

CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/24/2159/DOC
2.	Proposed Development:	DISCHARGE OF CONDITIONS 3, 4, 5, 6, 7, 8 AND 13 OF PLANNING APPLICATION 4/22/2364/0F1
3.	Location:	FORMER CLEATOR MILLS SITE, CLEATOR
4.	Parish:	Cleator Moor
5.	Constraints:	<p>ASC;Adverts - ASC;Adverts,</p> <p>Flood Area - Flood Zone 2, Flood Area - Flood Zone 3,</p> <p>SSSI - SSSI,</p> <p>Coal - Standing Advice - Data Subject To Change,</p> <p>Outer Consultation Zone - Sellafield 10KM</p>
6.	Publicity Representations &Policy	N/A.
7.	<p>Report:</p> <p>Site and Location:</p> <p>The Application Site comprises part of the former Cleator Mills site in Cleator.</p> <p>The Application Site comprises the location of a number of former mill buildings which have previously been demolished.</p> <p>The Application Site is located within Flood Zone 2/3.</p> <p>The Application Site is located adjacent to the River Ehen Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).</p>	

Directly Relevant Planning Application History:

App. ref. 4/22/2364/0F1 – Construction of new warehouse unit with ancillary offices – Approved subject to planning conditions.

Proposal:

This application seeks approval of the requirements of planning condition 3, 4, 5, 6, 7, 8 and 13 of planning application ref. 4/22/2364/0F1.

The information submitted in support of the application comprises the following:

Application Form

Conditions 3, 4 and 13

Letter for Highways, Drainage & Maintenance Conditions – Kingmoor Consulting – Ref. 23-406c007

Drawing No. 23-406 DWG100 Rev. C – Overall Site Layout

Drawing No. 23-406 DWG101 Rev. D – Site Layout – Overall Drainage Layout

Drawing No. 23-406 DWG102 Rev. - – Detailed Front Entrance Kerbs and Setting Out

Drawing No. 23-406 DWG103 Rev. C – Surface Water Manhole and Drainage Schedule

Drawing No. 23-406 DWG104 Rev. B – Foul Water Manhole and Pipe Schedule & Kerb Details

Operational Drainage Management Plan – Ref. 23-406r003

Drainage Report – Ref. 23-406r004

Condition 5

Cleator Mills Redevelopment Construction Traffic Management Plan – Ref. Cm107

Condition 6

Method Statement for the Protection of Existing Trees – Ref. 1701C-D006

Condition 7

Landscaping Plan – Drawing No. 1701C PL-210 Rev. A

Condition 8

Project No: GEO2024-6332 - Project Name: Cleator Mills, Cumbria - Project Title: Contamination Validation Report

Project No: GEO2024-6332 - Project Name: Cleator Mills, Cumbria - Project Title: Supplementary Ground Investigation and Remediation Strategy

Project No: GEO2024-6455 - Project: Speedy Hire Depot, Cleator Mills, Cumbria Report - Title: Supplementary Ground Investigation – Controlled Waters Risk Assessment



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Consultee:	Nature of Response:
Arb. Consultant	<p>DISCUSSION</p> <p>We have the following comment/observation to make on the submitted documents.</p> <p>The applicant has submitted a Method Statement for protection of the existing trees (Ref. No.1701C-D006) and a Landscaping Plan (Ref. No.1701C PL – 210) both produced by Manning Elliott Partnership. The submitted Landscaping Plan includes a plant specification for the new trees. These documents fulfil the requirements of planning conditions 6 & 7.</p> <p>RECOMMENDATIONS</p> <p>Inform the applicant in writing the Method Statement for protection of the existing trees (Ref. No.1701C-D006) and the Landscaping Plan (Ref. No.1701C PL – 210) fulfil the relevant parts of planning conditions 6 & 7. These documents must be implemented to fully discharge the requirements of the planning conditions.</p>
Cumberland Council – Highways and LLFA	<p>Cumberland Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) has reviewed the above planning reference and our findings are detailed below.</p> <p>Condition 3 - Highway Details I am satisfied that the proposals address the requirements of this condition. I have no objection to this condition being discharged.</p> <p>Condition 4 - Surface and Foul Drainage Schemes I note the favourable infiltration characteristics of the sub-soil and inclusion of an oil interceptor. I am satisfied that the proposals address the requirements of this condition. I have no objection to this condition being discharged.</p> <p>Condition 5 - Construction Traffic Management Plan I am satisfied that the proposals address the requirements of this condition. I have no objection to this condition being discharged.</p> <p>Condition 6 - Tree Protection Measures This condition was not requested by the LHA or LLFA. No comment.</p> <p>Condition 7 - Hard and Soft Landscaping This condition was not requested by the LHA or LLFA. No comment.</p>

		<p>Condition 8 - Contamination Remediation Strategy This condition was not requested by the LHA or LLFA. No comment.</p> <p>Condition 13 - Sustainable Drainage Management and Maintenance Plan (SDMMP) I am satisfied that the proposals address the requirements of this condition. I have no objection to this condition being discharged.</p>
	Environmental Health	<p>Insofar as the remit of Environmental Health is concerned, condition 8 on contaminated land and the submission of the Validation Report (June 2024) and the Supplementary Ground Investigation and Remediation Strategy Additional Information (July 2024) are relevant. Environmental Health are satisfied that the works carried out and proposals in the above documents would address any risks to human health. However, the comments of the Environment Agency in their response (dated 16.07.24) are noted. As the Environment Agency are of the opinion that risk to controlled waters from the contaminated land on site has not been fully addressed, condition 8 cannot yet be discharged.</p> <p>Environmental Health note the latest response dated 28.08.24 from the Environment Agency. As they are now satisfied that the development does not pose a pollution risk to water, condition 8 may be discharged.</p>
	Environmental Agency	<p>In response letter, referenced NO/2024/116163/02-L01 and dated 16 July 2024, we were unable to recommend the discharge of condition 8 (land contamination) as it could not be demonstrated that the development does not pose an unacceptable risk to water quality.</p> <p>We have now received and reviewed the following additional information: - Report titled 'Supplementary Ground Investigation – Controlled Waters Risk Assessment', prepared by GEO Environmental Engineering Ltd (referenced: GEO2024-6455; dated: 12.08.2024)</p> <p>Environment Agency Position</p> <p>We are now able to recommend the full discharge of condition 8 of planning application 4/22/2364/0F1, and we would offer the following comments:-</p> <p>The evidence provided within the report referenced above, dated 12th August 2024, provides the confidence that the remedial works for development at this site poses no unacceptable risk to water quality. We therefore agree with the findings of the report and accept that condition 8 can be discharged</p>

<p>Natural England</p>	<p>Thank you for consulting Natural England on this Discharge of Conditions including a CEMP for application 4/24/2159/DOC and apologies for the delay in our response.</p> <p>Natural England have reviewed the submitted CEMP and provide the following comments:</p> <p>Natural England advises that a suitably qualified Ecological Clerk of Works (ECoW) will be required to oversee the construction phase of the development to provide ongoing monitoring and ensure that all mitigation measures are secured as set out in the Appropriate Assessment and Construction Environmental Management Plan (CEMP). Subject to an ECoW being present on site and adherence to the measures outlined in the submitted CEMP Natural England advise that there will be no adverse effect on the site integrity of the River Ehen Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC). Therefore, this condition can be discharged.</p>
<p>Neighbour Responses:</p>	
<p>N/A.</p>	
<p>Development Plan:</p> <p>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.</p> <p>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.</p> <p>The inherited local development plan documents continue to apply to the geographic area of their sovereign Councils only.</p> <p>The Consolidated Planning Policy Framework for Cumberland comprises the Development Plan for Cumberland Council until replaced by a new Cumberland Local Plan.</p> <p>Copeland Local Plan 2013-2028 (Adopted December 2013):</p> <p><u>Core Strategy (CS):</u> Policy ST1 – Strategic Development Principles Policy T1 – Improving Accessibility and Transport Policy ENV1 – Flood Risk and Risk Management Policy ENV3 – Biodiversity and Geodiversity</p>	

Policy ENV5 – Protecting and Enhancing the Boroughs Landscapes

Development Management Policies (DMP):

Policy DM10 – Achieving Quality of Place

Policy DM11 – Sustainable Development Standards

Policy DM22 – Accessible Developments

Policy DM24 – Development Proposals and Flood

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM26 – Landscaping

Policy DM27 – Built Heritage and Archaeology

Policy DM28 – Protection of Trees

Emerging Copeland Local Plan (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 closed 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.

The Report on the Examination of the ELP was received on the 23rd September 2024. Given the advanced stage of preparation and with adoption pending, full weight can be attached to the policies of the ELP.

Policy DS2PU - Reducing the impacts of development on Climate Change

Policy DS6PU - Design and Development Standards

Policy DS7PU - Hard and Soft Landscaping

Policy DS8PU - Reducing Flood Risk

Policy DS9PU - Sustainable Drainage



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Policy DS10PU - Soils, Contamination and Land Stability
Policy N1PU - Conserving and Enhancing Biodiversity and Geodiversity Strategic
Policy N5PU - Protection of Water Resources
Policy N13PU - Woodlands, Trees and Hedgerows

Other Material Planning Considerations

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

Assessment:

The development has been commenced prior to the approval of the pre-commencement planning conditions imposed on planning permission reference 4/22/2364/0F1.

Extensive case law exists in respect of commencement of development and pre-commencement planning conditions.

The primary case of relevance comprises: *Whitley and Sons v Secretary of State for Wales and Clwyd CC (1992)*.

The 'Whitley Principle' is clear that work contravening true conditions precedent cannot be taken as lawfully commencing development subject to 'exceptions'.

One such 'exception' to the 'Whitley Principle' as derived from the Whitley judgement, is where works to commence a development are completed in strict conformity with the details provided by a developer in support of an Approval of Planning Condition Application even if that application has not been formally approved at the point of commencement of the development. The rationale of the 'exception' is to avoid unnecessary formality and both wasted time and expenditure.

It is considered that the above 'exception' to the 'Whitley Principle' is directly relevant in this case.

The works completed to commence the development are in conformity with the details formally submitted; therefore, it is concluded that planning permission reference 4/22/2364/0F1 remains valid and lawful.

The layout of the hard and soft landscaping areas differs minimally from those detailed in planning permission reference 4/22/2364/0F1 with specific regard to the shape of the customer drop off area and the position of the main entrance gates. Such revisions are acceptable given that the highway specifications and landscaping details were reserved

though the provisions of Planning Condition 3 and Planning Condition 7.

Condition 3

Notwithstanding the submitted details, no development shall commence until details, including longitudinal/cross sections of the carriageway, footways, footpaths etc. have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details before the development is complete.

Cumberland Council – Highways have raised no objections to the approval of the requirements of this planning condition.

Condition 4

Notwithstanding the submitted details, no development shall commence until details of a sustainable surface water drainage scheme and a foul water drainage scheme have been submitted to and approved in writing by the Local Planning Authority.

The drainage schemes must be based on the hierarchy of drainage options in the Planning Practice Guidance.

The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

Prior to occupation of the proposed development, the drainage scheme shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.

Cumberland Council – LLFA note that the favourable infiltration characteristics of the sub-soil and inclusion of an oil interceptor and have raised no objections to approval of the requirements of this planning condition.

Condition 5

No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted and approved in writing by the Local Planning Authority. The CTMP shall include:

- details of proposed crossings of the highway verge;*
- retained areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;*
- cleaning of site entrances and the adjacent public highway;*
- details of proposed wheel washing facilities;*
- the sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;*
- construction vehicle routing;*
- the timing of deliveries by heavy goods vehicles to and from the site;*
- the management of junctions to and crossings of the public highway and other public rights*



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of way/footway; and,
- details of any proposed temporary access points (vehicular/pedestrian).

Cumberland Council – Highways have raised no objections to approval of the requirements of this planning condition.

Condition 6

Notwithstanding the submitted details, no development shall commence until full details of the tree protection measures for all trees to be retained have been submitted to and approved in writing by the Local Planning Authority.

These measures shall be set out in a detailed Arboricultural Method Statement to include the specification of the location and type of protective fencing, the timings for the erection and removal of the protective fencing, the details of any hard surfacing and underground services proposed within the root protection areas and the measures to be used to prevent harm from such works, all to be in accordance with the British Standard for Trees in Relation to Construction 5837: 2012, and the monitoring of tree protection measures during construction. The Arboricultural Method Statement shall be implemented as approved throughout the construction period.

Cumberland Council – Arb. Consultant has raised no objections to approval of the requirements of this planning condition.

Condition 7

Notwithstanding the submitted details, no development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority.

These details shall include:-

- o means of enclosure including details of any walls/structures;*
- o other vehicle and pedestrian access and circulation areas; and,*
- o hard surfacing materials.*

Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers / densities; and an implementation programme.

The agreed scheme shall be carried out as approved to the agreed timetable.

Any trees / shrubs which are removed, die, become severely damaged or diseased within five years of their planting shall be replaced in the next planting season with trees / shrubs of similar size and species to those originally required to be planted.

Cumberland Council – Arb. Consultant has raised no objections to approval of the requirements of this planning condition.

Condition 8

No development shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby approved, has been submitted to and approved in writing by the local planning authority.

This strategy will include the following components:

1. A preliminary risk assessment which has identified: - all previous uses; - potential contaminants associated with those uses; - a conceptual model of the site indicating sources, pathways and receptors; and, - potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site. 3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation strategy shall be implemented as approved.

Cumberland Council – Environmental Health and the Environment Agency has raised no objections to approval of the requirements of this planning condition.

Condition 13

No development hereby approved shall be occupied until a Sustainable Drainage Management and Maintenance Plan (SDMMP) for the lifetime of the development has been submitted to and approved in writing by the Local Planning Authority.

The SDMMP shall include as a minimum:

- (i) Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and,*
- (ii) Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system and compensatory storage areas to secure the operation of the surface water drainage scheme throughout its lifetime.*

The development shall be completed, maintained and managed in accordance with the approved SDMMP.

Cumberland Council – LLFA have raised no objections to approval of the requirements of this planning condition.

Conclusion

Condition 3 – Approve requirements of planning condition.

Condition 4 – Approve requirements of planning condition.



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	Condition 5 – Approve requirements of planning condition. Condition 6 – Approve requirements of planning condition. Condition 7 – Approve requirements of planning condition. Condition 8 – Approve requirements of planning condition. Condition 13– Approve requirements of planning condition.	
8.	Recommendation: Approve Discharge of Conditions	
Case Officer: Chris Harrison		Date : 09.10.2024
Authorising Officer: N.J. Hayhurst		Date : 10.10.2024
Dedicated responses to:- N/A		