To: The Chair and Members of the Development Control and Regulation Committee

Agenda

DEVELOPMENT CONTROL AND REGULATION COMMITTEE

A meeting of the Development Control and Regulation Committee will be held as follows:

Date: Tuesday 13 August 2019
Time: 10.00 am
Place: Council Chamber - County Offices, Kendal, LA9 4RQ

Dawn Roberts
Executive Director – Corporate, Customer and Community Services

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Serving the People of Cumbria
MEMBERSHIP

Labour (6)                               Conservative (8)                   Liberal Democrat (3)
Mr A McGuckin (Vice-Chair)               Mr RK Bingham                        Mr GD Cook (Chair)
Mr F Cassidy                              Mr A Bowness                           Mr N Cotton
Mr KR Hamilton                           Mrs HF Carrick                           Mrs BC Gray
Mr W McEwan                               Mr D English                               
Mr FI Morgan                               Mr LN Fisher                                
Mr MH Worth                                Mr AJ Markley                              
                                                Mr D Wilson                                
                                                Mr CP Turner                                

Independent (1)

Mr JS Holliday

ACCESS TO INFORMATION

Agenda and Reports

Copies of the agenda and Part I reports are available for members of the public to inspect prior to the meeting. Copies will also be available at the meeting.

The agenda and Part I reports are also available on the County Council’s website – http://councilportal.cumbria.gov.uk/ieListMeetings.aspx?CId=124&Year=0

Background Papers

Requests for the background papers to the Part I reports, excluding those papers that contain exempt information, can be made to the Legal and Democratic Services Unit at the address overleaf between the hours of 9.00 am and 4.30 pm, Monday to Friday.
AGENDA

PART 1: ITEMS LIKELY TO BE CONSIDERED IN THE PRESENCE OF THE PRESS AND PUBLIC

1 APOLOGIES FOR ABSENCE
To receive any apologies for absence.

2 CHANGES IN MEMBERSHIP
To note any changes in membership.

3 DISCLOSURES OF INTEREST
Members are invited to disclose any disclosable pecuniary interest they have in any item on the agenda which comprises

1 Details of any employment, office, trade, profession or vocation carried on for profit or gain.

2 Details of any payment or provision of any other financial benefit (other than from the authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. (This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

3 Details of any contract which is made between you (or a body in which you have a beneficial interest) and the authority
   (a) Under which goods or services are to be provided or works are to be executed; and
   (b) Which has not been fully discharged.

4 Details of any beneficial interest in land which is within the area of the authority.

5 Details of any licence (alone or jointly with others) to occupy land in the area of the authority for a month or longer.

6 Details of any tenancy where (to your knowledge)
   (a) The landlord is the authority; and
   (b) The tenant is a body in which you have a beneficial interest.

7 Details of any beneficial interest in securities of a body where
(a) That body (to your knowledge) has a place of business or land in the area of the authority; and

(b) Either –

(i) The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) If that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

In addition, you must also disclose other non-pecuniary interests set out in the Code of Conduct where these have not already been registered.

**Note**

A “disclosable pecuniary interest” is an interest of a councillor or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners).

4 **EXCLUSION OF PRESS AND PUBLIC**

To consider whether the press and public should be excluded from the meeting during consideration of any item on the agenda.

5 **MINUTES**

To confirm as a correct record the Minutes of a meeting held on 1 July 2019 (Pages 7 - 16)

6 **CA10/41 - APPLICATION TO CORRECT UNIT CL495 OF THE REGISTER OF COMMON LAND - KITCHIN’S GROUND, THE HILL, MILLOM.**

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 17 - 38)

7 **NL0057: - APPLICATION FOR REGISTRATION OF LAND AT CUMREW AS A NEW TOWN OR VILLAGE GREEN**

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 39 - 84)

8 **WILDLIFE AND COUNTRYSIDE ACT 1981 - SECTION 53 APPLICATION TO MODIFY A SECTION OF PUBLIC FOOTPATH NO 126016 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE**

To consider a report from the Acting Executive Director – Economy and Infrastructure
HIGHWAYS ACT 1980 SECTION 119 APPLICATION TO DIVERT PUBLIC FOOTPATH NO 126016 PARISH OF NICHOLFOREST: DISTRICT OF CARLISLE

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 95 - 102)

HIGHWAYS ACT 1980 SECTION 119A - APPLICATION TO DIVERT UNRECORDED PUBLIC FOOTPATH AT BAYLEY/BAILEY LANE GRANGE OVER SANDS: DISTRICT OF SOUTH LAKELAND

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 103 - 114)

1/19/9005 & 1/19/9006 SECTION 73 VARIATION OF CONDITION 4 PERMISSION REF 1/17/9018 & CONDITION 2 PERMISSION REF 1/17/9019 TO PERMANENTLY EXTEND THE HOURS OF OPERATION ON THE SITE (NOT INCLUDING OPERATING TIMES OF WASTE CARRYING VEHICLES). LOCATION: NORTH WEST RECYCLING LTD, UNIT A, UNIT B & SITE K, KINGMOOR PARK, ROCKCLIFFE ESTATE, ROCKCLIFFE, CARLISLE, CA6 4RW

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 115 - 128)

APPLICATION REFERENCE NO. 2/19/9005. PROPOSAL: CONSTRUCTION OF ONE FERRIC DOSING KIOSK AND ONE MOTOR CONTROL KIOSK - ONE TO REGULATE THE PH OF THE FINAL EFFLUENT AND ONE TO CONTROL THE DOSING REGIME. LOCATION: ASPATRIA WWTW, COMELY BANK, ASPATRIA, CUMBRIA, CA7 2BE

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 129 - 140)

APPLICATION REFERENCE NO. 5/19/9007. PROPOSAL: DEMOLITION OF GOOSEHOLME FOOTBRIDGE. LOCATION: GOOSEHOLME BRIDGE, NEW ROAD, KENDAL (LA9 4BA)

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 141 - 158)

APPLICATION REFERENCE NO. 5/19/9008. PROPOSAL: REPLACEMENT OF EXISTING FIBRE GLASS WAVE EFFECT ROOF WITH A SHALLOW PROFILES INSULATED PANEL ROOF WITH PROTRUDING ROOF LIGHTS AND INSTALLATION OF ROOF MOUNTED SOLAR PANELS (PHOTOVOLTAIC AND THERMAL). LOCATION: SANDGATE HYDROTHERAPY POOL, SANDYLANDS ROAD, KENDAL, LA9 6JG

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 159 - 166)
15 APPLICATIONS DETERMINED UNDER DELEGATED POWERS

[Electoral Divisions: Various]

To consider a report from the Acting Executive Director – Economy and Infrastructure

To note that these are applications/consultations that have recently been determined by the Acting Executive Director – Economy and Infrastructure in accordance with the schemes of delegation. (Pages 167 - 168)

16 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS

[Electoral Divisions: Various]

To consider a report from the Acting Executive Director – Economy and Infrastructure

To note that these applications that have been submitted to the County Council but are not ready/appropriate for presentation to the Committee of for determination under delegated powers and/or have been recently withdrawn or determined as invalid or not requiring planning permission etc. (Pages 169 - 170)

17 FORWARD PLAN

To consider a report from the Acting Executive Director – Economy and Infrastructure (Pages 171 - 172)

18 DATE AND TIME OF NEXT MEETING

The next meeting will be held on 18 September 2019 at 10.00am at County Offices, Kendal
PRESENT:

Mr GD Cook (Chair)

Mr A McGuckin (Vice-Chair)  Mr LN Fisher
Mr RK Bingham        Mr AJ Markley
Mr A Bowness          Mr FI Morgan
Mrs HF Carrick        Mr D Wilson
Mr F Cassidy          Mr MH Worth
Mrs BC Gray           Mr CP Turner
Mr D English          Mr M Wilson

Also in Attendance:-

Mark Brennand - Lead Officer - Historic Environment and Commons
Philippa Christie - Solicitor
Richard Cryer - Lead Officer - Development Control
Paul Haggin - Manager - Development Control and Countryside Management
Jayne Petersen - Planning Officer
Jason Weatherill - Commons Officer
Geoff Fewkes - Countryside Access Officer

Mrs Fox - Public Participation
Ms Saunders - Public Participation

PART 1 – ITEMS CONSIDERED IN THE PRESENCE OF THE PUBLIC AND PRESS

19  APOLOGIES FOR ABSENCE

Apologies for absence were received from Mr N Cotton, Mr K Hamilton, Mr J Holliday and Mr B McEwan.

20  CHANGES IN MEMBERSHIP

It was noted that Mr M Wilson replaced Mr Hamilton as a member of the Committee for this meeting only.

21  DISCLOSURES OF INTEREST
There were no disclosures of interest made.

22 EXCLUSION OF PRESS AND PUBLIC

RESOLVED that, the press and public not be excluded during consideration of any items of business.

23 MINUTES

Page 8, Minute 3, 4th paragraph: add in to the last sentence ‘as she would be speaking on the item’.

Page 8, Minute 3, 3rd paragraph. Capitalise G on Great Urswick.

Page 12, Minute 11, Resolution 2, to read ‘If there are no objections to the made order, the Chief Legal Officer confirm the order’

RESOLVED that, subject to the corrections above, the minutes of the meeting held on 23 May 2019 be confirmed as a correct record and signed by the Chairman.

A short discussion took place on the decision which had been delegated to officers made at the previous meeting regarding the position and number of disabled parking spaces in the development of County Hall, Busher Walk, Kendal.

24 NL0064: APPLICATION FOR REGISTRATION OF LAND AT SCAWS DRIVE FIELD, PENRITH AS A NEW TOWN OR VILLAGE GREEN

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding NL0064:- Application for registration of land at Scaws Drive Field, Penrith as a new town or village green. An application had been received from Mrs Belinda Fox, Mrs Catherine Fenton and Mr Christopher Castle to register an area of land at Scaws Drive, Penrith as a new town or village green. The application was made under section 15(2) of the Commons Act 2006.

The Commons Officer introduced the report, showing a map of Penrith and the location of the site and photographs of the land at Scaws Drive. He presented the legal criteria and legislation that the recommendation was based on. He recommended that the application be accepted by the Committee.

Mrs Fox, the applicant made the following statement:

You will have before you much documentation pertaining to our application leading up to our last representation to the Commons Registration in November 2017, so I will not repeat this information.

My hope today is to bring the Committee fully up to date with important developments that have and are being put in place since then.
At the beginning of this year Penrith Town Council undertook a consultation of the residents of Eden based on the draft Neighbourhood Development Plan. The summary of responses will be utilised to form part of Eden’s Development Plan and will be used by the District Council and Town Council to help determine planning applications. Within this, Scaws Drive Field was again suggested to be identified as ‘Protected Green Space’ due to being important to both wellbeing and the local community and to be protected from inappropriate development. Other areas on the list include churchyards, allotments, nature reserves, cemetery and woods meaning that Scaws Drive Field is one of the few that is and can continue to be used for unprescribed recreational outdoor use such as dog exercising, ball games and picnics. It has long been used by the local community in this way and the strength of opinion to keeping this field protected in perpetuity was recognised during the consultation.

I have been informed from the Town Council Administrator that Eden District Council have not objected to the inclusion of Scaws Drive Field into the Draft Neighbourhood Plan therefore it remains in the Plan and will hopefully be ratified in 2020. Under Eden District Council’s recently adopted Local Plan, its principal planning document, the field is designated as Public Open Space and is protected from development under policy COM2, Protection of Open Space, Sport, Leisure and Recreation Facilities.

However as this is definitely not a certainty, as local residents we are keen to continue with this application for Town Green status to afford this valuable space the protection it deserves for the wide community that loves to use it on a daily basis. As there are large swathes of housing development continuing to be built all around Penrith, protecting this valuable recreation space has become even more relevant as it will ultimately become an area which many more new local residents will want to utilise.

Additional to the wishes of the local residents, we have been given wholehearted backing from Cllr. Patricia Bell, County Councillor, Cllr John Lynch and Cllr. Mike Eyles EDC Ward Member and James Fellows, Penrith Town Councillor.

Following member questions, the Commons Officer informed the Committee that Eden District Council was the landowner, clarified that the application related to NL0064 and explained that Eden District Council had not provided oral representations.

In supporting the application, the adjoining division member drew comparisons of the application with an application considered at a previous meeting which had been rejected. The Commons Officer explained the differences between the applications.

Mr McGuckin was not initially minded to support the application, however he noted that as Eden District Council the landowner had not objected, he would abstain from the vote as he was unsure of the ‘as of right’ aspect of the application.
A short discussion took place on the signage on the land; it was confirmed that it was currently blank.

It was moved by Mrs Carrick and seconded by Mr Fisher that the recommendation as set out in the report be agreed. Following a vote, with 14 members in favour of the motion, 0 against and Mr McGuckin abstaining, it was

RESOLVED that, the Committee accepts the application, on the grounds that the statutory criteria contained at section 15(2) of the Commons Act 2006 has been satisfied.

25 TOWN AND COUNTRY PLANNING ACT 1990 -SECTION 257 - APPLICATION TO STOP UP PUBLIC FOOTPATH NO 412018 PARISH OF LAMPLUGH DISTRICT OF COPELAND

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Town and Country Planning Act 1990 - Section 257 – Application to Stop Up Public Footpath No 412018 Parish of Lamplugh District of Copeland.

The Countryside Access Officer advised that an application had been received to stop up public footpath no 412018 at Eskett Quarry in the Parish of Lamplugh. He showed a map and aerial photograph of the site. He provided the history to the application and on the results of the consultation advising that no objections had been received. He recommended that the Committee agree that the order be made and that all necessary action was taken to confirm the order.

It was moved by Mr Morgan and seconded by Mr Markley that the order be made. Following a unanimous vote in favour of the motion it was,

RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g)(ii) of the Council’s Constitution, an order be made under Section 257 of the Town & Country Planning Act 1990 to stop up that section of public footpath no 412018 in the parish of Lamplugh as shown marked on the plan at Appendix A and that all necessary action be taken to confirm the order.

26 HIGHWAYS ACT 1980 SECTION 119 - APPLICATION TO DIVERT PUBLIC FOOTPATH NO 501018 PARISH OF ALDINGHAM: DISTRICT OF SOUTH LAKELAND

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Highways Act 1980 Section 119 - Application to Divert Public Footpath no 501018 Parish of Aldingham: District of South Lakeland.

Members were informed by the Countryside Access Officer that an application had been received to divert a section of public footpath in 501018 at Moat Scar in the parish of Aldingham, District of South Lakeland. He showed a map, and an aerial
photograph of the site and the existing boundary crossings. He provided the historical background to the application. He explained the outcome of the consultation process and was satisfied that the diversion was not less convenient than the current route. He recommended that the diversion be made.

A member asked whether the footpath would be subject to erosion as it would be closer to the cliff. The Countryside Access Officer advised that historical maps had been reviewed and there had been very little erosion over the years however, the landowner would place rocks at the bottom of the cliff.

A member reported on the historical settlement of Aldingham and welcomed that the footpath would be moved nearer the castle site. Members considered that walkers may use historical stiles in the area and queried whether cyclists would be encouraged to ride the footpath given the widened gates. The Countryside Access Officer stated that the routes would be way marked, diversion routes would be publicised and cycling the route would be classed as trespassing which was a matter for the landowner.

It was moved by Mr McGuckin and seconded by Mr Fisher that the section of footpath no 501018 as shown in the appendix to the report, be diverted and that all necessary action be taken to confirm the order. Following a unanimous vote in favour of the motion, it was

RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g) (iii) of the Council’s Constitution, an order be made under Section 119 of the Highways Act 1980 to divert that section of public footpath no 501018 in the parish of Aldingham shown A-B to a new route A-C-D-E-B as shown on the plan at Appendix A and that all necessary action be taken to confirm the order.

27 TOWN AND COUNTRY PLANNING ACT 1990 -SECTION 257 - APPLICATION TO DIVER PUBLIC FOOTPATH NO 210015 PARISH OF BLINDCRAKE DISTRICT OF ALLERDALE

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Town and Country Planning Act 1990 - Section 257 – application to divert public footpath no 210015, in the Parish of Blindcrake in the district of Allerdale.

The Countryside Access Officer advised that an application had been received to divert a section of public footpath no 210015 at Moota Quarry in the Parish of Blindcrake. He presented a map of the area, an aerial photograph and provided the background to the application. He highlighted that following an order granted previously by the Committee, the footpath path had been constructed on an alignment that did not accord with the route on the Order made in 2015. This application would remake the footpath order on the correct alignment and revoke the 2015 Order.
Following a member question, the Committee was reassured that the public right of way would be maintained by the County Council once moved.

It was moved by Mr McGuckin and seconded by Mr Bingham that the order to divert the section of public footpath no 210015 shown on Appendix 1 of the report be made and all necessary action be taken to confirm the order.

Following a unanimous vote in favour of the motion, it was RESOLVED that, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council’s Constitution, an order be made under Section 257 of the Town & Country Planning Act 1990 to divert that section of public footpath no 210015 in the parish of Blindcrake as shown marked A-I to a new route A-B-C-D-E-F-G-H-I on the plan at Appendix A and that all necessary action be taken to confirm the order.

28 HIGHWAYS ACT 1980 SECTIONS 119 AND 25 - APPLICATION TO DIVERT PUBLIC BRIDLEWAY NO 138055 PARISH OF WETHERAL AND UPGRADING OF PUBLIC FOOTPATH NO 138065 PARISH OF WETHERAL TO BRIDLEWAY: DISTRICT OF CARLISLE

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Highways Act 1980 Sections 119 and 25 – Application to divert public bridleway number 138055 parish of Wetheral and upgrading of public footpath number 138065, parish of Wetheral to bridleway: District of Carlisle.

The Countryside Access Officer advised that an application had been received to divert public bridleway number 138055 in the parish of Wetheral and to upgrade public footpath 138065 to a bridleway. He presented a map and aerial photograph of the area. Members considered the diversion firstly. Photographs of footpath subsidence in 2017 and 2019 were shown and it was reported that an informal diversion had been in place since 2000 to allow use of the bridleway. Aerial images were shown depicting the former mine workings as well as photographs of the existing and proposed route. It was highlighted that the proposed route did not end at the same point as the current route but the proposed route would provide better connectivity to other routes, which were explained in detail to the Committee.

Following member questions, it was confirmed that the Applicant would be entering into an agreement to limit vegetation levels to ensure highway users had a clear view of people exiting the bridleway.

Ms Saunders, on behalf of the Applicant made the following statement:

British Gypsum is seeking permission to permanently divert bridleway 138055 where it crosses directly over the old workings of Cocklakes Mine. The mine was opened in 1898 and was abandoned in the late 1960s.

The southern part of the mine over which the bridleway crosses was worked during a time when the technology and understanding controlling extraction rates and mine designs was not well understood. As such, the sizes of the pillars and roadways in
this part of the mine are not to modern-day standards. In addition, the mine supplied anhydrite (which is a form of gypsum) for use in the manufacture of munitions during World War Two. We suspect there was pressure to increase extraction rates during this period to support the war effort.

Whilst the risk of subsidence from modern-day mine workings is low, there have been a large number of subsidence events in this part of Cocklakes Mine due to the historic extraction rates and very shallow nature of the workings. The subsidence events at Cocklakes can result in deep, and often open holes at the surface and some have the potential to allow access into dangerous old mine workings.

The sole purpose of the application is to remove a bridleway route that could potentially be a very significant safety hazard for members of the public. For example, back in 2000 it was temporarily closed and re-routed due to subsidence on the route. A recent subsidence event also occurred in April this year, only 10 metres from the bridleway. A local resident reported accessing the site to take a closer look at the hole.

The proposed route has been designed to not cross over unstable old mine workings and will continue to pass through an off-road tranquil environment, through an area of mature and semi-mature trees. It will not result in a lower quality of experience or diversity of views for the bridleway users.

The provision of an access point onto Peter Gate will provide an enhancement and more convenient route for its users as this will enable the proposed route to connect to bridleway 138048, which is located on the opposite side of Peter Gate. We have also offered to upgrade footpath 138065 to a bridleway, which will provide a further enhancement to the local network for bridleway users.

In addition to this, we have agreed to:
• provide a 3m wide surfaced path for the entire length of the route;
• fund a road crossing point and surfaced area on the northern side of Peter Gate up to bridleway 138048;
• undertake ongoing maintenance of vegetation adjacent to the new bridleway and the roadside hedge along Peter Gate to maintain the visibility splay.

British Gypsum believes that the health and safety of anyone who may be affected by our operations both past and present is of paramount importance. The proposed diversion and upgrading will provide a safer route of approximately equivalent length, whilst remaining convenient and offering enjoyment to the public.

A member provided his support of the application and reported on his discussions with a local farmer who had been affected by subsidence. In recognising the dangerous conditions, a member who lived near the footpath welcomed the application as it would provide safe access to the countryside.
It was moved by Mr Fisher and seconded by Mr McGuckin that the diversion order be made and the footpath be upgraded to a bridleway. Following a unanimous vote in favour of the motion, it was

RESOLVED that,

1. That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council’s Constitution, an order be made under Section 119 of the Highways Act 1980 to divert that section of public bridleway no 138055 in the parish of Wetheral shown A-B to a new route A-C-D-E-F-G-H-I-J-K-L as shown on the plan at Appendix B to the report and that all necessary actions be taken to confirm the order; and

2. That, pursuant to the power set out at Part 2G paragraph 2.1(g) (i) of the County Council’s Constitution, the County Council enter into an Agreement with the landowner under Section 25 of the Highways Act 1980 to upgrade public footpath no 138065 in the parish of Wetheral to a bridleway shown A-B on the plan at Appendix C of the report.

A recess began at 10.55am and the meeting reconvened at 11.00am.

29 APPLICATION REFERENCE NO. 4/19/9003. PROPOSAL: ERECTION OF A NEW 2 STOREY HIGH ARCHIVE STORE TOGETHER WITH A NEW INFILL EXTENSION AND INTERNAL REFURBISHMENT, DEMOLITION WORKS, EXTERNAL WORKS AND THE REMOVAL OF 6 NO. TREES AND ASSOCIATED PLANTING. LOCATION: WEST CUMBRIA RECORD OFFICE, SCOTCH STREET, WHITEHAVEN, CA28 7NL

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application Reference No. 4/19/9003. Proposal: Erection of a new 2 storey high Archive Store together with a new infill extension and internal refurbishment, demolition works, external works and the removal of 6 no. trees and associated planting. Location: West Cumbria Record Office, Scotch Street, Whitehaven, CA28 7NL.

The Planning Officer guided members through the application and referred the Committee to the Update Sheet, circulated before the meeting had commenced, regarding the comments from Historic England and Copeland Borough Council in respect of the application which were duly noted. Maps, plans and photographs showing the proposed development were shown. Current parking provision and the context for the proposal in terms of surrounding buildings was provided. She recommended that planning permission be granted.

Following member questions, the Planning Officer reassured members that visual impact was not significant from Scotch Street looking down the road. In supporting the proposal, a member with knowledge of the current building acknowledged the mix of building styles in the area but raised his concern about current and future parking provision and asked that the size of disabled parking spaces be taken into consideration. The Planning Officer provided a synopsis of parking arrangements.
during the construction period. She advised where the Old Magistrate’s Court Wall would be located and its planned use for incorporation into wedding photographs. Members were informed that no response had been received from the Local Member. It was noted that the building was not listed but was located in a conservation area.

In moving the recommendation to grant planning permission, subject to the conditions set out in the report, Mr Morgan who was familiar with the surrounding buildings and the site considered the proposal a significant enhancement for the public, met the provision of services in Whitehaven and considered that the disabled parking space issue had been addressed. The motion was seconded by Mr Turner.

Mr Wilson advised that he was a member of the Copeland Borough Council Planning Committee but had not been influenced by any previous decisions nor made any comments in relation to this planning application. He advised that he would abstain from the vote.

Following a vote, with 14 members in favour of the motion, 0 against and Mr Wilson abstaining, it was

RESOLVED that, planning permission be granted subject to conditions set out in Appendix 1 to the report.

30 APPLICATION REFERENCE NO. 2/19/9004. PROPOSAL: CHANGE OF USE FROM RESIDENTIAL CARETAKER'S BUNGALOW TO EDUCATIONAL USE WITH MEETING ROOMS. LOCATION: ASHFIELD INFANT SCHOOL, NEWLANDS LANE, WORKINGTON, CA14 3JG

A report was considered from the Acting Executive Director – Economy and Infrastructure regarding Application Reference No. 2/19/9004. Proposal: Change of use from residential caretaker's bungalow to educational use with meeting rooms. Location: Ashfield Infant School, Newlands Lane, Workington, CA14 3JG.

The Lead Officer - Development Control guided members through the report and showed a map of the proposed site, an aerial photograph, plans showing context of the site, photographs of the entrance of the site and of the building and plans of the elevations. He provided the rationale behind the use of the proposed building, the visual impact of the proposal and an explanation of the adjoining properties. It was noted this was a change of use and it was considered to be a good use of the building.

Following a question from a member, it was noted that this building was for teachers’ use rather than as provision of a quiet space for children.

It was moved by Mr Morgan and seconded by Mr Cassidy that planning permission be granted subject to the conditions set out in the Appendix to the report. Following a unanimous vote in favour of the motion, it was

RESOLVED that, planning permission be granted subject to the conditions set out in Appendix 1 to the report
31 APPLICATIONS DETERMINED UNDER DELEGATED POWERS

RESOLVED that, the list of applications determined under delegated powers be noted.

32 APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS

A member advised that since the last meeting of the Committee where he had raised complaints made to him in relation to Whitehaven Skips and Services Limited and the potential for a site visit, he had spoken to the Enforcement Officer and would be providing him with photographs of the site.

Consideration was given to holding a site visit to North West Recycling Ltd in Carlisle. The Manager Development Control and Countryside Management advised that concerns would need to be reviewed to ascertain if they were material to consideration of the submitted planning applications.

RESOLVED that, the list of applications proposed to be determined under delegated powers be noted.

33 FORWARD PLAN

RESOLVED that, the Committee’s Forward Plan be noted.

34 DATE AND TIME OF NEXT MEETING

The next meeting of the Committee would be held on 13 August 2019 at 10.00am at County Offices, Kendal.

The meeting ended at 11.40 am
CA10/41 – APPLICATION TO CORRECT UNIT CL495 OF THE REGISTER OF COMMON LAND – KITCHIN’S GROUND, THE HILL, MILLOM.

1.0 EXECUTIVE SUMMARY

1.1 Cumbria County Council is the registration authority for common land and town and village greens under the Commons Act 2006.

1.2 An application has been received from Jaqueline Sayer to correct unit No. CL495 of the register of common land – Kitchin’s Ground, The Hill, Millom.

1.3 The purpose of this report is to request Members to make a decision as to whether the application should be granted and a correction made to the Council’s register of common land.

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN

2.1 The relevant corporate theme is that people in Cumbria are healthy and safe.

2.2 This matter is a decision-making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored.

3.0 RECOMMENDATION

3.1 It is recommended that the Committee accepts the application and corrects the common land register for the reasons contained within this report and on the specific grounds that Cumbria County Council as Commons Registration Authority made a mistake when producing the register map under the Commons Registration Act 1965 by including the land subject to this application within the boundary of CL495 Kitchin’s Ground.
4.0 BACKGROUND

The Application:

4.1 On 5th February 2019 the Council, as registration authority for common land and town and village greens, received an application on Form CA10 (“the Application”) under Section 19 (2) (a) of the Commons Act 2006 (“the 2006 Act”) from Jaqueline Sayer (“the Applicant”) for the correction of register unit CL495 Kitchin’s Ground in relation to the land shown coloured red on the plan attached at Appendix 1 (hereafter called “the Application Land”).

4.2 A copy of the Application is attached to the report at Appendix 2.

4.3 Kitchin’s Ground was provisionally registered as common land on 29th October 1970 under Section 4 of the Commons Registration Act 1965 pursuant to application no. 2171 made by Millom Parish Council on 25th June 1968 (“the 1968 Application”). The provisional registration became final on 1st August 1972 and the land became registration unit CL495. A copy of the 1968 Application is attached at Appendix 3.

4.4 The Applicant claims that the information contained in the map submitted by Millom Parish Council with the 1968 Application was transcribed inaccurately onto the first edition of the register map for CL495 (and subsequently transferred to the second edition register map), in that the Application Land was included within the boundary of that common. The Applicant requests that the Application Land be removed from register unit CL495.

4.5 The following supporting evidence was submitted by the Applicant:

- Copy of the second edition register map for CL495.
- Copy of the 1968 Application.

The following document was added by the registration authority:

- Copy of the first edition register map for CL495.

Copies of the first and the second editions register maps are attached to this report at Appendix 4.

4.6 On 29th March 2019 the Application was deemed to have been duly made and a notice of application was advertised on Cumbria County Council’s website, displayed prominently on the site of the Application Land and was also sent to all relevant parties in accordance with Schedule 7 of the Commons Registration (England) Regulations 2014 (“the 2014 Regulations”). Anyone wishing to object to the Application had until 13th May 2019 to do so in writing.

4.7 No objections were received.

4.8 The Law:
4.9 Part 1 of the 2006 Act was implemented in Cumbria on 15th December 2014 and allows applications to be made to amend the Register of Common Land and Town or Village Greens.

4.10 The Application is made under Section 19 (2) (a) of the 2006 Act which states:

“19 Correction

(1) A commons registration authority may amend its register of common land and town or village greens for any purpose referred to in subsection (2).

(2) those purposes are –
(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register.”

The application of the law to the facts and evidence of the Application:

4.11 The application complies with the formal requirements as to form and content as stipulated in the 2014 Regulations.

4.12 I have considered the Application and examined 1968 Application and the first and second editions of the register map. I agree with the Applicant’s assertion that the Application Land was included within the boundary of CL495 by virtue of a mistake made by the registration authority.

4.13 Section 19 (5) states:

“A mistake in the register may not be corrected in this section if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so.”

4.14 There are no rights of common registered on CL495 and therefore no commoners will be affected by this correction.

4.15 No objections or comments have been made to the Registration Authority from anyone with a legal interest in the land.

4.16 In view of the above, I do not consider it to be unfair to any person to make the requested correction to the register.

5.0 Legal Implications

5.1 The Council has a statutory duty to keep a register of Common Land and since the implementation of Part 1 of the 2006 Act, has the power to amend the register. The Council’s Constitution at Part 2G 2.1) f) i) delegates this responsibility to the Development Control and Regulation Committee.

5.2 In considering the Application, Members must consider all of the evidence available to them, and must be satisfied that the evidence shows that each
aspect of the statutory conditions set out at Schedule 2 Paragraph 6 of the 2006 Act have been met. The burden of proof in this regard is firmly upon the Applicant to provide the required evidence. The standard of proof to be applied is the usual civil standard “on the balance of probabilities”, i.e. it must be more likely than not.

5.3 The role of this Committee is to reach its own determination on the matters of fact and law arising as a result of the Application. It is for Members to determine the Application fairly, putting aside any considerations of the desirability of the land being registered as common land or being put to other use.

5.4 Although the findings of the Officer Recommendations are for the Committee to proceed with determination and acceptance of the Application, the Committee is not bound to follow the Recommendation; providing that in reaching its decision it applies the correct legal principles and duly considers the evidence. Therefore, Members are free to accept or reject any of the Recommendations in the report. If the Members reject the Officer findings and decide not to determine the Application, the Committee should set out its reasons at the meeting.

5.5 It should be noted that the Council may not refuse an application without first offering the applicant an opportunity to make oral representations. Accordingly, if Members reject the recommendation, such an offer will be made before a further report to Committee is made.

5.6 All other legal considerations, issues and implications have been addressed within the detail of the report.

6.0 Options

6.1 The Committee may accept or reject the Recommendation in whole or in part.

6.2 If the Recommendation is accepted the Registration Authority will give effect to the determination by amending register unit CL495 and the register map to confirm the removal of the Application Land from the register in accordance with the 2014 Regulations.

6.3 If the Recommendation is rejected the Application Land will remain registered as common land.

6.4 Members should note that the decision of the Committee in relation to an application to correct the common land register is a legal decision and is not a matter of policy or discretion.

7.0 Conclusion

7.1 I am of the opinion that the Application has been duly made. The evidence submitted by the Applicant supports the claim that the Application Land was included within the boundaries of CL495 as a result of a mistake which was
made by the registration authority. Under Section 19 (2) (a) of the 2006 Act this mistake can be corrected.

7.2 The land is not subject to any rights of common and no objections were received. I am, therefore, of the opinion that de-registration of the Application Land as common land will not be unfair to any person.

7.3 I recommend that this Committee resolves that the common land register be corrected and the Application Land be removed from register unit CL495.

Angela Jones
Acting Executive Director – Economy and Infrastructure
19th July 2019

APPENDICES

Appendix 1 - Map of the Application Land
Appendix 2 – Application CA10/41
Appendix 3 – 1968 Application
Appendix 4 – copy First and Second Edition Register Maps CL495

IMPLICATIONS

Staffing: None
Financial: There would be cost implications in the event of an application for judicial review, however the Council is the registration authority and therefore has a statutory duty to decide applications.
Property: None
Electoral Division(s): Thursby
Human Rights: The Council as registration authority has to make a decision in accordance with the law and in particular with the provisions of the 2006 Act, given these legal criteria a decision must reflect the legislation despite any other rights of individuals.

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

No previous relevant decisions

CONSIDERATION BY OVERVIEW AND SCRUTINY
Not considered by Overview and Scrutiny

BACKGROUND PAPERS

Commons Act 2006
Commons Registration (England) Regulations 2014
Common Land: Guidance to Commons Registration Authorities and Applicants 2015.

Contact: Svetlana Bainbridge, 01228 221026, Svetlana.Bainbridge@cumbria.gov.uk
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Commons Act 2006: section 19
Application to correct the register

This section is for office use only

Official stamp

COMMONS ACT 2006
CUMBRIA COUNTY COUNCIL
COMMONS REGISTRATION AUTHORITY

Q 5 FEB 2019

Application number

CA10/41

Applicants are advised to read 'Part 1 of the Commons Act 2006: Guidance to applicants' and to note:

- All applicants should complete boxes 1–8.
- Any person can apply under section 19 of the Commons Act 2006.
- You will be required to pay a fee unless your application is to correct a mistake made by the registration authority (section 19(2)(a)) or to remove a duplicate entry (section 19(2)(c)). Ask the registration authority for details. You would have to pay a separate fee should your application be referred to the Planning Inspectorate, unless it is to correct a mistake made by the authority or to remove a duplicate entry.

Note 1

Insert name of commons registration authority.

1. Commons Registration Authority

To the:

Tick one of the following boxes to confirm that you have:

enclosed the appropriate fee for this application:

or

applied for a purpose in section 19(2)(a) or (c), so no fee is enclosed:

☑
### 2. Name and address of the applicant

<table>
<thead>
<tr>
<th>Name:</th>
<th>JACQUELINE SAYCE</th>
</tr>
</thead>
</table>
| Postal address: | **The Hill**  
                    **MILLOM**  
                    **CUMBRIA** |
| Postcode: | CA18 |

#### Note 2

If there is more than one applicant, list all their names and addresses in full. Use a separate sheet if necessary. State the full title of the organisation if the applicant is a body corporate or an unincorporated association. If you supply an email address in the box provided, you may receive communications from the registration authority or other persons (e.g. objectors) via email. If box 3 is not completed all correspondence and notices will be sent to the first named applicant.

### 3. Name and address of representative, if any

| Name: |  |
| Firm: |  |
| Postal address: |  |
| Postcode: |  |

#### Note 3

This box should be completed if a representative, e.g. a solicitor, is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here. If you supply an email address in the box provided, the representative may receive communications from the registration authority or other persons (e.g. objectors) via email.
4. Basis of application for registration and qualifying criteria

Specify the register unit number to which this application relates:

CL 495

Specify the rights number to which this application relates (if relevant):

Tick one of the following boxes to indicate the purpose (described in section 19(2)) of your application. Are you applying to:

Correct a mistake made by the commons registration authority: ✓

Correct any other eligible mistake:

Remove a duplicate entry from the register:

Update the details of any name or address referred to in an entry:

Record accretion or diluvion:

5. Describe the purpose for applying to correct the register and the amendment sought

From comparing the registration documents to the register map, it seems that in 1970 the registration authority made a mistake by including within the boundaries of CL 495 a piece of land on the eastern side which is excluded from the boundaries of common land on the original application map submitted by Millam Without Parish Council. The land with an arrow pointing to it with a letter "G" beside it on the original application map.
6. Supporting documentation

1. Plan of Register of Common Land CL 495

7. Any other information relating to the application
8. Signature

Date: 30th January 2019

Signatures:

---

REMINDER TO APPLICANT

You are responsible for telling the truth in presenting the application and accompanying evidence. You may commit a criminal offence if you deliberately provide misleading or untrue evidence and if you do so you may be prosecuted.

You are advised to keep a copy of the application and all associated documentation.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the commons registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

A copy of this form and any accompanying documents may be disclosed upon receipt of a request for information under the Environmental Information Regulations 2004 or the Freedom of Information Act 2000.
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COMMONS REGISTRATION ACT 1965

Application for the registration of land as common land

IMPORTANT NOTE: Before filling in this form, read carefully the notes on the back. An incorrectly completed application form may be rejected.

To the

Cumberland County Council.

Application is hereby made for the registration as common land of the land described below.

Name and address of the applicant.

MILCOM WITHOUT PARISH COUNCIL

Afonwy Davies (Clerk to the Council)
District Library, MILCOM, Cumberland.

Part 2.

Name and address of solicitor, if any.

Part 3.

Particulars of the land to be registered, i.e. the land claimed to be common land.

Name by which usually known

Kitchin's Ground,

Locality

The Hill, MILCOM, Cumberland.

Colour on plan herewith

Shaded Red

Marked G on the Plan herewith.
Part 4.
(See Note 7.)

For applications submitted after 30th June, 1968 (to be disregarded in other cases).

Does the prescribed fee of £5 accompany this application? If not, state whether this is for reason (a) or (b) mentioned in Note 7, and give the appropriate particulars required by that note.

If the applicant is a body corporate or unincorporate the application must be signed by the secretary or some other duly authorised officer.

Signature of applicant or of person on applicant’s behalf.

[Signature]

[Signature]

Date 27th July 1970.
Statutory Declaration in Support

To be made by the applicant personally, unless the applicant is a body corporate or unincorporate, in which case the declaration must be made by the person who has signed the application. Inapplicable wording should be deleted throughout.

1. **Afonwy Davies**

solemly and sincerely declare as follows:

1. I am the person who has made the foregoing application.

2. I am **Clerk** to the applicant and am duly authorised by the applicant to make the foregoing application.

3. I have read Notes 2 and 3 on the back of the application form and believe that the land described in the application is common land.

4. The plan now produced and shown to me marked "****" is the plan referred to in the application.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

[Signature]

at

in the

doing of

this day of 19

Before me,

Signature [Signature]

Address [Address]

Qualification

---

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any plan as an exhibit.

Signed [Signature]

Marked G on the Plan herewith.
Notes

1. Registration authorities
The applicant should take care to submit his application to the correct registration authority. This depends on the situation of the land which is claimed to be common land. Except where there is an agreement altering the general rule (see below), the registration authority for land in an administrative county is the county council; for land in a county borough, it is the county borough council, and for land in Greater London, it is the Greater London Council.

In the case of land which is partly in the area of one registration authority and partly in that of another, the authorities may by agreement provide for one of them to be the registration authority for the whole of the land. Public notice is given of such agreements in the local or public press. Improvements on land lying close to the boundary of an administrative area, or partly in one area and partly in another, should, if in doubt, enquire whether an agreement has been made and, if so, which authority is responsible for that land.

2. Meaning of “common land”
Common land is defined in the Commons Registration Act 1965 as—
(a) land subject to rights of common (as defined in the Act—see Note 3 below) whether those rights are exercisable at all times or only during specified limited periods
(b) waste land of a manor not subject to rights of common.

It does not include a town or village green or any land forming part of a highway. (There is a separate form available for town or village greens, which are also registrable under the Act.) Land includes land covered with water, so that common land can, for instance, include ponds and lakes.

3. Meaning of “rights of common”
Rights of common are not exhaustively defined in the Act, but it is provided that they include cattlegates or beastgates (by whatever name known) and rights of sole or several verture or herbage, or sole or several pasture. They do not, however, include rights held for a common of pasturage. The Act does not therefore attempt to give a comprehensive definition of the expression “rights of common.”

4. Land descriptions
Except where the land has already been registered under the Act (as to which see below and Note 6), the particulars asked for at part 3 of the form must be given, and a plan must accompany the application. The particulars in part 3 are necessary to enable the registration authority to identify the land concerned, but the main description of the land will be by means of a plan. This must be drawn to scale in ink or other permanent medium and be on a scale of not less, or not substantially less, than six inches to one mile. It must show the land to be described by means of distinctive colouring (a coloured edging inside the boundary will usually suffice), and it must be marked as an exhibit to the statutory declaration (see Note 5).

Where the land has already been registered and comprises the whole of the land of one or more register units, or more, unless provided the register and register unit number(s) are quoted (see Note 6). If the application concerns only part of the land comprised in a register unit, however, it will not always be possible to obtain authority with a plan. A plan will not be needed if the land can be described by reference to some physical feature such as a road, river or railway, so that the description might, for example, be an existing register unit lying to the south of the road from A to B”. Where this method is not practicable the land must be described by a plan prepared as mentioned above. In cases where the procedure of reference to an existing register unit is adopted, part 3 of the form should be adapted accordingly, and where no plan is submitted inappropriate references to a plan should be deleted.

5. Statutory declaration
The statutory declaration must be made before a justice of the peace, commissioner for oaths or notary public. Any plan referred to in the statutory declaration must be marked as an exhibit and signed by the officer taking the declaration (if marking is insufficient). A plan is marked by writing on the face in ink an identifying symbol such as the letter “A”. On the back of the plan should be written the following words:

This is the exhibit marked “A” referred to in the statutory declaration of (name of declarant) made this (date) 19 before me,

(Signature and qualification)

If there is more than one plan care should be taken to choose a different identifying letter for each.

6. Previous registration: inspection and search of registers
It is possible that the land has already been registered under the Act. If it has been registered as common land, it will not be registered as such again pursuant to a further application, but the further application will be noted on the register. This will entitle the applicant to notice of any objection to the registration.

If the land has been registered as a town or village green, for registration as common land will take effect as an objection to the earlier registration as a town or village green, and the latter will take effect as an objection to the later registration as common land. It follows that the land is exempt from registration; the registration provisions of the Act do not apply to the New Forest, Epping Forest or the Forest of Dean, nor to any land exempted by order under section 11. To ascertain whether land has been registered under the Act it is necessary to inspect the registers at the office of the registration authority, or the copies of register entries affecting land in their areas held by other local authorities or by parish councils. Alternatively, an official certificate of search may be obtained from the registration authority. A requisition for an official search must be made in writing on C.R. Form No. 21, a separate requisition being required for each register. If the land is registered, the certificate will reveal the register unit number(s) and whether any rights of common and claims to ownership are registered. If the land is not registered, the certificate will say so, and it will not be possible to register it under the Act.

7. Submission of application: fees
The application must reach the registration authority properly completed during one of the registration periods allowed under the Act. The first registration period begins on 2nd January, 1967 and ends on 30th June, 1968, and the second begins on 1st July, 1968 and ends on 2nd January, 1970. There is no charge for applications submitted during the first registration period, but every application made during the second registration period must be accompanied by a fee of £5, unless—

(a) during the first registration period the applicant gave the registration authority notice in C.R. Form No. 5 of his intention to make the application, or
(b) the land did not become registrable as common land until after 30th April, 1968.

If (a) applies, the applicant should quote in part 4 of the application the number on the acknowledgment from the registration authority. If (b) applies, he should state in part 4 when and by what means the land became common land.

8. Action by registration authority
The registration authority will on receipt of the application send an acknowledgment. If this is not received within 10 days the applicant should communicate with the authority. Later, the applicant will be informed whether the application has been accepted or rejected. If it is accepted, then—

(a) if the land is not already registered as common land, it will be provisionally registered as such, or
(b) if it is already registered as common land, the application will be noted on the register.

The applicant will in either case be informed, and will in due course be notified of any objection to the registration, (As to objections see the official explanatory booklet “Common Land”, available free from local authorities.)

9. False statements: groundless applications
The making of a false statement to procure registration may render the maker liable to prosecution for perjury or obtaining a registration which is objected to will, unless the registration authority permits it to be cancelled, or the objection is withdrawn, be referred to a Commons Commissioner. If, at the hearing before the Commissioner, the registration cannot be substantiated, it will be removed from the register, and the applicant may be ordered to pay the costs of the objector.

(C442620) 21/090 2/68
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NL0057: - Application for Registration of Land at Cumrew as a New Town or Village Green

1.0 Executive Summary

1.1 Cumbria County Council is the registration authority for town and village greens under the Commons Act 2006.

1.2 An application has been received from Mr James Fowler on behalf of Cumrew Parish Council, to register an area of land at Cumrew as a new town or village green. The application was made under section 15(2) of the Commons Act 2006.

1.3 Section 15(2) specifies the legislative requirements for the registration of land as town or village green. For the application to be successful all statutory requirements must be met. Failure to meet one or more of the statutory requirements will result in the application being refused.

1.4 The purpose of this report is to request Members to make a decision as to whether the land should be added to the Council’s register of town and village greens.

2.0 Policy Position, Budgetary and Equality Implications, and Links to Council Plan

2.1 The relevant outcome in the Council Plan 2018 - 2022 is that people in Cumbria are healthy and safe.

2.2 This matter is a decision-making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored.
3.0 RECOMMENDATION

3.1 It is recommended that the Committee rejects the application, on the grounds that not all of the statutory criteria contained at section 15(2) of the Commons Act 2006 have been satisfied.

4.0 BACKGROUND

4.1 On 30th August 2011 the Council, as registration authority for town and village greens (“the Registration Authority”), received an application (“the Application”) from Mr James Fowler, on behalf of Cumrew Parish Council (“the Applicant”), for the registration of land referred to as ‘Cumrew Village Green and Fellside Lonnin’ (hereafter called the “Application Land”) as a new town or village green under Section 15 of the Commons Act 2006 (“the 2006 Act”).

4.2 Please note that on 10th September 2015 Cumrew Parish Council authorised the responsibility to progress the Application to Mr Philip Leslie Robinson. For the purposes of this report, and as he was also working on behalf of the parish council, I will also simply refer to Mr Robinson as “the Applicant”.

4.3 A copy of the Application and supporting documentation is attached to this report at Appendix 1 (please note that for pragmatic purposes I have only included an indicative sample of the user evidence statements received, along with a summary of all statements received. A full copy of all submitted statements received can be provided on request).

4.3.1 You will note that the Applicant submitted the following evidence in support of the Application:

- 22 user evidence statements from a total of 34 residents (some residents chose to jointly submit statements)

4.4 The Application Land comprises of areas of grassland towards the centre of the village of Cumrew. A plan showing the Application Land coloured in red is attached separately to this report at Appendix 2 for ease of reference. You will note that the land is divided into strips and sections and is dissected by driveways and ‘Fellside Lonnin’, which the Applicant chose to exclude from the Application Land as a result of correspondence with the Registration Authority. The final amended plan upon which the Application will be judged was submitted on 30th November 2015, and it is that plan which is attached at Appendix 2.

4.5 A Land Registry search was carried out which confirmed that the Application Land itself was not registered with the Land Registry, but that MRH Minerals Limited (“MRH”) owned the freehold mines and minerals under the land. MRH were consulted throughout the process, in line with the Commons Registration (England) Regulations 2014 (“the 2014 Regulations”), but did not provide any response.

4.6 After correspondence with the Applicant, in which the Application Land and neighbourhood or locality were redefined, the Application was accepted as
being duly made on 3rd March 2017 and the notice of Application was placed on site, advertised on Cumbria County Council’s website, and also sent to all relevant interested parties in accordance with Schedule 7 of the 2014 Regulations. Anyone wishing to make a representation to the Application had until 21st April 2017 to do so in writing (please note that it is the redefined and agreed plans of the Application Land and locality that are included within the appendices of this report).

4.7 Two representations were received in relation to the Application, from Carlisle City Council, and Mr and Mrs Cranwell, whose property abuts part of the Application Land. Copies of these representations are included at Appendix 3. Please note that Carlisle City Council requested that the points raised in their representation should be treated as general comments, rather than objections.

4.8 Copies of both representations were served on the Applicant, and the Applicant responded, focusing primarily on the objection received from Mr and Mrs Cranwell. This response, received on 23rd May 2017, is included as Appendix 4.

4.9 Site visits were carried out of the Application Land on the 3rd March 2017 and the 4th June 2018. Photographs taken on these site visits are numbered and included as Appendix 5 and will be referred to later in this report.

4.10 Following the site visits, the Application was assessed by the Registration Authority. Having initially viewed the Application as one that might be recommended, after a more detailed review of the evidence officers concluded differently. It was deemed that the user evidence submitted was wholly inadequate to satisfy the criteria required for the land to be registered as a town or village green, the reasons for which will be outlined further on in this report.

4.11 With this in mind I wrote to the Applicant on 29th August 2018, 27th November 2018 and the 24th January 2019, suggesting that new user evidence should be gathered and submitted. Evidence questionnaire templates were supplied with the August letter and it was suggested that the Applicant may wish to use these as a basis to gather the relevant user evidence. The Applicant responded to these letters, intimating their frustration at the request, which in their opinion amounted to starting the process from scratch. It was explained that the submission of new evidence would not amount to a new application, but would simply add to the existing application; however, no further evidence has been received.

4.12 With no further evidence having been received the Applicant was offered the opportunity to make oral representations on 7th March 2019, under Regulation 27(7) of The Commons Registration (England) Regulations 2014. The Applicant has not responded to this invite.
4.13 The 2006 Act governs town and village greens, Section 15 sets out the requirements which must be met if an application to add land to the town and village green register is to be successful.

4.14 The Application is made under Section 15 (1) of the 2006 Act which states:

“Any person may apply to the commons registration authority to register land as a town or village green if subsection 2... applies”

4.15 Section 15(2) provides that a town of village green has come into existence where:

“a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

b) they continue to do so at the time of the application.”

4.16 The statutory conditions referred to in Section 15 (1) and (2) above can be broken down as follows:

i. A significant number;

ii. of the inhabitants of any locality or any neighbourhood within a locality;

iii. have indulged as of right;

iv. in lawful sports and pastimes on the land;

v. for a period of at least 20 years and continue to do so at the time of the application.

4.17 For land to qualify as a town or village green under the 2006 Act, the use of the land must satisfy all the statutory tests. Failure to meet any one of the tests means that the application land cannot be registered as village green.

The application of the law to the facts and evidence of the application:

4.18 The application complies with the formal requirements as to form and content contained in the 2006 Act.

4.19 The statutory criteria as set out above is considered in relation to the application as follows:

i. A significant number:

“Significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in
general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

The Application was supported by 34 individuals, on a total of 23 letters. The total village population at the time of submission is stated as 42. The wider area, including the entire parishes of Carlatten and Cumrew, had an estimated population of 120 at the time of the 2001 census.

No individuals were seen to be using the Application Land at the time of the two site visits; however, I consider that the evidence provided is sufficient, in principle, to show that a significant number of local residents have used the Application Land, and therefore, in my opinion, this element of the criteria is satisfied by the quantity of responses received.

ii. Of the inhabitants of any locality, or of any neighbourhood within a locality:

After correspondence with the Registration Authority the Applicant submitted a plan on the 23rd October 2015 identifying the parishes of Carlatten and Cumrew as the locality upon which they rely.

The Courts have defined a ‘locality’ as being an area capable of being defined by reference to some division of the country known to the law. Carlatten and Cumrew are civil parishes with a common parish council, and therefore, in my opinion, qualify as a locality.

iii. Have indulged as of right:

“As of right” is a legal term meaning that for the land to become a town or village green it must be used without force, without secrecy and without permission.

There has been no indication that the use of the land has been through force or secrecy. The user evidence questionnaires support this notion, and indeed the site visits of 3rd March 2017 and 4th June 2018 found the Application Land to be open and easily accessible from the main road through Cumrew (see Appendix 5.1) and Fellside Lonnin’ (see Appendix 5.2) with no barrier or fence to inhibit access. Some sections of the Application Land had become somewhat overgrown by the time of the second visit (see Appendix 5.3), but in my opinion it would still require no force to access the land.

Permission of the land can be expressly given or implied from the landowner’s conduct. A Land Registry search identified MRH Minerals Ltd (“MRH”) as the owner of the freehold mines and minerals of the land. Despite being notified MRH have not commented throughout the process. There is no signage or anything else present on the land that would indicate that the public were being given permission to use the land.
I am therefore satisfied that use of the land has been without force, without secrecy and without permission, and therefore has been as of right. I believe this element of the criteria has been satisfied.

iv. **In lawful sports and pastimes on the land:**

The letters received in support of the application were submitted in 2011 along with the original application. At that stage Fellside Lonnin’ (“the Footpath”) was included as part of the Application Land (copies of the original plan on which the user evidence received was based have been included at the end of Appendix 1, alongside the sample user-evidence letters received). It is therefore difficult to determine if some of the activities listed on these letters were related to the grass verges which form the current Application Land, or the Footpath itself which has now been excluded from the application.

Many of the letters are quite brief and do not offer a detailed description of the sports and pastimes being carried out. Activities such as “used to access the fells” and “used as a public path” seem to be indicative of use of the now excluded Footpath, rather than the current Application Land. These activities are suggestive of a right of way, as opposed to village green use. “Moving livestock” could not be considered a sport or pastime, and in any case I’d suggest that this activity would have been carried out on the Footpath too.

It was established in the Sunningwell case that lawful sports and pastimes do not have to be either organised sports or have a communal element.Solitary and informal activities, such as dog walking or children playing are sufficient, as long as there is an established pattern of use and it is not ‘trivial and sporadic’.

Many of the user-evidence letters received list walking, or dog walking as an activity. Whilst these could be classed as a sport or pastime it is unclear exactly where these activities were taking place. If people were simply walking along the Footpath from A to B, and not wandering onto the claimed land, then this would not constitute village green use. The overgrown nature of some of the verges (see Appendix 5.3) would seem to indicate that much of the walking was limited to the Footpath itself.

It is accepted that activities such as nature walks, children playing, blackberry picking, picnics and birdwatching would have been more suited to the grass verges which form part of the Application Land, if the verges were not so overgrown.

The Applicant contends that the overgrown nature of some of the verges included within the Application Land would not prohibit activities such as birdwatching and blackberry picking, and would in fact allow for the enjoyment of wild flowers. My view would be that if some areas were as overgrown during the 20 year period as they were at the time of the June 2018 site visit, then it would be hard to envisage activities such as bird watching taking place on those areas of the Application Land. It is important to remember that the user
themselves would have to be on the Application Land, it would not be enough to be standing on the relatively clear Footpath, watching birds in the more overgrown areas.

Carlisle City Council appear to share my concerns, and although they do not object to the application as such, they do state that it would be “difficult to imagine what ‘lawful sports and pastimes’ could be carried out on this location”.

The area of land closest to the roadside upon which there is a phone box, litter bin and bench (shown as part of appendices 5.1 and 5.3) would seem to be more conducive to a wider range of potential sports and pastimes. It certainly appears to be more maintained and amenable. However, the responses submitted are very limited in their content. There are very few details about the frequency in which these activities were being carried out and on which piece(s) of the Application Land they took place.

In my opinion I consider that this element of the criteria is not satisfied. Some activities listed do not appear to be sports and pastimes, it is unclear if the listed sports and pastimes were being carried out on the Application Land, and there is very little evidence as to the frequency in which these sports and pastimes were being carried out.

v. For a period of at least 20 years, and continue to do so at the time of the application

The application was received on the 30th August 2011 and as such the period of use claimed runs from 30th August 1991 to the 30th August 2011.

The user evidence submitted via the 23 letters is relatively ambiguous with regards to the dates of use. Most submissions list the year in which the respondents moved to the area; however there is very little indication as to whether or not the respondents have used the land continuously since that date. Potentially, 6 of the 23 letters cover the whole 20 year period of claimed use, but again, it would be speculative to suggest that some of the respondents had used the Application Land throughout this entire period as the evidence provided is not very detailed.

Only 4 of the 23 letters submitted indicate any frequency of use of the land, and so not only is it difficult to determine exactly which years the respondents are claiming to have used the Application Land, but it is also difficult to determine any frequency of continuation of any claimed use.

In my opinion the user evidence submitted is not detailed enough to satisfy this element of the criteria.
In order for the Application to be successful the Applicants must prove that all of the statutory criteria set out in section 15(2) of the 2006 Act have been met. In my opinion the Applicants have, on the balance of probabilities, not proven every element of the criteria.

5.0 LEGAL IMPLICATIONS

5.1 The Council has a statutory duty to keep a register of Common Land and since the implementation of Part 1 of the 2006 Act, has the power to amend the register. The Council’s Constitution at Part 2G 2.1) f) i) delegates this responsibility to the Development Control and Regulation Committee.

5.2 In considering the Application, Members must consider all of the evidence available to them, and must be satisfied that the evidence shows that each aspect of the statutory conditions set out at Section 15(2) of the 2006 Act have been met. The burden of proof in this regard is firmly upon the Applicants to provide the required evidence. The standard of proof to be applied is the usual civil standard “on the balance of probabilities”, i.e. it must be more likely than not.

5.3 The role of this Committee is to reach its own determination on the matters of fact and law arising as a result of the Application. It is for Members to determine the Application fairly, putting aside any considerations of the desirability of the land being registered as a town or village green or being put to other use.

5.4 Although the findings of the Officer Recommendations are for the Committee to proceed with determination and rejection of the Application, the Committee is not bound to follow the Recommendation; providing that in reaching its decision it applies the correct legal principles and duly considers the evidence. Therefore Members are free to accept or reject any of the Recommendations in the report. If the members reject the Officer’s findings and decide either not to determine the Application, or to accept the Application and add the Application Land to the register of town and village greens, the Committee should set out their reasons at the meeting.

5.5 Please note that if Members were minded to accept the Application then the matter would have to be deferred to first allow the landowner a chance to make oral representations.

5.6 There is no right of appeal against a Committee decision. The route for any challenges would be via judicial review in the High Court, where the issue would be whether the Committee had misdirected itself in law. Should a judicial review application be successful, the Council would be obliged to re-determine the Application, a successful judicial review application would not of itself determine that the Application Land was or was not a town or village green.

5.7 All other legal considerations, issues and implications have been addressed within the detail of the report.
6.0 **OPTIONS**

6.1 The Committee may accept or reject the Recommendation.

6.2 If the Recommendation is accepted the register of town or village greens will not be amended and the Application Land will not be registered as a town or village green.

6.3 Members should note that the decision of the Committee in relation to an application to register a new town or village green is a legal decision and is not a matter of policy or discretion.

7.0 **CONCLUSION**

7.1 I am of the opinion that the evidence that has been provided by the Applicant is not sufficient to satisfy the criteria set out in section 15 (2) of the 2006 Act.

7.2 I consider it reasonable that this Committee resolve that the Application be rejected and the Application Land is not added to the register as a new town or village green.

Angela Jones  
Acting Executive Director – Economy and Infrastructure  
24 July 2019

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**APPENDICES**

*Appendix 1 – Application Form and Supporting Evidence*  
*Appendix 2 – Plan of Application Land*  
*Appendix 3 – Representations Received*  
*Appendix 4 – Applicant’s Response to Representations*  
*Appendix 5 – Site Visit Photographs*

**IMPLICATIONS**

- **Staffing:** None
- **Financial:** There would be cost implications in the event of an application for judicial review, however the Council is the registration authority and therefore has a statutory duty to decide applications.
- **Property:** None
- **Electoral Division(s):** Great Corby and Geltsdale Ward
- **Human Rights:** The Council as registration authority has to make a decision in accordance with the law and in particular with the provisions of the 2006 Act, given these legal criteria a decision must reflect the legislation despite any other rights of individuals.
PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

No Previous relevant decisions

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

Commons Act 2006
Commons Registration (England) Regulations 2014
Commons Registration Act 1965
R (Barkas) v North Yorkshire County Council [2014]
R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council, (House of Lords, 1999)

Contact: Jason Weatherill, 01228 221028, jason.weatherill@cumbria.gov.uk
Appendix 1

Commons Act 2006: Section 15
Application for the registration of land as a Town or Village Green

Application number: NL0057
Register unit No(s):
VG number allocated at registration:
(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

CUMBRIA COUNTY COUNCIL
COMMONS REGISTRATION DEPT
NISI PRIUS BUILDING, THE COURTS
CAUMULSE CUMBRIA CA 7 8 L7.
2. Name and address of the applicant

Name: JAMES FOWLER

ON BEHALF OF CUMREW PARISH COUNCIL

Full postal address:

CUMREW
BRAMPTON
CUMBRIA

Postcode CA8

Telephone number: 

Fax number:

E-mail address:

3. Name and address of solicitor, if any

Name: NOT APPLICABLE

Firm:

Full postal address:

Post code

Telephone number: 

Fax number:

E-mail address:
4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8): ☐

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: ☑

Section 15(3) applies: ☐

Section 15(4) applies: ☐

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

☐

If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

☐
5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

CUMREW VILLAGE GREEN AND FELLSDENE LONNIN

Location:

THE CENTRE OF CUMREW VILLAGE
MAP REF NY 552513 SHEET 86

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

MAIN STREET, CUMREW VILLAGE
PARISH OF CUMREW & CALLATTON
O/S MAP REF NY 552513 SHEET 86
POST CODE: CA8 9Q

Tick here if map attached: ☑
7. Justification for application to register the land as a town or village green

Indulgence by a significant number of inhabitants of Cumrew as of right in lawful sports and pastimes under section 15(2) of the Commons Act 2006 as witnessed by the thirty four (34) enclosed signed statements showing use for activities including walking, ball games, picnicking, bird and mammal watching by a total of forty two people extending from 1980 to 2011.
8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

None

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation

See attached list of 23 letters

1 maps representing 34 inhabitants

in a village of 42 people
11. Any other information relating to the application

Note 11
If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

Date: 30.8.11

Signatures: [Signature]

On behalf of Camren Parish Council

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.
Statutory Declaration in Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

1. Insert full name (and address if not given in the application form).

James Anthony

solemnly and sincerely declare as follows:

2. Delete and adapt as necessary.

1. I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (one of the applicants)).

3. Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

4. Complete only in the case of voluntary registration (strike through if this is not relevant)

4. I hereby apply under section 15(3) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

(i) a declaration of ownership of the land;
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/
-been received and are exhibited with this declaration; or-
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said  

JAMES  

FOWLER  

at  

Fell View, Cumrew  

Daventry  

this  
14th day of  
August 2011  

Before me *  

VIVIENNE CLOUGH  

Signature of Declarant

Address: 

CUMREW, 

BRAMPTON

Qualification: 

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising
solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the
application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit
Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

1. Insert full name (and address if not given in the application form).
   
   PHILIP LESLIE
   ROBINSON
   ROSE COTTAGE
   CUMREW
   BRAMPTON C A S D D

2. Delete and adapt as necessary.

   I solemnly and sincerely declare as follows:

   1. I am ((the person (one of the persons) who (has) have) signed the foregoing application)) ((the solicitor to (the applicant) (one of the applicants))

3. Insert name if Applicable

   2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

   3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

4. Complete only in the case of voluntary registration (strike through if this is not relevant)

   4. I hereby apply under section 16(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

   (i) a declaration of ownership of the land;
   (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/
And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said PHILIP LESLIE ROBINSON at FELL VIEW, CUMREW, BRAMPTON this 30th day of January 2017

Signature of Declarant

Before me \[\text{Signature}\]

Address: CUMREW, BRAMPTON

Qualification: SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit
This is the plan referred to in the attached declaration

Signed [Redacted]

Dated 26.1.2017
<table>
<thead>
<tr>
<th>Name</th>
<th>Local Inhabitant</th>
<th>Lawful sports &amp; pastimes</th>
<th>User as of right</th>
<th>for 20 yrs</th>
<th>up to date 05/03/08</th>
<th>frequency of use</th>
<th>other comments</th>
</tr>
</thead>
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<tr>
<td>Alan Sykes</td>
<td>yes</td>
<td>access to walk fells, grandchildren play</td>
<td>yes</td>
<td>16 years (no dates)</td>
<td>regular</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ann Bellingham</td>
<td>yes</td>
<td>access to fells, grandchildren play</td>
<td>no mention</td>
<td>10 years (no dates)</td>
<td>regular</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gordon and Janet Strong</td>
<td>yes</td>
<td>access, dog walking, cycling, picnics, play</td>
<td>yes</td>
<td>60 years (no dates)</td>
<td>regular</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fred and Sheila Brown</td>
<td>yes</td>
<td>bonfire parties, picnics, den building, play</td>
<td>yes</td>
<td>1960- present time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Viv Clough</td>
<td>yes</td>
<td>access to fells, cat walking, sloe picking, cycling, bonfire, nature walks</td>
<td>yes</td>
<td>1994 - present time</td>
<td>30/05/2011</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mike Clough</td>
<td>yes</td>
<td>access to the fells, walking, cat walking, blackberrying, cycling, bonfires, nature walks, home made swings and dens</td>
<td>yes</td>
<td>1994-present time</td>
<td>28/05/2011</td>
<td></td>
<td></td>
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<tr>
<td>Guy and Shona Broome</td>
<td>yes</td>
<td>nature watching</td>
<td>no mention</td>
<td>2009</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kirsty Hollings</td>
<td>yes</td>
<td>dog walking, access to fells, blackberrying, bird watching, bonfire parties, cycling, children playing</td>
<td>yes</td>
<td>2005</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrew Hollings</td>
<td>yes</td>
<td>access to fells</td>
<td>yes</td>
<td>2005</td>
<td>daily</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elizabeth Fowler</td>
<td>yes</td>
<td>dog walking, nature walk</td>
<td>no mention</td>
<td>2006</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Susan Blake and Peter Long</td>
<td>yes</td>
<td>children playing and walking</td>
<td>no mention</td>
<td>2009</td>
<td>regular uses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phil and Lynne Robinson</td>
<td>yes</td>
<td>dog walking, blackberrying, bird watching, bonfire parties, cycling, children playing</td>
<td>yes</td>
<td>35 years</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Paul and Julia Jenner</td>
<td>yes</td>
<td>children playing, den building, dog walking</td>
<td>yes</td>
<td>2000</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Bill Ovens</td>
<td>yes</td>
<td>walking, children playing</td>
<td>no mention</td>
<td>1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fiona Ovens</td>
<td>yes</td>
<td>walking, children playing</td>
<td>no mention</td>
<td>1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simon Ovens</td>
<td>yes</td>
<td>children playing, den building, dog walking</td>
<td>no mention</td>
<td>1993</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ruth and Mike Hill</td>
<td>yes</td>
<td>children playing, walking</td>
<td>no mention</td>
<td>2007</td>
<td>community maintain area</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jill and Paul McClean</td>
<td>yes</td>
<td>children playing</td>
<td>no mention</td>
<td>4 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clive and Sue Walton</td>
<td>yes</td>
<td>picnics, bonfire parties, dog walking</td>
<td>yes</td>
<td>40 years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Robin and Joanne O'Dowd</td>
<td>yes</td>
<td>running, walkers, dog walking</td>
<td>yes</td>
<td>2004-present time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clarence and Elsie Smith</td>
<td>yes</td>
<td>moving livestock</td>
<td>no mention</td>
<td>1966</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tony Smith and Elaine Watson</td>
<td>yes</td>
<td>moving livestock</td>
<td>no mention</td>
<td>40 years</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Farmers use it to move their sheep to higher ground.
Farmers use it to take sheep to upland grazing areas.
Community maintain area.

Doesn't mention village green or sports and pastimes.
To Whom it may concern

My wife Shona and I have been residents in Cumrew since July 2009. We live 70 metres to the north of the Green and Lonning and have had free access to the land. Although recent incomers, we wish to strongly support the Village Green and Lonning becoming a special protected area.

I have recorded the following birds nesting in the wooded Lonning---Tawny Owl, Redstart and Blackcap. All of these are rare in Cumbria, numerous other common species also nest here or pass through as woodland migrants. Butterflies include Speckled wood and Comma, both rare in the region.

I suspect that the mature hardwood woodland of the Lonning represents ancient primary uncut forest that is very rare in Northeast Cumbria.

Yours sincerely

Guy and Shona Broome
Re The Green & Fell Lonning Cumrew

I have lived in the village for almost 16 years, I have used the footpath opposite my house to access the fells where I walk regularly. My Grand children regularly play on the grassed area opposite my property. I am not aware of who may own the land but myself and my family have never been restricted from using it.

I would support any application that may be made to register the land as a ‘village green’ and would be prepared support any application if required to do so.

Alan Sykes

5th June 2011
6/6/11

To Whom it may Concern

My husband and I live at The Hollies, adjacent to the green and lonning in Cumrew, having moved here on 20th August 2006.

We have tidied rubbish and rubble from the green and cut the grass regularly, leaving areas for wild flowers in spring and early summer.

We have walked the lonning daily with our dog, enjoying the drifts of snowdrops, bluebells and other wild flowers in each season. Among the trees growing by the beck elms are regenerating.

Living adjacent to the lonning we have observed that open access is important, not just as an amenity, but for farmers to take sheep to the upland grazing areas of Cumrew Fell.

We feel that the green and lonning are very special and should be protected in order to preserve them and to allow access for everyone in the village to use and enjoy.

Yours faithfully,

Elizabeth Fowler
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.

Supplied by: Carlisle Library
Serial number: 00075000
Centre coordinates: 355083.5 550790.5

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey website: www.ordnancesurvey.co.uk
TO WHOM IT MAY CONCERN

CUMREW VILLAGE FELL LONNING
My family and I have lived in Cumrew Village for over 40 years. I confirm that we own land adjacent to the fell lonning which has two gateways which have a right of access for vehicles from the fell lonning.

The fell lonning is also used for accessing Cumrew Fell by villagers and other landowners.

We support the application for this land to be registered as common land and have the access rights protected for future generations.

Yours sincerely

Tony Smith, Elaine Watson, James Smith and Hannah Smith
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This page is intentionally left blank
RE: Application for the registration of land as a Town or Village Green. Land at Cumrew (Application No. NL0057)

Dear Liz Fitton,

I wish to pass comment on the proposals outlined in your letter dated 3rd March (Ref: LF/NL0057) to register land adjacent to our property as a town or village green.

One section of the land (identified on the attached PDF) is attached to land owned by ourselves. This land has been maintained by the previous owners Mr and Mrs Fowler since 2005 and by ourselves since March 2016. It conjoins with our grass lawns, flowers, planted trees and a wall surrounding three sides of our property.

We oppose the registration of this section of land for a town or village green. Instead we seek to formally adopt this land as our own, thus continuing to maintain its appearance and reduce the financial upkeep of this land for Cumbria County Council.

As a footnote we have no intention of extending our boundary wall or changing the appearance of this land in this protected conservation area. We merely want to prevent public events taking part on land adjacent to our property that could potentially damage and devalue it.

We have continued to maintain this section of land and in doing so upheld our civic duty to the village and parish council at our cost and time. All we wish to happen is that this is formally recognised and this land rightfully becomes part of The Hollies.

Yours sincerely,

Mr Cranwell
Ms Liz Fitton  
Commons Officer  
Cumbria County Council  
Commons Registration  
Lady Gillford’s House  
Petteril Bank Road  
Carlisle  
CA1 3AJ

07 March 2017

Dear Ms Fitton

APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN - LAND AT CUMREW

Thank you for consulting us on the above application. The City Council has no objections to the proposals. However, we have the following comments to make. The area in question is a narrow parcel of land giving access via a track to farm land, and alongside which runs Cumrew Beck. It doesn’t appear to be a typical green as it is not open in nature, and it is difficult to imagine what ‘lawful sports and pastimes’ could be carried out in this location.

As I understand it, it is important to distinguish the use of footpaths and tracks for the use of an area for sports and pastimes. Where the public have walked over defined tracks, this will only go as far as to establish public rights of way (see California Lane, Newfield Park, Kingstown, Carlisle application).

Yours sincerely

Jillian Hale  
Principal Planning Officer
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Dear Ms Fitton

NL0057 – Application for the registration of land as a Town or Village Green – Land at Cumrew

I am clerk of Carlatton and Cumrew Parish Council.

The letter that you sent to Mr P.L. Robinson on 5th May was read at the Council meeting on 11th May.

This land has always been used by the village for any public celebratory events. The land next to The Hollies is big enough to hold a marquee and has been used many times for this purpose.

Cumrew has no village hall or other public pieces of land on which we can hold any public functions, so the Council strongly recommend that you allow this land to become Village Green.

The previous owner of The Hollies was one of the main people who wanted it to be registered as a village green, and indeed did a lot of ground work to make this happen before he left the village.

I enclose a copy of the letter he sent to me about this matter.

Yours sincerely

Joanne Crozier
Parish Clerk
Dear Mrs Crozier,

I write to confirm that in the ten years we owned the Hollies, Cumrew, we had no intention at any stage of claiming ownership of the land adjoining the property.

I cut the grass on the green, we planted the trees outside the house at our own expense, and we planted daffodil bulbs provided by the local authority.

We did this because we enjoyed living in Cumrew, and it was our contribution to the community.

We always accepted that the land was part of the village green and I was one of the villagers instrumental in applying for village green protection for all the area including the area surrounding the lonnin.

There is a map showing the area marked in red which includes the land outside The Hollies.

I was involved in drawing up that plan.

I am disappointed to hear that for the second time in ten years a resident is trying to claim ownership of land that is in public ownership and as such should be kept as a village amenity.

Yours Sincerely

James Fowler
Appendix 5.1 - site visit photographs taken 3rd March 2017
Appendix 5.2 - site visit photographs taken 3rd March 2017
Appendix 5.3 - site visit photographs taken 4th June 2018

(page 1 of 2)
WILDLIFE & COUNTRYSIDE ACT 1981 – SECTION 53
APPLICATION TO MODIFY A SECTION OF PUBLIC FOOTPATH
NO 126016 PARISH OF NICHOLFOREST: DISTRICT OF
CARLISLE

1.0 EXECUTIVE SUMMARY

1.1 An application has been received to modify a section of the public footpath no 126016 near Low Plains in the parish of Nicholforest on the Definitive Map.

1.2 A plan (Appendix A) shows the route of the path subject to the application and a location plan is also attached at Appendix C.

1.3 The purpose of this report is to present Members with the evidence regarding the route, and for a decision to be made whether to proceed with the next stage of the process by making a legal order.

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN

2.1 The relevant corporate theme is “To provide a safe and well managed highway network, secure infrastructure improvements and support local economic growth”.

2.2 This matter is a decision making process of a quasi-judicial nature. There should be no policy or political consideration given and any potential financial implication should be ignored. It is merely a matter of weighing the strength of evidence and if that evidence is sufficient to meet the burden of proof, then the legal framework must be applied to the evidence.
3.0 RECOMMENDATION

3.1 It is recommended that the application to modify the route of public footpath no 126016 in the parish of Nicholforest be rejected.

4.0 BACKGROUND

4.1 An application under Section 53 of the Wildlife and Countryside Act 1981 must be valid. A valid application must contain

- A completed Application Form;
- A map to a scale of not less than 1:25000 showing the rights the rights of way subject of the application;
- Copies of the supporting evidence, including statements of witnesses;

4.2 If an application is considered valid it is added to the statutory list of outstanding applications in accordance with Section 53(5) of the 1981 Act and can only be removed following a formal decision by Cumbria County Council as the surveying authority.

4.3 In determining these applications our role is to consider whether or not the available evidence (including any evidence submitted by objectors) supports the claim made in the application. Normally this would involve assessing historical documentary evidence and evidence that the public has used a route as of right (without force, secrecy or permission) and without interruption for a period of 20 years or more. It is also important to establish that the landowner during that period has not sought to prevent the public use of the route.

4.4 The application submitted asserted that the path was in the wrong location and that it had never passed through the curtilage of the property Low Plains. This assertion was supported by a small number of letters from local people stating that they had never walked the definitive line at this property.

4.5 However, this is not enough to prove that a mistake was made when the Definitive Map and Statement was produced. When this happens our normal practice is to request further evidence. Unfortunately, the applicant has been unable to provide any evidence that a mistake was made and that the definitive map is incorrect.

4.6 The route of the right of way remains as claimed in the parish surveys undertaken in the early 1950s and depicted on the draft definitive map and statement and detailed in the original parish schedule submitted by the parish council back in the early 1950s.
4.7 Attached at Appendix B is an extract from the Definitive map and Statement in respect of public footpath no 126016

5.0 LEGAL POSITION

5.1 In considering the application to amend the Definitive Map under Section 53 (3)(c)(iii) of the Wildlife and Countryside at 1981, Members must consider all the evidence available to them and must be satisfied that the evidence shows on the balance of probabilities that the map and statement should be modified.

5.2 The leading case in this area is that of Trevelyan v Secretary of State for the Environment, Transport and the Regions [2001] EWCA Civ 266. The Court of Appeal decided that clear and compelling evidence of a mistake would be needed to set aside the presumption that the Definitive Map and Statement of Public Rights of Way had been correctly prepared and are a true record. The procedure whereby the Definitive Map was originally drawn up was lengthy and involved, and opportunities were given for those concerned to object if they thought that the Definitive Map had been incorrectly drawn.

5.3 The evidence needs to fulfil certain stringent requirements.

These are that:-

- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made (Burrows 2004).

- The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.

- The evidence must be cogent (clear, logical, and convincing).

5.4 Under paragraph 2.1 (g)(vii) Part 2 G of the Constitution the County Council has a statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (section 53 of the Wildlife & Countryside Act 1981).

6.0 CONSULTATIONS

6.1 No consultation has taken place as the evidence threshold has not been met to satisfy processing the application to this stage

7.0 OPTIONS

7.1 The Committee may accept or reject the recommendation in whole or in part.

7.2 If the recommendation is rejected the applications will remain on the list of outstanding orders and dealt with in accordance with the current policy criteria.
7.3 If the recommendation is accepted the individual applicants have the option of appealing against the decision to the Planning Inspectorate.

8.0 ANALYSIS AND CONCLUSION

8.1 The County Council has a statutory duty to keep the Definitive Map and Statement of Rights of Way under continuous review (s.53 Wildlife & Countryside Act 1981) and must process any claim that a path is incorrectly recorded on the legal record.

8.2 The path through the curtilage of Low Plains was obstructed by the construction of farm outbuildings, which took place during the 1960s. A recent planning application for demolition of the outbuildings and construction of a new dwelling brought the issue to the fore and the applicant landowner has taken the opportunity to rectify the matter by diverting the footpath under Section 119 of the Highway Act 1980.

8.3 In this case I conclude that the applicant has failed to satisfy the strict burden of proof that the Definitive Map and Statement are incorrect and the application should be rejected.

Angela Jones
Acting Executive Director – Economy and Infrastructure
July 2019

APPENDICES

A – Plan showing the section of path to be modified
B – Extract from Definitive Map and Statement for footpath no 126016
C – Location Plan

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division(s): Longtown – Val Tarbitt

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS [including Local Committees]

No previous relevant decisions.

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny.
BACKGROUND PAPERS

No background papers

Contact: Sandra Smith, Countryside Access Officer - Tel: 07920 711254
E-mail: Sandra.smith@cumbria.gov.uk
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Highways Act 1980 Section 119 Application to Divert Public Footpath No 126016 Parish of Nicholforest: District of Carlisle

1.0 Executive Summary

1.1 An application has been received to divert a section of public footpath no 126016 in the Parish of Nicholforest.

1.2 This can be done under Sections 119 of the Highways Act 1980 and consultations have taken place so as to assist members to reach a decision as to whether or not a diversion order should be made.

1.3 The plan at Appendix A shows the proposal.

2.0 Policy Position, Budgetary and Equality Implications, and Links to Council Plan

2.1 The relevant corporate theme is “To ensure places in Cumbria are well-connected and thriving”.

2.2 The relevant procedure is an “administrative quasi-judicial” one. The conditions which must be satisfied for an order to be made and confirmed are that it should appear to Members “that it is expedient” for the public footpath to be diverted and that there is a need to make an order on the grounds set out in paragraph 5.1 of this report. Members have discretion as to whether or not to make an order, but such discretion must be exercised reasonably.
3.0 RECOMMENDATION

3.1 That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council’s Constitution, an order be made under Section 119 of the Highways Act 1980 to divert that section of public footpath no 126016 in the parish of Nicholforest as shown A-B to a new route C-B on the plan at Appendix A and that all necessary action be taken to confirm the order.

4.0 BACKGROUND

4.1 The proposed diversion order is in the interests of the landowner.

4.2 The existing definitive route of the path passes through the curtilage of Low Plains before crossing the rough pasture to the rear of the property.

4.3 The path through the curtilage of Low Plains was obstructed by the construction of farm outbuildings, which took place during the 1960s. A recent planning application for demolition of the outbuildings and construction of a new dwelling brought the issue to the fore and the applicant landowner has taken the opportunity to rectify the matter.

4.4 The proposed diversion route will utilise a nearby field gate to access the rough pasture and take a direct line to the far field boundary crossing. In doing so it will make the proposed path more logical in its direction and easier to follow for the user. There are no works required to bring the new route into use by the public.

4.5 All costs associated with processing of the diversion order will be paid by the applicant.

Consultation

4.6 The statutory undertakers have been consulted and none are affected.

4.7 A consultation has been carried out with

Nicholforest Parish Council – has no comment to make on the application

Carlisle City Council – no response received

Ramblers – no response received

Local Ramblers representative – no response

Cumbria and Lakes Local Access Forum (CALLAF) – have no grounds to oppose this retrospective proposal, as it would seem that there would be no loss of amenity and convenience for potential users, the change of roadside access incurring minimal distance and with no reduction of connectivity.

Byways and Bridleways Association – no response received
British Horse Society – no response received
Open Spaces Society – no response received
Cyclists’ Touring Club – no response received
British Driving Society – no response received
Auto Cycle Union – no response received
Landowners – Consent has been received from the affected landowner

4.9 The local member for Longtown, Val Tarbitt has been consulted but has not made a response

5.0 LEGAL IMPLICATIONS

5.1 Under Section 119(1) of the Highways Act 1980 we must be satisfied that in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public, it is expedient that the line of the path or way, or part of that line, should be diverted.

5.2 The diversion must not alter any point of termination of the path, other than to another point on the same highway or a connected highway (Section 119(2) Highways Act 1980) and which is substantially as convenient to the public.

5.3 Further, under Section 119(6) of the Highways Act 1980, if no objections are received against the made order, we must be satisfied that the public footpath diversion is expedient and will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:-

5.4 The diversion would have on public enjoyment of the path or way as a whole;

5.5 The coming into operation of the order would have as respects other land served by the existing right of way; and

5.6 Any new public right of way created by the order would have as respects the land over which right is so created and any land held with it.

5.7 Under Section 119(6A)(b) of the 1980 Highways Act, our Rights of Way Improvement Plan (now incorporated in the Cumbria Countryside Access Strategy) has been considered and the proposal accords with two of the five priority areas of work identified therein namely: Improving Rights of Way and Countryside Access and Managing Rights of Way and Countryside Access .

5.8 Under Part 2G paragraph 2.1(g) (iii) of the Constitution, the Committee has power to divert footpaths and bridleways.
6.0 **OPTIONS**

6.1 The Committee may accept or reject the recommendation. If the recommendation is accepted by Members and an order is made any objector will have an opportunity, before the order is confirmed to submit a further objection. The matter will then be referred to the Secretary of State for a decision as to whether or not the order should be confirmed in circumstances where the objection is not withdrawn.

7.0 **ASSESSMENT AND CONCLUSION**

7.1 No objections have been received as a result of consultations.

7.2 I am satisfied that the proposed diversion will not prove to be substantially less convenient to use compared to the existing definitive route.

7.3 I conclude that the proposed diversion passes the legal tests set out in Section 119 of the Highways Act 1980 and, if Members approve the recommendation in this report, the order should be made in the interests of the landowner.

Angela Jones
Acting Executive Director – Economy and Infrastructure
July 2019

**APPENDICES**

A  *Plan showing proposed diversion*
B  *Location plan*

**IMPLICATIONS**

Staffing: Nil
Financial: Nil
Electoral Division: Longtown – Val Tarbitt

**PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS**

[Including Local Committees]

*No relevant decisions*

**CONSIDERATION BY OVERVIEW AND SCRUTINY**

*Not considered by Overview and Scrutiny*
BACKGROUND PAPERS

No background papers.

Contact: Geoff Fewkes, Countryside Access Officer
Email: geoff.fewkes@cumbria.gov.uk
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HIGHWAYS ACT 1980 SECTION 119A – APPLICATION TO DIVERT UNRECORDED PUBLIC FOOTPATH AT BAYLEY/BAILEY LANE GRANGE OVER SANDS: DISTRICT OF SOUTH LAKELAND

1.0 EXECUTIVE SUMMARY

1.1 The County Council has received an application to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass.

1.2 This can be done under Sections 119A of the Highways Act 1980 and now that a Section 119A(8) agreement (Appendix B) has been entered into with the applicant members can decide whether or not a diversion order should be made.

1.3 The plan at Appendix A shows the proposals and photos of the location are included at Appendix C.

2.0 POLICY POSITION, BUDGETARY AND EQUALITY IMPLICATIONS, AND LINKS TO COUNCIL PLAN

2.1 The relevant corporate theme is “To ensure places in Cumbria are well-connected and thriving”.

2.2 The relevant procedure is an “administrative quasi-judicial” one. The conditions which must be satisfied for an order to be made and confirmed are that it should appear to Members “that it is expedient in the interests of public safety” for the public footpath to be diverted and that there is a need to make an order on the grounds set out in paragraph 5.1 of this report. Members have discretion as to whether or not to make an order, but such discretion must be exercised reasonably.
3.0 **RECOMMENDATION**

3.1 That, the committee approve the making of the legal order to divert Bayley/Bailey pedestrian level crossing under Section 119A of the Highways Act 1980.

3.2 That, pursuant to the power set out at Part 2G paragraph 2.1(g)(iii) of the Council’s Constitution, an order be made under Section 119A of the Highways Act 1980 to divert the unrecorded public footpath in the parish of Grange-Over-Sands as shown A-B to a new route C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-B on the plan at Appendix A and that all necessary action be taken to confirm the order.

4.0 **BACKGROUND**

4.1 On the 11th July 2018 this Committee rejected the recommendation to refuse an application to make an order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass as shown on plan at Appendix A.

4.2 Members were advised that they could not resolve to make an order until a Section 119A (8) Agreement had been signed by Network Rail and Cumbria County Council. This form of agreement requires the applicant to pay any compensation or expenses that may arise as a result of processing the legal order (see 5.5 below). This Agreement has now been signed by the appropriate parties (see appendix B) and the County Council can now make a legal order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass (see plan at Appendix A).

4.3 The new route will pass along a section of the existing Grange promenade shown R-W on the plan at Appendix A which is supported by the existing retaining sea wall. Structures supporting public highways are normally the default maintenance responsibility of Highway Authorities. However because the applicant is Network Rail I have proposed a clause to limit the County Council’s liability:

“The operator of the railway crossed by the footpath described in paragraph 1 shall maintain the surface and all associated overbridges and supporting structures, on the part shown C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-B, including the underpass between Q-R and retaining sea wall between R-W, on the said map of the footpath created by this order.”

With this wording I believe the probability is very low that Cumbria County Council will become responsible for the maintenance of this section of the sea wall.
5.0 LEGAL IMPLICATIONS

5.1 Under Section 119A (1) of the Highways Act 1980 a footpath which crosses a railway should be diverted where it appears to a council expedient in the interests of safety of members of the public using it.

5.2 A council shall not confirm such an order as an unopposed order, unless they are satisfied that it is expedient to do so having regard to all the circumstances, and in particular to—

(a) whether it is reasonably practicable to make the crossing safe for use by the public, and

(b) what arrangements have been made for ensuring that, if the order is confirmed, any appropriate barriers and signs are erected and maintained.

5.3 A rail crossing diversion order (119A) shall not alter a point of termination of a path or way diverted under the order—

(a) if that point is not on a highway over which there subsists a like right of way (whether or not other rights of way also subsist over it), or

(b) (where it is on such a highway) otherwise than to another point which is on the same highway or another such highway connected with it.

5.4 Under S.119A (6) A rail crossing diversion order may make provision requiring the operator of the railway to maintain all or part of the footpath created by the order.

5.5 Under S.119A (8) Before determining to make a rail crossing diversion order on the representations of the operator of the railway crossed by the path or way, the council may require him to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—

(a) any compensation which may become payable under section 28 above as applied by section 121(2) below;

(b) any expenses which the council may incur in connection with the erection or maintenance of barriers and signs;

(c) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use by the public;

(d) where the council are not the highway authority, any expenses which may become recoverable from them by the highway authority under the provisions of section 27(2) above as applied by subsection (11) below.

5.6 Under Part 2G paragraph 2.1(g) (iii) of the Constitution, the Committee has power to divert footpaths and bridleways.
6.0 **OPTIONS**

6.1 The Committee may accept the recommendation or take a different view to officers and resolve not to make the order.

6.2 If the recommendation is accepted by Members and an order is made any objector will have an opportunity, before the order is confirmed to submit a further objection. The matter will then be referred to the Secretary of State for a decision as to whether or not the order should be confirmed in circumstances where the objection is not withdrawn.

6.3 If the recommendation is not accepted by Members and an order is not made the applicant has an opportunity to request that the Secretary of State make the order. The Planning Inspectorate acting for the Secretary of State will either refuse the request or make the legal order.

In the situation where the Secretary of State makes the legal order and receives objections a planning Inspector will then determine the matter following a public inquiry, public hearing or after a period of written representations dependent on the most appropriate method in the circumstances. Experience shows that in cases such as this it is likely that a public inquiry will be held.

7.0 **ASSESSMENT**

7.1 This committee, at its meeting on 11 July 2018, resolved that the recommendation that the application to divert Bayley/Bailey pedestrian level crossing under Section 119A of the Highways Act 1980 be rejected on the grounds that the evidence so far provided does not support a recommendation that it is expedient in the interests of safety of members of the public to divert the aforementioned crossing be rejected but noted that a further report would come to the Committee once the Section 119(A) Agreement had been. This has now been agreed.

7.2 The future maintenance liability of all elements of the proposed diversion will be the full responsibility of the rail authority including the relevant section of the retaining sea wall.

8.0 **CONCLUSION**

8.1 The applicant has now entered into a Highways Act 1980 S.119A (8) Agreement (see Appendix B) and this allows the County Council to make the legal order to divert the unrecorded public right of way as shown on plan at Appendix A.

*Angela Jones*
*Acting Executive Director – Economy and Infrastructure*
*July 2019*
APPENDICES

A Plan showing proposed diversion
B 1980 Highways Act Section 119A (8) Agreement
C Photos of location

IMPLICATIONS

Staffing: Nil
Financial: Nil
Electoral Division: Grange – Bill Wearing

PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS
[including Local Committees]

11th July 2018 Development Control and Regulation meeting this Committee rejected the recommendation to reject the application to make an order to divert the unrecorded public footpath that passes over the railway at Bayley/Bailey Lane, Grange Over Sands to an alternative route that incorporates the nearby railway underpass see Appendix A.

CONSIDERATION BY OVERVIEW AND SCRUTINY

Not considered by Overview and Scrutiny

BACKGROUND PAPERS

No background papers.

Contact: Andy Sims, Countryside Access Officer
Email: andy.sims@cumbria.gov.uk
This agreement is dated [DATE]

PARTIES

(1) Cumbria County Council of 117 Botchergate, Carlisle CA1 1RD (Council)

(2) Network Rail Infrastructure Limited (company number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN (Network Rail)

BACKGROUND

(A) Network Rail has made an application to the Council to vary the route of the public footpath over Bailey Lane Public Footpath Level Crossing in the town of Grange-over-Sands which will enable them to close the crossing.

(B) The Council is the Highways authority for the area within which the New Footpath is situated.

(C) Network Rail is the railway operator of the rail network over which the Old Footpath currently traverses.

(D) At a meeting of the Development Control and Regulation Committee (DCR) of the Council it was resolved that a Rail Crossing Diversion Order be made under S119A of the Highways Act 1980 subject to Network Rail entering into this agreement.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Application: The application made by Network Rail under Section 119A of the Highways Act 1980 to have the line of the Old Footpath diverted onto the line of the New Footpath by way of a Diversion Order

Commencement Date: The date of this agreement

Rail Crossing Diversion Order: The order made if the determination of the Application is in Network Rail’s favour

Old Footpath: is the footpath over the level crossing as marked with a thick solid black line between points A and B on plan at Appendix A

New Footpath is the footpath as marked with a thick dashed black line between points C-D-E-F-G-H-I-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-Y-Z on plan at Appendix A
1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party’s personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to writing or written includes fax and email.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 References to a document in agreed form are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.

1.14 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.15 References to clauses are to the clauses of this agreement

2. COMMENCEMENT

This agreement shall commence on the date when it has been signed by all the parties (Commencement Date).

3. ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

4. VARIATION
No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

5. WAIVER (SHORT FORM)

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

6. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

7. SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

8. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

9. The addresses for service of notices are:

(a) Cumbria County Council
   
   (i) Address: 117 Botchergate, Carlisle, CA1 1RD

   (ii) For the attention of: Development Control Manager

(b) Network Rail

   (i) Address: Square One, 4 Travis Street, Manchester, M1 2NY

   (ii) For the attention of: Ann Buckley

10. THIRD PARTY RIGHTS

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

11. GOVERNING LAW
This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

13. NETWORK RAIL COVENANTS

Network Rail covenants with the Council to observe and perform the covenants, restrictions and obligations reserved to them which are that Network Rail will defray in full and without qualification:

a) any compensation which may become payable under section 28 of the Highways Act 1980 as applied by section 121(2) of that act

b) any expenses which the Council may incur in connection with the erection or maintenance of barriers and signs on the Old or New Footpaths

c) any expenses which the Council may incur in bringing the site of the New Footpath or way into fit condition for the use of the public

which may occur as a result of the making of the Diversion Order.

This agreement has been entered into on the date stated at the beginning of it.

Signed by for and on behalf of Cumbria County Council

Signed by CAROLE BAYLISS for and on behalf of NETWORK RAIL INFRASTRUCTURE LIMITED
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Application Reference No. 1/19/9005 & 1/19/9006

Application Type: Section 73 Application to Vary or Remove Planning Conditions

Proposal:
Section 73 Variation of Condition 4 of Planning Permission reference 1/17/9018 to permanently extend the hours of operation on the site (not including operating times of waste carrying vehicles).

Section 73 Variation of Condition 2 of Planning Permission reference 1/17/9019 to permanently extend the hours of operation on the site (not including operating times of waste carrying vehicles).

Location: North West Recycling Ltd, Unit A, Unit B & Site K, Kingmoor Park, Rockcliffe Estate, Rockcliffe, Carlisle, CA6 4RW

Applicant: North West Recycling Ltd

Date Valid: 3 June 2019

Reason for Committee Level Decision: Objections received

1.0 RECOMMENDATION

1.1 That Planning Permission is Granted Subject to Conditions set out in Appendix 1 and Appendix 2 to this report.

2.0 THE PROPOSAL

2.1 Planning permission is sought in relation to Section 73A to permanently increase the operating hours of Unit A and Unit B at North West Recycling Ltd, Kingmoor Park, Rockcliffe Estate, Rockcliffe, Carlisle, CA6 4RW.

2.2 North West Recycling wish to continue waste processing operations in Units A & B up to 10.45 pm. This follows a 12-month trial that was granted permission by the Development Control and Regulation Committee on 30 May 2018 and commenced shortly afterwards.

2.3 The proposed increase in operational hours relates to work being carried out within the buildings only. It does not propose the use of site K for processing inert waste; the delivery or removal of waste from the site nor the movement of waste between the two buildings in the evening.

3.0 SITE DESCRIPTION

3.1 The application site is located adjacent to the entrance of Rockcliffe Estate, Kingmoor, Carlisle. The site was formerly part of RAF Carlisle and the 14th Maintenance Unit (14MU). 14MU consisted of various industrial type buildings used for the storage and maintenance of equipment and associated office / administration buildings across a number of sites to the north of Carlisle. After the closure of 14MU, Carlisle City Council granted planning permission for B2 & B8 use of the site without restrictions on operating hours or intensity of use. The Rockcliffe Estate is now a mixed use estate containing both industrial and office
based businesses and includes two other waste related companies. Northwest Recycling operates from 3 areas of the estate linked by internal roadways. These are two buildings known as unit A and unit B, the subject of these applications and site K which is an area of open hardstanding used for inert waste recycling. Unit A operates under one planning permission and unit B & site K operate under a different planning permission. The company’s head office and associated staff parking are also on the estate.

3.2 Unit A is surrounded by a concrete apron and a 3m high close board fence along the northern and western perimeters. Waste materials are stored along the southern elevation and waste is delivered to the unit via doors in the eastern elevation. Unit B is a large industrial building towards the back (eastern side) of the estate and site K in the south eastern corner, which is surrounded by substantial, landscaped, screening bunds.

3.3 The nearest residential properties are at Bank End Farm 180m to the south of Unit B; Crookdyke farm 420m to the North of Unit B; and Moss View & Melldrun House which are around 430m to the North of Unit A. Rockcliffe village is approximately 600m to the North West of Unit A. To a greater extent the Rockcliffe Estate is screened from Rockcliffe Village itself by topography, mature trees and hedges. The farms and nearest houses are less well screened.

4.0 SITE PLANNING HISTORY

4.1 Conditional planning permission for Unit A was granted on 19 March 2009 (ref 1/09/9002) for a change of use from an industrial building (B8 use) to the development and operation of a materials recycling facility to enable the sorting and recycling of waste materials (sui generis use). An application was made in 2011 to vary conditions 17, 19 and 20 of planning application ref: 1/09/9002. This was conditionally approved on 22 June 2011 (ref 1/11/9001). A further amendment to the approved layout plan and associated conditions was granted permission on 18 July 2017 (1/17/9008).

4.2 Planning permission for waste management operations in unit B and on site K was granted on 17 February 2016 (ref 1/15/9006). On 8 December 2017, planning permission was granted for the installation of a biomass fuelled boiler and drying plant along the northern elevation of unit B (ref 1/17/9014). The planning permission for the boiler and drying plant has not yet been implemented.

4.3 Planning permission references 1/17/9018 & 1/17/9019 were granted on 30 May 2018. These allowed working within the two buildings between 07.00 & 22.45 on weekdays for a 12-month trial period. Two additional conditions were added, one requiring the submission and implementation of a complaints recording system and the other requiring the submission of a noise monitoring scheme. Both of these schemes have been submitted and approved.

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 Carlisle City Council Planning Department: comment that in overall terms the principle of the continued use of the site is acceptable; however, would recommend the imposition of conditions ensuring: control of operation hours; the retention of the complaints procedure; and compliance noise investigation scheme.
5.2 CCC Highway Authority: No objection

5.3 CCC Lead Local Flood Authority: No objection

5.4 Carlisle City Council Environmental Health Department: comment that both the complaints and noise environmental noise report is satisfactory.

5.5 Environment Agency: No objection, although comment that the operator should be mindful of maximum quantities of waste that can be treated per day as set out in their Environmental Permit

5.6 Rockcliffe Parish Council: Object for the reasons set out in their previous objection. [This related to the submission of details for the complaints and noise monitoring schemes.] They add that they have concerns about Light Pollution; “Abuse of presently agreed operating hours”; the rights of residents in relation to the Human Rights Act; a lack of monitoring of waste types handled at the site; noise levels and the effect of night time working on migrating birds and nocturnal animals associated with the SSSI, Solway Coast, AONB and the Solway Firth MCZ.

5.7 Longtown ED - Mrs Val Tarbitt has not commented on the application

5.8 Dalston & Burgh ED - Mr T Allison has not commented on the application

5.9 One representation has been received. This relates to noise from the operations during the daytime and in particular the “unremitting bleep bleep of vehicles” and to crashes and bangs. They further comment that “the original planning approval for the creation of the plant stipulated that all vehicles should be fitted with neutral noise type backing alarms. I understand that they claim that the reversing alarms heard belong to vehicles belonging to outside contractors. As these are heard constantly all day it makes a mockery of the intention of the original planning condition.” No other representations have been received.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process.

6.2 The Cumbria Minerals and Waste Local Plan 2015-2030 was formally adopted on 6 September 2017. The key policies relevant to the determination of this planning application are considered to be:

- Policy SP1 - Presumption in Favour of Sustainable Development
- Policy SP14 - Economic Benefit
- Policy SP15 - Environmental Assets
- Policy DC2 - General Criteria
- Policy DC3 - Noise
- Policy DC6 - Cumulative Environmental Impacts
- Policy DC9 - Criteria for Waste Management Facilities

The National Planning Policy Framework (NPPF) was published in a revised form in July 2018. The national online Planning Practice Guidance (PPG) suite was launched in March 2014 and is continually updated. Both are material considerations in the determination of planning applications.

7.0 PLANNING ASSESSMENT

7.1 The proposal does not fall within any category of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. There is no requirement therefore, to screen the proposal.

7.2 I consider the key planning issues relevant to the proposed schemes are considered to be:

Would extending operating hours increase any negative impact on amenity caused by the site?

7.3 Policy DC2 of MWLP sets out general criteria for assessing minerals and waste related developments. It requires appropriate assessments to be undertaken and it sets out a number of considerations that are relevant to this development. These include the proximity of sensitive receptors; hours of operations; appropriate routes and volumes of traffic and other mitigation measures. CDLP policy CM5 states that “Development will not be permitted where it would generate or result in exposure to, either during construction or on completion, unacceptable levels of pollution (from contaminated substances, odour, noise, dust, vibration, light and insects) which cannot be satisfactorily mitigated within the development proposal or by means of compliance with planning conditions”.

7.4 I take the concerns of the Parish Council and the representation made very seriously. However, they appear to relate to other operational matters and the principle of this recycling operation at this site rather than the question of extending operations into the evening. If this application is refused the site would continue to operate to the existing conditions.

7.5 Of the specific concerns raised by the Parish Council that are relevant to this application:

- There is no proposed change in the current lighting arrangements, which are for security and the safety of site personnel. I consider the impact of the flood lighting at the nearby railway marshalling yard likely to have a much greater impact on dark skies than the dozen or so downward pointing lights attached to Units A & B.

- There have been no complaints about working on the 18 bank holidays since April 2017 when the only complaint recorded about working on a bank holiday (i.e. out of normal hours) was received.

- The application of the Human Rights Act in relation to land use planning has been scrutinised by the courts and is well understood by planning authorities. Notwithstanding the lack of evidence to support the Parish Council’s
assertions, the law allows limited impacts on human rights if they are proportionate to the wider needs of society.

- Waste types handled at the site are not a planning matter. These are regulated by the Environment Agency and in effect controlled by the “Duty of Care” imposed by section 34 of the Environment Protection Act 1990. The EA take breaches of this very seriously. If there is evidence that waste that is not allowed on site is being routinely managed at the site, this should be reported to the EA.

- The noise monitoring scheme is in accordance with recognised industry standards and has been reviewed by experts at the City Council Environmental Health Office. Contrary to the comments of the Parish Council, the scheme proposes that the night time background level is established at 3am when noise should be at a minimum.

- Evening operations have been and would be confined to the buildings. I can see little difference with respect to the impacts of nocturnal or migrating species or other interest features of the SSSI, AONB, and MCZ between this operation and any other industrial type process being undertaken inside a building in the area.

7.6 Similarly, I note the concerns of the local resident, and am sympathetic to them. However, as the proposal specifically excludes the external movement of vehicles and confines works to within the buildings, it is difficult to reasonably refuse the application on the basis of daytime noise nuisance that would not be present during the evening. Furthermore, whilst I acknowledge that a lot of the noise on Kingmoor Rockcliffe industrial estate can be attributed to North West Recycling, Cubby Constriction operate a depot that undertakes inert waste recycling in the open and Andidrain operate a fleet of vehicles from the Kingmoor Rockcliffe estate.

7.7 I note that, no complaints have been received about evening working during the 12 month trial period. As there have been no complaints I have not had reason to visit the site during the evening to provide my own subjective opinion as to noise impacts. However, I am confident that with the establishment of proper baseline conditions for noise monitoring there would be an objective way of assessing any noise problem should it be reported in the future.

7.8 I can therefore only conclude that extending the working hours for operations wholly contained within the building into the evening would not have a negative impact on local amenity.

Would a further trial period be an option?

7.9 Although not requested, I have considered whether there is any justification for extending the trial period approved last year. National Government’s Planning Practice Guidance states: “Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area” it continues; “It will rarely be justifiable to grant a second temporary permission... Further permissions can normally be granted permanently or refused if there is clear justification for doing so”. Given the lack any complaints, it follows that I do not believe that extending the trial period would accord with national planning practice and therefore is not an option in this case.
Other Planning Policy and Material Considerations

7.10 MWLP policy DC6 requires minerals and waste development proposals to be assessed in light of other land uses in the area. The policy states “Where appropriate, considerations will include: all environmental aspects including habitats and species, visual impact, landscape character, cultural heritage, noise, air quality, ground and surface water resources and quality, agricultural resources and flood risk” in this case, with the exception of a depot that has planning permission to crush and screen inert waste, the neighbouring land-uses are classed as industrial and agricultural. Although these do not have set operating times, they are generally not operating plant and machinery in the open air outside normal working hours. With respect to lighting, as noted above, I consider the external lighting of Units A & B to be low key particularly as compared to the lighting of the railway marshalling yard. I do not consider a cumulative impact likely. Therefore, I cannot identify any land-use that, in combination with this proposal could lead to a cumulative environmental impact.

7.11 Policy SP14 of the MWLP relates to Economic Benefit. This requires proposals to demonstrate “…how they would realise their potential to provide economic benefit. This may include such matters as the number of jobs directly or indirectly created or safeguarded and the support that proposals give to other industries and developments.” It goes on to say “Relevant adverse economic impacts on other industries, or on regeneration and development initiatives, will be weighed against the overall economic benefits of the proposal.” In this case, the proposal is made so that the business can operate closer to the maximum capacity already allowed through the existing planning permissions and environmental permit. It would provide economic benefit in allowing the business to produce greater quantities of higher value outputs from the wastes already managed on the site. It would also directly support two additional full time jobs in the recycling plant. No adverse economic impacts on other industries or regeneration initiatives have been identified.

7.12 The site is around 400m to the east of the River Eden SAC & SSSI. With respect to the European site / SSSI, the development has previously been considered acceptable and there are no changes to the development that would cause additional or cumulative impact that would warrant Habitats Regulations Assessment as required by Policy SP15 of the MWLP. Similarly, although the site lies within the visual impact zone of the Hadrian’s Wall World Heritage Site, the proposal does not include any built development or lead to changes that have not been assessed through the planning process and previously considered acceptable.

7.13 As noted above, traffic routing is not relevant to these proposals and no other mitigation measures have been identified.

8.0 CONCLUSION

8.1 The representations received from the Parish Council and one of the nearby residents suggest that the waste recycling operations at Kingmoor Rockcliffe Estate have an impact on amenity. Without specific details it is difficult for the operator or the County Council & Environment Agency as regulators to try to address these impacts. I was disappointed that at the recent site liaison meeting nobody from the Parish Council came despite being specifically invited. I am also disappointed that despite being aware of the complaints procedure and my long
standing and often repeated request for them to pass my contact details on to any resident that has a complaint about the operation, no complaints have been received to justify the response made.

8.2 I have no evidence that the trial period of evening working within the buildings only has had an impact on amenity. Without such evidence, and in light of the noise monitoring scheme and complaints recording process, I consider the proposed variation of operating hours to be acceptable.

8.3 In summary, I consider the proposed development is in accordance with the development plan, there are no material considerations that indicate the decision should be made otherwise and with the planning conditions proposed, any potential harm would reasonably be mitigated. It is therefore recommended that this application be granted subject to conditions.

**Human Rights**

8.4 The proposal may have a limited impact on residential amenity. Any impacts on the rights of local property owners to a private and family life and peaceful enjoyment of their possessions (Article 8 and Article 1 of Protocol 1 of the Human Rights Act 1998) are minimal and proportionate to the wider social and economic interests of the community.

**Angela Jones**
**Acting Executive Director for Economy and Infrastructure**

**Contact:** Mr David Hughes

**Electoral Division Identification:**
Mrs Val Tarbitt - Longtown
Mr Trevor Allison – Dalston and Burgh
Appendix 1 - PROPOSED PLANNING CONDITIONS – Ref 1/19/9005

1. The development shall be carried out in accordance with the approved documents, hereinafter referred to as the approved scheme. The approved scheme shall comprise the following:

   a) The submitted Application Form – dated 11 December 2017
   b) Report ENW103 - dated January 2009
   c) Great Crested Newt Method Statement V 2_dated April 30th 2009
   d) Lorry routeing agreement – dated 4 August 2009
   e) Supporting Statement – dated 14 December 2010
   f) Assessment of Environmental Noise prepared by Cirrus Environmental Solutions dated 4 October 2018
   g) Complaints procedure revision 1.1 dated July 2018
   h) Plans numbered:
      i. E ENW103/3/01- Site Location Plan
      ii. P.01. C-j- A2 Units A and B – Site plan rev 1.07
   i) This Decision Notice

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.

2. All plant, machinery and vehicles used on site shall be effectively silenced at all times in accordance with the manufacturer’s recommendations.

Reason: To safeguard the amenity of local residents by ensuring that the noise generated in their operation is minimised and so does not constitute a nuisance outside the boundaries of the site.

3. Stockpiles of aggregate intended for sale or other disposal outside the site shall not be stocked except where shown on the approved plan Site Plan rev 1.07. Stockpiles of aggregates shall not exceed 4m in height when measured above existing ground levels

Reason: To minimise the visual impact of the development in accordance with CMWLP Policy DC2

4. The operation of plant and machinery and other waste management operations inside the Unit A building shall not take place outside the hours of:

   07:00 to 22:45 hours Mondays to Fridays
   07:00 to 15:00 hours Saturdays

No operations, including the loading or unloading or other movement of materials or operation of plant or machinery outside the Unit A building shall take place on site outside the hours:
07.00 to 18.00 hours Mondays to Fridays
07.00 to 15.00 hours on Saturdays

There shall be no operations on Sundays and on Bank or Public holidays.

However this condition shall not operate so as to prevent the carrying out, outside these hours, of essential maintenance to plant and machinery used on site.

Reason: *To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.*

5. All vehicles used to transport materials from the site onto the public highway shall be sheeted or otherwise covered.

Reason: *In the interest of local amenity and highway safety and to prevent release of litter on to neighbouring properties*

6. All vehicles under the site operators control that are fitted with reversing alarms shall only use a white noise type.

Reason: *To safeguard the amenity of local residents by ensuring that the noise generated in their operation is minimised and so does not constitute a nuisance outside the boundaries of the site*

7. Any litter arising outside the building within land controlled by the applicant shall be cleared up daily

Reason: *In the interest of local amenity and to prevent release of litter on to neighbouring properties.*

8. The 3m high close boarded wooden fences on the western and northern boundaries of the site shall be retained for the duration of operations on site and any damage repaired within 1 month of being reported.

Reason: *In the interests of visual amenity*

9. No waste or skips shall be stacked or stored externally on the site to a height greater than 4 metres above the level of the ground on which they are placed.

Reason: *To minimise the visual impact of the development in accordance with CMWLP Policy DC2*

10. Baled materials shall not be stored except where shown on the approved plan Site Plan rev 1.06. External storage of baled materials shall not exceed 3m in height as measured above existing ground levels.

Reason: *To minimise the visual impact of the development in accordance with CMWLP Policy DC2.*

11. Notwithstanding conditions 9 and 10, external storage of waste materials shall not exceed 4m or take place except where shown on the approved plans (P.01.C-j-A2 Units A and B – Site plan rev 1.07)
Reason: To minimise the visual impact of the development in accordance with CMWLP Policy DC2.

12. The doors to the waste reception area on the east elevation shall be closed following each waste delivery unless a further waste delivery is scheduled to arrive within the following 30 minutes.

Reason: To minimise the impact of odour from the development in accordance with CMWLP Policy DC2.
Appendix 2 - PROPOSED PLANNING CONDITIONS – Ref 1/19/9006

The development shall be carried out strictly in accordance with the approved documents, hereinafter referred to as the approved scheme. The approved scheme shall comprise the following:

c. Emissions statement – NWR-5.3/17
d. Odour management plan – revision 3.02
e. Flood risk assessment – dated 8 September 2014
g. Great Crested Newts (Triturus Cristatus) Habitat Assessment – October 2015
i. Site access instructions
j. Lighting impact of Rockcliffe Estate
k. A technical design note covering the provision of a sustainable drainage system to treat surface water
l. Plans numbered and named:
   i. P.01 – site plan
   ii. P.02 – location plan
   iii. P-01-L – Landscaping
   iv. P-01-ES – External storage
   v. 64600? – Silt removal traps
   vi. 646001 – Proposed key drainage areas
   vii. 646002 – Proposed scheme
   viii. 646003 – Conceptual design of intel and settlement pond 1
   ix. P-01-TM – Traffic management plan
m. Schemes approved on 15 June 2016 named
   i. NWR 5.3/15 Pest and Scavenger Control
   ii. NWR 5.3/0 Daily Inspection and Reporting
   iii. NWR 5.3/14 Emissions Control – Dust
   iv. NWR 5.3/15 Emissions Control – Noise and Dust
   v. Appendix E to EMD – Odour Management Plan (OMP) Odour
n. Scheme approved 2 June 2017 named
   i. Maintenance Plan 2
   ii. Unit K planting plan 20 04 17
o. Assessment of Environmental Noise prepared by Cirrus Environmental Solutions dated 4 October 2018
p. Complaints procedure revision 1.1 dated July 2018
q. The details or schemes approved in accordance with the conditions attached to this permission

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.
2. The operation of plant and machinery and other waste management operations inside the Unit B building shall not take place outside the hours of:

07:00 to 22:45 hours Mondays to Fridays
07:00 to 15:00 hours Saturdays

No operations, including the loading or unloading or other movement of materials or operation of plant or machinery outside the Unit B building or on Site K shall take place on site outside the hours:

07.00 to 18.00 hours Mondays to Fridays
07.00 to 15.00 hours on Saturdays

There shall be no operations on Sundays and on Bank or Public holidays.

However, this condition shall not operate so as to prevent the carrying out, outside these hours, of essential maintenance to plant and machinery used on site.

Reason: To ensure that no operations hereby permitted take place outside normal working hours which would lead to an unacceptable impact upon the amenity of local residents.

3. No waste or skips shall be stacked or stored externally on the site to a height greater than 4 metres above the level of the ground on which they are placed.

Reason: To minimise the potential for there to be any adverse visual impact arising in accordance with Policy DC2 of the CMWLP.

4. No more than 52 HGV’s (104 movements) shall enter and leave the site each day between Monday and Friday and no more than 14 HGV’s (28 movements) shall enter and leave the site on a Saturday. A record of loads entering the site shall be maintained and produced on request to the Local Planning Authority.

Reason: To minimise the potential for conflict with any other uses in the area and minimise the potential for noise generation from operation of the site in accordance with Policy DC2 of the CMWLP.

5. All plant, machinery and vehicles used on site shall be effectively silenced at all times and be maintained in accordance with the manufacturers’ recommendations.

Reason: To safeguard the amenity of local residents by ensuring that the noise generated in their operation is minimised and so does not constitute a nuisance outside the boundaries of the site.

6. All vehicle loads used to transport materials into or from the site onto the public highway shall be securely sheeted or otherwise covered.

Reason: In the interest of local amenity and highway safety and to prevent release of litter on to neighbouring properties.
7. No vehicles shall leave the site in a condition that would give rise to the deposit of mud, dust or other debris on the public highway.

Reason: In the interests of highway safety.

8. All HGV’s leaving the site shall be instructed to turn left onto the C1016 (Rockcliffe/Cargo to Kingmoor road) and connect directly onto the CNDR, unless travelling to local sites which cannot reasonably be accessed by that route.

Reason: To reduce the amount of heavy goods vehicles on rural roads in the vicinity of Rockcliffe village in the interest of highway safety.

9. The operator shall maintain on site at all times a water bowser or other dust suppression system together with an adequate supply of water to suppress dust arising on the access road, haul roads, working areas, plant area and stockpiling areas with water in order that it does not constitute a dust nuisance outside the site.

Reason: To safeguard the amenity of local residents by ensuring that dust does not constitute a nuisance outside the boundaries of the site in accordance with Policy DC2 of CMWLP.

10. No fuels, oils, or any other potentially polluting liquids shall be stored within the site except in a tank or multiple tanks set within an impervious bund set on an impervious base and with a capacity of not less than 110% of the tank or tanks if there is multiple tankage. Any fill and draw valves shall be sited within the bund and directed to discharge downward into the bund.

Reason: To prevent any incident of ground or water pollution in accordance with Policy DC20 of the CMWLP.
Appendix 3 - PLAN OF SITE LOCATION/EXTENT
Application Reference No. 2/19/9005
Application Type: Full Planning Permission
Proposal: Construction of one ferric dosing kiosk and one motor control kiosk - one to regulate the PH of the final effluent and one to control the dosing regime
Location: Aspatria WwTW, Comely Bank, Aspatria, Cumbria, CA7 2BE
Applicant: United Utilities (UU)
Date Valid: 7 June 2019
Reason for Committee Level Decision: Objection received from representee and Parish Council.

1.0 RECOMMENDATION
1.1 That planning permission be GRANTED subject to conditions set out in Appendix 1 to this report.

2.0 THE PROPOSAL
2.1 Planning permission is sought for the construction of one Ferric Dosing Kiosk (FDK) and one Motor Control Kiosk (MCK), one to regulate the PH of the final effluent and one to control the dosing regime.
2.2 The MCK would measure 10m (l) x 4m (w) x 4m (h) and FDK would measure 7.5m (l) x 5.5m (w) x 4m (h) both kiosks would be constructed of GRP coloured dark recessive green (BS 4800 14c39).
2.3 The MCK is proposed on the central part of the site on an area of grassland, the MCK would be located approximately 140m from the entrance to Aspatria WwTW. The MCK would be located on a piece of grassland in front of an existing brick built building.
2.4 The FDK is proposed on a grassed area to the east of the site on an area of grassland, the kiosk would be located 86m from the entrance to Aspatria WwTW. To the rear of the FDK are existing raised infrastructure including underground and above ground tanks.
2.5 The proposed upgrade to the existing facilities is part of United Utilities Asset Management Programme 6 (AMP6). AMP6 is a major programme of works to provide new assets across the region as required by the water industry regulatory Office of Water Services (OFWAT), and the Environment Agency between 2015-2020.

Permitted Development
2.6 The works which require planning permission form a small part of a larger
scheme of works to be undertaken to upgrade Aspatria WwTW. The larger works are classed as permitted development under Part 13 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This part of the GPDO enables development to be carried out by or on behalf of sewerage undertakers within their operational land without the need for planning consent to be obtained, where the works accord with the provisions of this part of the Order. Amongst other provisions, this includes all plant and machinery, the erection of buildings under 29m³ and structures under 15m in height. Development that falls outside these parameters would require planning consent. The following installations are classed as permitted development:

- Storm return pumping station – 2.4m diameter x 3m height;
- Safety shower – 1.5m (l) x 1m (w) x 3m (h); and
- Valve slab – 3.5m (l) x 2m (w)

3.0 SITE DESCRIPTION

3.1 Aspatria WwTW is located to the south west of Aspatria. The site is located in the open countryside with agricultural fields to the north, east and west and the Carlisle to Barrow railway line to the south.

3.2 Aspatria WwTW is screened from public view points, the nearest public point is from Public Right of Way 205010 which is located approximately 300m north east of the WwTW.

3.3 Aspatria WwTW is accessed from Comely Bank off Arkleby Road (B5301), this connects onto the A596 at Aspatria and A595 at Moota. Comely Bank is a private access road which residents, UU and farmers have access.

4.0 SITE PLANNING HISTORY

4.1 There have been no previous alterations to Aspatria WwTW.

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 Allerdale Planning Department: No objection.

5.2 Allerdale Environmental Health Department: No response received.

5.3 CCC Highway Authority: No objection.

5.4 CCC Lead Local Flood Authority: No objection.

5.5 Aspatria Town Council: A noise assessment should be carried out from the first house to the construction site. Speeding have been an issue on the road leading to the site and a request is made that a suitable speed limit is applied and enforced.

5.6 Natural England: No objection based on the plans submitted as the development will not have significant adverse impacts on statutorily protected nature conservation sites or landscape.

5.7 Environment Agency: No objection.
5.8 **Network Rail:** The operations will be undertaken close to operational railway line.

5.9 **Local Member:** J Lister informed no response received.

5.10 One representation has been received who is concerned with regards to speeding vehicles accessing the WwTW along Comely Bank.

6.0 **PLANNING POLICY**

6.1 **Section 38(6)** of the [Planning & Compulsory Purchase Act 2004](#) provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process.

6.2 The [Cumbria Minerals and Waste Local Plan 2015-2030](#) was formally adopted on 6 September 2017. The key policies relevant to the determination of this planning application are considered to be:

- Policy DC1 - Traffic and Transport
- Policy DC2 - General Criteria
- Policy DC3 - Noise
- Policy DC5 - Dust
- Policy DC16 - Biodiversity and Geodiversity
- Policy DC18 - Landscape and Visual Impact
- Policy DC19 - Flood Risk
- Policy DC20 - The Water Environment
- Policy DC22 - Restoration and Aftercare


- Policy S1 Presumption in Favour of Sustainable Development
- Policy S2 Sustainable Development Principles
- Policy D4 Design Principles
- Policy DM14 Standards of Good Design


6.4 **The National Planning Policy Framework** (NPPF) was published in March 2012. The national online [Planning Practice Guidance](#) (PPG) suite was launched in March 2014. Both are material considerations in the determination of planning applications. The following sections and paragraphs of the NPPF and/or PPG are considered to be relevant to the determination of this application:

Paragraph 102 requires transport issues to be considered at an early stage.
Paragraph 108 in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety can be cost effective mitigated to an acceptable degree.

Paragraph 170 planning policies should contribute to and enhance the local and natural environment.

Paragraph 175 when determining planning applications local planning authorities should apply the following principles development whose primary objective is to conserve or enhance biodiversity should be supported.

7.0 PLANNING ASSESSMENT

7.1 Aspatria WwTW has been screened under Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as not being EIA development.

7.2 I consider the key planning issues relevant to the proposed schemes are; is there an need for the upgrading of the existing WwTW; would the proposed kiosks have an impact on the landscape and visual character of the area; would the proposed operations have any highway/transport impacts; would the proposal impact on the biodiversity of the area; what environmental impacts would the proposal create and concerns raised by Parish Council and local resident:

Is there a need for the upgrading of the existing WwTW?

7.3 The upgrading of Aspatria WwTW is required to comply with United Utilities AMP6 which is a major programme of works to provide new assets across the region as required by the water industry regulatory Office of Water Services (OFWAT), and the Environment Agency between 2015-2020. The AMP has been operational since 1999 and provides progressive upgrades to the Victoria sewerage systems since this time. AMP6 is a £250 million pound investment by UU.

Would the proposed kiosks have an impact on the Landscape and Visual character of the area?

7.4 Cumbria MWLP Policy DC18 requires proposals for development should be compatible with the distinctive characteristics and features of Cumbria's landscapes should ensure that development proposals avoid significant adverse visual impacts and consider the effects on: locally distinctive natural or built features; scale in relation to landscape features; public access and community value of the landscape; historic patterns and attributes; and openness and remoteness.

7.5 Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural and local environment, whilst protecting and enhancing valued landscapes, site of biodiversity and geology values and soils.

7.6 Aspatria WwTW lies in Cumbria Landscape Character Area 5a ridge and valley which the landscape is mainly carboniferous rocks overlain by extensive glacial
till and riverine sand and gravels deposited in the glacial outwash plain. The glacial till forms some low subtle drumlins and the sand and gravel forms some low eskers. These help shape the ridges and valley landscape, ridges and valleys vary in height between 50-130m AOD. Aspatria WwTW lies approximately 48m AOD the valley in which Aspatria WwTW sits rises to 87m AOD to the north and 150m AOD to the south. Due to the contours of the landscape and existing landscape screening Aspatria WwTW is not visible from B5301.

7.7 Aspatria WwTW is located approximately 370m from the nearest residential property and 300m from the nearest Public Right of Way (205010). Views from the nearest residential property and public right of way are limited due to the existing landscaping contours and mature hedgerows. The Carlisle to Barrow railway line adjoins the Aspatria WwTW views from passing trains would be limited due to the existing landscaping.

7.8 At the entrance gates to Aspatria WwTW the land drops away making the WwTW at a lower level to the entrance road. The landscape in the immediate area raises from Aspatria WwTW quite significantly to the ridge line.

7.9 The proposed MCC and FDK have an overall height of 4m in comparison to the existing infrastructure on site these kiosks would be no higher. In terms of design these are typical GRP in a dark green colour, thereby blending in with the existing infrastructure on site. In terms of other infrastructure in the surrounding landscape this comprises of wind turbines, factory units and industrial chimney stacks, pylons and telegraph poles.

7.10 In terms of additional impacts on the surrounding landscape and visual appearance of the area the proposed kiosks would not have any visual impact outside the site or on the surrounding area as there are already existing larger infrastructure within the WwTW, there is existing mature landscape screening which screens Aspatria WwTW and the site is sat at a much lower level than the surround land.

7.11 I consider that the MCC and FDK kiosks would not have any landscape and visual impact on the surrounding landscape. I consider the proposal complies with Cumbria MWLP Policy DC18 – Landscape and Visual Impact and NPPF paragraph 170.

**Would the proposed operations have any highway/traffic impacts?**

7.12 Cumbria MWLP Policy DC1 Traffic and Transport requires proposals for minerals and waste development to be located where they are well related to the strategic route network and minimise operational minerals and waste road miles, where practicable.

7.13 NPPF Paragraph 102 requires transport issues should be considered at the earliest stage, so that the potential impacts of development on the transport networks can be addressed. Paragraph 108 requires consideration of impacts of development on the highway network.

7.14 Access to Aspatria WwTW is from Arkelby Road (B5301) which connects onto A596 at Aspatria and A595 at Moota. From the B5301 this is a private access road which extends 370m this provides access to residents of Comely Bank, farmers and UU operatives.
Construction activities would be undertaken over a period of 8 months. Vehicle movements during the construction operations would on average be:

- 6 cars/vans (12 movements) each day associated with the movement of site personnel;
- 3-5 vehicles (6-10 movements) per day associated with concrete pours, waste removal and delivery of cabins and equipment;

Whilst traffic and transport activities are classed as minimal and would be for a temporary period of time of 8 months to Aspatria WwTW. During construction activities there will still be impacts to the residents of Comely Bank, which are on the private access road to Aspatria WwTW of construction personnel and traffic accessing the WwTW. There is no pavement along Comely Bank which serves around 13 properties, with cars being parked on Comely Bank directly outside gateways. Concern has been raised by the Parish Council and local resident with regards to dangers of construction traffic on the private road by speeding and lack of awareness of drivers. A Construction Management Plan is proposed which would include details to be submitted with regards to speed and awareness of users of the access road.

I consider that the traffic and transport movements can be adequately controlled by appropriately worded condition controlling HGV’s and other traffic associated with Aspatria WwTW along the access track as part of the Construction Management Plan. CCC Highways have raised no objection to the proposed works. Subject to the implementation of the condition I consider the traffic and transport movements comply with Cumbria MWLP Policy DC1 and NPPF Para 108.

How would the proposal impact on biodiversity in the area?

Cumbria MWLP Policy DC16 requires proposals for minerals and waste developments, including ones for ROMP applications and time extensions, will be required to identify, where appropriate any potential impacts on important biodiversity and geological conservation assets, as defined in the Strategic Policies, and on any functional ecological and green infrastructure networks.

NPPF paragraph 175 requires consideration when determining planning applications local planning authorities should apply the following principles development whose primary objective is to conserve or enhance biodiversity should be supported.

Aspatria WwTW is not located close to any European Protected Site. However, the nearest European Protected Sites are Salta Moss Site of Special Scientific Interest (SSSI) approximately 6.5km north west and Clints Quarry SSSI located 4.7km south of Aspatria WwTW. The larger European protected site of Solway Firth SSSI, Special Area of Conservation (SAC) and RAMSAR is 7.7km north. Due to the topography of the area these European Protected Areas cannot be seen from Aspatria WwTW.

There is a woodland area immediately south of Aspatria WwTW, this woodland has a pond and is considered to be a Habitat of Principal Importance under Section 41 of the NERC Act (2006). The woodland and pond is separated from the site by the Carlisle to Barrow railway line.
7.22 The applicant has undertaken two Ecological Appraisals the first one in May 2016 and a second in July 2018 which acknowledged the works which require planning permission would not impact on the woodland, bats, birds or other protected species. However, the larger works carried out under permitted development may have an impact and recommendations have been included for the mitigation of these impacts which include habitats, bats, birds, great crested newts, otter, badger and other small animals. Enhancements to the site include installation of wildlife boxes (bat and bird); planting within the new development to provide foraging habitat for bats; increasing the value of the site and creation of brash and log piles to create short and long term refugia for mammals, amphibians and invertebrates.

7.23 I consider the impacts on biodiversity have been duly considered and addressed in the two Ecological Appraisal reported. Natural England are satisfied the proposed works would not impact on any European Protected site. I therefore consider that Cumbria MWLP Policy DC16 and NPPF Paragraph 175 have been duly complied with.

What are other environmental impacts during construction operations?

7.24 **Noise:** noise could be an issue during construction operations. These impacts would be temporary impacts for a period of 8 months. I recommend that a condition is imposed with regards to noise from the temporary construction operations to reduce noise to sensitive receptors during construction works. I consider the imposition of this condition would comply with Cumbria MWLP Policy DC3.

7.25 **Dust:** dust could arise during construction operations particularly in dry windy weather conditions. Dust suppression should be considered as part of the Construction Management Plan required for the construction activities. I consider Cumbria MWLP policy DC5 dust is complied with.

7.26 **Vibration:** vibration could be an issue during construction works however, due to the location of the works to the existing residential properties, it is unlikely that vibration would have an impact on the amenities of local residents. I consider Cumbria MWLP policy DC2 – General Criteria is complied with.

7.27 **Flood Risk:** The site lies within Flood Zone 1, however to the north of the site Flood Zone 2 adjoins the boundary. Part of the site is susceptible to surface water flooding. Consideration of adjoining Flood Zone 2 has been considered as part of the proposed scheme including the siting and location of the proposed kiosks. The proposed MCC kiosk is to house sensitive electrical equipment and would be water tight to protect the equipment. I consider Cumbria MWLP policy DC 19 – Flood Risk is complied with.

7.28 **Impacts on Network Rails Asset (Carlisle to Barrow Railway line):** Aspatria WwTW adjoins the boundary with Network Rails asset. The works which require planning permission would not impact on Network Rail’s Asset, however, the works to be undertaken as permitted development may have an impacts on Network Rail’s Asset, the applicant is required to formally notify and consult with Network Rail of the impacts under their Asset Protection Scheme.

7.29 I consider that the environmental impacts of the proposed construction activities have been duly considered and where necessary appropriately worded conditions would be implemented. I therefore consider that Cumbria MWLP
Policies DC2, DC3, DC5 and DC19 are duly complied with.

**How can concerns of Parish Council and local resident be addressed?**

7.30 Aspatria Parish Council have raised concerns with regards to noise during construction operations and HGV’s accessing the site from Comely Bank. A local resident has also raised concern with regards to the number of HGV’s accessing the site and the safety of users of Comely Bank.

7.31 The concerns raised by the Parish Council and representation have been addressed in paragraphs 7.10-7.15 and 7.22.

**8.0 CONCLUSION**

8.1 I consider the scheme for Aspatria WwTW is essential for UU to comply with AMP6 which is a major programme of works to provide new assets across the region as required by the water industry regulatory Office of Water Services (OFWAT), and the Environment Agency between 2015-2020. The works are essential to ensuring the town of Aspatria waste water meets with the objectives set out in the Water Framework Directive in the River Ellen.

8.2 The concerns raised by the Parish Council and local residents with regards to noise and safety of users on the private access road can be addressed by condition under the Construction Management Plan for the duration of the construction operations.

8.3 I consider the impacts on landscape and visual amenity; impacts on highways and traffic; biodiversity and environmental impacts have been duly addressed and considered within the report and where necessary can be controlled by appropriately worded conditions.

8.4 I therefore recommend that planning permission is granted subject to the conditions set out in Appendix 1.

8.5 In summary, it is considered that the proposed development is in accordance with the development plan, there are no material considerations that indicate the decision should be made otherwise and with the planning conditions proposed, any potential harm would reasonably be mitigated. Furthermore, any potential harm to interests of acknowledged importance is likely to be negligible and would be outweighed by the benefits of the development. It is therefore recommended that this application be granted subject to conditions.

**Human Rights**

8.6 The proposal will have a limited impact on the visual, residential and environmental amenity of the area. Any impacts on the rights of local property owners to a private and family life and peaceful enjoyment of their possessions (Article 8 and Article 1 of Protocol 1 of the Human Rights Act 1998) are minimal and proportionate to the wider social and economic interests of the community.

8.7 The Human Rights Act 1998 requires the County Council to take into consideration the rights of the public under the European Convention on Human Rights. Article 8 of the Convention provides that everyone has the right to respect for his private life and home save for interference which is in accordance with the law and necessary in a democratic society in the interests of, amongst other things, public safety, the economic wellbeing of the country or the
protection of the rights and freedoms of others. Article 1 of Protocol 1 provides that an individual’s peaceful enjoyment of his property shall not be interfered with save as necessary in the public interest and subject to conditions provided for by law. For any interference with these rights to be justified the interference needs to be proportionate to the aims that are sought to be realised. The County Council has a duty to consider the policies of the development plan and to protect the amenities of residents as set out in those policies.

Angela Jones
Acting Executive Director - Economy and Infrastructure

Contact: Mrs Jayne Petersen

Electoral Division Identification: Aspatria ED
Appendix 1
Ref No. 2/19/9005
Development Control and Regulation Committee – 13 August 2019

Appendix 1 - PROPOSED PLANNING CONDITIONS

Time Limit for Implementation of Permission

1. The development hereby permitted shall be begun 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 Section 51 of the Planning and Compulsory Purchase Act 2004.

Approved Scheme

2. The development hereby permitted shall be carried out, except where modified by the conditions to this permission, in accordance with the following:

   a. The submitted Application Form – dated 10 May 2019
   b. Planning Application Supporting Statement – dated April 2019
   c. Preliminary Ecological Appraisal – dated May 2016
   d. Preliminary Ecological Appraisal – dated July 2018
   e. Technical Memorandum: Great Crested Newt Desk-based Review and Reasonable Avoidance Measures (RAMS) – date 22 March 2019
   f. Plans numbered and named:
      i) Location Plan - 80042067-01-C2V-ASPAT-99-DR-I-00001
      ii) Site Layout Plan - 0042067-01-C2V-ASPAT-99-DR-I-00002
      iii) Ferric Kiosk Plan - 80042067-01-C2V-ASPAT-99-DR-I-00004
      iv) MCC Kiosk Plan - 80042067-01-C2V-ASPAT-99-DR-I-00003
   g. The details or schemes approved in accordance with the conditions attached to this permission.

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.

Notification of Commencement of Development

3. Notification of the date of commencement of the development shall be made in writing to the Waste Planning Authority within 7 days of such commencement.

Reason: To enable the County Planning Authority to monitor the development to ensure compliance with this permission.

Construction Management Plan

4. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Waste Planning Authority. The Plan shall include details of the following:

   a) Contractors compound/parking provision including a plan reserving adequate land for the parking of vehicles engaged in construction
operations, including vehicular access;

b) The location and design of wheel cleaning facilities including the provision for cleaning of the site entrances and adjacent highway to prevent debris from the site being deposited by vehicle wheels upon the public highway;

c) Management of traffic within and accessing the site and access road including speed limit; awareness of other users on the access road; warning signage for all users of access track and notification of deliveries to residents of Comely Bank;

d) Means of receiving construction material;

e) Identification of potential sources and measures to control;
   i. Noise
   ii. Dust
   iii. vibration

f) The storage of fuels and soils during construction phase, including spill kit;

g) A scheme for recycling/disposing of waste resulting from construction works;

h) Details of temporary lighting during construction;

i) Details of temporary construction/warning signage;

j) Provision for facilities of manoeuvring, loading and unloading of vehicles;

k) Construction vehicle routing.

The construction phase of the development shall be carried out in accordance with the approved Construction Management Plan.

Reason: To ensure the construction is carried out in accordance with the approved scheme.

Hours of Operation

5. No construction works relating to the development hereby approved shall be undertaken except between the hours of 08:00 to 18:00 Mondays to Fridays and 08:00 to 12:00 Saturdays and not at all on Sundays and Bank/Public Holidays.

Reason: In the interests of preserving the amenity of neighbouring residents.

Noise Assessment

6. The rating levels for cumulative noise from all plant and machinery during the operational life of the site shall not exceed 5dB above the existing LA90 background levels and 10 dB below the existing LAeq at any noise sensitive premises as assessed in accordance with British Standard 4142 (2014).

Reason: To protect the amenities of local residents from noise pollution and to conform with Policy DC3 of the CMWLP.

Highway and Transportation

7. The access road from the site to the public highway shall be kept clean and maintained in a good standard of repair for the period of construction works.

Reason: To ensure that no material from the access road is carried onto the public highway in the interest of highway safety.
Appendix 2 - PLAN OF SITE LOCATION/EXTENT
Application Reference No. 5/19/9007
Application Type: Planning Permission for Relevant Demolition in a Conservation Area
Proposal: Demolition of Gooseholme footbridge
Location: Gooseholme Bridge, New Road, Kendal (LA9 4BA)
Applicant: Cumbria County Council Infrastructure Recovery Team
Date Valid: 28 June 2019
Reason for Committee Level Decision: Application made by the Acting Executive Director of Economy and Infrastructure

1.0 RECOMMENDATION

1.1 That planning permission be granted subject to the conditions set out in Appendix 1 to this report.

2.0 THE PROPOSAL

2.1 Cumbria County Council’s Infrastructure Recovery Team has lodged an application seeking planning permission for relevant demolition in a conservation area in connection with a proposal to demolish Gooseholme footbridge which sustained significant damage as a result of the Storm Desmond flood event in December 2015. Following a structural inspection shortly after this event the bridge was deemed an unsafe structure and was closed-off to the public with herras fencing being put in place to prevent access.

2.2 The proposed demolition works would involve removal of the metal parapet railings, timber deck, the 3x cutwater piers, abutment walls and the approach ramps. It is proposed to retain the 3x concrete apron foundations that underpin the piers in-situ so as to minimise disturbance to river ecology. The ground beneath the bridge footprint on either side of the river would be re-profiled to match the level of the neighbouring land. The land on the western New Road side of the bridge would then be hard-surfaced with tarmac and the limestone faced boundary wall re-built to tie into the height and match the coursing of the existing riverside wall where the bridge once was. This wall rebuild would make use of limestone masonry salvaged from the bridge abutments/access ramps. On the eastern side of the river the land would be sown to grass.

2.3 Removal of the ramps, abutment and deck superstructure would be undertaken using a tracked mechanical excavator and dumper-truck, while removal of the parapets, stone masonry and piers are proposed to be predominantly undertaken by hand (with assistance for the latter elements provided where required by the aforementioned machinery). The main temporary construction compound is proposed to be sited on the area of grassland to the south-east of the bridge opposite 1-6 Little Aynam. A smaller satellite compound would be set-up to the south-west of the bridge on New Road Common for the works to remove the western abutment and approach ramp. For in-river working, access for all plant
and labour would be taken from the eastern river bank. There is a limited period in any year in which in-river working can take place (i.e. 18 June – 30 September). The demolition works are provisionally programmed to commence in late August and are anticipated to take up to three weeks.

2.4 This application has come forward at this point in time as the applicant has now secured the funding required to deliver a replacement bridge structure and as there is now greater certainty in respect of the Kendal linear flood defence scheme coming forward now that it has gained planning permission. Cumbria County Council’s Infrastructure Recovery Team undertook a public consultation on their proposals to construct a new replacement bridge between 8 July 2019 and 2 August 2019. The provision of a replacement bridge does not require an application for planning permission in this instance as the undertaking of such an engineering operation by a Local Highway Authority constitutes permitted development by virtue of Part 9 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which covers a variety of works for the maintenance and improvement of an existing highway (including the reconstruction of a bridge maintainable at public expense either on the same site or on a new site within 200 yards of the old one). In this instance the replacement bridge is proposed on the same site.

2.5 It is noted that the proposed new bridge has been designed to improve water flow beneath it (and thus reduce flood risk by not restricting or modifying the flow of the River Kent during full spate) and to provide for greater accessibility for wheeled users.

3.0 BRIDGE LOCATION, DESCRIPTION & SURRounds

3.1 Gooseholme footbridge is situated on the eastern edge of Kendal Town centre where it spans the River Kent. The bridge is situated within the town’s Conservation Area and connects two parcels of common land - Gooseholme Common to the east of the river with New Road Common to its west. This four span footbridge provided a convenient pedestrian link between the town centre and the pleasant curvilinear green open space of Gooseholme and to the residences and businesses beyond this and up to the historic remains of Kendal Castle. It is noted that the area of New Road Common to the south-west of Gooseholme Bridge has been transformed from a completely hard-surfaced area utilised for car parking by the general public to a green park space in recent years.

3.2 The footbridge has short steep ramped abutments (with a 1 in 5.4 gradient to the west and 1 in 7.1 gradient to the east) which lead to a structural wooden deck supported by three cutwater piers which are established on concrete apron foundations.

3.3 The access ramps up to the bridge deck follow the linear alignment of the bridge. The western ramp measures approximately 7.8m in length and terminates approximately 4.5m from the edge of the motor vehicular carriageway of New Road. The eastern ramp measures approximately 6.8m in length and ties into the tarmac surfaced riverside path along Gooseholme (which also forms part of National Cycle Network Route #6). The route across the bridge (and on toward Little Aynam) and that which curves along Gooseholme are public footpaths. The former is public right of way no. 536260 (which measures 84.1m in length) and the latter is public right of way no. 536261 (which measures 226.3m in length).
3.4 The wooden deck measures approximately 40m in length, 1.6m in width and 0.4m in height. The mean soffit level of the bridge is 43.6m AOD (i.e. the bottom of the bridge deck ranges from 3.2m to 3.5m in height above the grouted cobble invert that forms the river bed underneath the bridge).

3.5 Tubular metal rail fencing (consisting of 1m high posts at 2m spacings with three evenly spaced horizontal cross bars) forms the parapets to the ramps and decks. There is a 1.45m wide clear space between the parapet handrails. This fencing is painted green.

3.6 The piers and the abutment and ramp walls are faced with limestone masonry. The masonry to the ramp walls is random in size and coursing masonry while that to the piers is larger in size and regular in form and coursing. The piers measure approximately 1m in width, 3m in length and 3m in height. Their concrete aprons vary in width from 1.9m to 2.4m and measure 6m in length.

3.7 The nearest properties to the bridge on the western side of the river are the semi-detached two storey dwelling houses of 1 and 2 Melrose Place to its north. The front elevations of these properties face toward the ramp, with their bay windows measuring approximately 17.8m in distance from it. A 128.5m² area of New Road common, which is still fully hard-surfaced and utilised as car parking, stands between the curtilage of these residential dwellings and the bridge. On the opposite side of New Road to the bridge is a sub-divided commercial unit part of which is occupied by a take-away pizza business and another which is used as a painter and decorators store. To the south-east of this is the Grade II* listed Friends Meeting House. This building is set back approximately 30m from New Road due to its garden grounds. The Grade II* listed Church of Holy Trinity and St George lies approximately 80m from the bridge at the corner of the junction of Blackhall Road with New Road.

3.8 To its eastern side the bridge is immediately bounded by green open space. A small hut associated with the operation of the putting green on the south-eastern side of Gooseholme lies 6.5m from the ramp edge. The nearest properties to the bridge on this side of the river are a group of semi-detached dwelling houses (1-6 Little Aynam). The nearest curtilage of these lies over 30m south-east of the bridge. Nos. 1-4 Little Aynam would directly overlook the main temporary works compound. The Kendal Scout Group Hall and Store lies to the south-west of this proposed compound area.

3.9 Two other bridges are in relatively close proximity to Gooseholme bridge – Stramongate bridge which lies approximately 190m to its north and Miller bridge which lies approximately 190m to its south-west. Both of these historic limestone pier bridges are scheduled monuments and both carry only one lane of motor-vehicular traffic.

3.10 The entirety of the bridge is located within the extent of Flood Risk Zone 3b (i.e. the functional flood plain). South Lakeland District Council’s 2007 Strategic Flood Risk Assessment designates the riverside walls along the western right-side banks of the river Kent between Stramongate and Miller bridges as being raised flood defences.

3.11 The river Kent is designated at a European level as a Special Area of Conservation (SAC) and nationally as a Site of Special Scientific Interest (SSSI). The primary reason for the River Kent’s designation as a SAC is the presence of White-clawed crayfish. Habitats and species that are qualifying features (but not
a primary reason for site selection) are its watercourse habitat of plain to montane levels, freshwater pearl mussel and bullhead fish. The River Kent and Tributaries is also notified as SSSI for its nationally important populations of white clawed crayfish (and their habitat) and as it supports one of the largest populations of fresh water pearl mussel in England.

4.0 SITE HISTORY

4.1 A footbridge crossing has existed at the approximate location of the existing Gooseholme footbridge since at least the 18th Century. The cloth industry used to dominate the town and records indicate that local trades historically utilised the ground at Gooseholme for drying cloth on tenter-frames, so it may be the case that the footbridge was built to provide access in association with this activity.

4.2 The bridge has been washed away by floods and rebuilt a number of times. It was washed-away by floods in 1874 and in 1898. Following the October 1874 flood, the remains of two old piers were taken down and three new stone piers built and an iron truss bridge installed. Following the loss of the iron truss bridge to flooding in November 1898 the bridge was rebuilt with two piers and tubular iron railings. In 1913 a concrete reinforced deck was installed. By 1982 the concrete reinforced deck had degraded and was replaced with a timber deck and the span adjacent to Gooseholme park increased. Historic ordnance survey mapping and photographs suggest that the third pier was built at some point between 1938 and 1968. Further notable flood events occurred in the Kent catchment in October 1927, December 1954 and December 1964; so the provision of the third pier may have come about following one of these events.

5.0 PLANNING HISTORY & BACKGROUND

5.1 There is no planning history associated with this bridge.

5.2 The Environment Agency planning application for a linear flood defence scheme through Kendal (Ref. SL/2018/0925) gained planning permission in June 2019.

5.3 In light of the provisions of the Environmental Impact Assessment (EIA) Regulations, the applicant requested a screening opinion in respect of the proposed demolition of the existing footbridge and its replacement with a single-span steel-tied arch bridge with a wider deck set at a higher level and a revised access ramp arrangement with a greater footprint. The County Council adopted a screening opinion in respect of this proposed project on 22 May 2019. The screening opinion concluded that; by virtue of factors such as the location, nature and scale of the proposal and the limited magnitude, spatial extent and complexity of its potential impacts; the proposal does not constitute EIA development.

6.0 NOTE IN RESPECT OF STORM DESMOND

6.1 The levels of rainfall and flooding resulting from Storm Desmond in December 2015 were unprecedented in the County. Rain fell for 54.75 hours onto already heavily saturated ground after a particularly wet November, resulting in an extremely large flood peak. Within the Kent catchment, Kentmere Hallow Bank rain gauge recorded a total of 225.8mm of rain between 19:00 on 04/12/2015 and 07:45 on 06/12/2015 and at Fisher Tarn, which is located to the east of Kendal; 139.6mm fell in 48 hours. In the River Mint catchment, the rain gauge at Watchgate recorded 181.8mm of rain in 48 hours. The gauged flows in the
Rivers Kent, Sprint, and Mint were the highest on record with a peak flow of 403 m³/s (and level of 44.7 m AOD) being recorded at Victoria Bridge (though in reality, the peak flow in the River Kent was likely higher due to the bypassing of the gauging station by floodwater that passed through Mintsfeet and Longpool to the east of the river). Approximately 2,150 properties across the Kent catchment experiencing flooding. Storm Desmond is the highest ranking gauged flood event in the Kent catchment but is believed to rank second to the flood of November 1898.

6.2 During this flood event the existing Gooseholme Bridge soffit level (which stands at 43.71 m AOD at the centre of the deck) was vastly exceeded, with peak water levels over this estimated to have reached around 45 m AOD. The flood thus surcharged the structure, with the bridge deck heavily blocking flow and influencing upstream flood levels.

7.0 CONSULTATIONS AND REPRESENTATIONS

7.1 South Lakeland District Council Planning Department: No objection.

7.2 South Lakeland District Council Environmental Health Department: No objection. Advised that a condition be imposed to secure details of the layout of the demolition compounds and further aspects of the working methodology in order to safeguard the amenity of the area during the undertaking of demolition operations.

7.3 South Lakeland District Council - Conservation Officer: No response received. South Lakeland District Council - Arboricultural Officer: No objection. Consider that the demolition, if carried out with due care, should not have a detrimental impact upon adjacent trees. Sets out that protective herras fencing for trees should be deployed in line with the specification shown in figures 2 and 3 of BS5837 2012.

7.4 Kendal Town Council: No response received.

7.5 Kendal Civic Society: No response received.

7.6 Historic England: Do not wish to offer any comments.

7.7 Environment Agency (EA): No objection. Set out that along with the planning requirements the EA will be regulating the works for demolition in and around the River Kent through an Environmental Permit for Flood Risk Activities and are currently working through the details of the application and hope to be in a position to issue a permit in due course. Originally requested further clarification and information in respect of some risk areas identified within the shadow Habitats Regulations Assessment (HRA) submitted in support of these applications. These risks areas related to control of debris from demolition; specifics of measures to prevent pollution, sedimentation and/or turbidity; final bio-security measures adopted; and controlled-use of in-situ concrete. Also requested that the HRA document the alternative methodologies considered to ensure there are no alternative solutions that could have a lesser impact on the river habitat. The EA were satisfied that the revised Shadow HRA adequately addressed these matters.

7.8 The EA note that there could be an opportunity as part of these works to remove the cutwaters and reduce the extent of modification in the river in this area;
however they relate that it is their understanding that this was considered during the appraisal stage of the project and it was concluded that the benefits of removal would be outweighed by the risks of doing so.

7.9 **Natural England**: No objection. Originally requested further information in respect of mitigation measures, lower impact construction options considered and the rationale for retention of the cutwaters so as to inform and enable the Habitats Regulation Assessment (HRA). Satisfied that the revisions to the shadow HRA adequately addressed these matters and that its conclusions are sound. Request that the mitigation measures set-out in the HRA are secured via planning condition.

7.10 Note that the proposal is sited on an area that is registered as common land. Directs the applicant to their guidance in respect of works that do and do not require consent on common land.

7.11 **Open Spaces Society**: No response received.

7.12 **CCC Common Land**: No response received.

7.13 **CCC Countryside Management (Public Rights of Way)**: No response received.

7.14 **CCC Ecological Consultant**: No objection. Consider the revised HRA to be acceptable, being satisfied that with the mitigation proposed there would be no adverse effect upon the integrity of the SAC. Reports that they have read through the bat survey report and are satisfied that it is comprehensive, its judgement exercise is appropriate, and that no further actions are required in respect of bats.

7.15 **CCC Highway Authority**: No objection. Recommend a condition be imposed to ensure adequate inter-visibility between pedestrians and users of the access to the temporary compounds. Observes that the traffic impact of works appears to be the erection and subsequent removal of a working platform and 6-8 journeys per day for demolition works for up to 17 working days. Considers that this scale of impact can easily be accommodated by the local highway network within central Kendal. Considers both compounds are capable of being accessed safely and advises that they should reserve adequate space for vehicle parking, manoeuvring, loading and unloading clear of the highway.

7.16 **CCC Historic Environment Officer**: No objection.

7.17 **CCC Lead Local Flood Authority (Local Flood Risk Management)**: No objection. Observe that the flood impact of the proposal relates to Main River flooding for which the Environment Agency are responsible. Note that during the in-river working phase of the footbridge demolition there may be a lowering of the river embankment and it may be necessary for incident warning procedures and flood warnings to be updated as is noted in the FRA.

7.18 **Crime Prevention Design Advisor**: No objection. Does not perceive the proposal to present a particular crime risk. Comments that the contractors will need to take the usual precautions as work takes place to protect plant machinery, power tools and fuel stocks from theft.

7.19 **Sustrans**: No response received.
7.20 Electricity NorthWest: No response received.

7.21 United Utilities: No response received.

7.22 The application site straddles the county council electoral divisions of Kendal Nether and Kendal Strickland & Fell. Councillors Shirley Evans and Peter Thornton who, respectively, represent these divisions, have been notified of this application.

7.23 No representations have been received.

8.0 PLANNING LEGISLATION – CONSERVATION AREAS & LISTED BUILDINGS

8.1 Section 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 [PLB&CA] bestows Local Planning Authorities (LPAs) with a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. The PLB&CA also introduced the need for developers to gain Conservation Area Consent for proposed works of demolition above a certain scale within a conservation area. The Enterprise and Regulatory Reform Act 2013 replaced the conservation area consent regime with a requirement for planning permission to be sought for demolition of a building in a conservation area.

8.2 Section 66 of the PLB&CA Act imposes a legal obligation on LPAs to have “special regard” to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when considering applications. All Listed Buildings are nationally designated. Grade II* listed buildings are particularly important buildings of more than special interest. Only 5.8% of listed buildings are Grade II*.

9.0 PLANNING POLICY

9.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process.

9.2 The following documents constitute the local development plan for Kendal:

- South Lakeland Core Strategy - adopted 20 October 2010.


9.3 The following local development plan policies are considered relevant to the consideration of these applications:

- CS1.1 - Sustainable Development Principles
- CS2 - Kendal Strategy
- CS8.4 - Biodiversity and Geodiversity
- CS8.6 - Historic Environment
- CS8.8 - Development and Flood Risk
- CS10.2 - Transport Impact of new development
- DM1 - General Requirements for all development
- DM3 - Historic Environment
- DM4 - Green and Blue Infrastructure, Open Space, Trees and Landscaping
- DM5 - Right of Way and other routes providing pedestrian, cycle and equestrian access
- DM6 - Flood Risk Management and Sustainable Drainage Systems
- DM7 - Addressing Pollution, Contamination Impact, and Water Quality
- DM24 - Kendal Town Centre and Kendal Canal Head Area

9.4 *The National Planning Policy Framework* (NPPF) was published in a revised form in February 2019. The national online *Planning Practice Guidance* (PPG) suite was launched in March 2014 and is continually updated. Both are material considerations in the determination of planning applications. The following sections and paragraphs of the NPPF are considered to be relevant to the determination of this application:

- Section 2 - Achieving sustainable development: Paragraphs 8 & 11;
- Section 8 - Promoting healthy & safe communities: Paragraphs 91 & 95;
- Section 9 - Promoting sustainable transport: Paragraphs 102, 108, 109, 110 & 111;
- Section 14 - Meeting the challenge of climate change, flooding and coastal change: Paragraphs 148, 150, 155, 163, 164 & 165;
- Section 15 - Conserving and enhancing the natural environment: Paragraphs 170, 178, 180 & 181;
- Section 16 - Conserving and enhancing the historic environment: Paragraphs 189, 190, 192 & 193.

10.0 PLANNING ASSESSMENT

10.1 The key planning issues relevant to this application proposal are considered to be whether there is a justifiable need to demolish this bridge and if so whether the loss of this undesignated heritage asset would have an unacceptable impact on the character or appearance of Kendal's Conservation Area; the setting of other designated heritage assets; or wider connectivity. Flood risk is a central factor driving the proposal so will be fully considered within the consideration of the case for need. Other planning considerations that need to be taken into account include the potential for demolition works to adversely impact on nature conservation interests, trees, and the potential to encounter contaminated land on New Road Common.

10.2 The design of the proposed replacement bridge is not relevant to the consideration of this application. The fact that funding has been secured to provide a replacement bridge establishes a relatively high degree of certainty that the bridge will be replaced in the near future. This fact is considered to be a material consideration that can be given a degree of weight in the consideration of this application.

Are there sound reasons for removal of the bridge?

10.3 The case for the need to remove the existing bridge is predicated on three factors – its current unsafe storm damaged condition; flood risk considerations and the restricted accessibility of its current form (due to its ramp gradient and its narrow width). Indeed, in respect of this latter aspect, it is observed that the
current bridge is not Disability Discrimination Act compliant in terms of accessibility; and it is considered that it would be preferable for a river crossing here that is fully accessible to all users. The fact that the bridge is currently deemed unsafe to use is, of itself, not sufficient to justify demolition. Sustainability principles require repair to be considered as the first option. So if repair can be practically (and safely) achieved, is economically viable and provides the most suitable option to ensure greatest longevity for the bridge; then repair would be the preferable option.

10.4 The Storm Desmond flood event substantially damaged this footbridge resulting in significant section loss to the timber deck, failed welds to parapet posts, undercutting to the pier aprons, cracking to piers and scour to the invert. Due to its poor structural integrity the footbridge was closed to the public for safety reasons. Given the level of damage, and the fact that the bridge crossing to Gooseholme has been impacted by flooding on a notable number of past occasions, reinstating this bridge in its current form was not considered prudent by the applicant in terms of its vulnerability to future flooding and its impact upon wider flood levels and the inability of the current pier arrangement to support a wider multi-use deck. It is also noted that its current unfit state presents a liability risk with potential for accidents to occur as a result of unauthorised access to the structure.

10.5 A Flood Risk Assessment (FRA) has been submitted in support of the application. The existing four-span structure (by virtues of its three piers, deck/soffit height and parapet configuration) impacts on river hydraulics – resulting in backwater effects and creates potential for obstructions/diversions to flow (with bridge openings averaging 9m in width). Under theoretical design conditions the existing bridge deck is exceeded by a 1in100 year flood event (not taking into account any climate change multipliers) which results in a predicted peak water level of 44.62mAOD at the bridge – i.e. exceeding its soffit level by almost 0.9m. Flood modelling for a 1in100-year flood incorporating a 30% climate change allowance uplift (in the absence of any Environment Agency flood scheme) suggests that removal of the footbridge would reduce local flood levels upstream (for up to 1km) by up to 180mm and reduce peak water levels by approximately 20mm around 250m downstream of the bridge. Flood depth on the right and left floodplain at Gooseholme is consistently reduced by approximately 90mm with the removal of the existing footbridge. The model demonstrates that backwater effects of the structure extend approximately 1.5km upstream. That is to say the existing footbridge structure results in a flood flow head loss that maintains a greater upstream peak flood level. Whilst the overall structure clearly has an adverse impact on flood levels in the locality it is noted that the FRA modelling finds that the peak flood level is not very sensitive to pier loss within the river channel.

10.6 The existing bridge has a conveyance capacity of 3,984m$^3$/s. Removal of the bridge would pass forward an additional 40m$^3$/s downstream. The above modelling indicates that this increased pass forward flow has no apparent negative impact on flood risk downstream for the modelled event as the flood extent downstream “remains almost identical”. As such it would not increase flood risk downstream and would comply with policies CS8.8 and DM6.

10.7 The existing bridge would be unsafe to use during a 1in100year flood event as floodwater would surcharge the deck and there are sound recent and historic grounds for concern as to the resilience of the existing form of the bridge to
future flood events. The removal of the bridge would reduce flood depth and extent in its vicinity and reduce the displacement of floodwater further into the flood plain and modification of floodwater movement by its structural elements. There would thus seem to be clear flood risk related benefits resulting from this application, as the proposal would remove elements that constrict the natural flow of water within the river channel and thus reduce the level of flood hazard in the surrounding area to residents, visitors and business.

10.8 In light of the above I am satisfied that there are sound reasons for the proposed demolition of this bridge and that its removal would have positive benefits in terms of flood risk.

**Would the loss of the existing footbridge have an unacceptable impact on the character or appearance of Kendals’ Conservation Area?**

10.9 Further to the statutory duty to have special regard to preserving or enhancing the special character and appearance of a conservation area, Policy DM3 requires proposals to take fully into account any identified significance that is contained in any Conservation Area Appraisal or Management Plan for the relevant designated area and to seek to retain features which contribute positively to the spatial character and appearance of the area and its setting. Paragraph 201 of the NPPF clarifies that not all elements of a Conservation Area will necessarily contribute to its significance. It continues that loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area as a whole. The NPPF and Policy DM3 require applicants to describe the significance of any heritage assets affected and the impact of the proposal on that asset. A heritage statement has been submitted in support of the application to address this.

10.10 The principle special interests that led to the designation of this conservation area, and aspects from which its significance is principally derived, are considered to be the unique spatial pattern of Kendal’s historic development as a working market-town and its assemblage of buildings of architectural merit that provide a common language in terms of their overall aesthetic and material selection.

10.11 South Lakeland District Council’s 2007 *Character Appraisal of Kendal Conservation Area* sets out that the area around Gooseholm Bridge is one of historical and cultural significance and high environmental sensitivity. It observes that the broad arc of the river Kent dominates this part of the Conservation Area providing strong physical definition. The appraisal denotes the footbridge as an “important pedestrian crossing point from the Riverside Car Park onto the southern edge of Goose Holme”. Furthermore, it identifies Gooseholme as the most significant green riverside space in the northern part of the conservation area, describing it as an attractive and slender curvilinear shaped strip of land that is part informal park and part low key recreation area. It observes that “this attractive green space is visible from various points on the west side of the river [and that] here it acts as a valuable foreground element in views towards Thorny Hills and the Castle hill behind”.

10.12 The paths that run along both sides of the river in the vicinity of the footbridge provide important views toward individual and collective heritage assets. The
bridge deck also provided an elevated viewpoint towards the various designated heritage assets found on New Road, downstream toward Miller Bridge and across Gooseholme green toward the Georgian Villas of Thorny Hill. However, the character of this viewpoint generally lacked tranquillity on account of traffic noise from New Road and the limited space available for fellow river crossers to pass.

10.13 The section of the river Kent between the two scheduled bridges is characterised by open views. The bridge, due to its light form, small scale and use of traditional materials does little to detract from open views across to key parts of the townscape and is not visible from Kendal Castle due to the intervening presence of vegetation. The limestone faced piers, abutments and ramps reinforce the distinctive historic materials palette that is synonymous with the Conservation Area, but is judged to be of negligible architectural and aesthetic merit. The built form of the bridge is low key and in-keeping with the appearance of the area rather than an element that is core to the definition of the appearance of the area as the larger pre-17th Century bridges (Stramongate, Miller and Nether) are. Furthermore, it is noted that various alterations to the form and fabric of the structure over time have diminished the authenticity of its historic fabric and thus diminished some of its evidential historic interest. The positive contribution the footbridge makes to the conservation area is more deeply rooted in its character as it has a historical illustrative value – related to its likely association with the wool/cloth industry which was integral to the development and evolution of the town; and a communal social value – being a source of identity, social interaction and consciously evoking memories as it provided a cultural link (in the past and recent present) to an important open amenity space, not to mention a physical connection between two highly valued areas of common land. As such it is considered to have a relative degree of significance in relation to the character of the area i.e. it makes a positive contribution to the character of the conservation area. The fact that the bridge crossing is currently unusable due to its unsafe condition is immaterial to this heritage assessment process and its conclusion, as the presence of the bridge is sufficient to evidence its historical and social value as a non-designated heritage asset.

10.14 In light of the positive contribution this bridge crossing is found to make to the character of the conservation area, the logic set out in paragraph 201 of the NPPF is engaged, and it therefore follows that a degree of harm will result from the loss of this crossing.

10.15 This subtractive intervention would serve to further open-up views across the river to key heritage assets and views upstream from Miller Bridge. It would also enhance the perceived natural character of the river corridor and its associated sense of calm. The removal of the bridge deck would result in the loss of a valued elevated viewpoint towards designated heritage assets, albeit a viewpoint with negligible sense of tranquillity. It is considered that the proposal would thus marginally enhance the open appearance of the river corridor area and make a positive contribution to perceptual character and that these benefits balance-out the loss of the bridge deck as a viewpoint. The relative short distance of alternative routes between New Road and Gooseholme (approximately 550m by both Stramongate Bridge or Miller Bridge from one footbridge ramp to the other) should not alter or reduce the character of usage of areas either side of the bridge. The retention of the concrete pier footings will communicate the previous existence of a bridge connection here. It is also noted that there is a high likelihood that this crossing point would only be absent for a short period of time.

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in light of the advanced stage of development of the proposal for a replacement bridge and the funding committed to providing this. It is also important to reiterate that the existing footbridge is of negligible architectural and aesthetic merit. Bearing in mind the principle special interests that led to the designation of this conservation area (as set out in paragraph 10.10 above), I consider that the footbridge is of limited significance and makes limited contribution to the significance of the conservation area as a whole. In light of the above factors I consider that the proposed demolition would result in a less than substantial level of harm.

10.16 I am satisfied that the removal of the current footbridge would result in a substantial public benefit in the form of reduced flood risk to people and other nearby heritage assets and that the combination of the level of flood risk to the current structure and the current storm damaged nature of the asset prevents its reasonable repair and re-use. I therefore consider the public benefit of the proposed demolition to outweigh the less than substantial harm found and thus consider the proposal to pass the test set out at paragraph 195 of the NPPF (which is carried forward into Policy DM3).

10.17 In relation to sub-points 16 and 17 of Policy DM3 (which seek to retain features that contribute positively and require proposals to demonstrate how they avoid and mitigate harm); the application seeks to re-use limestone that currently faces the ramps for the reconstruction of the river-side wall on New Road; to retain the footprint foundations as a physical indication of the crossing; retain all existing trees in place; and to maintain the open character of the area in the intervening period between the demolition and construction of a replacement bridge.

**Would the removal of the bridge adversely affect the setting of any designated heritage assets?**

10.18 The bridge is not listed and is not considered to fall within the curtilage of any of the nearby listed buildings. There are however a number of listed buildings in proximity to the bridge and it is acknowledged that bridges can form an important part of the setting of some listed buildings. In essence, the setting of a designated heritage asset is the surroundings in which a heritage asset is experienced. Elements of a setting can profoundly contribute to the ability to appreciate the significance of a heritage asset. The contribution of setting is often expressed by reference to views (although perceptual characteristics such as quietness and tranquillity can also be an important component of a heritage assets setting).

10.19 It is noted that the submitted Heritage Statement provides a detailed assessment of the significance of each designated heritage asset and the impact of the proposal upon their settings. This assessment is considered essentially sound and I do not disagree with any of its conclusions.

10.20 Gooseholme Footbridge can be seen from the external eastern grounds of the nearby Grade II* listed Friends Meeting House and the Church of Holy Trinity and St George. It can also be seen from the upper floors of the Grade II listed Georgian properties at Thorny Hills which sit above Gooseholme green. It can also be seen clearly from Miller Bridge Scheduled Monument. Views from the Stramongate Bridge Scheduled Monument are limited by the presence of mature trees and the Sand Aire House Apartment Block complex. The bridge is not visible from the historic listed elements of the original Grade II Listed Sand Aire House. Where the bridge can be seen in views from these assets it forms a small
component of the wider townscape. The footbridge is not considered to have any functional relationship or direct historical association with any of these heritage assets. Consequently, the proposed removal of the footbridge is not considered to harm views from these heritage assets.

10.21 The openness of the areas around the nearby designated heritage assets add to their significance allowing appreciation of their prominence. The presence of the footbridge in views towards these designated heritage assets draws the eye and marginally reduces the prominence of the designated heritage assets. It therefore follows that its removal will marginally improve their setting as viewed across the river. The footbridge also affords fortuitous views of these heritage assets. Overall, it is considered that its loss would have a neutral impact on the appreciation and experience of these heritage assets – removing views from its deck but opening-up views towards these assets either side of the bridge. Consequently, it is considered the proposal would not adversely affect the setting of any designated heritage assets and therefore complies with Policy DM3.

Would the loss of the existing footbridge have an unacceptable effect on patterns of movement around the town?

10.22 It is my view that the crossing at Gooseholme is not a key functional route, but is an attractive leisure route whose principle value lies in providing a convenient motor vehicle free desire-line route (with scenic views) between the town-centre and the more tranquil open riverside greenspace at Gooseholme (and toward Kendal Castle). Alternative bridge crossings of the river Kent are available 190m to either side of it. These crossings are considered to be equally as convenient for most practical journeys undertaken by foot. It is acknowledged that these alternative crossing points are not exclusively for pedestrians (being shared with one-way motor vehicular traffic). It is further noted that Stramongate Bridge to the north-west provides wider shared-use pedestrian space on one side while Miller Bridge to the south has narrow less than 1m footway on its southern side and a footway that varies from 1m to 2m in width on its northern side. So whilst Miller Bridge is a slightly less attractive route to pedestrians because of the combination of motor-vehicular traffic and narrow footways, it does technically provide greater overall space for pedestrians than the 1.4m wide footbridge. So whilst the routes are not qualitatively comparable in terms of openness/experience they are functionally adequate. Gooseholme footbridge has been closed to the public for over three years. Taking into account the presence of these nearby alternative bridge crossings, and the town’s one-way traffic system, I do not believe that the loss of the Gooseholme crossing has, or will, lead to an increase in journeys by private motor vehicles. By the same token, I do not believe its loss would discourage journeys by foot (or make them any less safe). As such I consider that the (likely short-term temporary) loss of this route provides for a minor inconvenience at most and would not promote unsustainable modes of travel, decrease pedestrian safety or have an unacceptable effect on patterns of movement around the town.

Other Material Considerations

10.23 **Nature Conservation:** The applicant has submitted a Shadow Habitats Regulations Assessment (HRA) in relation to the impact of the proposed demolition works upon the River Kent SAC. It is noted that it is proposed to retain the pier foundations in place so as to minimise disturbance to the river bed habitat. The County Council’s Ecological Consultant, Natural England and the Environment Agency have worked with the applicant to develop the HRA over
the course of the application. Resultantly myself, the County Council’s Ecological Consultant, Natural England and the Environment Agency consider the extent of demolition and working methodology to be reasonable and are satisfied that the latter puts in place a comprehensive set of suitably tailored mitigation measures to control the risks of demolition works, adherence to which will ensure that there are no pathways that could result in any likely significant effects, either alone or in combination with other plans/projects, to the interest features of the River Kent SAC. Consequently, the County Council adopted the Habitats Regulation Assessment undertaken on 5 August 2019. The mitigation measures set-out in the adopted HRA were brought forward into a revised version of the Method of Work statement (Rev.3). It is therefore proposed to make this statement an approved document (referenced in condition 2) so as to ensure compliance with the HRA.

10.24 A phase 1 Habitat Survey of the River Kent was undertaken in November 2017. This flagged the presence of bats, breeding birds and otters within the river Kent corridor in Kendal. An otter survey carried out in June/July 2018 found no holts or resting sites in proximity to the footbridge. The tall ruderal grassland on the left-hand bank of the river Kent has some limited potential to harbour nesting birds (a potential diminished by the level of dog-walking activity that occurs on the riverside path). A condition is therefore proposed requiring this to be checked by a qualified ecologist prior to clearance to provide access for vehicular machinery into the river. There is no evidence of any bird nests on the bridge. A preliminary bat roost assessment and emergence survey was undertaken in connection with the bridge this summer. This assessed the structure as having low potential for use by bats and found no indication of use of the site by bats for roosting during the survey. CCC’s ecological consultant is satisfied with the survey work undertaken and agrees that demolition of the bridge is unlikely to result in a significant disturbance and/or loss of a bat roost site. Consequently, subject to the conditions proposed, I am satisfied that the proposed demolition works would not result in the loss of any habitat or harm to protected species.

10.25 **Trees**: The programmes of demolition works have been designed so that no trees require removal or trimming and it is proposed that tree protection fencing shall be put in place prior to set-up of the temporary construction compound. A condition is imposed to ensure this occurs.

10.26 **Amenity**: There is the potential for demolition operations to adversely impact upon residential amenity due to their noise and potential for emitting dust. The applicant provided further information in respect of working methods and the temporary compounds in light of South Lakeland District Council’s Environment Health Departments’ response. The demolition methodology minimises the amount of activity undertaken by heavy plant and machinery which has greater propensity to generate higher levels of noise and dust. Given the limited scale, intensity and likely short duration of demolition operations and the working methods to control and limit dust and noise levels I do not consider that the proposed demolition works would adversely impact upon residential amenity. To ensure this is the case a condition is proposed to restrict the hours of demolition operations. To ensure pedestrian amenity and safety is maintained it is proposed to impose the condition in respect of visibility from temporary compound accesses suggested by CCC Highways.

10.27 **Restoration**: The proposals to restore the ramp / abutment footprints is considered to be in-keeping with its surrounds and to therefore be acceptable. A
condition is proposed to ensure the re-use of the limestone masonry facing the ramps and abutments for the re-construction and reinstatement of the riverside wall.

10.28 **Contaminated Land:** The Geotechnical Design Report submitted in support of the application includes an assessment of potential contamination. This assessed historic soil sample data alongside four additional soil samples all of which had been subject to chemical analysis. This found no signs of any contamination on the eastern (Gooseholme) side of the river. The results indicated some minor exceedances in the man-made ground on the western (New Road) side of the river. Given the nature of use of the new road land and proposed hard surface finish to be applied to the bridge footprint here it concludes that these do not pose an unacceptable risk to human health and/or the environment. Consequently it is considered to comply with Policy DM7.

11.0 **CONCLUSION**

11.1 This bridge has been substantially flood damaged and is currently unsafe to use. Its current design/form is not considered to be sufficiently resilient to future flooding and is considered to heighten flood risk hazard in its wider vicinity. These are considered to present sound reasons for removal of a bridge whose central value lies primarily in provision of a convenient scenic leisure route rather than an essential functional route. This subtractive intervention is judged to result in less than substantial harm to Kendal’s Conservation Area, and it is considered that the flood risk and public safety benefits of demolition constitute public benefits that outweigh this level of harm. Nor is the proposal considered to adversely affect the setting of any designated heritage assets. Nor would its removal increase flood risk downstream.

11.2 The proposed demolition works programme has been carefully and sympathetically designed to minimise impacts upon the River Kent and nearby properties and to avoid the loss of trees.

11.3 In summary, it is considered that the proposed development is in accordance with the development plan, there are no material considerations that indicate the decision should be made otherwise and with the planning conditions proposed, any potential harm would reasonably by mitigated. Furthermore, any potential harm to interests of acknowledged importance is likely to be negligible and would be outweighed by the benefits of the development. It is therefore recommended that this application be granted subject to conditions.

**Human Rights**

11.4 The proposal will have a limited impact on the visual, residential and environmental amenity of the area. Any impacts on the rights of local property owners to a private and family life and peaceful enjoyment of their possessions (Article 8 and Article 1 of Protocol 1 of the Human Rights Act 1998) are minimal and proportionate to the wider social and economic interests of the community.

*Angela Jones  
Acting Executive Director for Economy and Infrastructure*

*Contact:* Mr Edward Page  
*Electoral Division Identification:* Kendal Nether  
Kendal Strickland and Fell
Appendix 1 - PROPOSED PLANNING CONDITIONS

Time Limit for Implementation of Permission

1. The development hereby permitted shall be begun 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 Section 51 of the Planning and Compulsory Purchase Act 2004.

Approved Scheme

2. The development hereby permitted shall be carried out, except where modified by the conditions to this permission, in accordance with the following:

   a. The submitted Application Form for relevant demolition in a Conservation Area – dated 27 June 2019;
   b. Location Plan;
   c. Demolition Plan – Drawing No. 399629-MMD-00-XX-DR-T-1010-Rev.P01.1 – submitted 1 August 2019;
   d. Method of Work – Report Ref. SG25050-PLN-001-Rev.3;
   e. Tree Statement – dated July 2019 (Report Reference 18.050);
   f. Tree Protection Plan – Submitted 19 July 2019;
   g. Site Layout Plan (Compounds) – submitted 31 July 2019;
   h. Email dated 31 July 2019 from Story Contracting re: working compounds;

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.

Tree Protection Measures

3. No demolition operations, or construction compound set-up on the eastern side of the river, shall take place until the tree protection measures as described in the Tree Statement dated July 2019 (Report Reference 18.050) and shown on the Tree Protection Plan submitted 19 July 2019 have been implemented in full. For the avoidance of doubt, all protective herras fencing for trees should be deployed in line with the specification shown in figures 2 and 3 of BS5837 2012.

The tree protection measures shall be retained in place throughout the undertaking of demolition works and the presence of the temporary compound within their vicinity. Once the temporary compound has been removed and its footprint re-soiled the tree protection fencing shall be removed.

Reason: In order to protect trees within the Conservation Area from damage during demolition operations in recognition of the contribution which trees make to the character and appearance of the conservation area and the wider townscape in accordance with policies DM3 and DM4 of the South Lakeland Development Management Policies Development Plan Document.

Breeding Birds
4. No tall ruderal grassland shall be disturbed, removed or otherwise cleared between the 1st March and 31st August inclusive in any year unless it has first been checked for breeding birds by a qualified ecologist in accordance with Natural England’s Guidance. In the event that breeding birds are found to be present an appropriate exclusion zone shall be set up around the habitat in question. No work shall be undertaken within the exclusion zone until nesting birds have been confirmed absent by a qualified ecologist.

Reason: To ensure appropriate protection for breeding / nesting birds under Section 1 of the Wildlife and Countryside Act 1981 and the Local Planning Authority’s biodiversity duty under The Natural Environment and Rural Communities Act (NERC) 2006.

Pedestrian Visibility Sight Splays from the Temporary Compounds

5. A 2.4 metre x 2.4 metre pedestrian visibility sight splay as measured from the highway boundary (or footpath boundary), shall be provided on both sides of the vehicular access to each temporary working compound. There shall be no obstruction above a height of 600mm as measured from the finished surface of the access within the area of the visibility sight splays thereafter.

Reason: To provide adequate inter-visibility between the pedestrians and users of the access and the existing public highway for the safety and convenience of users of the highway and of the access.

Hours of Operations

6. No demolition operations or start-up of generators or other plant and/or machinery shall take place outside the hours specified below without the prior written consent of the local planning authority:

- 08.00 am to 18.00 pm Monday to Friday
- 08.00 am to 13.00 pm on Saturdays.

No work shall be carried out on Sundays or public and/or bank holidays. This condition shall not operate so as to prevent the operation of any traffic control systems and the carrying out, outside these hours, of essential maintenance to plant and machinery used in the demolition works.

Reason: In the interests of local and residential amenity.

Retention of Limestone Masonry for Re-use on Wall Reconstruction

7. The limestone masonry facing to the footbridge ramps and abutments shall be removed by hand (or by hand held tools) only and in a manner so as to prevent damage from occurring to the limestone masonry and its dressed face. All undamaged masonry shall be retained on site and re-used in the construction of the river-side wall on the western side of the river where the bridge once was.

Reason: To preserve and ensure the productive re-use of historic fabric and ensure that the masonry matches that of the existing riverside wall.
Appendix 2
Ref No. 5/19/9007
Development Control and Regulation Committee – 13 August 2019

Appendix 2 - PLAN OF SITE LOCATION/EXTENT
Application Reference No. 5/19/9008

Application Type: Full Planning Permission

Proposal: Replacement of existing fibre glass wave effect roof with a shallow profiled insulated panel roof with protruding roof lights and installation of roof mounted solar panels (photovoltaic and thermal).

Location: Sandgate Hydrotherapy Pool, Sandylands Road, Kendal, LA9 6JG

Applicant: Cumbria County Council

Date Valid: 3 July 2019

Reason for Committee Level Decision: Application made by the Acting Executive Director of Economy and Infrastructure

1.0 RECOMMENDATION

1.1 That planning permission be granted subject to the conditions set out in Appendix 1 to this report.

2.0 THE PROPOSAL

2.1 Planning permission is sought to replace the existing white fibreglass wave effect roof of Sandgate Hydrotherapy Pool with a shallow profiled insulated panel roof with 4x protruding roof lights and to install roof mounted solar panels (38x photovoltaic and 4x thermal). This proposed development has arisen out of aspirations to reduce the running costs of the pool. Planning permission is required because of the height of the proposed replacement roof structure.

2.2 The proposed new roof would have a nominal pitch set at 1.5° and be formed from light “Merlin Grey” coloured (RAL 180 40 05) insulated Kingspan panels with raised joints. To accommodate the proposed new panel roof, insulated spandrel wall panels coloured “Basalt Grey” (RAL 7012) would be installed above the concrete ring beam that sits on top of the existing pool walls. As such the surface of the new roof would vary in height – with the surface plane of the roof measuring approximately 0.5m above the concrete ring beam (i.e. approximately 4.1m agl) at the lower north-western end of the roof and up to approximately 0.8m above the concrete ring beam (i.e. approximately 4.25m agl) at the higher south-eastern end. N.B. The external ground level varies around the pool facility.

2.3 A north-light roof light system is proposed. This would have aluminium framed double-glazed units set at a 60° angle facing northward, and Polyester Powder Coated (PPC) aluminium sandwich panels coloured Basalt Grey to the other sides. The aluminium frames to the double glazed units would also be finished in a Basalt Grey colour. The proposed roof lights would be sited above the pool and would sit up to 0.8m above the plane of the roof (and would thus stand approximately 5.1m agl at the highest point). The roof lights would be situated in 4 staggered rows, with each bank of lights having a footprint of 3m x 1.45m. The roof lights would be set back at least 3.1m from the edge of the sides of the pool
roof; 4.25m from its lower north-western edge and 1.5m from the south-eastern edge of the pool building roof (but 7m from south-eastern building line).

2.4 It is proposed to install 4no. solar thermal panels in a continuous row on the lower flat roofed entrance area. The panels are proposed to be fixed in a landscape orientation and set at a 15° pitch. Each panel would measure 1m x 2m, so the footprint of the bank of thermal panels would measure 8m in length and just under 1m in width. They would measure up to 0.3m in height above the plane of the roof. The thermal panels would be set back at least 0.7m from the edge of the roof. This system would provide a pre-heat for the existing 250 litre unvented indirect hot water cylinder.

2.5 It is also proposed to install 38no. 340w solar photovoltaic panels across the new pool roof and the flat-roofed entrance area, with 29 panels sited on the pool roof and 9 panels on the entrance area roof. Each panel would measure 1.7m in length by 0.94m in width. It is proposed that they would be fixed in a portrait orientation and set at a 15° pitch. As such they would measure up to 0.5m above the planes of the roofs. The panels would be set out in six rows; with two rows of 9 panels book-ending four rows of 5 panels interspersed by the roof lights. The panels would be set at least 1m from the edge of the roofs. This solar photovoltaic system would have a peak power output of 12.9 kWp and would generate 10,539 kWh a year. As such, based on past energy usage figures, this system would provide approximately 20% of electrical energy required by this facility.

2.6 Both types of solar panels would be mounted on metal frame systems and the surfaces of the panels would be black in colour.

2.7 It is noted that it is also proposed to provide a new single ply membrane covering to replace the existing felt covering on the flat roof above the entrance area and that new aluminium rainwater goods are also proposed.

3.0 SITE LOCATION & DESCRIPTION

3.1 Sandgate hydrotherapy pool is located in the north-east side of Kendal within the mid-twentieth century built Sandylands housing estate. It shares a site with Sandgate Special School and is accessed off Sandylands Road. The County Council is responsible for the safe and efficient operation of the hydrotherapy pool – managing the building and employing its staff.

3.2 The Hydrotherapy Pool was built in 1977. The facility is housed within a single storey building with flat felted roofs to ancillary spaces and a white fibre glass wave effect roof to the pool. This fibre glass roof is supported on curved beams bolted to a concrete ring-beam to the top of the masonry perimeter walls. The flat roofed elements stand approximately 3.2m above ground level. The crest of the wave roof stands approximately 4.75m agl. The external walls of the building are formed from buff brick.

3.3 The pool building is situated within the northern part of the site and is set back at least 23m from the highway. The hydrotherapy pool facility is approximately rectangular in footprint with a small number of rectilinear protrusions. It measures approximately 24m in length and is generally 10m in width. There is a direct link into the school via the wet-change room which is set off the south-western side of the school. On site car parking bounds the pool facility to its north-eastern and south-eastern sides with Sandylands Road being present to the east beyond this.
The school lies to the pool buildings’ south-western side. The school buildings are all single storey and have a mixture of dual-pitched, mono-pitched and flat roofs finished with a variety of materials including concrete roof tiles, Sarnafil Decor Profile PVC and felt roofing. The pool building is set back at least 6m from the sites’ north-western boundary. The rear gardens of a terrace of two storey properties (1-8 Eastgate) back onto this boundary which is formed by a mixture of 1.8-2m high close boarded timber fencing and mature shrub planting. The rear elevation of the nearest terrace property measures approximately 16m in distance from the pool building. There are a number of mature trees, a few recently planted trees and mature shrubs and hedgerows distributed to the eastern side of the complex of buildings on this site.

3.4 The pool building is over 150m away from the north-eastern boundary of Kendal’s Conservation Area and there are no listed buildings within 200m of it.

3.5 Following the Environment Agency’s re-evaluation of flood risk zones after the Storm Desmond Flood Event in December 2015, the pool is now situated within Flood Risk Zone 3 (it was previously in flood risk zone 1). It is understood that neither the pool nor the school buildings experienced flooding during Storm Desmond, although the Section 19 Flood Investigation Report indicates that the flood extent encompassed Sandylands Road in front of the site. Flood risk to this site is associated with the eastern and southern Stock Beck systems and the capacity of the Stock Beck Flood Storage Basin.

4.0 SITE PLANNING HISTORY

4.1 There have been two applications for small extensions to the pool facilities over the last twenty years. Planning permission was granted in May 2003 for an extension to the pool facilities and car parking area (Ref. 5/02/2231). In February 2012 planning permission was granted for a 24m² extension to the southern side of the north-eastern elevation to provide new changing room facilities and for alterations to the car park (Ref. 5/12/0006).

4.2 There have also been a number of incremental extensions to Sandgate Special School over the last forty years (Refs. 5/83/0147; 5/97/9008; 5/00/9016; 5/02/9012).

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 South Lakeland District Council Planning Department: No objection provided no significant amenity harm will be caused to third party residential amenity or to landscape character as part of the proposal.

5.2 Kendal Town Council: No response received.

5.3 Cumbria County Council Highways Development Management: No objection. Comments that solar panels are designed to absorb light and accordingly reflect only a small amount of the sunlight that falls on them compared to most other everyday objects. Considers that the proposed solar panels are unlikely to have more glare that the current white wave effect fibreglass roof.

5.4 The pool falls within the Kendal Nether County Council Electoral Division. The Councillor representing that division, Cllr Shirley Evans, has been notified of this application.
5.5 No representations have been received.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process. The development plan documents deemed relevant to the consideration of this application are:

- South Lakeland Core Strategy - adopted 20 October 2010.

6.2 The following policies from these local development plan documents are considered to be relevant to the consideration of these applications:

- CS1.1 - Sustainable Development Principles
- CS2 - Kendal Strategy
- CS7.7 - Opportunities provided by energy and the low carbon economy
- CS8.4 - Biodiversity and Geodiversity
- CS8.7 - Sustainable construction, energy efficiency and renewable energy
- CS8.10 - Design
- DM1 - General Requirements for all development
- DM2 - Achieving Sustainable High Quality Design
- DM6 - Flood Risk Management and Sustainable Drainage Systems

6.3 The National Planning Policy Framework (NPPF) was published in a revised form in February 2019. The national online Planning Practice Guidance (PPG) suite was launched in March 2014 and is continually updated. Both are material considerations in the determination of planning applications. The following sections and paragraphs of the NPPF are considered to be relevant to the determination of this application:

- Section 2 - Achieving sustainable development: Paragraphs 8 & 11;
- Section 8 - Promoting healthy & safe communities: Paragraphs 91 & 95;
- Section 14 - Meeting the challenge of climate change, flooding and coastal change: Paragraphs 148, 150, 155, 163, 164 & 165;

7.0 PLANNING ASSESSMENT

7.1 I consider that the key planning issues are whether the proposal is acceptable in principle and whether the proposed scheme design and layout would result in any unacceptable impacts on residential or visual amenity or highway safety. Other material considerations include the potential for the scheme to impact upon the historic or natural environments.

Principle

7.2 Policies CS1.1 and CS7.7 support the realisation of opportunities to mitigate against climate change by increasing the proportion of energy derived from renewable sources. CS7.7 expands on this by expressing support in principle for solar power micro-generation projects where they are appropriately located and
avoid harmful impacts on the historic environment. CS8.7 encourages energy efficiency and renewable energy measures and sets out that the most appropriate technologies for the site and surrounding area should be used, having due regard to the physical nature of the development such as aspect, building height and the environmental quality of the surrounding area. In light of the above, the principle of this development, which seeks to both reduce energy usage (by providing a more thermally efficient roofing system) and maximise the amount of electrical and heat energy generated by renewable solar power is considered to be strongly supported by strategic planning policies.

**Potential Impacts**

7.3 By virtue of the profile, height, orientation and design of the proposed new pool roof, roof-lights and solar panels; and their distance from properties to the north and south; I do not believe the proposals will result in any adverse impact on residential amenity, as they will not be overbearing, result in any loss of outlook, sunlight or overshadowing nor lead to any direct view of the solar panel surfaces from nearby properties that could result in glint or glare.

7.4 The existing wave effect roof is a distinctive and characterful feature in the Sandylands area of Kendal; however, it is recognised that its form makes maintenance difficult (and in turn has led to limitation of natural light within the pool) and that its fibreglass construction has limited longevity (and that this is evident from its current condition). The proposed roof is less characterful and more functional. Given the variety of forms and finishes of roofs on the Sandgate site, the proposed light grey coloured insulated roof panels are considered to be acceptable and in-keeping with the form, tone and colour palette of roofs on site and those present in the wider neighbourhood. The roof-lights and solar infrastructure would be set back from the edges of the building closest to public vantage points, with visibility of the roof being generally limited to mid-distance views from Sandylands playing field where it would be seen in the context of the complex of this site and its diverse roofscape. I do not consider that the proposal would detract from the roofscape of the wider area or the local street scene. Nor do I consider it to have an adverse visual impact nor any impact on the wider landscape.

7.5 I believe that, in light of the angle of the north-lights, their distance from Eastgate and the intervening presence of solar photovoltaic panel arrays, that the proposal would not result in any overlooking (and associated loss of privacy) to pool users.

7.6 The set-back positioning of the pool facility buildings from the highway alongside the low-pitch and orientation of the roof and solar panel and the limited reflectivity of the solar panel surfaces limits the potential for glint (direct reflection of sunlight) or glare (reflection of the bright sky) to affect those moving through public spaces outside the site. These factors combined with the curved alignment and shallow gradient of Sandylands Road around the site (and the position of other buildings along the road on the approach to the site) and the presence of a number of mature trees and planting between the pool building and road means there is considered to be negligible visibility of the solar panels from motor vehicles on the highway. Consequently, I consider that the proposal would not adversely affect highway safety as a result of glint or glare.

**Other Material Considerations**

7.7 Although the facility is situated within Flood Risk Zone 3, the proposed
development would not increase the building footprint nor the capacity of the pool. As such the proposal would not increase flood risk in the area. The existing roof of the building has been surveyed by an ecologist and found to be unsuitable for bat roosting and free of bird nests. The proposal would not affect any heritage assets directly or indirectly. Accordingly, the proposal would not have any adverse impacts upon the natural or historic environment and therefore complies with policies CS8.1, DM1 and DM6.

8.0 CONCLUSION

8.1 The proposed new roof would enhance the experience of users of the hydrotherapy pool by providing a clear source of natural light and creating a more consistent and temperate environment that avoids direct sunlight and reduces glare. The insulated roof panel system would provide an improved thermal performance (reducing energy consumption) while the solar panels would provide electrical and heat energy that would increase the proportion of energy derived from low-carbon renewable sources. Consequently, the proposal would increase the physical lifespan of the roofs and improve the economic and environmental sustainability of this much valued community facility. As such the proposal would deliver profound and multiple benefits that align with planning policy. Furthermore, I am satisfied that the proposed new roof system and solar panels have been sympathetically designed so as to ensure the proposal would have negligible impact upon residential or visual amenity or highway safety.

8.2 In summary, it is considered that the proposed development is in accordance with the development plan, there are no material considerations that indicate the decision should be made otherwise. It is therefore recommended that this application be granted subject to conditions

Human Rights

8.3 Given the nature and purpose of the proposed development no Convention Rights as set out in the Human Rights Act 1998 would be affected.

Angela Jones
Acting Executive Director for Economy and Infrastructure

Contact: Mr Edward Page

Electoral Division Identification: Kendal Nether ED
Appendix 1 - PROPOSED PLANNING CONDITIONS

Time Limit for Implementation of Permission

1. The development hereby permitted shall be begun 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 Section 51 of the Planning and Compulsory Purchase Act 2004.

Approved Scheme

2. The development hereby permitted shall be carried out in accordance with the following:

   a. The submitted Planning Application Form – dated 1 July 2019;
   b. Planning Supporting Statement (Report Ref. CM18002/PSS1) – dated 1 July 2019;
   g. Email dated 10 July 2019 from Agent re Colour Finishes and Clarifications and associated External Coating Colour Range Brochure;

   *Reason:* To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.
Appendix 2 - PLAN OF SITE LOCATION/EXTENT
APPLICATIONS DETERMINED UNDER DELEGATED POWERS

NOTE: These are applications that have been recently determined by the Assistant Director of Economy & Environment in accordance with the scheme of delegation.

<table>
<thead>
<tr>
<th>Authority Area</th>
<th>Ref. No.</th>
<th>Applicant</th>
<th>Proposal / Site Location / (Case Officer)</th>
<th>Date Valid Application Received</th>
<th>Decision &amp; Date</th>
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<tbody>
<tr>
<td>Carlisle</td>
<td></td>
<td>Nil</td>
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<tr>
<td>Allerdale</td>
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<tr>
<td>Eden</td>
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<td>Nil</td>
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<tr>
<td>Copeland</td>
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<td>Nil</td>
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<tr>
<td>South Lakeland</td>
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<tr>
<td>Barrow</td>
<td>6/18/9006</td>
<td>Burlington Aggregates Ltd</td>
<td>Review of Minerals Permission (ROMP) Application for Permission Ref.6/03/9020 Goldmire Quarry, Dalton in Furness, (DH)</td>
<td>18.12.18</td>
<td>Granted subject to conditions 11.07.19</td>
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</table>
APPLICATIONS PROPOSED TO BE DETERMINED UNDER DELEGATED POWERS

NOTE: These are applications that have been submitted to the County Council but are not yet ready/appropriate for determination under delegated powers and/or have been recently withdrawn or determined as invalid, or do not require planning permission, etc.

<table>
<thead>
<tr>
<th>Authority Area</th>
<th>Ref. No.</th>
<th>Applicant</th>
<th>Proposal / Site Location / (Case Officer)</th>
<th>Date Valid Application Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carlisle</td>
<td>1/19/9004</td>
<td>North West Recycling Ltd</td>
<td>Importing waste soils and inert material under the provisions of a Recovery Permit, issued by the Environment Agency, in order to extend an embankment supporting a residential property. Initial Planning consent approved 09/09/2013. Cargo Hill Farm, road leading from Kingmoor Road junction to bridge south of Rockcliffe Estate, Cargo, Carlisle, CA6 4AL (DH)</td>
<td>04.06.19</td>
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<tr>
<td>Allerdale</td>
<td>Nil</td>
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<tr>
<td>Eden</td>
<td>3/19/9002</td>
<td>United Utilities</td>
<td>Installation of a Motor Control Centre (MCC) kiosk, on a parcel of land within the existing Calthwaite Wastewater Treatment Works. These works are required in connection with permitted development works which will include the installation of 2 no. polonite tanks and 2 no. bark tanks, below ground chambers and manholes, associated pipework, and an extension to the hardstanding to allow for vehicular access to the tanks. Calthwaite Wastewater Treatment Works, Near 2 Orchard Cottages, Calthwaite, Cumbria, CA11 9QN (JP)</td>
<td>01.07.19</td>
</tr>
<tr>
<td>Copeland</td>
<td>4/17/9004</td>
<td>Whitehaven Skips and Services Ltd</td>
<td>Yard for Skip Hire, Storage and Sorting of Waste.</td>
<td>15.02.17</td>
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<td>Whitehaven Skips and Service Ltd, 12, Leconfield Industrial Estate, Cleator Moor, CA25 5QB (DH)</td>
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<td>South Lakeland</td>
<td>5/18/9005</td>
<td>United Utilities Plc</td>
<td>New stormwater detention tank, kiosk, pressure balance stack and associated land repprofiling to address an Unsatisfactory Intermittent Discharge associated with the existing Dragley Beck Combined Sewer Overflow. Low Mill Business Park, Ulverston, LA12 9EE (DH)</td>
<td>26.02.18</td>
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Agenda Item 16
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<tr>
<th>Authority Area/Ref. No. (Web-link)</th>
<th>Applicant - (Case Officer)</th>
<th>Date Valid Application Received</th>
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### DEVELOPMENT CONTROL & REGULATION COMMITTEE

**Meeting Date:** 13 August 2019  
**From:** The Acting Executive Director - Economy and Infrastructure

## FORWARD PLAN

<table>
<thead>
<tr>
<th>Committee Date</th>
<th>Reference/Proposal/Site Location</th>
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<tr>
<td><strong>18 September 2019</strong></td>
<td>Commons Registration</td>
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<td></td>
<td><strong>CA13/25</strong> Application to correct mistaken registration, land at High Stile Farm, Torver (SB).</td>
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<td></td>
<td><strong>CA13/26</strong> Application to correct non-registration or mistaken registration, CL495 Kitchin's Ground, The Hill, Millom (SB)</td>
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<tr>
<td><strong>Countryside and Access</strong></td>
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<td></td>
<td><strong>05.01.443</strong> – Diversion of paths 536260/261 Kendal (HA)</td>
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<td><strong>05.02.270</strong> – Claimed bridleway ext 258023 Westward (WCA)</td>
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<td><strong>05.02.241</strong> – Amendment of public footpath 126003 Nicholforest (WCA/HA)</td>
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<td><strong>05.02.337</strong> – Add path at Centurions Walk, Carlisle (WCA)</td>
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<td><strong>Development Control</strong></td>
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<td></td>
<td>United Utilities Plc - 5/19/9006 - change of use from agricultural field to wastewater treatment works extension to allow for increases to the capacity of the wastewater treatment process to accommodate population growth in the area.</td>
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<td></td>
<td>Land adjacent to the Endmoor Wastewater Treatment Works, Enyeat Road, Endmoor, Near Kendal, LA7 7NW (DH)</td>
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<td><strong>31 October 2019</strong></td>
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<td><strong>CA13/15</strong> Application to correct non-registration or mistake registration, land at Ivy Tree Farm, CL276 Blawith Fell</td>
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<td><strong>05.01.446</strong> – Extinguishment of section of path no 138005 Wetheral (HA)</td>
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