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Your Ref: -

Our ref: MTS/MF/NC28298

Date 5 June 2023

Contact [mts@goughs-solicitors.com](mailto:mts@goughs-solicitors.com)

Dear Mr Harrison

**Re: Planning Application 4/23/2104/001**

**Land to the southwest of Summergrove Park, Whitehaven, Cumbria  
Outline Application for Residential Development of up to 40 Self-Build Plots  
including details of Access and all other Matters Reserved**

I refer to the above application and in particular the letter dated 9 May 2023 forming the consultation response from the Local Highway Authority (LHA) and Lead Local Flood Authority (LLFA). The LHA and LLFA advise that they have no objections to the proposal subject to conditions. This is positive and together with the other supportive consultee responses indicates that this is a proposal which is acceptable in planning terms. As explained in my initial email response of 17 May 2023 the Applicant is concerned by suggested condition 9.

The proposed planning condition is considered to be defective in so far as it is considered to fail the statutory tests for imposing a planning condition. It should be noted that any condition suggested by a third party, such as a statutory consultee, must also meet the six Newbury tests. In addition to the six Newbury tests the condition fails in that it is positively worded and requires the payment of a sum of money as part of a planning permission. The LPA would be justified in granting planning permission for this development by simply omitting the LHA's suggested condition 9 as defective. The LPA is not bound to impose or revert to a consultee in relation to a suggested condition, particularly a condition which is manifestly defective. I appreciate that the LPA may also be considering whether the issue may be dealt with by way of a S106 Obligation. It should be noted that the Newbury tests apply equally to planning obligations.

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In terms of considering the basic test as to whether the proposed shared cycleway is necessary, reasonable and relevant to the proposed development the assessment contained in the letter should be considered in detail.

The letter appears to ignore the fact that the site is effectively phase 2 of a larger development. Planning permission 4/22/2237/001 was approved on the 8 March 2023 being phase 1. There are no physical boundaries between the two sites. The two sites will effectively be developed as one comprehensive development. This is an important consideration when assessing pedestrian and cycle links together with active travel generally.

Condition 7 of planning permission 4/22/2237/001 requires “shared footways and cycleways shall be provided that link continuously and convenient to West Lakes Science Park and Summergrove Park”. This shared footway and cycleway link must pass through the application site. A link will be provided at Summergrove Park with a similar link from the application site to connect to an existing footpath link into West Lakes Science Park. Please find enclosed various annotated versions of the public rights of way map. These plans show the following:

1. The first plan shows the existing network of paths, tracks and public rights of way connecting Summergrove Park, the West Cumberland Hospital and Sneckyeat Road, Hensingham. These routes currently provide footpath access to the site. The routes broadly reflect the proposed cycle network shown in the LCWIP. Indeed, link 17 in the LCWIP appears to link West Cumberland Hospital directly to the application site across fields. This route can easily be implemented by utilising and improving existing tracks and is marked B on the plan.

Route A1 is the existing connection of paths from Sneckyeat Road and the Copeland Stadium to the Galemire crossroads. This provides a connection through Summergrove Park and via the proposed footway and cycleway links within the site along route A2 connecting with route B and connecting into the existing path/shared use route into West Lakes Science Park. The connecting path into West Lakes Science Park currently exists. This path is likely to be prescriptive and it appears to be used without restriction. This network broadly provides links 17 and 18 as shown in the LCWIP together with the enhancements that the site will generate to allow pedestrian and cycle access to and from the site to a wide variety of employment and service locations.

2. A further marked up plan shows the entry and access points to existing network and onwards to the NC72.

Statements made in the LHA letter in relation to West Lakes Science Park are not entirely accurate. West Lakes Science Park positively encourages sustainability and active travel. West Lakes Science Park is considered to be a safe and cycle friendly environment. Furthermore, it has dedicated pedestrian routes including the West Lakes steam trail. It would be disingenuous to suggest that West Lakes does not offer a positive environment for walking and cycling.

The West Lakes Science Park has a dedicated connection to the NC72. We enclose photographs of the site entrance. Crossing arrangements which exist on the A595 for pedestrians and cyclists. This crossing leads to the following:

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- (a) A wide pedestrian footway;
- (b) A purposely designed refuge for cyclists which allows a safe connection on to the specific cycleway link connecting with the NC72.

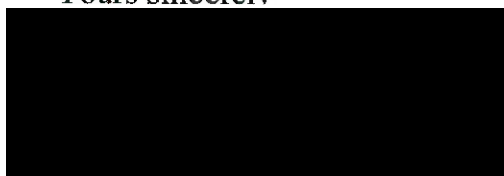
The footway and cycleway linked to Summergrove Park will allow safe pedestrian access through Summergrove Park to the Galemire crossroads (served by footways). These footways then continue through Padstow to the B5295 at Keekle. Regular bus services between Whitehaven and Cleator Moor run along the B5295. Similarly, Stagecoach service runs along the A595 and there is a dedicated bus stop for the West Lakes Science Park. This route typically connects to Whitehaven, Egremont and Sellafield.

The application site has a very good pedestrian and cycle connections which will be further enhanced by the development. A proposed request for £260,000.00 towards a shared cycleway link along Dalzell Street is unjustified. The application site utilises the same site entrance as application 4/22/2237/001. No such request was made in respect of the earlier application. It is unclear how the LHA would secure the proposed shared cycleway and which other parties would contribute. The proposal will enhance and improve pedestrian and cycleway links complimenting and enhancing the proposals in the LCWIP.

On the basis of the LHA's response of no objections subject to conditions and the fact that suggested condition 9 is demonstrably unlawful there is no reason why the LPA cannot proceed to positively determine this application. Approval of this proposal together with the proposal approved under 4/22/2237/001 will deliver a comprehensive and cohesive form of development.

If you require any further information, please do not hesitate to contact me.

Yours sincerely



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