

CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/24/2215/DOC	
2.	Proposed Development:	DISCHARGE OF CONDITION 11 OF PLANNING APPLICATION 4/21/2489/0F1	
3.	Location:	LAND WEST OF CLEATOR MOOR ROAD, WHITEHAVEN	
4.	Parish:	Whitehaven	
5.	Constraints:	ASC;Adverts - ASC;Adverts, Coal - Standing Advice - Data Subject To Change	
6.	Publicity Representations &Policy	Neighbour Notification Letter	No
		Site Notice	No
		Press Notice	No
		Consultation Responses	See Report
		Relevant Policies	See Report
7.	Report:		
	Site and Location		
	This application relates to a brownfield site located off Cleator Moor Road, located within the centre of Hensingham to the east of Whitehaven. The regular shaped site covers an area of 1.21 hectares and is generally flat. The application site previously sited the Sekers factory which was demolished in 2010, and currently benefits from two access points onto Cleator Moor Road.		
	The application site is bounded to the north east by Cleator Moor Road, to the north west by The Gables care home, to the south east by existing residential estates, and to the south west by another brownfield site which benefits from planning permission (ref: 4/17/2143/0O1,		

4/20/2334/0R1 & 4/22/2110/0B1) for 26 dwellings also under the applicants ownership.

Relevant Planning History

4/07/2706/0 – Change of use from industrial (B2) to residential development comprising 118 No. 1, 2, 3 and 4 bedroom dwellings – Withdrawn.

4/10/2359/0O1 – Outline application for proposed 58 bed space care home and residential development with associated highway access – Approve in outline.

4/13/2159/0O1 – Application for a new planning permission to replace extant planning permission (4/10/2359/0O1) – Outline application for proposed 58 bed space care home and residential development with associated highway access – Withdrawn.

4/17/2143/0O1 – Demolition of factory and outline planning permission for erection of dwellings – Approved in outline (adjacent site).

4/20/2334/0R1 – Reserved matters application for 26 dwellings and associated infrastructure following outline approval 4/17/2143/0O1 – Approved reserved matters (adjacent site).

4/22/2110/0B1 – Variation of condition 2 (revised house types) of planning approval 4/20/2334/0R1 - Reserved matters application for 26 dwellings and associated infrastructure following outline approval 4/17/2143/0O1 – Approved (adjacent site).

4/21/2489/0F1 – Residential development of 37 dwellings – Approved.

4/24/2249/DOC – Discharge of conditions 4, 6, 8, 10 and 12 of planning application 4/21/2489/0F1 – Ongoing.

Proposal

In May 2013, planning permission (ref: 4/21/2489/0F1) was granted subject to a S106 agreement, for a residential development of 37 dwellings. This current application seeks to discharge condition 11 attached to planning permission 4/21/2489/0F1). This condition states the following:

11. No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

- a) 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
 - potentially unacceptable risks arising from contamination at the site
- b) 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.
- c) 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.
- d) 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.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework.

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

- Application Form, received by the Local Planning Authority on the 14th June 2024.
- Revised Contamination Remediation Strategy, Prepared by GEO Environmental Engineering June 2024, received by the Local Planning Authority on the 14th June 2024.
- Remediation Plan, Prepared by GEO Environmental Engineering, received by the Local Planning Authority on the 14th June 2024.
- Hydrocarbon Contamination Assessment, Prepared by GEO Environmental Engineering July 2024, received by the Local Planning Authority on the 31st July 2024.
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Consultation Responses

Environment Agency

27th June 2024

We are unable to recommend the discharge of condition 8 and we offer the following

comments:-

Condition 11 cannot be discharged in its entirety because section 3.2 of the Remediation Strategy (ref: GEO2024-6320) requires additional investigation of localised hydrocarbon hotspots in made ground, and remediation of soils and groundwater as necessary. In addition, section 3.3 highlights the possibility of hydrocarbon contaminated water beneath relic structures which may need delineation and removal.

To allow the full discharge of condition 8, the validation and verification of the risk assessment and remedial works will be required.

Additional comments:

The Remediation Strategy highlights the re-use /disposal of made ground without reference to CLAIRE Definition of Waste Code of Practice. Comments regarding the re-use of made ground can be found below.

Waste:

The placement of a cover system using 'clean' material does not need to be regulated under an environmental permit, If the cover uses 'waste materials' in its construction the waste exemption might be available. If the installation of a proposed cover system does not meet the criteria for the registration of a waste exemption the activity may need to be regulated through a site based environmental permit.

Where the onsite reuse of material does involve the removal and subsequent re-deposition of materials, this is normally considered a waste operation unless fully justified otherwise via use of the CL:AIRE The Definition of Waste Development Industry Code of Practice (DoWCoP). If the deposit is regarded as waste operation it must be regulated through an environmental permit.

Redundant infrastructure that doesn't meet the article 2(1)(b) Waste Framework Directive exclusion are waste and need to be regulated as such.

8th August 2024

Contaminated Land

We are satisfied with the partial discharge of condition 11 and wish to offer the following comments:-

We have reviewed the revised remediation strategy, referenced above, and we have no objections to the discharge of the first 3 components of condition 11 (contaminated land).

We are unable to discharge the fourth component of the 4-part contaminated land condition as this is dependent on the validation and verification of the proposed remedial works and can only be discharged upon completion.

Please re-consult us once a Validation Report has been submitted and we will respond within 21 days.



Cumberland Council

Waste

Please refer to our previous response, referenced NO/2024/116146/01-L02 and dated 27 June, in regard to the re-use of made ground on site. We have no additional comments to make.

Cumberland Council – Environmental Health

5th July 2024

In terms of addressing the potential impact on human health, Environmental Health are satisfied that the approach of the Remediation Strategy to date is acceptable, though the concerns raised by the Environment Agency in their response dated 27.06.24 remain, and further work is required.

The re-use of material on site will also require a Materials Management Plan.

As such, condition 11 cannot be fully discharged until the issues raised by the Environment Agency are resolved.

9th August 2024

Planning App 4/24/2214/DOC – comments were awaited from the Environment Agency who had previously objected to the discharge of condition 8 (contaminated land) because of a contamination risk from the site to controlled waters.

Likewise planning app 4/24/2215/DOC and the EA's objection to the discharge of condition 11.

Following the submission dated August 2024 of additional information in the Hydrocarbon Contamination Assessment from Geo Environmental Engineering, the Environment Agency are satisfied with the proposed approach.

Environmental Health are content to defer to the Environment Agency's stance on this matter and therefore the partial discharge of both the above conditions 8 and 11 respectively is agreed.

Further remedial works need to be undertaken to compete their validation and verification as laid out in the assessment and in this response of the Environment Agency.

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 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 SS5 – Provision and Access to Open Space and Green Infrastructure

Policy T1 – Improving Accessibility and Transport

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 of New Residential Developments

Policy DM22 – Accessible Developments

Policy DM24 – Development Proposals and Flood Risk

Policy DM25 – Protecting Nature Conservation Sites, Habitats and Species

Policy DM26 – Landscaping

Policy DM28 – Protection of Trees

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.



Cumberland Council

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. The Planning Inspectors Report is awaited.

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

Strategic Policy DS5PU: Planning Obligations

Policy DS6PU: Design and Development Standards

Policy DS7PU: Hard and Soft Landscaping

Strategic Policy DS8PU: Reducing Flood Risk

Policy DS9PU: Sustainable Drainage

Policy DS11PU - Protecting Air Quality

Strategic Policy H1PU: Improving the Housing Offer

Strategic Policy H2PU: Housing Requirement

Strategic Policy H3PU: Housing delivery

Strategic Policy H4PU: Distribution of Housing

Strategic Policy H5PU: Housing Allocations

	<p>Policy H6PU: New Housing Development</p> <p>Policy H7PU: Housing Density and Mix Strategic</p> <p>Policy H8PU - Affordable Housing</p> <p>Policy SC1PU - Health and Wellbeing</p> <p>Strategic Policy N1PU: Conserving and Enhancing Biodiversity and Geodiversity</p> <p>Strategic Policy N2PU: Local Nature Recovery Networks</p> <p>Strategic Policy N3PU: Biodiversity Net Gain</p> <p>Strategic Policy N6PU: Landscape Protection</p> <p>Policy N9PU - Green Infrastructure</p> <p>Policy CO4PU - Sustainable Travel</p> <p>Policy CO5PU - Transport Hierarchy</p> <p>Policy CO7PU - Parking Standards and Electric Vehicle Charging Infrastructure</p> <p>Other Material Planning Considerations</p> <p>National Planning Policy Framework (2023)</p> <p>National Design Guide (NDG)</p> <p>Cumbria Development Design Guide (CDG)</p> <p>The Conservation of Habitats and Species Regulations 2017 (CHSR)</p> <p>Strategic Housing Market Assessment 2021 (SHMA)</p> <p>Copeland Borough Council - Strategic Housing Market Assessment and Objectively Assessed Housing Need (SHMA)</p> <p>Assessment</p> <p>Following the submission of a Hydrocarbon Contamination Assessment to support the revised Contamination Remediation Strategy and Remediation Plan, the EA have confirmed that condition 11 can be discharged in part. The EA have confirmed that part d of this condition cannot be formally discharged until a Validation Report has been submitted. The Council's Environmental Health Officer has confirmed that they agree with this position.</p> <p><u>Conclusion</u></p> <p>Part discharge condition 11.</p>
8.	<p>Recommendation:</p> <p>Discharge condition 11 in part.</p>



**Cumberland
Council**

Case Officer: C. Burns	Date : 19.08.2024
Authorising Officer: N.J. Hayhurst	Date : 19.08.2024
Dedicated responses to:- N/A	