advertised by way of site notice and neighbour notification letters issued to 85 no. properties – No comments received.

Development Plan

On 1st April 2023, Copeland Borough Council ceased to exist and was replaced by Cumberland Council as part of the Local Government Reorganisation of Cumbria.

Cumberland Council inherited the local development plan documents of each of the sovereign Councils including Copeland Borough Council, which combine to form a Consolidated Planning Policy Framework for Cumberland.

The inherited the local development plan documents continue to apply to the geographic area of their sovereign Councils only.

The Consolidated Planning Policy Framework for Cumberland comprises the Development Plan for Cumberland Council until replaced by a new Cumberland Local Plan.

Copeland Local Plan 2013 – 2028 (Adopted December 2013):

Core Strategy

Policy ST1 – Strategic Development Principles

Policy ST2 – Spatial Development Strategy

Policy SS1 – Improving the Housing Offer

Policy SS2 – Sustainable Housing Growth

Policy SS3 – Housing Needs, Mix and Affordability

Policy ENV1 – Flood Risk and Risk Management

Policy ENV3 – Biodiversity and Geodiversity

Policy ENV5 – Protecting and Enhancing the Borough’s Landscapes

Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

Policy DM11 – Sustainable Development Standards

Policy DM12 – Standards for New Residential Development

Policy DM22 – Accessible Developments

Policy DM24 – Development Proposals and Flood Risk

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM26 – Landscaping

Emerging Copeland Local Plan 2021-2038 (ELP):

Cumberland Council are continuing the preparation and progression to adoption of the emerging Copeland Local Plan 2017-2038.

The emerging Copeland Local Plan 2017-2038 comprising the Publication Draft (January 2022) and Addendum (July 2022) have recently been examined by the Planning Inspector and their report on the soundness of the plan currently remains awaited.

As set out at Paragraph 48 of the National Planning Policy Framework (NPPF), Local



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Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan; the extent to which objections to relevant policies have been resolved; and the degree to which emerging policies are consistent with the NPPF.

Given the stage of preparation of the emerging Copeland Local Plan 2017-2038 some weight can be attached to policies where no objections have been received or objections have been resolved. The Publication Draft (January 2022) and Addendum (July 2022) provides an indication of the direction of travel of the emerging planning policies, which themselves have been developed in accordance with the provisions of the NPPF.

The following policies are relevant to this proposal:

Policy DS1PU - Presumption in favour of Sustainable Development

Policy DS2PU - Reducing the impacts of development on Climate Change

Policy DS3PU – Settlement Hierarchy

Policy DS4PU - Settlement Boundaries

Policy DS6PU - Design and Development Standards

Policy DS7PU - Hard and Soft Landscaping

Policy DS8PU – Reducing Flood Risk

Policy DS9PU – Sustainable Drainage

Policy DS10PU – Soils, Contamination and Land Stability

Policy H1PU – Improving the Housing Offer

Policy H2PU - Housing Requirement

Policy H3PU - Housing delivery

Policy H4PU – Distribution of Housing

Policy H6PU – New Housing Development

Policy H7PU – Housing Density and Mix

Policy H8PU – Affordable Housing

Policy N3PU – Biodiversity Net-Gain Policy N6PU – Landscape Protection

Policy CO7PU – Parking Standards and Electric Vehicle Charging Infrastructure

Other Material Planning Considerations

National Planning Policy (NPPF)

Planning Practice Guidance (PPG)

National Design Guide (NDG)

Strategic Housing Market Assessment 2019 (SHMA)

Strategic Housing Market Assessment Update 2021 (SHMAA)

Housing Needs Survey 2020

Copeland Borough Council Housing Strategy 2018-2023 (CBCHS)

Cumbria Development Design Guide (CDG)

Wildlife and Countryside Act 1981

ASSESSMENT

Under Section 73 of the Town and Country Planning Act 1990, an application can be made to vary or remove a condition associated with a permission. The effect of an application under Section 73 is the issue of a new permission sitting alongside the original permission, which remains intact and unamended. The NPPG outlines that to assist with clarity it states that decision notices should also repeat the relevant conditions from the original permission unless they have already been discharged.

As a Section 73 application cannot be used to vary the time limit for implementation this condition must remain unchanged from the original permission. In terms of the conditions attached to the previous application (ref: 4/22/2359/0F1), as development has commenced on site therefore it is not necessary to repeat condition 1 relating to timescales.

The current application seeks to vary condition 2 relating to the submitted plans for the parent consent 4/22/2359/0F1, in order to change the levels (floor levels, patios and rear gardens). This includes the replacement of retaining walls with banking to the rear and minor alterations to driveways and approaches to dwelling to ensure level access.

The properties are designated for over 50s and people with disabilities and therefore the level access to the front and rear of the property is considered to increase accessibility in accordance with Policy DM22.

In addition, the alterations are required to provide sufficient cover on the existing services and new drainage attenuation. The most significant changes are to the rear of the proposed properties where existing drainage and United Utilities requirements for the new drainage have resulted in a change in approach from retaining walls to banking. The applicant has been in discussion with United Utilities to obtain the S185 agreement and this has previously been agreed with planning through the discharge of condition 3 of the original permission.



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Whilst the main reason for the change is to accommodate the drainage, it is also considered that the grass garden design and landscape banking is an acceptable design to reflect the current sloped grass character of the site.

On the basis of the above, the proposed alterations are considered acceptable and will not have an impact on the overall street-scene or character of the area. The proposed revisions accord with the relevant provisions of the Development Plan and Condition 2 can therefore be updated to reflect these changes.

In addition, Conditions 3-8 have been discharged as part of the original application and therefore these conditions are amended to ensure continued compliance and Conditions 9-15 will be repeated to ensure that works are carried out as per the approved details. Full details of the updated conditions are noted in the table below.

Summary of Planning Conditions

Planning Condition	Retain/Amend
1.	-
2.	Amend to refer to revised plans
3.	Amend to reflect approval of discharge of condition details
4.	Amend to reflect approval of discharge of condition details
5.	Amend to reflect approval of discharge of condition details
6.	Amend to reflect approval of discharge of condition details
7.	Amend to reflect approval of discharge of condition details
8.	Amend to reflect approval of discharge of condition details
9.	Retain
10.	Retain
11.	Retain
12.	Retain
13.	Retain
14.	Retain
15.	Retain
16.	Retain
17.	Retain

8.	<p>Recommendation: Approve amendment of condition</p>
9.	<p>Conditions:</p> <ol style="list-style-type: none"> 1. - 2. This permission relates to the following plans and documents as received on the respective dates and development must be carried out in accordance with them:- <ul style="list-style-type: none"> - Site Location Plan, scale 1:2500, ref. 22016-PL-001, received 2nd October 2023; - Fell View Avenue Existing Block Plan, scale 1:200, ref 22016-PL-025, received 30th August 2022; - Fell View Avenue Existing Site Plan 1, scale 1:200, ref 22016-PL-002, received 30th August 2022; - Fell View Avenue Existing Site Plan 2 ,scale 1:200, ref 22016-PL-003, received 30th August 2022; - Fell View Avenue Existing Site Plan 3, scale 1:200, ref 22016-PL-004, received 30th August 2022; - Fell View Avenue Proposed Block Plan, scale 1:500, ref 22016-PL-026, received 30th August 2022; - Fell View Avenue- Proposed Site Block Plan 1, scale 1:200, ref. 22016-PL-005F, received 9th November 2023; - Fell View Avenue- Proposed Site Block Plan 2, scale 1:200, ref. 22016-PL-006F, received 9th November 2023; - Fell View Avenue- Proposed Site Block Plan 3, scale 1:200, ref. 22016-PL-007G, received 9th November 2023; - Fell View Avenue- Proposed Overall Elevation 1, scale 1:200, ref. 22016-PL-008B, received 2nd October 2023; - Fell View Avenue- Proposed Overall Elevation 2, scale 1:200, ref. 22016-PL-009B, received 2nd October 2023; - Fell View Avenue - Proposed Sections, scale 1:200, ref. 22016-PL-010C, received 2nd October 2023; - Windermere Road Existing Site Plan 1, scale 1:200, ref 22016-PL-011, received 30th August 2022; - Windermere Road Existing Site Plan 2, scale 1:200, ref 22016-PL-012, received 30th



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August 2022;

- Windermere Road Existing Site Plan 3, scale 1:200, ref 22016-PL-013, received 30th August 2022;
- Windermere Road – Proposed Site Block Plan 1, scale 1:200, ref. 22016-PL-014F, received 9th November 2023;
- Windermere Road – Proposed Site Block Plan 2, scale 1:200, ref. 22016-PL-015F, received 9th November 2023;
- Windermere Road – Proposed Site Block Plan 3, scale 1:200, ref. 22016-PL-016, received 9th November 2023;
- Windermere Road – Proposed Overall Elevation 1, scale 1:200, ref. 22016-PL-017B, received 2nd October 2023;
- Windermere Road – Proposed Overall Elevation 2, scale 1:200, ref. 22016-PL-018B, received 2nd October 2023;
- Windermere Road – Proposed Sections, scale 1:200, ref. 22016-PL-019B, received 2nd October 2023;
- Windermere Road Existing Block Plan, scale 1:500, ref 22016-PL-027, received 30th August 2022;
- Windermere Road Proposed Block Plan, scale 1:500, ref 22016-PL-024, received 30th August 2022;
- Supporting Statement, ref. 22016, received 2nd October 2023;
- Proposed Perspective Views, ref 22016-PL-020A, received 28th November 2022;
- House Type A (HT-A), scale 1:100, ref 22016-PL-021A, received 21st October 2022;
- House Type B (HT-B), scale 1:100, ref 22016-PL-022A, received 21st October 2022;
- House Type C (HT-C), scale 1:100, ref 22016-PL-023A, received 21st October 2022;
- Ecological Appraisal, ref 8088, received 30th August 2022;
- Phase 1 Geoenvironmental Site Assessment, ref 15-861-R1-1 dated April 2022, received 30th August 2022;
- Phase 2 Ground Investigations Report, ref 2022-5335 date 29.07.2022, received 30th August 2022;
- SuDs Construction Management Plan, ref K39225.CMP-003, received 30th August 2022;
- SuDs Operation and Maintenance Plan, ref K39225.OM-002A, received 9th November 2022;
- Flood Risk Assessment and Drainage Strategy, ref K39225.DS-001A, received 9th

November 2022;

- Proposed Drainage Plan 1/4, ref K39225-105A, received 9th November 2022;
- Proposed Drainage Plan 2/4, ref K39225-106A, received 9th November 2022;
- Proposed Drainage Plan 3/4, ref K39225-107A, received 9th November 2022;
- Proposed Drainage Plan 4/4, ref K39225-108A, received 9th November 2022;
- Proposed Sewer Diversion and Abandonment Plan 1/4, scale 1:200, ref 109, received 30th August 2022;
- Proposed Sewer Diversion and Abandonment Plan 2/4, scale 1:200, ref 110, received 30th August 2022;
- Proposed Sewer Diversion and Abandonment Plan 3/4, scale 1:200, ref 111, received 30th August 2022;
- Proposed Sewer Diversion and Abandonment Plan 4/4, scale 1:200, ref 112, received 30th August 2022;
- Design and Access Statement, ref SF4.12 dated August 2022, received 30th August 2022;
- Proposed Phasing Plan, ref 22016-PL-028A, received 16th November 2022.

Reason

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

3. The development hereby approved must be carried out in accordance with the drainage proposal approved as part of condition 3 of permission 4/22/2359/0F1, as detailed in correspondence 4/23/2089/DOC dated 27th September 2023. Only the approved scheme shall be implemented prior to first occupation and thereafter maintained.

Reason

To secure proper drainage and to manage the risk of flooding and pollution.

4. The development hereby approved must be carried out in accordance with the Construction Environmental Management Plan approved as part of condition 4 of permission 4/22/2359/0F1, as detailed in correspondence 4/23/2005/DOC dated 30th January 2023. Development must be carried out in accordance with the approved



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details thereafter.

Reason

In the interests of the amenities of surrounding occupiers during the operation of the development.

5. The development hereby approved must be carried out in accordance with the Phase 2: Ground Investigations Report approved as part of condition 5 of permission 4/22/2359/0F1, as detailed in the correspondence 4/23/2008/DOC dated 24th February 2023. Development must be carried out in accordance with the approved details thereafter.

Reason

To ensure that risks from land contamination are understood and any such risks are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors

6. The development hereby approved must be carried out in accordance with the Construction Traffic Management Plan approved as part of condition 6 of permission 4/22/2359/0F1, as detailed in correspondence 4/23/2089/DOC dated 27th September 2023. Development must be carried out in accordance with the approved measures in the Construction Traffic Management Plan thereafter.

Reason

To ensure the undertaking of the development does not adversely impact upon the fabric or operation of the local highway network and in the interest of highway and pedestrian safety.

7. The development hereby approved must be carried out in accordance with the details of the highway drains protection at the access approved as part of condition 6 of permission 4/22/2359/0F1, as detailed in correspondence 4/23/2089/DOC dated 27th September 2023. The works to protect the drain shall be carried out in accordance with a specification approved by the Local Planning Authority.

Reason

In the interest of highway safety and environmental protection.

8. The development hereby approved must be carried out in accordance with the construction access and parking/turning requirements for each phase approved as part of condition 6 of permission 4/22/2359/0F1, as detailed in correspondence 4/23/2089/DOC dated 27th September 2023. The provision should be substantially met before any building work commences on site so that construction traffic can park and turn clear of the highway.

Reason

In the interest of highway safety.

Prior to Occupation Conditions

Highways

9. Prior to the first occupation of any of the dwellings on each phase of the development hereby approved, the parking provision for each property as demonstrated on Windermere Road – Proposed Block Plan (Phase 1) and Fell View Avenue – Proposed Block Plan (Phase 2) received by the Local Planning Authority on 30th August 2022 must be constructed and brought into use and maintained as such at all times thereafter.

Reason

To ensure a minimum standard of construction in terms of highway safety and in accordance with Policy DM22 of the Copeland Local Plan.

Landscaping

10. Prior to occupation, a detailed Landscaping Plan should be submitted to and approved in writing by the Local Planning Authority. This should include a specification and planting details for new tree and hedgerow planting along with an aftercare maintenance program. Development must be carried out in accordance with the approved details thereafter.

Reason



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To ensure adequate landscaping is provided in accordance with Policy DM26 of the Copeland Local Plan.

Other Conditions

Materials

11. The external finishes of the development hereby permitted shall be completed in accordance with the details set out in the Design and Access Statement, ref SF4.12 dated August 2022, received by the Local Planning Authority on 30th August 2022.

Reason

To ensure the development is of a high-quality design in accordance with Policy DM10 of the Copeland Local Plan 2013 - 2028.

Ecology

12. Development shall be carried out in accordance with the mitigation measures and recommendations set out in Preliminary Ecological Appraisal. Ref. 8088 received by the Local Planning Authority on 30th August 2022.

Reason

To ensure that adequate protection is given to protected species, in the interest of the environmental protection and in accordance with Policy DM25 of the Copeland Local Plan.

Ground Conditions

13. Development shall be carried out in accordance with the recommendations set out in Phase 1 Geoenvironmental Site Assessment, ref 15-861-R1-1 and Phase 2 Ground Investigations Report, ref 2022-5335 received by the Local Planning Authority on 30th August 2022.

Reason

To ensure that adequate protection is given to protected species, in the interest of the environmental protection and in accordance with Policy DM25 of the Copeland Local

Plan.

14. In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. A suitable investigation and risk assessment will then be agreed upon by the Council and the developer and where remediation is necessary a remediation scheme must be prepared and submitted to and approved in writing by the Local Planning Authority.

Reason

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

Highways

15. The vehicular crossing over the footway, including the lowered kerbs, shall be carried out to the specification of the Local Planning Authority in consultation with the Highway Authority.

Reason

To ensure a suitable standard of crossing for pedestrian safety and in accordance with Policy DM22 of the Copeland Local Plan.

16. Access gates, if provided, shall be hung to open inwards only away from the highway.

Reason

In the interest of highway safety and in accordance with Policy DM22 of the Copeland Local Plan.

Working Hours

17. No work for the construction of these developments, including demolition, shall take place on site, except between the hours:



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- 08.00 – 18.00 Monday to Friday; and

- 08.00 – 13.00 on Saturdays.

No work should be carried out on Sundays or officially recognised public holidays.

Reason

To safeguard the amenity of the neighbouring occupiers in accordance with the provisions of Policy ST1 of the Copeland Local Plan.

Informative Notes:

Public Right of Way

1. A PROW (public footpath) number 431016 lies adjacent to the site at Fell View Avenue. The granting of planning permission would not give the applicant the right to block or obstruct the right of way. It must be kept open and unaltered for public use until an order made to divert or to temporarily close it has been confirmed.

Coal Authority Standing Advice

2. The proposed development lies within a coal mining area which may contain unrecorded coal mining related hazards. If any coal mining feature is encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is also available on the Coal Authority website at: www.gov.uk/government/organisations/the-coal-authority Coal Standing Advice

Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received, and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development as set out in the National Planning Policy Framework.

Case Officer: C. Wootton

Date : 04/01/2024

Authorising Officer: N.J. Hayhurst

Date : 05/01/2024

Dedicated responses to:- N/A