



# H.F.T. GOUGH & Co.

## SOLICITORS

38/42 Lowther Street, Whitehaven, Cumbria, CA28 7JU

Telephone: 01946 692461

Fax: 01946 692015

e-mail: [admin@goughs-solicitors.com](mailto:admin@goughs-solicitors.com)

Mr C Harrison  
Copeland Borough Council  
The Copeland Centre  
Catherine Street  
Whitehaven  
Cumbria CA28 7SJ  
Email: [Christopher.harrison@copeland.gov.uk](mailto:Christopher.harrison@copeland.gov.uk)

Your Ref: -

Our ref: MTS/MF/NC27974

Date 8 March 2022

Contact

Dear Mr Harrison

**Re: Application 4/21/2416/DOC Discharge of Conditions 4 and 7 of Planning Approval 2/18/2472/O01 – Keekle Meadows, Cleator Moor, Cumbria**

We are instructed by the Applicant in relation to the above application. This letter solely concerns matters relating to the discharge of condition 4 of Planning Approval 4/18/2472/O01. In particular we have been requested to advise in relation to the letter dated 7 February 2022 (the letter) from Paul Telford, Development Management Officer, Cumbria County Council.

The letter under the heading condition 4 whilst somewhat confusing concludes with the sentence: "I would therefore suggest that the Applicant contacts our Sec 38 Team to discuss this matter and get at least technical approval prior to re-submitting".

It is implied that the Highway Authority are unwilling to provide a substantive response to the consultation unless the above request is followed.

### Condition 4

Planning permission 4/18/2335/0B1. The condition states:

"The carriageway, footways, footpaths and cycleways shall be designed, constructed, drained and lit to a standard suitable for adoption; and in this respect further details, including longitudinal/cross sections, shall be submitted to the local Planning Authority for approval before work commences on site. No work shall be commenced until a specification has been approved. These details shall be in accordance with the standards laid down in the Cumbria Design Guide".

/ Continued

The wording and construction of the condition requires further details including longitudinal/cross sections to be submitted to the Local Planning Authority for approval. This submission must be made before work commences on site. No work shall commence until a full specification has been approved. The condition has a further requirement that the details shall be in accordance with standards laid down in the current Cumbria Design Guide.

The procedure for discharging the planning condition is set out in the Town and Country Planning (Development Management Procedure) ("the DMP") (England) Order 2015.

The appropriate fee has been paid for the application to discharge the condition under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. By virtue of Part 4 of the DMP the Local Planning Authority is required to consult with the Highway Authority as the works referred to in condition 4 relate to the laying out of a new street. In turn the Highway Authority have a duty to respond to consultation.

For the purposes of this application the Local Authority has provided the Highway Authority with such information as would enable that person to provide a substantive response. In return the Highway Authority should have given a substantive response in the form of one of the following:

- (a) States that the consultee has no comment to make;
- (b) States, on the basis of the information available, the consultee is content with the development proposed;
- (c) Refers a consultor to current standing advice by the consultee and the subject of consultation; or
- (d) Provides advice to the consultor.

Advice that the Applicant should contact the Highway Authority's Sec 38 Team to discuss the matter and get at least technical approval prior to re-submitting is not substantive advice.

The information submitted by the Applicant is either adequate or inadequate. The entire purpose of the Local Planning Authority consulting the Highway Authority on this matter is to request that a statutory body with appropriate knowledge appraises the information and is able to conclude either that:

- (a) The information provided is suitable and that the application should be approved or;
- (b) That the Highway Authority provides advice to the Local Planning Authority as to why information submitted is inadequate (see d above) to enable the Local Planning Authority to either decide whether the refusal of the application on the basis of the advice provided by the Highway Authority is justified or to identify any missing information which if provided would enable the Highway Authority to state that they are content with the development proposed (b above).

/ Continued

The Highway Authority clearly has the resources and the technical capabilities to provide this advice. The fact that this resource may, by the Highway Authority's choosing be within the Sec 38 Team is not a matter for the Local Planning Authority or the Applicant. By not providing a response in accordance with the DMP the Highway Authority is acting unreasonably and is failing to discharge its statutory duty. Furthermore, the fact that the Highway Authority is aware that if the Applicant contacts the Sec 38 Team directly the Applicant will be requested to pay a fee for this service is both unreasonable and unlawful. The Applicant has paid the correct fee set by Parliament for the approval the Applicant seeks.

We refer you to Section 22 (3) of the DMP – Duty to respond to consultation. This section prescribes for the purposes of Section 54 (4) (a) of the 2004 Act for a period of 21 days to respond to consultation. The Highway Authority have confirmed that they received the Local Planning Authority's consultation on the 31 October 2021. They failed to provide a response within the 21 day period. Following a period of 99 days the Highway Authority have produced a response which is both unreasonable and potentially unlawful. The response cannot reasonably be considered as advice and is effectively no comment. We therefore suggest that the details submitted in relation to condition 4 should now be approved.

If the Local Planning Authority choose to request that the Highway Authority provide a response which is compliant with the DMP the Highway Authority should be afforded no greater period than 21 days for response.

We look forward to hearing from you.

Yours faithfully

H F T Gough & Co