

CUMBERLAND COUNCIL DELEGATED PLANNING DECISION

1.	Reference No:	4/25/2326/0F1
2.	Proposed Development:	CHANGE OF USE OF WASTE GROUND TO FROM PART OF DOMESTIC GARDEN OF 4 DERWENTWATER CLOSE AND RETROSPECTIVE PERMISSION FOR ERECTION OF A 1.8M FENCE
3.	Location:	LAND TO THE EAST OF 4 DERWENTWATER CLOSE, MILLOM
4.	Parish:	Millom
5.	Constraints:	ASC;Adverts - ASC;Adverts Coal - Off Coalfield - Data Subject To Change Key Species - Potential areas for Natterjack Toads PROWs - Public Right of Way
6.	Publicity Representations &Policy	Neighbour Notification Letter: Yes Site Notice: No Press Notice: No Consultation Responses: See Report Relevant Policies: See Report
7.	Report: SITE AND LOCATION <p>This application site relates to and area of land to the rear of 4 Derwentwater Close, a detached property situated on an existing housing estate within Millom.</p> <p>The property benefits from a small garden area to the front including an existing driveway, and a modest size garden, adjacent to a Public Right of Way to the rear.</p> PROPOSAL <p>Planning permission is sought for a change of use of an area of waste ground beyond the curtilage of the properties rear garden to form an extension to the domestic garden, with retrospective permission for the erection of a 1.8 metre concrete post and panel fence to enclose the area.</p>	

The area to be extended lies to the East of the parent property.

The new fence to bound the site has already been erected and is 1.8 metres high and is constructed from concrete posts and panels.

RELEVANT PLANNING APPLICATION HISTORY

None relevant.

CONSULTATION RESPONSES

Millom Town Council - The council have no objections in principle to this application; however, concern was raised regarding the ownership of this piece of land as it was always an area separate from the houses and we know that the owners were trying to claim it as theirs. This area did have access to a footpath, but a resident did block up the access gateway some time ago. Could this area be investigated as to the ownership of the ground before any planning is granted for the fence.

Countryside Access Officer - We have no objection to the application. Public Right of Way - FP 415007 (Church Walk) passes along the boundary of the site. The applicant must be advised that:

- The granting of planning permission would not give them the right to obstruct, close or divert the public right of way shown on the attached plan.
- The public right of way as shown on the Definitive Map and Statement must be kept open and unaltered for public use until an order made to divert, stop up or to temporarily close it has been confirmed.

Public Representations

The application has been advertised by way of 4 neighbour consultations being sent – No representations have been received as a result of this consultation process.

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 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 5th 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:-

Policy DS4 – Design and Development Standards

Policy H14 – Domestic Extensions and Alterations

Policy N1 – Conserving and Enhancing Biodiversity and Geodiversity

Policy N3 – Biodiversity Net Gain

Other Material Planning Considerations

National Planning Policy Framework (NPPF, 2024)

Cumbria Development Design Guide

Wildlife and Countryside Act 1981

The Conservation of Habitats and Species Regulations 2017 (CHSR)

The Countryside & Rights of Way Act 2000

ASSESSMENT

The key issues raised by this proposal are the principle of development, its siting, scale and design, the potential impacts on residential amenity, Impact on the Public Right of Way and Ecology.

Principle of Development

The proposed application relates to a detached property located within a residential housing estate in Millom.

Policy H14 supports extensions and alterations to residential properties subject to detailed criteria, which are considered below.

On this basis, the principle of the development is therefore considered to be acceptable, and the extension satisfies Policy HS14 of the Copeland Local Plan and the National Planning Policy Framework.

Scale and Design

Policy DS4 and section 12 of the NPPF seek to promote high quality designs. Policy H14 supports extensions where the scale, design and materials of the proposed development would not adversely alter the character or appearance of the existing building, street scene or wider surrounding area.

The proposal comprises a change of use for a small parcel of unowned, overgrown vacant land to be made into a domestic garden for the property known as 4 Derwentwater Close. The vacant plot is located to the rear (East) of the parent property and is considered to be suitably located and cannot be seen from the street scene. The change of use of the land to a domestic garden is acceptable in principle as it is already adjacent to the existing garden of 4 Derwentwater Close.

The scale and design of the proposed new garden area will not create any overlooking, security or privacy issues for the neighbours and following a site visit, has already been bound with a 1.8-metre-high fence. The fence is appropriate in scale, height and design and is similar in appearance to other neighbouring property fences/walls that currently already exist within this locality. It is therefore considered that the proposal would not impact upon the character and appearance of the existing property itself, nor would it impact upon the character of the wider residential area.

On this basis, the proposal is considered to meet Policy DS4 and H14 of the Copeland Local Plan and NPPF guidance.

Residential Amenity

Policy H14 and section 12 of the NPPF seek to safeguard good levels of residential amenity. As part of the consultation process, no objections have been received from neighbouring properties.



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There are two different aspects that have been assessed as part of this submission - The change of use of the land to increase the curtilage of number 4 Derwentwater Close to form a domestic garden, and the erection of a 1.8-metre-high fence to bound the site.

The proposed change of use of a vacant area of land to the rear is considered to be modest in overall scale. The proposed additional area to form an extended garden does not materially change the situation for the neighbouring properties, where they were previously bound by residential gardens/green space on either side.

There were comments received as part of the consultation process regarding the ownership of this piece of land. It is understood that the area of land has been neglected and was significantly overgrown and contained tipped waste and building material prior to it being cleared recently by the applicant. Despite the best efforts of the applicant following all available avenues to locate the owner/s, none have come forward. It is therefore considered that the granting of permission for this land would be in the best interests of both the applicant and the wider residential area to ensure that amenity is restored and the land can continue to be maintained appropriately.

The rear boundary of the proposed new garden area now aligns with the existing rear garden boundaries of the other dwellings located on Bowness Road. The development therefore does not protrude onto the Green Wedge or the existing public footpath, and thus, in my opinion, creates a more positive impact on the surrounding area.

In addition, the application seeks retrospective permission to erect a 1.8-metre-high concrete panel and post fence, which is already in situ. The fence is not considered to have a significant impact upon the residential amenities of the adjoining properties or result in loss of light or privacy.

In order to ensure that residential amenity is further protected, an appropriately worded Planning condition is attached to the decision notice to remove the permitted development rights relating to any alterations/additions or the erection of any extensions/buildings to the proposed garden extension, to ensure any proposed uses are controlled and to further safeguard the character and appearance of the development in the interests of residential amenity.

On this basis, there are no detrimental residential amenity issues considered as part of this

proposal; therefore, the proposal is considered to satisfy Policy H14 and the NPPF.

Impact on the Public Right of Way

Existing Public Rights of Way are protected by law and therefore do not need Policy protection, however Strategic Policy CO6 and The Countryside and Rights of Way Act 2000 seeks to exercise statutory rights of access. On this basis, as the Public Right of Way FP 415007 is directly adjacent to the proposed development, consideration must be given to the potential impacts on both the physical and amenity of the footpath.

A site visit confirmed the PRoW runs to the South-East adjacent to the proposal, however, the proposal will not interfere with the footpath, nor will it significantly harm the physical footpath, or the amenity of the user.

Furthermore, no objections were received from the Countryside Access Footpaths Officer, however the applicant is advised to ensure that the PROW is kept clear at all times for use by the public. This can be included as an informative on the decision notice, and therefore the proposal is considered to satisfy Policy CO6 and the NPPF guidance.

Ecology and Biodiversity

Policy N1 outlines how the Council will protect and enhance the biodiversity and geodiversity within the Borough, and defines a mitigation hierarchy.

Policy N3 requires that all development, with the exception of that listed in the Environment Act must provide a minimum of 10% biodiversity net gain over and above existing site levels, following the application of the mitigation hierarchy set out in Policy N1. This is in addition to any compensatory habitat provided under Policy N1. It is stated net gain should be delivered on site where possible and where on-site provision is not appropriate, provision must be made elsewhere in accordance with a defined order of preference.

In England, BNG is now mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Applications must now deliver a Biodiversity Net Gain of 10%, resulting in more or better-quality natural habitat than there was before the development. Some developments are however except from these BNG requirements, including householder developments, .

The application site is also identified as a potential area for natterjack toads.



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	<p>In this instance the development is considered exempt from BNG as the development falls within the definition of a householder application. In addition, the development is considered to have a de minimis impact on onsite habitat as the application site is not located within 200m of a watercourse (as indicated within the ALGE trigger list) and is within an existing built-up area and the site has already been cleared.</p> <p>On this basis, it is considered that this is not a habitat that is likely to contain natterjack toads and so it would not be necessary to seek an ecological survey for this minor application. However, the applicant has stated within their supporting statement that the established trees on site will be retained, and further planting will take place to encourage further wildlife habitats.</p> <p>On this basis, it is considered that the development complies with the requirements of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 and Policies N1 and N3 of the Copeland Local Plan and the provisions of the NPPF.</p> <p>Planning Balance and Conclusion</p> <p>The application seeks permission for a change of use of a small parcel of unowned, vacant land beyond the curtilage of the properties rear garden to form an extension to the domestic curtilage and garden of 4 Derwentwater Close, with retrospective permission for the erection of a 1.8 metre concrete post and panel fence.</p> <p>The proposed development is considered to be appropriate in scale and design within the street-scene and will not have any detrimental impact upon the amenities of the neighbouring properties, users of the Public Right of Way, or ecology.</p> <p>On balance, the proposed works represent an acceptable form of development which accords with the policies set within the Copeland Local Plan and the guidance in the NPPF.</p>
8.	<p>Recommendation:</p> <p>Approve (commence within 3 years)</p>
9.	<p>Condition(s):</p> <ol style="list-style-type: none">1. The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.

Reason

To comply with Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

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 18th September 2025
- Design & Access Statement, received 18th September 2025
- Site Location Plan, scale 1:1250, received 18th September 2025
- Site Block Plan, scale 1:500, received 18th September 2025
- Covering Letter, received 18th September 2025
- Biodiversity Net Gain Exemption Statement, received 18th September 2025
- Newspaper Article, received 18th September 2025
- Supporting Photographs, received 18th September 2025

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.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking or re-enacting that Order with or without modification) no buildings, enclosures, extensions, porch, domestic fuel container, pool or hardstanding be constructed within the extended garden curtilage without the prior written consent of the Local Planning Authority.

Reason

To safeguard the traditional appearance of the site in the interests of visual amenity.

Informative Notes:

Biodiversity Net Gain – Exemption

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may



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not begin unless: (a) a Biodiversity Gain Plan has been submitted to the local planning authority, and (b) the local planning authority has approved the plan. The planning authority, for the purposes of the Biodiversity Gain Plan is Cumberland Council. Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Applicable exemption: Householder development.

PRoW:

- The granting of planning permission would give the applicant the right to obstruct, close or divert the Public right of way FP 415007.
- The Public right of way must be kept open and unaltered for public use until an order made to divert, stop up or to temporarily close it has been confirmed.

Statement:

The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and negotiating with the applicants acceptable amendments to address them. As a result the Local Planning Authority has been able to grant planning permission for an acceptable proposal in accordance with Copeland Local Plan policies and the presumption in favour of sustainable development as set out in the National Planning Policy Framework.

Case Officer: Demi Crawford

Date : 10.11.2025

Authorising Officer: N.J. Hayhurst

Date : 13.11.2025

Dedicated responses to:- N/A