

## CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	<b>Reference No:</b>	4/25/2066/0B1
2.	<b>Proposed Development:</b>	VARIATION OF CONDITION 8 TO ENABLE SITE WORKS TO COMMENCE WITHIN THE AREA OF THE SITE UNAFFECTED BY FORMER MINE ENTRY LOCATION OF PLANNING APPLICATION 4/21/2504/001 - OUTLINE APPLICATION FOR DEMOLITION OF EXISTING CHAPEL & ERECTION OF 11 RESIDENTIAL DWELLINGS
3.	<b>Location:</b>	ST BEGAS CHURCH HALL, CROSSINGS CLOSE, CLEATOR MOOR
4.	<b>Parish:</b>	Cleator Moor
5.	<b>Constraints:</b>	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, PROWs - Public Right of Way
6.	<b>Publicity Representations &amp; Policy</b>	Neighbour Notification Letter: YES  Site Notice: YES  Press Notice: YES  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 which currently houses the St Bega's Roman Catholic Church which is situated off Crossings Close in Cleator Moor. The site is adjoined

by green fields to the southwest, a Public Right of Way (403017) to the east, Whitehaven Road to the north and existing residential dwellings to the northwest and south east.

The site is accessed directly from Crossings Close and currently includes the church building and a large, surfaced area which provides car parking. The site is partly located within the Coal Referral Area and within Flood Zones 2 and 3.

### **Relevant Planning History:**

Outline application for demolition of existing chapel building and the erection of 11 residential dwellings including full details of access, approved in March 2023 (application reference 4/21/2504/001 relates).

### **Proposal:**

This application seeks to vary condition 8 which was imposed on outline planning permission reference 4/21/2504/001. The wording of the condition was as follows:-

8. Prior to commencement of the development, a scheme of intrusive site investigations must be carried out on site to establish the risks posed to the development by the mine entry and its zone of influence. The findings of these investigations, including any remedial works necessary, must be submitted to the LPA for consideration and approval in writing.

### **Reason**

To ensure that the site ground conditions are safe and in accordance with Policy ST1 of the Copeland Local Plan.

Part of the site contains a former mine entry. The variation of the condition is required to enable site works to commence within the area of the site that is unaffected by the former mine entry location.

### **Consultation Responses**

<b>Consultee:</b>	<b>Nature of Response:</b>
Cleator Moor Town Council	1 <sup>st</sup> Response  Members wish to object to the application to vary condition 8 and believe this condition should remain as detailed in the original decision notice.

		<p>2<sup>nd</sup> Response</p> <p>With regards to this application members agreed with the inclusion of condition 8 and the reason for its inclusion and believe this condition should apply without variation until the assurances of ground safety are accepted by the Planning Authority.</p>
	Environmental Health	<p>As far as Environmental Health are concerned, there would be no objections if site works commenced on the phase 2 intrusive ground investigations as the next step.</p> <p>Given that site works are likely to encounter soil pollutants, an appointed geo-environmental consultant could further advise on the safe extent of any demolition works and seek their approval from the Local Planning Authority.</p>
	Highways and Local Lead Flood Authority	<p>Condition 8 - The Highway Authority did not recommend this condition therefore we have no comments to make.</p>
	The Coal Authority	<p>We would have <b>no objection</b> to the variation of Condition 8 subject to no development being undertaken in the area identified (yellow area) until site investigations have been carried out and any remedial works necessary implemented on site.</p>
	<b>Neighbour Responses:</b>	
	<p>1 letter of objection has been received raising the following concerns:</p> <ul style="list-style-type: none"> <li>The residents should be responsible for the access road.</li> </ul>	
	<p><b>Planning Policy</b></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 the 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>	

**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

Policy DS8 – Soils, Contamination and Land Stability

**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 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:**

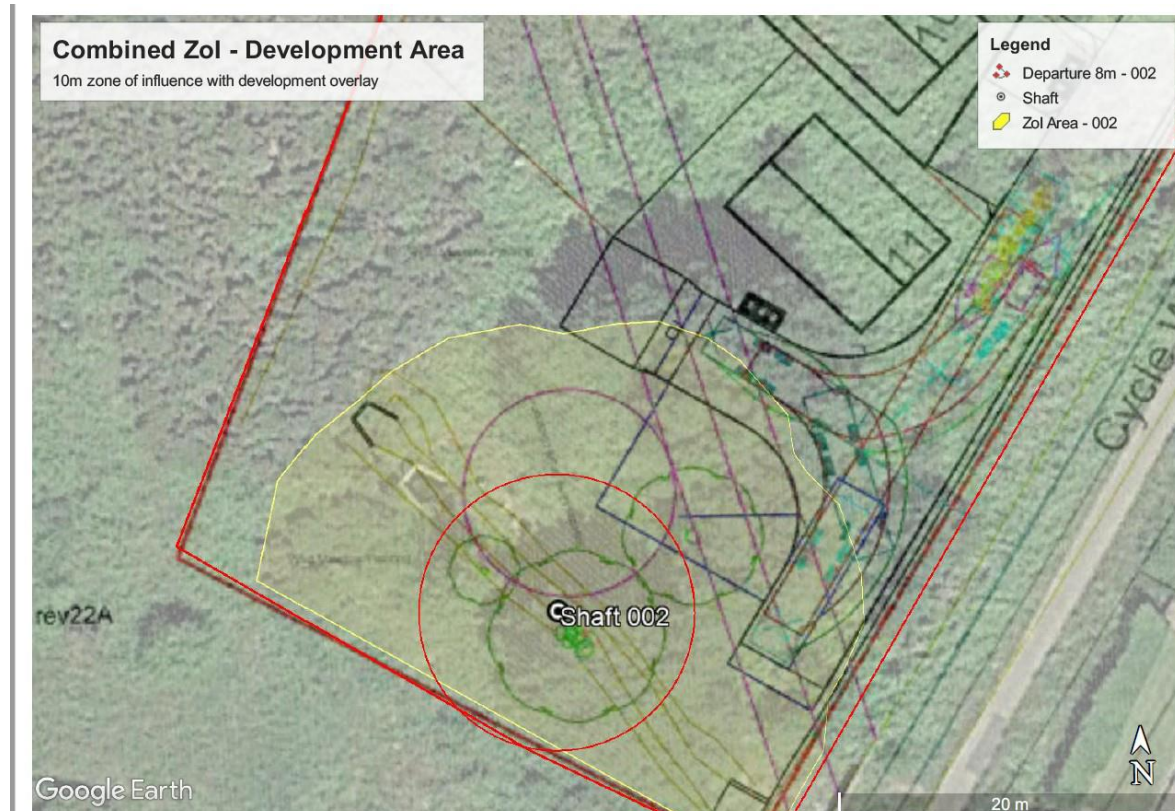
This application seeks to vary condition 8 of application reference 4/21/2504/001 to enable site works to commence within the area of the site unaffected by the former mine entry location.

As The Coal Authority requested the original condition and are considered to have in depth knowledge of the site, their response is most pertinent to the application. Their full response is set out below which details the acceptability of the variation of condition application.

We last commented on the application to which this variation of condition relates in a letter to the LPA dated 21st December 2022. In this response we raised no objections but did request the imposition of conditions for site investigations on any approval granted. We note the imposition of Condition 8 which requires the following:

*Prior to commencement of the development, a scheme of intrusive site investigations must be carried out on site to establish the risks posed to the development by the mine entry and its zone of influence. The findings of these investigations, including any remedial works necessary, must be submitted to the LPA for consideration and approval in writing.*

The applicant has now provided a letter dated 25th August 2022 and prepared by RGS. This letter appears to indicate that a positional review has been undertaken on the mine entry recorded to be within the site. This and its potential zone of influence have been used to identify the combined zoi shown on the plan. The plan referred to is included below.



It is noted that the applicant proposes that the wording of Condition 8 be amended to the following:

*Prior to commencement of the development within the potential zone of influence of the former mine entry, a scheme of intrusive site investigations shall be carried out on site to establish the risks posed to the development by the mine entry and its zone of influence. The findings of these investigations, including any remedial works necessary, shall be submitted to the LPA for consideration and approval in writing.*

The yellow area on the plan above shows the extent of the zone of influence from the mine entry calculated by RGS. We would have **no objection** to the variation of Condition 8 subject to no development being undertaken in the area identified (yellow area) until site investigations have been carried out and any remedial works necessary implemented on site.

On the basis of this response, the proposed change of wording and variation of the condition is considered to be acceptable.

#### Town Council Concerns

An objection was received from the Cleator Moor Town Council stating that the condition should remain as it was written, unless otherwise approved by the Local Planning Authority. As The Coal Authority are happy with the variation, the Town Council's concerns are considered to be satisfied.

One letter of objection has been received from a member of the public, however the concerns raised do not form part of this application and therefore cannot be considered.

#### 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 sometimes necessary to amend the wording of the conditions to reflect the details that have already been agreed but which require ongoing compliance. These are summarized below:-

Condition 1 – reserved matters for consideration – to remain as existing.

Condition 2 – commencement of development – to remain as existing.

Condition 3 – plans – to remain as existing.

Condition 4 – site investigations – to be discharged, to remain as previously worded.

Condition 5 – surface water drainage – to be discharged, to remain as previously worded.

Condition 6 – site investigations – to be discharged, to remain as previously worded.

Condition 7 – construction management plan - to be discharged, to remain as previously worded.

Condition 8 – site investigations – amended under this application.

Condition 9 – remediation strategy - to be discharged, to remain as previously worded.

	<p>Condition 10 – landscaping scheme - to be discharged, to remain as previously worded.</p> <p>Condition 11 – highways - to be discharged, to remain as previously worded.</p> <p>Condition 12 – visibility splays - to be discharged, to remain as previously worded.</p> <p>Condition 13 – plot 11 remedial works - to be discharged, to remain as previously worded.</p> <p>Condition 14 – plot 11 remedial works - to be discharged, to remain as previously worded.</p> <p>Condition 15 – signed declaration - to be discharged, to remain as previously worded.</p> <p>Condition 16 – drainage plan - to be discharged, to remain as previously worded.</p> <p>Condition 17 – access drive – to remain as previously worded.</p> <p>Condition 18 – provision of footways – to remain as previously worded.</p> <p>Condition 19 – foul and surface water drainage – to remain as previously worded.</p> <p>Condition 20 - surface water drainage – to remain as previously worded.</p>
8.	<p><b>Recommendation:</b></p> <p>Approve amendment of condition</p>
9.	<p><b>Conditions:</b></p> <ol style="list-style-type: none"> <li>1. The layout, scale, appearance and landscaping shall be as may be approved by the Local Planning Authority.</li> </ol> <p>Reason</p> <p>To comply with Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.</p> <ol style="list-style-type: none"> <li>2. Detailed plans and drawings with respect to the matters reserved for subsequent approval shall be submitted to the Local Planning Authority within three years of the 17<sup>th</sup> March 2023 and the development hereby permitted shall be commenced not later than the later of the following dates: <ol style="list-style-type: none"> <li>a) The expiration of 17<sup>th</sup> March 2026</li> </ol> <p>Or</p> <ol style="list-style-type: none"> <li>b) The expiration of TWO years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be</li> </ol> </li> </ol>

approved.

Reason

To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

3. 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: -

Site Location Plan, scale 1:1250, drawing number SNG-StBega-SLP-OPA, received 23rd November 2021;  
Proposed Site Plan, scale 1:500, drawing number SNG-SBOP-PSP22D, received 29th November 2022;  
Flood Risk Assessment, written by Betts Hydro, received 23rd November 2021;  
Coal Mining Risk Assessment, written by MBC Designs, received 23rd November 2021; Preliminary Ecological Appraisal, written by Elite Ecology, received 23rd November 2021;  
BS5837:2012 Tree Survey and Arboricultural Impact Assessment, written by Elite Ecology, received 23rd November 2021;  
Design and Access Statement, written by South North Group, received 23rd November 2021;  
Phase 1 Environmental Desk Study, written by Rogers Geotechnical Services Ltd, reference number C2064/21/E/3181, received 1st August 2022;  
Mine Entry Positional Review, written by RGS, received 3rd November 2022;  
Flood Risk Assessment and Drainage Management Strategy, written by Betts Hydro, received 31st August 2022;  
Flood Risk Assessment and Drainage Management Strategy Appendices, written by Betts Hydro, received 31st August 2022;  
Refuse Lorry Tracking Plan, scale 1:500, drawing number SNG-SBOP-PSP22RLT, received 3rd November 2022;  
Road Safety Audit, written by RG Parkins, reference K39555.RSAS2/001b, received 3rd November 2022;  
Road Safety Audit Appendices, written by RG Parkins, reference K39555.RSAS2/001b, received 3rd November 2022;  
Swept Path Analysis Fire Appliance Entering/Turning, scale 1:500, drawing number SK22283-003, received 3rd November 2022;  
Swept Path Analysis Fire Appliance Leaving, scale 1:500, drawing number SK22283004, received 3rd November 2022;  
Swept Path Analysis Refuse Collection Vehicle Entering/Turning, scale 1:500, drawing number SK22283-001, received 3rd November 2022;  
Swept Path Analysis Refuse Collection Vehicle Leaving, scale 1:500, drawing number SK22283-002, received 3rd November 2022;



Sequential and Exception Tests, written by South North Group, received 24th January 2023.

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.

4. Prior to, or concurrent with, the reserved matters submission for Plot 11, the findings of a scheme of intrusive site investigations to locate the mine entry within the plot must be submitted to the LPA for consideration. The information submitted must include recommendations for remedial works and mitigation measures necessary to ensure the safety and stability of the development. A plan must also be submitted to the LPA to show the location of the mine entry, as established, its calculated zone of influence and its relationship to the siting of the dwelling on Plot 11.

Reason

In order to ensure that the potential mining issues are dealt with safely and satisfactorily and in accordance with Policy DS8 of the Copeland Local Plan.

Prior to the Commencement of Development

5. Prior to the commencement of development hereby approved, a full surface water drainage scheme, including attenuation measures, must be submitted to and approved in writing by the Local Planning Authority. The approved scheme must become operational before the development is brought into use and must be so maintained thereafter.

Reason

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

6. Prior to the commencement of development hereby approved, a Phase 2 Intrusive Investigation must be undertaken and submitted in writing to the Local Planning Authority. Development must be carried out in accordance with any findings, recommendations and mitigation measures within the report for the entirety of the lifespan of the development.

	<p>Reason</p> <p>Due to the potential range of potential soil / ground contaminants, the risk of mine gas migration and further study to substantiate the risk associated with historical mine shafts on the site and in accordance with Policy DS8 of the Copeland Local Plan.</p>
7.	<p>Prior to the commencement of the development hereby approved, a construction management plan or construction method statement must be submitted to and approved in writing by the Local Planning Authority. The approved / plan statement shall be adhered throughout demolition / construction period.</p> <p>Reason</p> <p>To ensure a satisfactory level of demolition and construction and in accordance with Policy DS8 of the Copeland Local Plan.</p>
8.	<p>Prior to commencement of the development within the potential zone of influence of the former mine entry, a scheme of intrusive site investigations shall be carried out on site to establish the risks posed to the development by the mine entry and its zone of influence. The findings of these investigations, including any remedial works necessary, shall be submitted to the LPA for consideration and approval in writing.</p> <p>Reason</p> <p>To ensure that the site ground conditions are safe and in accordance with Policy DS8 of the Copeland Local Plan.</p>
9.	<p>No development approved by this planning permission must 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:</p> <ol style="list-style-type: none"> <li>1. A site investigation scheme, 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.</li> <li>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.</li> <li>3. A verification plan providing details of the data that will be collected in order to</li> </ol>

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 line with paragraph 170 of the National Planning Policy Framework.

10. Prior to the commencement of the development hereby approved, full details of the landscaping scheme for the development, including details of trees and hedgerows to be removed and replacement trees, their planting and maintenance, must be submitted to and approved in writing by the Local Planning Authority. The development must be carried out in accordance with the approved details and retained and managed as such at all times thereafter.

**Reason**

In order to ensure that the site includes net gain and in accordance with Policy DS5 of the Copeland Local Plan.

11. Prior to the commencement of the development hereby approved, the carriageway, footways, footpaths, cycleways etc must be designed, constructed and drained to the satisfaction of the Local Planning Authority and in this respect further details, including longitudinal/cross sections, must be submitted for approval. No work will be commenced until a full specification has been approved. Any works so approved must be constructed before the development is complete.

**Reason**

To ensure a minimum standard of construction in the interests of highway safety and in accordance with Policies CO4 and CO7 of the Copeland Local Plan.

12. Prior to the commencement of the development on site, a 2.0 metre x 2.0 metre pedestrian visibility sight splay as measured from the highway boundary (or footpath boundary), must be provided on both sides of the vehicular access. There must be no obstruction above a height of 600mm as measured from the finished surface of the access within the area of the visibility sight splays thereafter.

Reason

To provide adequate inter-visibility between the pedestrians and users of the access and the existing public highway for the safety and convenience of users of the highway and of the access and in accordance with Policies CO4 and CO7 of the Copeland Local Plan.

Prior to the Commencement of Works on Plot 11

13. If the mine entry is found to be located outside of Plot 11 remedial works must be carried out on site to stabilise this feature prior to the infrastructure (access road and turning head) being constructed to the front and side of this plot. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

Reason

To ensure that historic mining issues on the site are dealt with effectively and in accordance with Policy DS8 of the Copeland Local Plan.

14. Prior to commencement of the development on Plot 11 the remedial works necessary to ensure the stability and safety of the mine entry and the development as a whole, including any mitigation measures required must be implemented on site. The intrusive site investigations and remedial works must be carried out in accordance with authoritative UK guidance.

Reason

To ensure that historic mining issues on the site are dealt with effectively and in accordance with Policy DS8 of the Copeland Local Plan.

Prior to Occupation Conditions

15. Prior to the occupation of Plots 10 and 11, 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 the Local Planning Authority for approval in writing. This document must confirm the completion of any remedial works and/or mitigation necessary to address the risks posed by the mine entry.

Reason

To ensure that historic mining issues on the site are dealt with effectively and in accordance with Policy DS8 of the Copeland Local Plan.

16. Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum: a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime. The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason

To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development and in accordance with Policies DS6 and DS7 of the Copeland Local Plan.

17. Prior to the first occupation of the dwellings hereby approved, the access drive must be surfaced in bituminous or cement bound materials, or otherwise bound. This surfacing must extend for a distance of at least 5 metres inside the site, as measured from the carriageway edge of the adjacent highway.

Reason

In the interests of highway safety and in accordance with Policies CO4 and CO7 of the Copeland Local Plan.

18. Prior to the first occupation of the dwellings hereby approved, footways must be provided that link continuously and conveniently to the nearest existing footway.

Reason

To ensure highway safety and in accordance with Policies CO4 and CO7 of the Copeland Local Plan.

### Other Conditions

19. Foul and surface water must be drained on separate systems.

#### Reason

To secure proper drainage and to manage the risk of flooding and pollution and in accordance with Policies DS6 and DS7 of the Copeland Local Plan.

20. No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development must be carried out in accordance with the approved details.

#### 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 caused by mobilised contaminants and in accordance with Policy DS8 of the Copeland Local Plan.

### **Informative Notes**

1. The proposed development lies within an area that has been defined by The Coal Authority as containing potential hazards arising from coal mining. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological fissures; mine gas and previous surface mining sites. Although such hazards are often not readily visible, they can often be present and problems can occur as a result of development taking place, or can occur at some time in the future. It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required, be submitted alongside any subsequent application for Building Regulations approval. Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires the prior written permission of The Coal Authority. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain Coal Authority permission for such activities is trespass, with the potential for court action. Property specific summary

information on coal mining can be obtained from The Coal Authority's Property Search Service on 0845 762 6848 or at [www.groundstability.com](http://www.groundstability.com) <<http://www.groundstability.com>>

2. Japanese Knotweed has been identified on the site. The site should be thoroughly inspected and reference made to Code of Practice For The Treatment of Japanese Knotweed PCA 2018 and INNSA 2017 respectively.

3. The development lies within an area of elevated Radon potential, with a maximum potential of 10 – 30%. Please refer to UKradon.org.

4. It should be noted that where SUDs are proposed as part of the development scheme consideration will need to be given to the implications of this in relation to the stability and public safety risks posed by coal mining legacy. The developer should seek their own advice from a technically competent person to ensure that a proper assessment has been made of the potential interaction between hydrology, the proposed drainage system and ground stability, including the implications this may have for any mine workings which may be present beneath the site.

5. The intrusive site investigations should be designed and undertaken by competent persons and should be appropriate to assess the ground conditions on the site in order to establish the coal-mining legacy present and the risks it may pose to the development and inform any remedial works and/or mitigation measures that may be necessary. The applicant should note that Permission is required from the Coal Authority Permit and Licensing Team before undertaking any activity, such as ground investigation and ground works, which may disturb coal property. Please note that any comments that the Coal Authority may have made in a Planning context are without prejudice to the outcomes of any Permit application.

6. The granting of planning permission would not give the applicant the right to block or obstruct the right of way adjacent to the development site. The right of way as shown on the definitive map and statement must be kept open and unaltered for public use, unless or until an order is made to divert, stop up or to temporarily close it comes into effect. The applicant should contact Copeland Borough Council in the first instance if they wish to discuss the process for an application for an order to divert, stop up or temporarily close a right of way shown on the definitive map and statement.

**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.

**Case Officer: Sarah Papaleo**

**Date : 02/05/2025**

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

**Date : 02/05/2025**

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