

## CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	<b>Reference No:</b>	4/24/2207/0B1
2.	<b>Proposed Development:</b>	VARIATION OF CONDITION 2 (PLANS) OF EXTANT PLANNING PERMISSION 4/08/2194/0 TO REDUCE THE SCALE OF THE PROPOSED BUNGALOW FROM A 4 BEDROOMED DORMER BUNGALOW AND DOUBLE GARAGE TO A 2 BEDROOMED BUNGALOW AND SINGLE GARAGE
3.	<b>Location:</b>	181 HIGH ROAD, WHITEHAVEN
4.	<b>Parish:</b>	Whitehaven
5.	<b>Constraints:</b>	ASC;Adverts - ASC;Adverts, Safeguard Zone - Safeguard Zone, Coal - Standing Advice - Data Subject To Change
6.	<b>Publicity Representations &amp;Policy</b>	Neighbour Notification Letter: YES  Site Notice: NO  Press Notice: NO  Consultation Responses: See report  Relevant Planning Policies: See report
7.	<b>Report:</b>  <b>Site and Location:</b>  This application relates to an area of land at the rear of 181 High Road which also flanks the rear of Ennerdale Terrace. The site is situated within the residential area of Kells in Whitehaven.  The land has residential dwellings to the west and south with playing fields to the north and east.	

Access is taken to the site directly from High Road, through double gates fronting the highway.

### Relevant Planning History:

Detached four bedroomed dormer bungalow with double garage, approved in June 2008 (application reference 4/08/2194/0 relates).

### Proposal

The development that was approved in 2008 under reference 4/08/2194/0 was implemented and therefore the permission remains extant.

This application seeks to vary condition 2 of the extant permission in order to secure a reduction in the scale of the proposed dwelling to a two-bedroomed single-storey bungalow and also a revision in the location of the single-storey detached garage.

### Consultation Responses

Consultee:	Nature of Response:
Whitehaven Town Council	No objections.
Highways and Local Lead Flood Authority	<u>1<sup>st</sup> response</u> Cumberland Council as the Local Highway Authority (LHA) and Lead Local Flood Authority (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. Subject to any conditions not been previously discharge are added to any notice of consent you may grant. <u>2<sup>nd</sup> response</u> The Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA) can confirm as follows: Additional information has been supplied regarding drainage and surface water as this is a single dwelling and below the threshold for the LLFA to determine the surface water aspects of this development will be managed through building control. The LHA &

	LLFA has no objection to the variation of condition 2 for the reduction in scale to the proposed bungalow and garage, 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.
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United Utilities	No response received.
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#### **Neighbour Responses:**

6 objection letters from 2 properties have been received raising the following concerns:

- The garage location and height is not neighbourly;
- Natural water runoff from 30 and 31 Ennerdale Terrace has been stopped due to the erection of a boundary wall and change in levels;
- Drainage should be put in place as part of the development;
- Concerns that gutters would be added to the garage;
- The garage is unfinished and unsightly.

### **Planning Policy**

Planning law requires 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 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 2021-2039 (LP):**

Cumberland Council continued the preparation of the LP as commenced by Copeland Borough Council.

The LP was adopted by Cumberland Council on the 5<sup>th</sup> of November 2024 replacing the Copeland Local Plan 2013-2028 and the saved policies of the Copeland Local Plan 2021-2016.

The policies relevant to this application are as follows:

Strategic Policy DS1 - Settlement Hierarchy

Strategic Policy DS2 - Settlement Boundaries

Strategic Policy DS3 - Planning Obligations

Policy DS4 - Design and Development Standards

Policy DS5 - Hard and Soft Landscaping

Strategic Policy DS6 - Reducing Flood Risk Policy

Strategic Policy DS7 - Sustainable Drainage

Policy DS8 – Soils, Contamination and Land Stability

Strategic Policy H1 - Improving the Housing Offer

Strategic Policy H2 - Housing Requirement

Strategic Policy H3 - Housing delivery

Strategic Policy H4 - Distribution of Housing

Strategic Policy H5 - Housing Allocations

Policy H6 - New Housing Development

Policy H7 - Housing Density and Mix Strategic

Policy H8 - Affordable Housing

Strategic Policy N1 - Conserving and Enhancing Biodiversity and Geodiversity

Strategic Policy N2 - Local Nature Recovery Networks

Strategic Policy N3 - Biodiversity Net Gain

Strategic Policy N6 - Landscape Protection

Strategic Policy CO4 – Sustainable Travel

Policy CO5 – Transport Hierarchy

### **Other Material Planning Considerations**

National Planning Policy Framework (NPPF)

The Planning Practice Guidance (NPPG):

This web-based resource was launched in March 2014 by the Department for Communities and Local Government (DCLG).

This outlines that an application can be made under Section 73 of the Town and Country Act



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1990 to vary a condition associated with a permission. One of the uses of a Section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied.

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. 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.

### **Assessment:**

This application seeks to vary condition 2 of application reference 4/08/2194/0 to reduce the scale of the dwelling and detached garage and move the location of the detached garage.

The dwelling will be reduced in size to remove the first floor and create a traditional single-storey bungalow. This is considered to be acceptable and betterment for the site, creating less of an impact on the visual amenity of the area and also upon the amenity of the occupiers of the surrounding residential properties.

### The Siting and Scale of the Garage

The location of the garage has been moved from the northern boundary fronting the playing field to the southern boundary with Ennerdale Terrace. The garage will be 3m in overall height and situated within 2m of the boundary with the dwellings on Ennerdale Terrace. Under the Permitted Development Rights, garages can be erected up to a maximum height of 2.5m within 2m of a boundary, without the requirement to apply for planning permission.

This fallback position is a material consideration in the assessment of this proposal, and it has to be considered whether the additional to the height of 0.5m has a material effect on the dwellings on Ennerdale Terrace. Given the separation distances between the rear of the dwellings and the garage of at least 15m, it is considered that there is unlikely to be any significant adverse impact upon the amenity of the occupiers of these properties.

Furthermore, the garage will have a dual pitched roof, with the eaves height on the boundary to be 2.4m in height. Had the garage been constructed with a flat roof, it may have fallen under the Permitted Development Rights and not required planning permission.

Whilst the ridge is 0.5m higher, this is not considered to be significant and is located further from the boundary than the side elevation of the garage. There are examples of outbuildings in the rear gardens of the dwellings on Ennerdale Terrace, with the garage at 31 Ennerdale Terrace being 2.5m to the eaves and having an overall height of 3.4m.

On the basis of the above, the siting and scale of the garage is considered to be acceptable and complies with the policies within the Copeland Local Plan.

### Drainage

Concerns were raised with regards to the worsened drainage from properties on Ennerdale Road as a result of the development. Consequently, site visits were undertaken to both the land for development and the neighbouring properties by the Council's Enforcement Officer, Senior Planning Officer and Planning Manager. A full drainage scheme was requested from the Applicant which showed the following:

- Gutters will be added to the garage, which drain to an existing United Utilities combined drainage system;
- Foul water will be connected to the existing combined system;
- The proposed dwelling will be connected to the existing combined system.

A drainage hierarchy statement was also submitted to justify that the options chosen are the most sustainable and effective way of draining the site.

On the basis of the additional information supplied it has been confirmed by the Local Lead Flood Authority that the drainage proposals are satisfactory, and it is considered that there is unlikely to be a material effect on the existing situation.

The implementation of the agreed drainage scheme will be secured by planning conditions to ensure that the drainage is completed in accordance with the submitted drainage strategy and that the drainage is installed prior to the occupation of the development. This should help to alleviate the concerns raised by the occupiers of the neighbouring properties.

Some issues relating to the rights of drainage over another person's land raised by the Objectors are considered to be private legal issues and cannot be considered under the planning legislation.

### Other issues

Comments were received that the garage was unsightly and had not been completed. This is not a material planning consideration, and it is understood that construction on the site is ongoing.

Concerns were also raised that natural drainage has been stopped between the rear gardens of 30 and 31 Ennerdale Terrace and the site due to the erection of a boundary wall. Whilst this does not form part of this application and therefore is not a consideration, a boundary wall can be erected to the height of 2m between neighbouring properties without the need for planning permission as permitted development.

### Other Planning Conditions

In accordance with the guidance set out in the NPPG it is relevant to consider the other conditions that were imposed on the original planning permission. It is necessary to amend the wording of the conditions to reflect the details that have already been agreed but which require ongoing compliance. Furthermore, some additional conditions have been suggested.



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	<p>These are summarized below: -</p> <p>Condition 1 – commencement of development – no longer required as works have begun.</p> <p>Condition 2 – plans – amended under this application and requires ongoing compliance.</p> <p>Condition 3 – drainage – completion and operation of drainage system prior to the occupation of the development.</p> <p>Condition 4 – drainage – completion of the drainage system in accordance with the submitted drainage strategy.</p>
8.	<p><b>Recommendation:</b></p> <p>Approve amendment of condition</p>
9.	<p><b>Conditions:</b></p> <p><u>Standard Conditions</u></p> <ol style="list-style-type: none"><li>1. -</li><li>2. Permission shall relate to the following plans and documents as received on the respective dates and development shall be carried out in accordance with them: -  Application Form, received 31st May 2024; Site Location Plan, scale 1:1250, drawing number 05001 01, received 31st May 2024; Block Plan, scale 1:250, drawing number 05002 02, received 31st May 2024; Proposed Ground Floor Plan, scale 1:50, drawing number 05001 02, received 31st May 2024; Proposed Elevations, scale 1:100, drawing number 05001 02, received 31st May 2024; Proposed Garage, scale 1:50, drawing number 04002 01, received 31st May 2024; Typical Section, scale 1:50, drawing number 06001 01, received 31st May 2024; Drainage Plan, scale 1:250, drawing number 01003 01, received 11th October 2024; Surface Water Hierarchy Report, received 11th October 2024.  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.  <u>Prior to Occupation Condition</u></li></ol> <ol style="list-style-type: none"><li>3. Prior to the first occupation of the development hereby approved, the foul and surface</li></ol>

water drainage must be constructed and functioning in accordance with the Drainage Plan, scale 1:250, drawing number 01003 01, received 11<sup>th</sup> October 2024 and retained as such at all times thereafter.

**Reason**

To ensure a satisfactory scheme of surface water disposal from the site in accordance with Policies DS6 and DS7 of the Copeland Local Plan.

**Other Conditions**

4. Development must be completed in accordance with the Drainage Plan, scale 1:250, drawing number 01003 01, received 11<sup>th</sup> October 2024 and retained as such at all times thereafter.

**Reason**

To ensure a satisfactory scheme of surface water disposal from the site in accordance with Policies DS6 and DS7 of the Copeland Local Plan.

**Informative**

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 Mining Remediation Authority on 0345 762 6846 or if a hazard is encountered on site call the emergency line 0800 288 4242.

Further information is also available on the Mining Remediation Authority website at: Mining Remediation Authority - GOV.UK

**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 a variation of condition in accordance with the presumption in favour of sustainable development as set out in the National Planning Policy Framework.





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Council**

<b>Case Officer: Sarah Papaleo</b>	<b>Date : 19/03/2025</b>
<b>Authorising Officer: N.J. Hayhurst</b>	<b>Date : 21/03/2025</b>
<b>Dedicated responses to:-</b>	