

## Planning Statement – Lane Head Gardens, Sandwith, Whitehaven

**Proposal:** New dwelling as replacement for an approved building conversion



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## **1.0 Introduction**

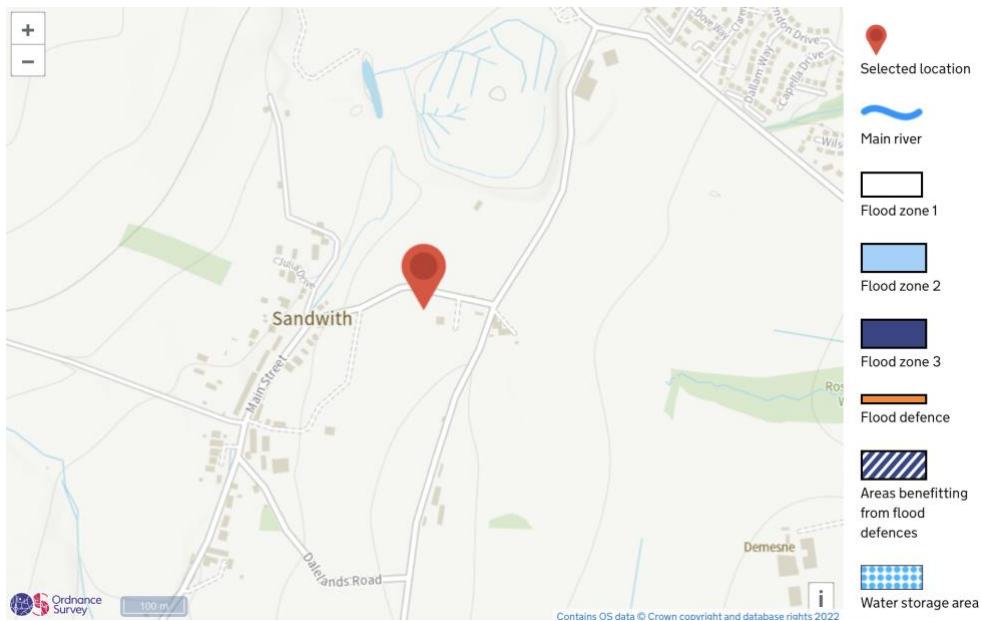
- 1.1 This planning statement has been prepared on behalf of the applicant in support of a planning application for a new dwelling on the site of an approved building conversion.
- 1.2 The application is submitted in full. The purpose of this statement is to set out the planning case in support of the development, and it should be read in conjunction with the plans submitted.
- 1.3 Section 2 of this Statement will set out the site's context, Section 3 covers the proposed development, Section 4 relates to the planning history of the site and surroundings, Section 5 will set out the planning policy context against which the application must be considered and undertakes a planning assessment of the proposed development and section 6 will draw together the conclusions.

## **2.0 The Site**

- 2.1 The application relates to a site at Lanehead Gardens, Sandwith, Whitehaven. The development site adjoins the applicants dwelling to the west, the unclassified road between Sandwith and Whitehaven the north and agricultural grass land to the south. Immediately to the east the site adjoins the road between Whitehaven and Rottington, and further to the east are the residential dwellings Lane Head, Hillcrest, Lane Head Cottage and Lane Head Smithy.
- 2.2 The site has previously been used as working horticultural nursery site. The topography of the land is generally flat, and it is contained by hedgerows and post and wire fences to the boundaries.
- 2.3 The application site is located close to the Whitehaven settlement boundary (180m away) and is therefore close to the local amenities of Whitehaven consisting of the West Cumberland Hospital, Primary Schools, churches, playparks, pubs, library, shops and supermarkets. Whitehaven is the Main Service Centre in the Borough as detailed in the Copeland Local Plan.
- 2.4 The A595 which runs through Copeland can be joined 2km from the site and provides easy access to both Sellafield and Whitehaven and continues north towards Carlisle, and Egremont and Sellafield to the south. The A595 links to the A66, 5 miles north of the site which connects to Penrith and Junction 40 of the M6 to the east.
- 2.5 In summary therefore, the site is situated near a long-established residential area that is within reach of a range of facilities that the Borough can offer.
- 2.6 There are no Conservation Areas, Listed Buildings or Tree Preservation Order's on or directly adjacent to the site as detailed on the Copeland GIS map below. The nearest TPO is approximately 300m to the west in Sandwith village, adjacent to the Main Street.



2.7 The existing building is located in an area that the Environment Agency Flood Map for Planning has noted as Flood Zone 1, and as such have a low probability of flooding. A copy of the Environment Agency’s Flood Map is included below.



### 3.0 The Proposed Development

- 3.1 The application is a full planning application for the proposed new dwelling on the site.
- 3.2 The proposed dwelling would utilise the existing access to the site from the road between Sandwith and Whitehaven.

- 3.3 The proposed scale of the development is a single dwelling on the site, as a suitable replacement for the existing building on the site, granted approval for a conversion to a single residential property.
- 3.4 The layout of the proposed development would take a build form similar to the existing building, having front and rear elevations to the north and south, with garden land to the south and parking and turning area to the west.
- 3.5 The proposed dwelling will have similar characteristics as the building in terms of scale and footprint on the site.
- 3.6 The application site is considered well related to other buildings and is not an isolated development. It is well connected to the road network, and it is considered that the development of the site in the proposed form is possible without having any adverse impact on residential amenity to the surrounding properties or the adjacent separate dwelling. The aim of the proposed development is to provide a new dwelling on the site of the building due to the cost implications of conversion against a new build.

#### **4.0 Planning history**

- 4.1 The following planning applications are all recent submissions at Lane Head Gardens:
- 4/21/2503/0F1 – Application to determine if prior approval is required for a proposed change of use from commercial to a dwelling including replacement of main roof
  - – Lane Head Gardens, Sandwith, Whitehaven – Approved
  - 4/15/2353/0G1 - Removal of condition 3 of planning approval 4/94/0027/0 regarding occupation of dwelling – Lane Head Gardens, Sandwith, Whitehaven - Withdrawn
  - 4/21/2375/0F1 – Prior approval for the change of use from an agricultural building into a dwelling – Lane Head Gardens, Sandwith, Whitehaven – Refuse
  - 4/15/2419/0E1 - Application for a lawful development certificate for an existing use – Lane Head Gardens, Sandwith, Whitehaven – Approved
  - 4/90/0107/0 - market garden with static caravan – Lane Head Gardens, Sandwith Whitehaven - Approved

#### **5.0 Planning Policy and its application to the proposed development**

- 5.1 Planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.2 The Local Development Plan consists of policies within the Core Strategy and Development Management Policies DPD (December 2013). The policies in the following paragraphs are considered relevant to the proposed development.
- 5.3 The Local Plan sets out a long-term spatial vision and strategic objectives to support Copeland’s vision which is “Working to improve lives, communities and the prosperity of Copeland”. Although it was adopted before the updated NPPF (2019) it was adopted after the first NPPF that was published in March 2012 and therefore closely follows the principles

of sustainable development, as defined by national policy and delivering sustainable housing in accordance with that policy.

#### Strategic Policies

- 5.4 **Policy ST1** of the core strategy sets out the fundamental principles that will achieve sustainable development. Amongst other things it seeks to ensure that development created a residential offer which meets the needs and aspirations of the Boroughs housing markers and aims to focus housing on previously developed land rather than greenfield sites.
- 5.5 **Policy ST2** sets a spatial development strategy whereby development should be guided to the Principal settlement and other service centres to help sustain services and facilities.
- 5.6 The above are the strategic policies with particular relevance to residential housing sites.
- 5.7 **Policy SS1** seeks to improve the housing offer of the borough by, amongst other things, by allowing housing sites to meet local needs in locations attractive to house builders and enhancing the general surrounding residential environment of the borough.
- 5.8 With regards to the above, it is noted that the site is within the vicinity of a number of residential properties in the village of Sandwith and is close to the main settlement in the Borough of Whitehaven.

The Council has previously acknowledged that there is a need to identify sites that: -

- Met the needs of the Local Plan and the NPPF (2012);
- Provided sustainable development;
- Help to meet the needs of Copeland and provide a sound basis for economic growth.

It is considered that that site meets the above, given the location on the edge of the main settlement, adjoining other residential properties and being a desirable location for new residential development of an appropriate scale.

- 5.9 **Policy SS3** requires housing development proposals to demonstrate how the proposal helps to deliver a range and choice of good quality and affordable homes for everyone. This is assessed by how well a proposal meets the identified needs and aspirations of the Borough's individual Housing Market Areas as set out in the Strategic Housing Market Assessment (SHMA). The aim of the policy is therefore to: -
- Create a more balanced mix of housing types and tenure within that market area, in line with the evidence provided in the SHMA;
  - Include a proportion of affordable housing which makes the maximum contribution (consistent with maintaining the viability of the development) to meeting identified needs in that market area.
- 5.10 **Policy ENV1** sets out an approach to ensure that new build development is not prejudiced by flood risk, by permitting new build on sites outside areas at risk of flooding, and ensuring that new development does not contribute to increased surface water run-off through measures such as Sustainable Drainage Systems.



- 5.11 The proposed development is located within Flood Zone 1 which the Environment Agency (EA) define as an area having less than 0.1% annual risk of flooding and is therefore at the lowest risk of flooding.
- 5.12 **Policy ENV3** seek to ensure that new development will protect and enhance biodiversity and geodiversity.
- 5.13 There are no designations or information available which suggests that the site is subject to any biodiversity interest.
- 5.14 **Policy ENV5** relates to the protection and enhancement of the Boroughs landscapes. It seeks to ensure that landscapes are protected from inappropriate change through unsympathetic development.
- 5.15 It is considered that the proposed development, being of small scale, adjoining an existing dwelling and previous residential approval on the site, is not an inappropriate change to the landscape.

#### Development Management Policies

##### Design

- 5.16 **Policy DM10** states the Council will expect high standard of design and the fostering of 'quality places' and development proposals will be required to: -
- Respond positively to the character of the site and the immediate and wider setting and enhance local distinctiveness through an appropriate size and arrangement of development plots, the appropriate scale and massing of houses;
  - Incorporate existing features of interest including local vernacular styles and building materials;
  - Address vulnerability to and fear of crime and anti-social behaviour by ensuring that the design, location and layout of all new development creates clear distinctions between public and private spaces, overlooked routes and spaces within and on the edges of development;
  - Create and maintain reasonable standards of general amenity.
- 5.17 It is considered that the above principles have been taken into account in the design and layout of the proposed development. The proposed dwelling on the layout plan is considered appropriate in form, design and size, and also the size is at an appropriate scale for the site and context of the adjacent dwelling. The proposed dwelling follows the shape and size of the building it is to replace to ensure it is appropriate in the landscape.

##### Residential Amenity

- 5.18 **Policy DM12** requires new build residential properties to have: -
- a separation distance of at least 21 metres between directly facing elevations of dwellings containing windows of habitable rooms
  - a separation of at least 12 metres between directly facing elevations of dwellings containing windows of habitable rooms and a gable or windowless elevation

- 5.19 It is noted that the layout confirms that the proposed dwelling would as detailed meet all of the above separation distances in relation to the existing dwelling on site, and the adjacent property outside of the site.

#### Drainage and Flood Risk

- 5.20 **Policy DM24** states where a proposed development is likely to be at risk from flooding or increases risk of flooding elsewhere, a Flood Risk Assessment (FRA) will be required to be submitted as part of the planning application. Development will not be permitted where it is found that there is an unacceptable risk of flooding; or the development would increase the risk of flooding elsewhere.
- 5.21 As mentioned above, the development area is located within a Flood Zone 1 in which the NPPF recognises that all uses types are therefore appropriate including residential new build.

#### Access and Transport

- 5.22 **Policy DM12** requires housing development to provide a car parking provision in accordance with adopted residential parking standards. Cumbria Highways have provided a Cumbria Development Design Guide but there are no adopted parking standards. The guidance provides a suggested level of parking for housing development.
- 5.23 The size of the proposed site can accommodate sufficient parking for a single dwelling. It is therefore considered that the proposed layout meets this criterion of Policy DM12.
- 5.24 **Policy DM22** requires development proposals to be accessible to all users by providing convenient access into and through the site for pedestrians, cyclists and disabled people, access for emergency and service vehicles, meeting adopted car parking standards which reflect the needs of the Borough in its rural context. Where necessary the potential transport implications of development will be required to be supported by a Transport Assessment and a Travel Plan to manage any significant transport implications.
- 5.25 Firstly, the site has a suitable access and parking area within the boundary, and the access has been utilised by the existing property for a number of years without issue. It also used to serve the nursery/market garden when previously in use. As mentioned above, the site is with 180m of the settlement boundary of the main town in the Borough. This allows good sustainability to the facilities in Whitehaven and allow sustainable transport links across the wider Borough. The proposal therefore meets the aims of local plan policies DM12 and DM22.

#### Ecology and Trees

- 5.26 **Policy DM25** states that all development proposals should protect the biodiversity value of land and buildings minimise fragmentation of habitats. As the proposed site is already the location of an existing barn building approved for conversion, it is considered that the biodiversity value of the site will not change.
- 5.27 **Policy DM28** requires development proposals which are likely to affect any trees within the Borough will be required to include an arboriculture assessment as to whether any of those

trees are worthy of retention and protection by means of a Tree Preservation Order. No trees will be removed on the site, again given the existing building and layout.

Principle – National Planning Policy Framework (“NPPF”) (as revised 2021)

5.28 The purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF states that sustainable development has three objectives social, economic and environmental listed within Paragraph 8.

5.29 The social and economic are as follows:

*”a) **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) **a social objective** – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being. “*

It is noted in the above that a central aim of the NPPF is to ensure that the right type of land is available in the right areas, to ensure that the correct housing is available to meet the needs of present generations.

5.30 Paragraph 11 covers the issue of the application of the presumption in favour of sustainable development.

*“For **decision-taking** this means:*

*Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

5.31 Paragraph 102 is regarding promoting sustainable transport, which is relevant to this proposal. *“Opportunities to promote walking, cycling and public transport use are identified and pursued.”* This continues in paragraph 103 stating *“The planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This can help to reduce congestion and emissions and improve air quality and public health. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.”*



- 5.32 Paragraph 79 is regarding the development of isolated homes in the countryside, and how planning policies and decisions should avoid this, with certain exceptions. However, on the basis of the information provided within this statement, it is considered that this is not an isolated development. It is one of two structures on the site (the other building an existing dwelling), so therefore is not isolated in the site context. In the site surroundings context, it is within a group at Lane Head consisting of 5 dwellings. Outside of the site it is only 180m away from the settlement boundary of the Copeland Local Plan for Whitehaven.

Copeland Borough Council Housing Land Supply Position Statement

- 5.33 In the Council's recent Housing Land Supply Position Statement, it states Copeland can now demonstrate a five-year housing land supply. However, this also states that Policy ST2 of the Copeland Local Plan 2013-2028 in so far as relating to development boundaries (Parts B and C) is out of date. This is on the basis that to meet the identified need for residential development outlined in the SHMA, development is required beyond the existing defined settlement boundaries. As such, in respect of decision making the provisions of Paragraph 11 of the NPPF are engaged.

On this basis the provisions of the presumption in favour of sustainable development outlined in Paragraph 11 of the national planning policy framework must be applied.

- 5.34 Whitehaven is defined in the Copeland Local Plan 2013 – 2028 as the main settlement where development should be focussed, reflecting its scale and function as the significant settlement in the Borough. It is also proposed to retain this status in the future Local Plan currently being prepared. This site is, as mentioned, 180m from the existing boundary. Indeed, further development within Whitehaven recently is a greater distance from the town centre than this location is. On this basis it is difficult to consider any planning argument that does not consider this site to be sustainable in terms of the guidance set out within the NPPF.

The Fallback Position

- 5.35 While it is noted that this is a new build not within a settlement boundary, the existing fallback position of the approved conversion should be taken into account when considering this application on the site.
- 5.36 In September 2017, a judgment in the case of Mansell v Tonbridge & Malling Borough Council [2017] EWCA Civ 1314 was handed down by the Court of Appeal. The case concerned the grant of planning permission for four houses on land currently occupied by an existing bungalow and a large agricultural building. In granting consent for four replacement houses, the Council took into account the fact that the barn could be converted to three houses under Class Q (agricultural to a residential dwelling) of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("Class Q"). A nearby resident was unhappy with the decision made, and bought a Judicial Review. The consent was initially quashed by the High Court, but reinstated by the Court of Appeal, who found it was legitimate for the Council to grant the consent, even though no application to convert the barn had been made.

The Court of Appeal held in Mansell, the fact that a building could be converted (the "fallback position") is a material consideration when considering a proposal for a new house or houses, provided that there is a realistic prospect of such development going ahead. Where such consent exists, or could reasonably be granted, then it is possible to design a brand new house and present a case to a Local Authority that there are benefits ("a betterment") in planning terms over and above any generated from the Class Q conversion.

5.37 When originally granting permission, the officer stated in his report:

*"In making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without any permission at all (historic use rights) or using permitted development rights for alternative forms of development.*

5.38 At the Court of Appeal, legal counsel for the appellant argued that the evidence did not demonstrate a real prospect as opposed to merely a theoretical prospect of such a development being carried out. He claimed that the judge should have recognised that the fallback development referred to in the officer's report was not a material consideration. In responding, the judge stated:

*"I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar...in this case...it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law."*

5.39 The relevant legal principles relating to fallback were set out in R v Secretary of State for the Environment and Havering BC (1998) EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fallback test:

*"First whether there is a fallback use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is "yes" a comparison must be made between the proposed development and the fallback use."*

5.40 An increasing number of determinations across the country have since recognised the fallback position as a legitimate material consideration. In the appeal case 3248009, the Inspector found in favour of the appellant and judged that, new dwellings would produce a better result than a fallback option allowing for a barn's residential conversion.

The Inspector found:

*"However, there is a realistic fallback position which would result in the same amount of housing being delivered in the same location, and in these circumstances, I afford the conflict with the development plan moderate weight. The appeal proposal would however deliver significant benefits to the appearance of the site compared to that fallback position, and this*

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*carries significant weight in favour of the appeal proposal. Overall, taking account of the Framework and the above considerations, I find that the benefits of the proposed development compared to the identified fallback position are a material consideration which outweighs the conflict with the development plan and justifies granting planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.”*

- 5.41 Therefore it is considered that the fact that there is already a residential property approved on the site should be factored into the decision-making process on this application. The applicant wishes to commence with a new build rather than the approved conversion, due to the additional cost and time of bringing the structure up to habitable standard. It also allows them the opportunity to improve the proposed internal layout, and the external elevations to provide a more aesthetically pleasing dwelling, and provide a more useable home.

## **6.0 Conclusion**

- 6.1 The proposed development provides the opportunity for a dwelling on a site that is considered suitable for residential use.
- 6.2 The land is currently occupied by a building that has previously received planning permission for a residential dwelling.
- 6.3 The proposed development has been sensitively designed to take into account the site characteristics, surroundings, wider location and the existing building.
- 6.4 It is considered that any impact on anyone outside of the site has been minimised by the proposed development.
- 6.5 It is contended therefore that the proposed development is acceptable and is in accordance with both national and local planning policy, and therefore should be approved.

Simon Blacker MRTPI