

**CUMBERLAND COUNCIL
DELEGATED PLANNING DECISION**

1.	Reference No:	4/24/2073/0F1	
2.	Proposed Development:	CHANGE OF USE FROM AGRICULTURAL LAND TO FORM A RESIDENTIAL GARDEN	
3.	Location:	BEACH VIEW, BORWICK RAILS, MILLOM	
4.	Parish:	Millom	
5.	Constraints:	ASC;Adverts - ASC;Adverts, Coal - Off Coalfield - Data Subject To Change, Key Species - Known Sites for Natterjack Toads	
6.	Publicity Representations &Policy	Neighbour Notification Letter	Yes
		Site Notice	No
		Press Notice	No
		Consultation Responses	See Report
		Relevant Policies	See Report
7.	Report:		
	Site and Location		
	This application relates to the land to the rear of the partly constructed detached dwelling known as Beach View. The site lies to the east of Millom and is currently in use as agricultural land.		
	Relevant Planning History		
	4/21/2297/0F1 – Erection of a detached four bed dwelling – Approved.		

Proposal

In May 2022, planning permission was granted for the erection of a detached four bed roomed dwelling within this building plot. This dwelling has yet to be fully completed. The proposed dwelling was approved with a rear garden which reflected the scale of the two adjacent properties to the north. It was proposed that the garden area would be enclosed with a Burlington slate faced boundary wall with a maximum height of 2m.

This current application seeks planning permission to change the use of the existing agricultural land to the rear of this dwelling to form an extension to the residential garden. The proposed garden would extend the existing garden by 65m in a south westerly direction, with a width of 12m to match the existing garden. It is proposed that the site will be enclosed by a 1.8m high slate/stone faced boundary wall to match the existing garden.

Consultation Responses

Millom Town Council

No objections in principle to the application.

Cumberland Council – Countryside Access Officer

No comments received.

Public Representation

This application has been advertised by way of a neighbour notification letters issued to four properties. One letter of support was received in relation to this statutory notification period which states that this will tidy up the land making it into a garden.

A letter of support was also received from the applicant which provided the following comments:

- We have purchased the land that was for sale that is an eyesore.
- We are going to tidy this up and use it garden in this area.
- Failing to be accepted we then have plans to just put an agricultural farm building on there.

Planning Policy

Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

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



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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 ENV3 – Biodiversity and Geodiversity

Policy ENV5 – Protecting and Enhancing the Borough's Landscapes

Development Management Policies (DMP)

Policy DM10 – Achieving Quality of Place

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 ELP.

The Local Plan Examination Hearing Sessions were completed in March 2023.

The appointed Planning Inspector issued their post hearing letter in June 2023, which identified the next steps for the examination.

The appointed Planning Inspector has now considered all representations and the discussions that took place during the Local Plan Examination Hearing Sessions in 2023 and has identified a number of amendments or 'modifications' that are required in order to ensure the ELP is sound i.e. positively prepared, justified, effective and consistent with national planning policy.

A six week public consultation seeking views on the proposed modifications to the ELP commenced on Wednesday 14th February 2024 and will close on the 28th March 2024.

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

Given the advanced stage of preparation of the ELP full weight can be attached to policies

where no objections have been received or objections have been resolved. Once the consultation on the main modifications to the ELP is complete significant weight can be afforded to the policies of the ELP where modifications are proposed.

Strategic Policy DS1PU: Presumption in favour of Sustainable Development

Strategic Policy DS2PU: Reducing the impacts of development on Climate Change

Strategic Policy DS3PU: Settlement Hierarchy

Strategic Policy DS4PU: Settlement Boundaries

Policy DS7PU: Hard and Soft Landscaping

Strategic Policy N1PU: Conserving and Enhancing Biodiversity and Geodiversity

Strategic Policy N2PU: Local Nature Recovery Networks

Strategic Policy N3PU: Biodiversity Net Gain

Strategic Policy N6PU: Landscape Protection

Other Material Planning Considerations

National Planning Policy Framework (2023).

The Conservation of Habitats and Species Regulations 2017 (CHSR).

Landscape Character Assessment, Settlement Landscape Character Assessment

The Cumbria Landscape Character Guidance and Toolkit (CLCGT)

Assessment

The main issues raised by this application relate to the principle of the development; settlement character, landscape and visual impact; impact on residential amenity; and impact on ecology.

Principle of Development

The application site relates to land to the rear of the partly constructed detached dwelling known as Beach View. The existing dwelling, and associated residential curtilage, are located within the existing and proposed settlement boundary for Millom, however the application site falls outside the designated boundary. The red line for the application projects 65m from the current rear boundary of the property into the open agricultural field behind.

Policy ST2 of the Copeland Local Plan restricts development outside of the defined settlement boundary to that which have a proven requirement for such a location including land uses characteristically located outside of settlements, such as agriculture or forestry, farm diversification schemes or tourism activities requiring location in the open countryside, or prisons.

Policy DS4PU of the ELP defines the settlement boundaries for all settlements within the



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hierarchy and states that development within these boundaries will be supported in principle where it accords with the Development Plan unless material considerations indicate otherwise. It is stated that to ensure the delivery of allocated sites is not prejudiced, development outside the settlement boundaries will only be accepted in the following cases: the proposal is for either nuclear related development, renewable energy proposals, essential infrastructure to support energy developments, or agricultural, forestry, farm diversification or tourism proposal which require such a location a proven need for an open countryside location has been demonstrated to the satisfaction of the Council.

As a residential garden is not included as an exception within either policy within the CS or ELP, it is considered to be inappropriate to permit an encroachment into the open countryside of the scale proposed without any specific justification. It is therefore considered that the principle of the development is contrary to Policy ST2 of the Copeland Local Plan, Policy DS4PU of the Emerging Local Plan and provision of the NPPF.

Settlement Character, Landscape Impact and Visual Impact

One of the key principles of the NPPF is to protect and enhance the natural environment, with planning policies and decisions playing an active role in guiding development towards sustainable solutions but in doing so taking local circumstances into account, to reflect the character, needs and opportunities of each area. Paragraph 180 of the NPPF requires that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

Policy ST1 of the CS seeks to protect and enhance areas, sites, species and features of biodiversity and the undeveloped coast.

Policy ENV5 of the CS states that the Borough's landscapes will be protected and enhanced by: protecting all landscapes from inappropriate change by ensuring that the development does not threaten or detract from the distinctive characteristics of that particular area; that where the benefits of the development outweigh the potential harm, ensuring that the impact of the development on the landscape is minimised through adequate mitigation, preferably on-site; and, supporting proposals which enhance the value of the Borough's landscapes.

Policy DM26 of the Copeland Local Plan states that where necessary development proposals will be required to include landscaping schemes that retain existing landscape features, reinforce local landscape character, and mitigate against any adverse visual impact. Care should be taken that landscaping schemes do not include invasive non-native species.

Within the ELP, Policy N6PU states that the Borough's landscapes will be protected and enhanced by supporting proposal which enhance the value of the Boroughs landscapes, protecting all landscapes from inappropriate change by ensuring that development conserves and enhances the distinctive characteristics of that particular area in a manner commensurate with their statutory status and value. It is stated that proposals will be assessed according to whether the proposed structures and associated landscaping relates

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 and that consideration must be given to the Council's Landscape Character Assessment, Settlement Landscape Character Assessment and the Cumbria Landscape Character Guidance and Toolkit at the earliest stage.

The Cumbria Landscape Character Guidance and Toolkit (CLCGT) identifies the site as being within Sub Type 2d: Coastal Margin – Coastal Urban Fringe. The Key Characteristics of the land comprise: low lying flat land, urban influences linked to tourism development, derelict buildings and major transport routes, strong man-made landforms on coastal edges, mixed land cover of mown grass, pasture, scrub and semi natural grassland, and weak field patterns.

The Guidelines for development include: protect 'green' areas from sporadic and peripheral development, encourage new development on brownfield and vacant sites to protect and enhance habitats, minimise the impact of new development by careful siting, design and high standards of landscape treatment particularly where public views are affected, and establish new woodland belts or thick hedgerows along the edges of developments to soften their impact, provide a backcloth, define limits of urban expansion and integrate isolated development.

The application site relates to part of an existing agricultural field located to the eastern edge of Millom. The land to the north of the agricultural field, and the application site, forms part of the Millom Sewage Works, however this is significantly detached from the application site by the remainder of the agricultural field and existing highway. The application site forms part of the open character of the eastern edge of Millom and provides uninterrupted open views towards the Duddon Channel and Estuary.

The proposed development would extend the garden area associated with the partly constructed dwelling, Beach View, by 65m into the existing agricultural field, which is considered to be an extensive projection into the open countryside. The proposed site would be enclosed by a 2m high slate faced wall, which would ensure the proposed change of use of this land would be a prominent feature within this rural landscape. Whilst the agent for this application has indicated that the other two adjacent properties are seeking to carry out the same works, no indication of this has been provided by either property therefore this cannot be weight in the consideration of this application.

Paragraph 72 of the NPPF resists the creation of residential gardens when it would cause harm to the local area. On balance, the proposed development is likely to create harm to the character and openness of the site and surrounding landscape, creating a prominent feature within this rural context. The scale of the proposed change of use and use of a domestic harsh boundary treatment will create an awkward addition to the rear of the property and edge of settlement site. The development is therefore viewed as an inappropriate change within this rural area which will detract from and erode the distinctive character of this area of Millom.



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The proposal is therefore considered to be contrary to policies ST1, ENV5 and DM26 of the Copeland Local Plan, Policy N6PU of the Emerging Local Plan, and the provisions of the NPPF.

Impact on Ecology

Policies ST1, ENV3, and DM25 seeks to ensure that new development will protect and enhance biodiversity and geodiversity.

Policy N1PU of the Emerging Local Plan LP defines a mitigation hierarchy.

Policy N3PU of the Emerging Local Plan requires that all development, with the exception of that listed in the Environment Act must provide a minimum of 10% biodiversity net gain over and above existing site levels, following the application of the mitigation hierarchy set out in Policy N1PU above. This is in addition to any compensatory habitat provided under Policy N1PU. It is stated net gain should be delivered on site where possible and where on-site provision is not appropriate, provision must be made elsewhere in accordance with a defined order of preference.

The application is identified as a known site for Natterjack Toads, which are protected in the UK under the Wildlife and Countryside Act 1981, identified as a Priority Species under the UK Post-2010 Biodiversity Framework, and are listed as a European Protected Species under Annex IV of the European Habitats Directive.

Paragraph 186 of the NPPF states that 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. The application is not supported by an Ecological Survey, therefore the impact on this protected species has not been considered as part of this proposal. The application is therefore void of any necessary mitigation measures to protect and/or enhance biodiversity and geodiversity.

The application is considered to provide insufficient evidence relating to the proposed impacts on ecology and how the proposal, through the use of mitigation measures, would protect and enhance biodiversity in this sensitive location. On this basis, the proposal is considered to be contrary to Policies ST1, ENV3 and DM25 of the Copeland Local Plan, Policies N1PU and N3PU of the Emerging Local Plan, and provisions of the NPPF.

Planning Balance & Conclusions

Paragraph 11 of the NPPF requires any adverse impacts to be weighed against the benefits that a scheme would produce.

Given the advanced stage of preparation of the ELP full weight can be attached to policies where no objections have been received or objections have been resolved. As the consultation on the main modifications to the ELP is now complete significant weight can also be afforded to the policies of the ELP where modifications are proposed.

The partly constructed dwelling, Beach View, currently benefits from a large rear garden. The

	<p>proposed extension to create a larger garden for this property would have some benefits for the applicant, however this is limited to this single property only. Consequently, little weight can be attached to this benefit.</p> <p>The application site is located beyond the defined settlement boundary for Millom as identified as identified within the CS or ELP. Policy ST2 of the CS and DS4PU of the ELP restrict development outside the defined settlement boundaries to that which have a proven requirement for such a location. As a residential garden is not included as an exception within either the policies within the CS or ELP, it is considered to be inappropriate to permit an encroachment into the open countryside of the scale proposed without any specific justification. This is given significant weight.</p> <p>The proposed development by virtue of its location, scale, and harsh domestic boundary treatment will create a prominent feature within this rural landscape which will be viewed as an awkward addition to the rear of the property and edge of settlement site. The development is therefore considered to be inappropriate change within this rural area which will detract from and erode the distinctive character of this area of Millom. On balance, the proposed development is likely to create harm to the character and openness of the site and surrounding landscape. This is given significant weight.</p> <p>The application is identified as a known site for Natterjack Toads, a protected species. The application is void of any Ecology Surveys. The application is therefore considered to provide insufficient evidence relating to the proposed impacts on ecology and how the proposal, through the use of mitigation measures, would protect and enhance biodiversity in this sensitive location. This is given significant weight.</p> <p>In overall terms, it is considered that the direct conflict with the provisions of the Copeland Local Plan and Emerging Local Plan, the adverse local landscape character and visual impacts of the development, and failure to assess and mitigate the ecological constraints associated with the site are sufficiently harmful to significantly and demonstrably outweigh the potential benefits of the development.</p>
8.	<p>Recommendation: Refuse</p>
9.	<p>Reasons for Refusal</p> <ol style="list-style-type: none"> 1. The proposed development of an extensive domestic garden on a site outside the settlement boundary for Millom is unjustified within this location in direct conflict with the provisions of Policy ST2 of the Copeland Local Plan, Policy DS4PU of the Emerging Copeland Local Plan 2017- 2038 and provisions of the NPPF. 2. The proposed change of use of the land to form an extension to the domestic garden of this partly constructed dwelling would, be reason of its siting, scale, and harsh domestic boundary treatment, have an adverse impact upon the local landscape



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character by creating a prominent feature within this rural context. The development is considered inappropriate change within this rural area which will detract from and erode the distinctive open character of this area of Millom in conflict with the provisions ST1, ENV5 and DM26 of the Copeland Local Plan, Policy N6PU of the Emerging Local Plan, and paragraphs 72 and 180 of the NPPF.

3. The application site is identified as a known site for Natterjack Toads. The proposed development fails to demonstrate that adequate assessment of the ecological constraints of site have been assessed and any impacts sufficiently mitigated, in conflict with Policies ST1, ENV3 and DM25 of the Copeland Local Plan, Policies N1PU and N3PU of the Emerging Local Plan, and provisions of the NPPF.

Statement

The Local Planning Authority has acted positively and proactively in accordance with Copeland Local Plan policies and the National Planning Policy Framework in determining this application by identifying matters of concern with the proposal and raising those with the applicant. However, in this case it has not been possible to arrive at a satisfactory resolution for the reasons set out in the reason for refusal.

Case Officer: C. Burns

Date : 26.04.2024

Authorising Officer: N.J. Hayhurst

Date : 26.04.2024

Dedicated responses to:- N/A