

## CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/24/2336/DOC	
2.	Proposed Development:	DISCHARGE OF CONDITIONS 9, 10 AND 21 OF PLANNING APPLICATION 4/23/2076/001	
3.	Location:	LAND OFF DALZELL STREET, MOOR ROW, EGREMONT	
4.	Parish:	Cleator Moor, Egremont	
5.	Constraints:	ASC;Adverts - ASC;Adverts, Flood Area - Flood Zone 2, Flood Area - Flood Zone 3, Coal - Standing Advice - Data Subject To Change, Coal - Development Referral Area - 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 an area of land located to the northern edge of Moor Row, which is accessed from Dalzell Street. The irregular shaped site extents eastwards towards the River Keekle and covers an area of approximately 4.1 hectares. It comprises agricultural land and the former Moor Row goods yard to the south of the site with all previous commercial buildings now demolished.	

The site is separated from the existing built form of Moor Row by the Whitehaven to Cleator Moor section of the C2C cycleway, which is set in a former railway cutting. An existing tree belt to the south of the site also separates the site from the existing built form of the village.

### **Relevant Planning History**

4/10/2165/001 – Outline application for 37 dwellings – Approved in outline.

4/13/2146/0R1 – Reserved matters application for road and plot layout – Approved reserved matters.

4/16/2275/001 – Outline application for residential development – Approved in outline.

4/23/2076/001 – Outline application for residential development for up to 65 dwellings with details of proposed access and all other matters reserved – Approved subject to a S106 agreement.

4/24/2323/0R1 – Application for reserved matters relating to layout, scale, appearance, and landscaping pursuant to outline application reference 4/23/2076/001 - residential development for up to 65 dwellings with details of proposed access and all other matters reserved – Ongoing.

4/24/2335/DOC – Discharge of conditions 5, 6, 8, 19 and 20 of planning application 4/23/2076/001 – Approved.

4/24/2337/DOC - Discharge of conditions 11, 12,13, 14, 15, 16, 17, 18, and 22 of planning application 4/23/2076/001 – Ongoing.

### **Proposal**

In July 2024, outline planning permission (ref: 4/23/2076/001) was granted by Members of the Planning Committee for a residential development of up to 65 dwellings with details of the proposed access and all other matters reserved.

This current application seeks to discharge conditions 9, 10 and 21 attached to outline planning approval 4/23/2076/001. These conditions state the following:

#### **Contamination Assessment**

9. 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 must include the following components:

- 1) A site investigation scheme, including a Phase 2 Ground Investigation Report and watching brief, based on the desk study to provide information for a detailed

assessment of the risk to all receptors that may be affected, including those off-site.

- 2) The results of the site investigation and the detailed risk assessment referred to in (1) 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.
- 3) 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 (2) 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 must 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 accordance with the provisions of Policy ST1 of the Copeland Local Plan 2013 – 2028.

#### Coal Mining

10. No development approved by this planning permission must commence on this site until:

- a) A scheme of intrusive site investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and;
- b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works must be carried out in accordance with authoritative UK guidance and must be submitted to and approved in writing to the Local Planning Authority before remedial works are undertaken. The development must proceed in accordance with the approved details at all times thereafter.

#### Reason

This is in order to ensure the safety and stability of the development, in accordance in accordance with the provisions of Policy ST1 of the Copeland Local Plan 2013 – 2028.

#### Coal Mining Legacy

21. Prior to first occupation of the development hereby approved, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved

development must be submitted to and approved in writing by the Local Planning Authority. This document must confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

#### Reason

This is in order to ensure the safety and stability of the development, in accordance with the provisions of Policy ST1 of the Copeland Local Plan 2013 – 2028.

The information submitted to support this application comprises of the following:

- Application Form, received by the Local Planning Authority on the 1<sup>st</sup> October 2024.
- Phase II Site Investigations (Amended), Prepared by GeoCon Site Investigations Ltd September 2024, received by the Local Planning Authority on the 15<sup>th</sup> January 2025.
- Remediation Strategy (Amended), Prepared by GeoCon Site Investigations Ltd September 2024, received by the Local Planning Authority on the 15<sup>th</sup> January 2025.
- Email from Agent – Response to EA, received by the Local Planning Authority on the 19<sup>th</sup> October 2024.
- Phase II Report Addendum Letter, Prepared by GeoCon Site Investigations Ltd October 2024, received by the Local Planning Authority on the 19<sup>th</sup> October 2024.
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#### **Consultation Responses**

##### Environment Agency

*17<sup>th</sup> October 2024*

We have reviewed the following documents in support of the discharge of condition 9 (contaminated assessment):

- Report titled 'Remediation Strategy for Land at Dalzell Street Moor Row', prepared by GeoCon Site Investigations Ltd (referenced: GSI 2132 LD RS Report V1; dated: September 2024)
- Report titled 'Phase II Site Investigation Report of Land at Dalzell Street, Moor Row, Cumbria', prepared by GeoCon Site Investigations Ltd (referenced: SI 2132 WG PII Report; dated: September 2024)

##### Environment Agency position

We are unable to recommend the discharge of Condition 9, and we wish to make the following comments:-

Condition 9 cannot be discharged in its entirety because verification of works outlined in the

remediation strategy have not been completed and validated.

The phase 2 ground investigation has failed to produce groundwater quality or soils leaching information and therefore the risks to Controlled Waters cannot be assessed and the assumption of low risk is arbitrary.

Made ground is present and the ground investigation has shown some of this brownfield area lacks the protection of superficial drift deposits overlying the aquifer. The Remedial Strategy principally focusses on the risk to human health, but the proposal to remove areas of made ground for offsite disposal should also remove the source term contaminants that have the potential to cause detriment to water quality.

In order to discharge this condition, we recommend either of the following:

1. Undertake further ground investigation and risk assessment, which may still require a specific remediation strategy for unacceptable risk to Controlled Waters, or;
2. Expand the remedial strategy to ensure all made ground is removed from areas where superficial deposits are absent as indicated by RO4, DS11 and DS17.

*5<sup>th</sup> November 20224*

In our previous response referenced NO/2024/116363/01-L01 and dated 17 October 2024, we were unable to recommend the discharge of condition 9 (contamination assessment), as it could not be demonstrated that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution.

We have reviewed the additional information provided by the agent and received by email.

Environment Agency position

Further to our previous response referenced NO/2024/116363/01-L01 and dated 17 October, we wish to make the following additional comments:-

The remedial proposals outlined required to discharge condition 9 do not address risk to water quality, the reasons for which were outlined in our previous response, referenced above.

An acceptable risk assessment requires evidence-based findings from ground investigations. Reliance on natural attenuation can be acceptable if the risk can be quantified with modelling, but there is insufficient data to determine the risk without the essential groundwater quality or soil leaching samples. This follows the Remedial Targets Methodology.

The site is adjacent to the River Keekle and overlies a secondary and principal aquifer. In the absence of any data regarding soluble contamination, the remediation proposals outlined are unacceptable, and we are unable to recommend the discharge of condition 9.

In order to discharge this condition, please refer to the points raised in our previous response.

*28<sup>th</sup> January 2025*

In our previous response referenced NO/2024/116363/03-L01 and dated 5 December 2024, we recommended the full discharge of condition 9 of planning application 4/23/2076/001.

We have received the following amended documents:

- Report titled 'Remediation Strategy for Land at Dalzell Street Moor Row', prepared by GeoCon Site Investigations Ltd (referenced: GSI 2132 LD RS Report Version 3; dated: January 2025)
- Report titled 'Phase II Site Investigation Report for Land at Dalzell Street Moor Row Cumbria', prepared by GeoCon Site Investigations Ltd (referenced: GSI 2132 WG PII Report Version 2; dated: January 2025)

Environment Agency position

We have reviewed the amended documents and we maintain our recommendation for the discharge of condition 9. Please refer to our previous response dated 5 December 2024. We do not wish to add any further comments.

The Coal Authority

*10<sup>th</sup> October 2024*

Thank you for your notification of 8 October 2024 seeking the views of the Coal Authority on the above.

The Coal Authority is a non-departmental public body sponsored by the Department for Energy Security and Net Zero. As a statutory consultee, the Coal Authority has a duty to respond to planning applications and development plans in order to protect the public and the environment in mining areas.

The Coal Authority response: Substantive Concern

Condition 10 of the planning permission seeks to address coal mining legacy issues including the undertaking of intrusive site investigations and the implementation of any necessary remedial measures.

The Coal Authority records indicate that the site has been subject to recorded underground coal mining at shallow depth. In this instance, our records indicate shallow coalmine workings in two seams of coal underlying the northeast and eastern part of the application site. The seams are indicated to underlie the site at depths of only 5m and 11m with extraction thicknesses of 1.44m and 1.22m.

Voids and broken/disturbed ground associated with such workings can pose a risk of ground instability and may give rise to the emission of mine gases.

The applicant has submitted a Phase II Ground Investigation Report (September 2024, prepared by GeoCon Site Investigations Ltd), in support of the discharge of the aforementioned condition. However, the content appears to fail to identify the recorded workings, which we know underlie the site, with only one borehole advanced in the area



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affected. Whilst the borehole encountered intact coal, this could represent a pillar in an area of coal otherwise worked. Consequently, the Planning and Development Team at the Coal Authority considers that the Report fails to adequately assess the risks posed by recorded shallow coalmine workings, which we know underlie the site and that the investigations undertaken were not so significant to the extent to establish those risks.

On account of the above, the Planning and Development Team at the Coal Authority is unable to recommend the LPA discharge Condition 10.

*15<sup>th</sup> October 2024*

Thank you for your consultation letter of 14 October 2024 seeking the views of the Coal Authority on the above planning application.

The Coal Authority is a non-departmental public body sponsored by the Department for Energy Security and Net Zero. As a statutory consultee, the Coal Authority has a duty to respond to planning applications and development plans in order to protect the public and the environment in mining areas.

The Coal Authority response: Material Consideration

Condition 10 of the planning permission seeks to address coal mining legacy issues including the undertaking of intrusive site investigations and the implementation of any necessary remedial measures.

In terms of providing comments in relation to this planning application, it is noted that the submission is a reserved matters application in respect of outline planning approval reference 4/23/2076/001 and that there are no coal mining legacy features to dictate any layout.

On the basis that the coal mining legacy related issues as required by Condition 10 are in the process of being addressed (i.e. as confirmed in my consultation letter dated 10 October 2024 to 4/24/2336/DOC), the Coal Authority has no objection to this planning application. We look forward to receiving for consultation any further information in support of the discharge of condition application.

*21<sup>st</sup> October 2024*

Thank you for your notification of 21 October 2024 seeking the further views of the Coal Authority on the above.

The Coal Authority response:

Condition 10 of the planning permission seeks to address coal mining legacy issues including the undertaking of intrusive site investigations and the implementation of any necessary remedial measures.

The Coal Authority records indicate that the site has been subject to recorded underground coal mining at shallow depth. In this instance, our records indicate shallow coalmine workings in two seams of coal underlying the northeast and eastern part of the application site. The

seams are indicated to underlie the site at depths of only 5m and 11m with extraction thicknesses of 1.44m and 1.22m.

Voids and broken/disturbed ground associated with such workings can pose a risk of ground instability and may give rise to the emission of mine gases.

The applicant previously submitted a Phase II Ground Investigation Report (September 2024, prepared by GeoCon Site Investigations Ltd), in support of the discharge of the aforementioned condition. However, the content of the Report appeared to fail to identify the recorded workings, which we confirmed we know underlie the site, with only one borehole being advanced in the area affected. Whilst the borehole encountered an intact coal seam, we confirmed that the seam encountered could represent a pillar in an area of coal otherwise worked. Consequently, the Planning and Development Team at the Coal Authority considered that the Report failed to adequately assess the risks posed by recorded shallow coalmine workings and that the investigations undertaken were not so significant to the extent to establish those risks. We were therefore unable to recommend the LPA discharge Condition 10.

The Coal Authority is therefore now pleased to note the submitted letter (dated 18 October 2024) from GeoCon Site Investigations Ltd, which accompanies the application. The content of the letter confirms that if such coal mining features are beneath the eastern fringes of the site, they are at a depth not to pose risk to the development. Consequently, and on the basis that the content of the letter goes on to confirm that no further investigations are required, the Planning and Development Team at the Coal Authority would now raise no objections to the LPA discharging Condition 10.

*28<sup>th</sup> November 2024*

Further to your email below, please accept my apologies, I missed Condition 21, specifically as the condition would normally proceed the condition dedicated to coal mining legacy. Despite that, and on the basis of the information submitted, the Coal Authority is also able to recommend the LPA discharge Condition 21.

*20<sup>th</sup> January 2025*

Thank you for your further consultation email of 16 January 2025

The Coal Authority would not wish to raise any further observations, but would reiterate our comments of 21 October 2024 and 28 November 2024, which remain valid (i.e. no objections to the discharge of Conditions 10 and 21). We previously reviewed the Phase II Site Investigation Report (September 2024) and the Remediation Strategy (September 2024) appears to relate only to contaminated land issues etc.

Cumberland Council – Environmental Health

*28<sup>th</sup> October 2024*

Insofar as its remit is concerned, Environmental Health are satisfied that the Phase II Site





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Investigation Report adequately deals with any potential risks to human health and property from the contamination legacy on the site.

The comments from the Environment Agency about risk to controlled waters are noted.

Within the report, Table 4.2 Summary of Ground Conditions (p.9) appears to indicate that glacial till was not encountered in boreholes RO4, DS11 and DS17 respectively.

However the borehole logs for DS11 and DS17 do show that glacial till was encountered, albeit for little depth before obstructions ended the boreholes.

Till ground was not encountered on borehole RO4 but was on RO4a nearby.

At this point, Environmental Health will defer to negotiations between the Environment Agency and the Agent as to how this matter may be further addressed.

Condition 9 (Contamination Assessment) shall therefore be discharged upon the satisfaction of the Environment Agency about risk to controlled waters.

Likewise, the comments from The Coal Authority and the Agent on the coal mining investigation are also noted.

As such, Conditions 10 and 21 shall not be discharged until The Coal Authority are content with the investigations.

### **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 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

	<p>Copeland Local Plan 2013-2028 and the saved policies of the Copeland Local Plan 2021-2016.</p> <p>Planning approval 4/23/2053/0F1 was determined under the previous Local Plan, however this current discharge of conditions application is being considered under the Copeland Local Plan 2021-2016 as this now forms the development plan.</p> <p>Strategic Policy DS1: Settlement Hierarchy</p> <p>Strategic Policy DS2: Settlement Boundaries</p> <p>Policy DS4: Design and Development Standards</p> <p>Policy DS5: Hard and Soft Landscaping</p> <p>Strategic Policy DS6: Reducing Flood Risk</p> <p>Policy DS7: Sustainable Drainage</p> <p>Policy DS8: Soils, Contamination and Land Stability</p> <p>Strategic Policy H1: Improving the Housing Offer</p> <p>Strategic Policy H2: Housing Requirement</p> <p>Strategic Policy H3: Housing Delivery</p> <p>Strategic Policy H4: Distribution of Housing</p> <p>Strategic Policy H5: Housing Allocations</p> <p>Policy H6: New Housing Development</p> <p>Policy H7: Housing Density and Mix</p> <p>Strategic Policy N1: Conserving and Enhancing Biodiversity and Geodiversity</p> <p>Strategic Policy N2: Local Nature Recovery Networks</p> <p>Strategic Policy N3: Biodiversity Net Gain</p> <p>Strategic Policy BE1: Heritage Assets</p> <p>Policy BE2: Designated Heritage Asset</p> <p>Strategic Policy CO4: Sustainable Travel</p> <p>Policy CO5: Transport Hierarchy</p> <p>Policy CO7: Parking Standards</p> <p><b>Other Material Planning Considerations</b></p> <p>National Planning Policy Framework (2023)</p> <p>National Design Guide (NDG).</p>
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Cumbria Development Design Guide (CDG)

The Cumbria Landscape Character Guidance and Toolkit (CLGC)

### Assessment

The application seeks to discharge the requirements of conditions 5, 6, 8, 19 and 20 attached to the previous outline planning permission at this site. These are assessed separately below:

#### Condition 9:

This condition seeks to discharge the requirement for the development to provide details of a remediation strategy for the development. Following the submission of an addendum report and amended details for this application the EA, and Coal Authority have confirmed that the condition can be discharged

It is therefore confirmed that condition 9 can be discharged.

#### Condition 10:

This condition seeks to discharge the requirement for the development to provide details site investigations in relation to coal mining for the development. Based the amended detail submitted with this application, the Coal Authority have confirmed this condition can be discharged.

It is therefore confirmed that condition 10 can be discharged.

#### Condition 21:

This condition seeks to discharge the requirement for the development to provide details of the safety of the site in relation to coal mining. Based the amended detail submitted with this application, the Coal Authority have confirmed this condition can be discharged.

It is therefore confirmed that condition 21 can be discharged.

8.

### **Recommendation:**

Approve discharge of conditions 9, 10 and 21

**Case Officer:** C. Burns

**Date :** 17.02.2025

**Authorising Officer:** N.J. Hayhurst

**Date :** 19.02.2025

**Dedicated responses to:-** N/A