

## **Local Planning Authority Appeal Statement**

### **Appeal By:**

Mr Andrew Butler

### **Appeal Reference:**

APP/Z0923/W/22/3294623

### **Local Planning Authority Reference:**

4/19/2140/001

### **Proposal:**

Outline Application for Residential Development  
(With Full Details of Access) & Demolition of Derelict Barn

### **Site Address:**

Land To North of Ennerdale Country House Hotel, Cleator

## **1. Introduction:**

- 1.1 The Appeal Site comprises a parcel of land located to the north of the Ennerdale Country House Hotel, Cleator, Cumbria.
- 1.2 The Appeal Site comprises a collection of former agricultural buildings which are in varying states of repair/decay.
- 1.3 The Appeal Site is the subject of extensive tree cover.
- 1.4 The Appeal Site is bounded by the Ennerdale Country House Hotel to the south/west; the A5086 to the north/east; and, the residential development of Howthorne Fields to the north/east.
- 1.5 The Ennerdale County House Hotel is Grade II Listed.
- 1.6 A group of trees the subject of a Tree Protection Order are located to the east of the Appeal Site.
- 1.7 Access to the Appeal Site exists from the A5086 to the west.

## **2. Decision of Local Planning Authority:**

- 2.1 On the 27<sup>th</sup> October 2021, Members of the Copeland Borough Council Planning Panel resolved to refuse application reference 4/19/2140/001 for the following reason:

*Inadequate information has been submitted to demonstrate that the visibility splays of 2.4m x 60m identified as deliverable to the proposed vehicle access are appropriate to the known recorded 85th percentile traffic speeds on the A5086 which significantly exceed the designated 30mph speed limit of the highway. Inadequate information has also been submitted to demonstrate that a cost effective scheme of mitigating traffic calming is deliverable that will achieve a reduction in 85th percentile traffic speeds to a level that makes the visibility splays of 2.4m x 60m identified as deliverable to the proposed vehicle access appropriate. In the context of the above, it has not been demonstrated that the proposed will not result in unacceptable impacts upon highway safety or that such impacts can be cost effectively mitigated to an acceptable degree in conflict with the requirements of Policy T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.*

The Decision Notice was issued on the 29<sup>th</sup> October 2021.

## **3. Statement of Case:**

*Proposal and Proposed Access*

- 3.1 Outline Planning Application is sought with some matters reserved for residential development. Access is included within the Outline Planning Application with appearance, landscaping, layout and scale reserved for subsequent approval.
- 3.2 Access is proposed via a newly created access from the A5086.
- 3.3 Visibility splays of 2.4m x 60m are demonstrated as achievable to the newly created access.

#### *Third Party Speed Survey*

- 3.4 An Automated Traffic Count Survey (ATC Survey) was completed in the vicinity of the Appeal Site by Traffic Sense from 29<sup>th</sup> September 2018 to 5<sup>th</sup> October 2018 in support of Planning Application Reference 4/18/2536/0F1, which sought Full Planning Permission for a temporary construction access to the northwest of the Appeal Site.

The ATC Survey recorded average weekday 85th percentile speeds of:

- Northbound = 38.1mph
- Southbound = 37.9mph

#### *Applicant Speed Survey 1*

- 3.5 An Automated Traffic Count Survey (ATC Survey) was completed by Northern Link Traffic Data Consultancy between 12<sup>th</sup> August 2019 and 18<sup>th</sup> August 2019.

The ATC Survey recorded average weekday 85th percentile speeds of:

- Northbound = 36mph
- Southbound = 35mph

#### *Applicant Speed Survey 2*

- 3.6 An Automated Traffic Count Survey (ATC Survey) was completed by Northern Link Traffic Data Consultancy between 14<sup>th</sup> July 2020 and 22<sup>nd</sup> July 2020.

The ATC Survey recorded average weekday 85th percentile speeds of:

- Northbound = 36mph
- Southbound = 38mph

#### *Reliability of Applicant Speed Survey 1*

- 3.7 The conclusions of Applicant Speed Survey 1 were challenged by an objector to the development when the ATC Survey was being completed.
- 3.8 It was identified that unofficial 'slow down-tree cutting' signs had been placed by persons unknown either side of the road and survey point immediately prior to

the survey and removed following its completion. Evidence of the presence of the signage was provided.

- 3.9 Legal advice from the Solicitor of Copeland Borough Council and advice from Cumbria County Council – Highways confirmed that the conclusions of Applicant Speed Survey 1 cannot be relied upon.

*Reliability of Applicant Speed Survey 2*

- 3.10 The conclusions of the Applicant Speed Survey 2 were again challenged by an objector to the development.
- 3.11 It was identified that a yellow van was parked at the entrance to the Appeal Site for a period during the survey.
- 3.12 The survey was completed during Covid 19 times when traffic volumes were lower.
- 3.13 Legal advice from the Solicitor of Copeland Borough Council and advice from Cumbria County Council – Highways confirmed that the conclusions of Applicant Speed Survey 2 could be relied upon and the timing of the survey was acceptable.
- 3.14 Notwithstanding the above, the reliability of the survey data is considered to remain in question and it is considered caution must be exercised in assessing the conclusions.

*Calculation of Visibility Splay Requirements*

- 3.15 The Cumbria Development Design Guide (CDDG) states:

*It is always preferable to use actual recorded 85<sup>th</sup> percentile figures of traffic speeds on existing roads as they are the best method of generating an accurate design. Where actual speed data cannot be obtained then the next best method for identifying SSD [Stopping Site Distance] is to use the existing road's 'design' speed. If this is not known, then the final method is to use the road's posted speed limit to determine SSD.*

*It is always preferable to use the actual 85th percentile recorded figures of traffic speeds on existing roads. This is due to that data providing the best method for generating an accurate design. Figure V5 shown below shows a detailed selection of SSDs from MfS [Manual For Streets] which are suitable for existing roads that have had their 85<sup>th</sup>ile speed surveyed and found to be up to and including 37mph.*

*MfS uses an indicative ceiling of 37mph, below which its principles and guidance can be used with confidence. Above this threshold figure of 37mph it is therefore considered more appropriate to switch back to the DMRB figures which were used previously in all situations. It is important to appreciate when using the data from*

*DMRB [Design Manual for Roads and Bridges], that it was created by the Highways Agency, specifically to design for trunk roads and it is therefore not suitable for applying to residential streets without any critical analysis being done.*

#### *Visibility Splay Requirements*

- 3.16 Given that the data from Applicant Speed Survey 1 is not considered to be reliable, it must be discounted.
- 3.17 The Third Party Speed Survey identifies average weekday 85th percentile speeds of:
- Northbound = 38.1mph
  - Southbound = 37.9mph
- 3.18 The Applicant Speed Survey 2 identifies average weekday 85th percentile speeds of:
- Northbound = 36mph
  - Southbound = 38mph
- 3.19 Both the Third Party Speed Survey and Applicant Speed Survey 2 identify recorded 85th percentile traffic speeds exceeding 37mph; therefore, in accordance with the CDDG, the provisions of the DMRB are to be applied.
- 3.20 The DMRB requires visibility splays of 2.4m x 120m in each direction for a 40mph road.
- 3.21 The visibility splays of 2.4m x 60m demonstrated as achievable to the access fall considerably below the DMRB requirements for a 40mph road.
- 3.23 No reliable data has been provided by the Appellant to demonstrate traffic speeds below 37mph and which would enable the application of the MfS.

#### *Speed Reduction – Traffic Calming*

- 3.24 The Applicant has not prepared a scheme of traffic calming.
- 3.25 Cumbria County Council – Highways proposed the imposition of planning conditions on any planning permission that Copeland Borough Council were minded to approve, which included a requirement to implement a scheme of traffic calming on the A5086 at the expense of the Applicant. A base specification for the scheme was drafted by Cumbria County Council – Highways, with it confirmed that the details of any scheme are to be secured at a later stage.
- 3.26 Cumbria County Council – Highways state that the implementation of a scheme of traffic calming in alignment with the base specification prepared would result in a reduction in road speeds and so would deliver betterment of the safety of the proposed access and A5086 generally in this location.

- 3.27 Notwithstanding the above, no assessment, evidence or audit has been prepared or provided to demonstrate that a cost effective scheme of traffic calming can deliver a reduction in traffic speeds on the A5086 to a level that makes the visibility splays of 2.4m x 60m identified as deliverable to the proposed vehicle access accord with the requirements of the CDDG and thus mitigates the impacts of the development on highway safety to an acceptable degree.

#### **4. Conclusion**

- 4.1 For the reasons outlined in this Appeal Statement, the proposed development is in direct conflict with the requirements of Policy T1 of the Copeland Local Plan 2013-2028 and Paragraphs 110 and 111 of the National Planning Policy Framework.
- 4.2 It is respectfully requested that this appeal is dismissed.

#### **5. Planning Conditions .**

- 5.1 The required list of planning conditions to which Copeland Borough Council would agree if the appeal were to be allowed is contained at Annex A to this Appeal Statement.

## **Annex A**

### **Planning Conditions**

#### Standard Conditions

1. The layout, scale, appearance and landscaping shall be as may be approved by the Local Planning Authority.
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 date of this permission and the development hereby permitted shall be commenced not later than the later of the following dates:-
  - a) The expiration of THREE years from the date of this permission
  - Or
  - 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 approved.
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: -

Planning Application Form received 15<sup>th</sup> April 2019;

Site Location Plan – Flosch Farm, Cleator, Cumbria at scale 1:1250 received 15<sup>th</sup> April 2019;

As Existing Site Plan – Drawing No. 1072 01 Rev. - received 15<sup>th</sup> April 2019;

Indicative Site Plan – Drawing No. 1072 02 Rev. C received 15<sup>th</sup> April 2019 in approving details of position of access only;

Design and Access Statement – December 2018 received 15<sup>th</sup> April 2019;

Survey for Bats, Barn Owls & Breeding Birds – Flosch Farm, Cleator, Cumbria prepared by Steve Wake received 15<sup>th</sup> April 2019; and,

Tree Survey in relation to TIC for a Proposed Residential Development on Land at Flosch Farm, Cleator – April 2018 received 15<sup>th</sup> April 2019.

#### Pre-Commencement/Occupation

##### *Highways*

4. Prior to the commencement of development, a design for a traffic management scheme for the A5086 in accordance with the principles of A5086Cleator\_MH12022021 including full engineering, drainage, and construction details shall be submitted to and approved in writing by the Local Planning Authority. The approved traffic management scheme shall be implemented in accordance with the approved details prior to occupation of any dwelling.
5. No development shall commence until visibility splays providing clear visibility of 60 metres in both directions, measured 2.4 metres down the centre of the access road and the nearside channel line of the carriageway edge have been provided at the junction of the access road with

the A5086. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grow within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

6. No development shall commence until a full specification of the carriageways and footpaths associated with the development have been submitted to and approved in writing by the Local Planning Authority. The carriageways and footways associated with the development shall be designed, constructed, drained and lit to a standard suitable for adoption and as such shall be in accordance with the standards laid down in the current Cumbria Design Guide. Any works so approved shall be constructed before the development is complete.

7. No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of:

- Pre-construction road condition established by a detailed survey for accommodation works within the highways boundary conducted with a Highway Authority representative; with all post repairs carried out to the satisfaction of the Local Highway Authority at the applicants expense;
- Details of proposed crossings of the highway verge;
- Retained areas for vehicle parking, manoeuvring, loading and unloading for their specific purpose during the development;
- Cleaning of site entrances and the adjacent public highway;
- Details of proposed wheel washing facilities;
- The sheeting of all HGVs taking spoil to/from the site to prevent spillage or deposit of any materials on the highway;
- Construction vehicle routing;
- The management of junctions to and crossings of the public highway and other public rights of way/footway;
- Details of any proposed temporary access points (vehicular / pedestrian)
- Surface water management details during the construction phase

### *Drainage*

8. No development shall commence until a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed, maintained and managed in accordance with the approved details.



### *Construction*

9. No development hereby approved shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority.

The statement shall include:

- details of the means of access and parking for construction traffic and vehicles
- procedures for the loading and unloading of plant and materials
- details of the storage of plant and materials used in construction
- details of measures to control dust, emissions, sediments and pollutants arising from the development, specifically including measures to prevent the discharge of such materials to the River Ehen
- a scheme for recycling/disposing of waste resulting from construction works.

The approved Construction Method Statement and Management Plan shall be adhered to throughout the construction period.

### *Arboriculture*

10.

- a) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with Clause 7 of British Standard BS5837 - *Trees in Relation to Construction - Recommendations* has been submitted to and approved in writing by the Local Planning Authority.
- b) The tree protection measures shall be carried out as described and approved, and shall be maintained until the development is completed.

### *Heritage*

11. Prior to any demolition work the existing buildings affected by the proposed development shall be recorded in accordance with a Level 3 survey as described in the English Heritage document "Understanding Historic Buildings: A Guide to Good Recording Practice, 2006" and moreover within two months of that recording work being done three copies of the resultant Level 3 Survey Report shall be submitted to the Local Planning Authority.

### *Ecology*

12.

- a) No development shall begin unless and until a scheme detailing the method and timescales for the removal and disposal of Japanese Knotweed within the site has been submitted to and approved in writing by the Local Planning Authority.
- b) The removal and disposal of Japanese Knotweed shall be undertaken in accordance with the approved scheme in (a) above.

### Pre-Occupation

### *Highways*

13. No dwelling hereby approved shall be occupied until the approved carriageways and footways to serve such dwellings have been constructed in all respects to base course level and street lighting where it is to form part of the estate road has been provided and brought in to full operational use.

14. Before the dwellings are occupied the existing access to the highway shall be permanently closed and the highway crossing and boundary shall be reinstated in accordance with details which have been submitted to and approved by the Local Planning Authority.

### *Drainage*

15. Prior to the first occupation of the dwellings hereby approved A Sustainable Drainage Management and Maintenance Plan shall be submitted to and approved in writing to the Local Planning Authority.

The Management and Maintenance Plan shall include:

1. arrangements for adoption by an appropriate public body or statutory undertaker, or management and maintenance by a development management company; and
2. 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 be managed and maintained in accordance with the approved Plan for the lifetime of the development.

### Other Conditions

#### *Highways*

16. There shall be no vehicular access to or egress from the site other than via the approved access, unless otherwise agreed by the Local Planning Authority.

#### *Drainage*

17. Foul and surface water shall be drained on separate systems.

#### *Hours of Construction*

18. No construction work associated with the development hereby approved shall be carried out outside of the hours of 07.30 hours -18.00 hours Monday-Saturday, nor at any time on Sundays and bank holidays, unless otherwise agreed in writing by the local planning authority.

#### *Contamination*

19. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted to and obtained written approval from the Local Planning Authority for a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

#### *Ecology*

20. The development shall not proceed except in accordance with the mitigation strategy described in Survey for Bats, Barn Owls & Breeding Birds – Floss Farm, Cleator, Cumbria prepared by Steve Wake.