

SCHEDULE B

SCHEDULE B

## SCHEDULE B: Applications Determined by Other Authorities

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**Item No: 15**

Between 11/11/2017 and 19/12/2017

**Appn Ref No:**

17/9013

**Applicant:**

Capita

**Parish:**

Dalston

**Date of Receipt:**

13/09/2017

**Agent:**

Cumbria County Council -  
Economy & Planning

**Ward:**

Dalston

**Location:**

U1143, Gaitsgill, Dalston, Carlisle

**Grid Reference:**

338892 546442

**Proposal:** Realignment Of The U1143 To Provide A Safe Highway Route Following  
Closure Of The Current Road Due To Landslips

**Amendment:**

### REPORT

**Case Officer:** Suzanne Osborne

### City Council Observations on the Proposal:

**Decision:** City Council Observation - Observations

**Date:** 25/09/2017

**Decision of:** Cumbria County Council

**Decision Type:** Grant Permission

**Date:** 08/12/2017

A copy of the Notice of the decision of the Determining Authority is printed following the report.

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**CUMBRIA COUNTY COUNCIL**

TOWN AND COUNTRY PLANNING ACT 1990  
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2015

**NOTICE OF PLANNING PERMISSION**

To: Mrs R Taylor  
Capita  
Kingmoor Business Park  
Carlisle  
CA6 4SJ

In pursuance of the powers under the above Act and Order the Cumbria County Council as local planning authority hereby **grant** planning permission for the development described in your application and on the plans/drawings attached thereto received on 19 September 2017.

**viz: Realignment of the U1143 to provide safe highway route following closure to landslips and provision of construction compound/welfare facilities**

**B6263, Wetheral, Carlisle**

Subject to due compliance with the following conditions:

**Time Limit for Implementation**

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 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 23 August 2017
  - b. Planning Statement – dated August 2017
  - c. Flood Risk Assessment – Level 2 Scoping Study – dated August 2017
  - d. Preliminary Sources (Desk) Study and Preliminary Options Appraisal – dated 21 July 2017
  - e. Landscape and Visual Impact Assessment – dated August 2017
  - f. Phase 1 Habitat Survey – dated 8 August 2017
  - g. Waste Management Plan – dated 31 January 2017
  - h. Plans numbered and named:
    - i) CSS-CAP-LPN-02-DR-Z-004 P01 – Planning boundary
    - ii) CSS-CAP-LLO-02-DR-Z-002 P03 – Temporary and permanent land take
    - iii) CSS-CAP-EGN-02-DR-Z-0007 P01 – Site location plan
    - iv) CSS-CAP-LPN-02-DR-CH-0001 P01.1 – Realignment of U1143 unclassified county road
  - i. 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.*

3. Notification of the date of commencement of the development shall be made in writing to the County 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 County 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;
  - d) Means of receiving construction material;
  - e) The storage of fuels and soils during construction phase;
  - f) A scheme for recycling/disposing of waste resulting from construction works;
  - g) Access gates shall be hung to open away from the public highway, no less than 10m from the carriageway edge and shall incorporate visibility splays;
  - h) Details of temporary construction/warning signage;
  - i) Provision for facilities of manoeuvring, loading and unloading of vehicles'
  - j) 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, in accordance with CMWLP Policy DC2.*

### **Control of Temporary Lighting**

5. Any temporary lighting shall not be used between the hours of 20.00 and 08.00 hours Monday to Friday and 18.00 hours and 08.30 hours Saturday and Sunday and at no time on Public Bank Holidays.

*Reason: To ensure the residential amenities of local residents are protected from light pollution, in accordance with CMWLP Policy DC2.*

### **Hours of Working**

6. No site construction work, delivery or removal of materials shall take place on the site outside the hours of:

07:00 to 18:00 Monday to Fridays  
08:00 to 13:00 Saturday

No site construction work, delivery or removal of materials shall take place on Sundays; Bank Holidays and other Public Holidays.

*Reason: To ensure the construction is carried out in accordance with the approved scheme and there is no impact on the amenities of nearby residents.*

## Noise

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

*Reason: To safeguard the amenity of adjoining land users by ensuring that the noise generated in their operation is minimised and so does not constitute a nuisance outside the boundaries of the site, in accordance with CMWLP Policy DC3.*

8. The equivalent continuous noise level (LAeq) attributable to the approved operations shall not exceed 55 dB(A) as measured at The Straits, Gaitsgill. The noise levels are expressed as one hour free field LAeq's.

*Reason: To safeguard the amenity of local residents by ensuring that noise generated by the operations hereby permitted does not cause a nuisance outside the boundaries of the site, in accordance with Cumbria MWLP Policy DC3.*

## Dust

9. Measures shall be employed to provide for the cleaning of all vehicles leaving the site (with the exception of cars), and which shall be maintained for the life of operations and used to ensure that no mud or other material from the site is deposited upon road outside the site boundary.

*Reason: To prevent material tracked onto roads outside the site giving rise to mud, in accordance with CMWLP Policy DC5.*

10. The operator shall maintain on site at all times a water bowser or other dust suppression system, together with an adequate supply of water and during periods of dry weather shall spray the access road, haul roads and working areas and waste with water to suppress dust to prevent its migration off 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 CMWLP Policy DC5.*

## Biodiversity

11. All excavations deeper than 0.5m that will be left unattended overnight will be kept to a minimum. Where excavations must unavoidably be left open overnight they will be securely fenced with Herras fencing with an additional lower guard to prevent wildlife from entering the working area.

*Reason: In order to prevent otters or wildlife becoming trapped in deep excavations, in accordance with CMWLP Policy DC16.*

12. No trees, bushes or hedges within the development site shall be removed, lowered or pruned during the bird nesting season between 1 March and 31 July

inclusive. If areas cannot be cleared outside this time, they should be checked for breeding birds in accordance with Natural England's Guidance and, if appropriate, an exclusion zone set up around any vegetation to be protected. No work shall be undertaken within the exclusion zone until birds and any dependant young have vacated the area.

*Reason: To protect nesting birds during the bird nesting season, in accordance with CMWLP Policy DC16.*

### **Construction Traffic**

13. No construction traffic shall enter the Gaitsgill Village. All construction traffic shall use the C1017 and U1146.

*Reason: To protect the amenities of local residents and highway safety, to comply with CMWLP Policy DC2.*

### **Landscaping**

14. The landscaping shall be maintained for a period of five years from the date of planting. Any trees or shrubs which die or become seriously damaged or diseased within the five years from planting shall be replaced with plants of the same species or such species as may otherwise be agreed with the County Planning Authority.

*Reason: To secure the satisfactory establishment and maintenance of a landscaping scheme in the interests of local and residential amenity.*

### **INFORMATIVES**

The applicant is reminded on the opening of the new section of U1143 the stopping up of the old section of road is required.

The applicant is reminded to apply for Hedgerow Removal Notice.

Dated the 8 December 2017

.....  
Signed: Angela Jones  
Assistant Director of Economy & Environment  
on behalf of Cumbria County Council.

### **NOTES**

- The local planning authority has worked with the applicant/agent in a positive and proactive manner to seek solutions to any problems which have arisen in relation to dealing with the planning application and has implemented the requirements of the [National Planning Policy Framework](#).
- The policies and reasons for the approval of this planning application are set out within the planning officers' report on the application which can be viewed online via: [Onlineplanning.cumbria.gov.uk/ePlanningOPS/searchPageLoad.do](http://Onlineplanning.cumbria.gov.uk/ePlanningOPS/searchPageLoad.do)

**REFERENCE No. 1/17/9013**

- The conditions attached to this permission may override details shown on the application form, accompanying statements and plans.
- Submissions to discharge conditions require a fee. Any approval to be given shall be made in writing.

## APPENDIX TO NOTIFICATION OF PLANNING DECISION

This Appendix does not form part of any consent. However, you should take careful notice of the advice given below as it may affect your proposal.

1. This grant of planning permission does not exempt you from regulation under Building Control and Environmental Protection regimes. The County Council regularly shares information with other authorities. Failure to comply with other regulatory regimes may result in prosecution.
2. Any grant of planning permission does not entitle developers to obstruct a public right of way. Development, insofar as it affects a right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of [The Town and Country Planning Act 1990](#), or other appropriate legislation, for the diversion or extinguishment of right of way has been made and confirmed.
3. The attention of the person to whom any permission has been granted is drawn to Sections 7 and 8A of the Chronically Sick and Disabled Persons Act 1970 and to the Code of Practice for Access of the Disabled to Buildings or any prescribed document replacing that code.
4. Any application made to the Local Planning Authority for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission will be treated as an application under [Article 27](#) of [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) and must be made in writing. A fee is payable for each submission. A single submission may relate to more than one condition.
5. There is a right of appeal against the failure to determine applications within the specified period and against the refusal of any consent, agreement or approval for which application is made (see enclosed "Notes in respect of Appeals to The Secretary of State").



## NOTES IN RESPECT OF APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. Please note, only the applicant possesses the right of appeal.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at: [Gov.uk/appeal-planning-inspectorate](https://www.gov.uk/appeal-planning-inspectorate)
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

## Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of part VI of the Town and Country Planning Act 1990.

## SCHEDULE B: Applications Determined by Other Authorities

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**Item No: 16**

Between 11/11/2017 and 19/12/2017

**Appn Ref No:**

17/9015

**Applicant:**

Capita

**Parish:**

Wetheral

**Date of Receipt:**

09/10/2017

**Agent:**

Cumbria County Council -  
Economy & Planning

**Ward:**

Wetheral

**Location:**

B6263 East of Wetheral Pasture, Wetheral, Carlisle

**Grid Reference:**

346745 555713

**Proposal:** Realignment Of A Section Of B6263 Between Warwick On Eden And  
Wetheral; Stopping Up Of 5m Section Of Public Right Of Way - 138005

**Amendment:**

### REPORT

**Case Officer:** Suzanne Osborne

### City Council Observations on the Proposal:

**Decision:** City Council Observation - Observations

**Date:** 30/10/2017

**Decision of:** Cumbria County Council

**Decision Type:** Grant Permission

**Date:** 08/12/2017

A copy of the Notice of the decision of the Determining Authority is printed following the report.

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**CUMBRIA COUNTY COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1990  
THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2015**

**NOTICE OF PLANNING PERMISSION**

To: Mrs R Taylor  
Capita  
Kingmoor Business Park  
Carlisle  
CA6 4SJ

In pursuance of the powers under the above Act and Order the Cumbria County Council as local planning authority hereby **grant** planning permission for the development described in your application and on the plans/drawings attached thereto received on 19 September 2017.

**viz: Realignment of a section of B6263 between Warwick on Eden and Wetheral and stopping up of 5m section of Public Right of Way 138005  
B6263, Wetheral, Carlisle**

Subject to due compliance with the following conditions:

**Time Limit for Implementation**

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 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 15 September 2017
  - b. Planning Statement – dated September 2017
  - c. Flood Risk Assessment – Level 2 Scoping Study – dated September 2017
  - d. Preliminary Sources (Desk) Study and Preliminary Options Appraisal – dated 21 July 2017
  - e. Landscape and Visual Impact Assessment – dated September 2017
  - f. Ground Investigation Report – Rev,0: 25 July 2017
  - g. Traffic Statement – dated September 2017
  - h. Phase 1 Habitat Survey – dated 14 August 2017
  - i. Carlisle Slopes Stability Wetheral – Road Re-alignment Tree Survey – dated 31 July 2017
  - j. Environmental Management Plan - CS-CAP-EGN-03-RPV-0001
  - k. Environmental Management Plan – Cumbria Infrastructure Recovery Programme (live) (WPCE03b) (dated 6 November 2017)
  - l. Plans numbered and named:
    - i) CSS-CAP-EGN-03-DR-Z-0007 P01.1 – Site Location Plan
    - ii) CSS-CAP-LPN-03-DR-CH-0003 P01 – Planning boundary
    - iii) CSS-CAP-VES-03-DR-V-0001 P01 – Tree constraints plan
    - iv) CSS-CAP- EBD-03-DR-Z-0002 P01.1 – Phase 1 Habitat Survey

- v) CSS-CAP-ELS-03-D-L-0001 P01 – Wetheral Landscape Plan
- vi) CSS-CAP-EBD-03-DR-Z-0003 P01.1 – Designated Sites
- vii) CSS-CAP-HGN-03-DR-C-0001 P01 – Construction Management Plan
- m. 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.*

3. Notification of the date of commencement of the development shall be made in writing to the County 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 County 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;
  - d) Means of receiving construction material;
  - e) The storage of fuels and soils during construction phase;
  - f) A scheme for recycling/disposing of waste resulting from construction works;
  - g) Access gates shall be hung to open away from the public highway, no less than 10m from the carriageway edge and shall incorporate visibility splays;
  - h) Details of temporary construction/warning signage;
  - i) Provision for facilities of manoeuvring, loading and unloading of vehicles'
  - j) 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, in accordance with CMWLP Policy DC2.*

### **Control of Temporary Lighting**

5. Any temporary lighting shall not be used between the hours of 18.00 and 08.00 hours Monday to Friday and 18.00 hours and 08.30 hours Saturday and Sunday and at no time on Public Bank Holidays.

*Reason: To ensure the residential amenities of local residents are protected from light pollution, in accordance with CMWLP Policy DC2.*

## Hours of Working

6. No site construction work, delivery or removal of materials shall take place on the site outside the hours of:

07:00 to 18:00 Monday to Fridays  
08:00 to 13:00 Saturday

No site construction work, delivery or removal of materials shall take place on Sundays; Bank Holidays and other Public Holidays.

*Reason: To ensure the construction is carried out in accordance with the approved scheme and there is no impact on the amenities of nearby residents.*

## Noise

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

*Reason: To safeguard the amenity of adjoining land users by ensuring that the noise generated in their operation is minimised and so does not constitute a nuisance outside the boundaries of the site, in accordance with Cumbria MWLP Policy DC3.*

8. The equivalent continuous noise level (LAeq) attributable to the approved operations shall not exceed 55 dB(A) as measured at Myrebank. The noise levels are expressed as one hour free field LAeq's.

*Reason: To safeguard the amenity of local residents by ensuring that noise generated by the operations hereby permitted does not cause a nuisance outside the boundaries of the site, in accordance with Cumbria MWLP Policy DC3.*

## Dust

9. Measures shall be employed to provide for the cleaning of all vehicles leaving the site (with the exception of cars), and which shall be maintained for the life of operations and used to ensure that no mud or other material from the site is deposited upon road outside the site boundary.

*Reason: To prevent material tracked onto roads outside the site giving rise to mud, in accordance with CMWLP Policy DC5.*

10. The operator shall maintain on site at all times a water bowser or other dust suppression system, together with an adequate supply of water and during periods of dry weather shall spray the access road, haul roads and working areas and waste with water to suppress dust to prevent its migration off 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 CMWLP Policy DC5.*

## Biodiversity

11. All excavations deeper than 0.5m that will be left unattended overnight will be kept to a minimum. Where excavations must unavoidably be left open overnight

they will be securely fenced with Herras fencing with an additional lower guard to prevent wildlife from entering the working area.

Reason: *In order to prevent otters or wildlife becoming trapped in deep excavations, in accordance with CMWLP Policy DC16.*

12. No trees, bushes or hedges within the development site shall be removed, lowered or pruned during the bird nesting season between 1 March and 31 July inclusive. If areas cannot be cleared outside this time, they should be checked for breeding birds in accordance with Natural England's Guidance and, if appropriate, an exclusion zone set up around any vegetation to be protected. No work shall be undertaken within the exclusion zone until birds and any dependant young have vacated the area.

Reason: *To protect nesting birds during the bird nesting season, in accordance with CMWLP Policy DC16.*

13. All vegetation clearance and construction works must take into account habitat, and species such as breeding birds, reptiles and badgers and impacts on River Eden SSSI and SAC and all works must take place in accordance with 'Environmental Management Plan – Cumbria Infrastructure Recovery Programme (live) (WPCE03b) (dated 6 November 2017). Any alterations/amendments to the live document shall be submitted to and approved by the County Planning Authority.

Reason: *To ensure that species of reptile and impacts on River Eden SSSI and SAC are protected, in accordance with Policy DC16 of the Cumbria Minerals and Waste Local Plan 2015-2030.*

### **Construction Traffic**

14. All construction traffic shall use the B6263 only.

Reason: *To protect the amenities of local residents and highway safety, to comply with CMWLP Policy DC2.*

### **Surface Water/Drainage**

15. No development shall commence until a construction surface / ground water management plan has been agreed in writing with the local planning authority.

Reason: *To safeguard against flooding to surrounding sites and to safeguard against pollution of the watercourse running through the site, to comply with CMWLP Policies DC19 and DC20.*

16. No development shall commence until a surface / ground water drainage scheme and means of disposal, based on sustainable drainage principles with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the County Planning Authority. The proposed scheme should meet the requirements of Sustainable drainage systems: non-statutory technical standards (March 2015).

The surface water drainage scheme must be restricted to existing runoff rates and unless otherwise agreed in writing by the County Planning Authority, no

surface water shall be discharged to the public sewerage system either directly or indirectly.

The development shall be completed, maintained and managed in accordance with the approved details.

*Reason: To safeguard against flooding to surrounding sites and to safeguard against pollution of the watercourse running through the site, to comply with CMWLP Policies DC19 and DC20.*

## Landscaping

17. The landscaping shall be maintained for a period of five years from the date of planting. Any trees or shrubs which die or become seriously damaged or diseased within the five years from planting shall be replaced with plants of the same species or such species as may otherwise be agreed with the County Planning Authority.

*Reason: To secure the satisfactory establishment and maintenance of a landscaping scheme in the interests of local and residential amenity.*

## INFORMATIVES

The proposed activities are within 8m of the top of the bank of the main River Eden and also within the floodplain. There activities would not be 'allowed activities'. Therefore under the terms of the Environmental Permitting (England and Wales)(Amendment)(No 2) Regulations 2016 the prior written consent of the Environment Agency may be required for any works in, over, under or within 8m of the 'main river', or in the flood plain outside of the 8m margin.

The applicant is reminded to apply for Hedgerow Removal Notice.

The grant of planning permission does not entitle a developer to obstruct a right of way and any proposed stopping - up or diversion of a right of way should be the subject of an Order under the appropriate Act. Footpath no. 138005 is affected by the proposal.

The applicant is reminded on the opening of the new section of B6263 the stopping up of the old section of road is required.

Dated the 8 December 2017

.....  
Signed: Angela Jones  
Assistant Director of Economy & Environment  
on behalf of Cumbria County Council.

## NOTES

- The local planning authority has worked with the applicant/agent in a positive and proactive manner to seek solutions to any problems which have arisen in relation to dealing with the planning application and has implemented the requirements of the [National Planning Policy Framework](#).

**REFERENCE No. 1/17/9015**

- The policies and reasons for the approval of this planning application are set out within the planning officers' report on the application which can be viewed online via: [Onlineplanning.cumbria.gov.uk/ePlanningOPS/searchPageLoad.do](https://onlineplanning.cumbria.gov.uk/ePlanningOPS/searchPageLoad.do)
- The conditions attached to this permission may override details shown on the application form, accompanying statements and plans.
- Submissions to discharge conditions require a fee. Any approval to be given shall be made in writing.



## APPENDIX TO NOTIFICATION OF PLANNING DECISION

This Appendix does not form part of any consent. However, you should take careful notice of the advice given below as it may affect your proposal.

1. This grant of planning permission does not exempt you from regulation under Building Control and Environmental Protection regimes. The County Council regularly shares information with other authorities. Failure to comply with other regulatory regimes may result in prosecution.
2. Any grant of planning permission does not entitle developers to obstruct a public right of way. Development, insofar as it affects a right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 or 257 of [The Town and Country Planning Act 1990](#), or other appropriate legislation, for the diversion or extinguishment of right of way has been made and confirmed.
3. The attention of the person to whom any permission has been granted is drawn to Sections 7 and 8A of the Chronically Sick and Disabled Persons Act 1970 and to the Code of Practice for Access of the Disabled to Buildings or any prescribed document replacing that code.
4. Any application made to the Local Planning Authority for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission will be treated as an application under [Article 27](#) of [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) and must be made in writing. A fee is payable for each submission. A single submission may relate to more than one condition.
5. There is a right of appeal against the failure to determine applications within the specified period and against the refusal of any consent, agreement or approval for which application is made (see enclosed "Notes in respect of Appeals to The Secretary of State").

## NOTES IN RESPECT OF APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990. Please note, only the applicant possesses the right of appeal.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this notice.
- Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at: [Gov.uk/appeal-planning-inspectorate](https://www.gov.uk/appeal-planning-inspectorate)
- The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

## Purchase Notices

- If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of part VI of the Town and Country Planning Act 1990.

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**Item No: 17** Between 11/11/2017 and 19/12/2017

**Appn Ref No:**  
17/0304

**Applicant:**  
Citadel Estates Ltd

**Parish:**  
Wetheral

**Date of Receipt:**  
07/04/2017

**Agent:**  
Squire Patton Boggs (UK)  
LLP

**Ward:**  
Wetheral

**Location:**  
Skelton Court, (formerly Skelton House), Wetheral,  
CA4 8JG

**Grid Reference:**  
346432 554572

**Proposal:** Variation Of Condition 1 (Approved Documents) Of Previously Approved 14/0472 To Retain The 2no. Bedroom Flat Within The Roofspace;  
Reduce The Height Of The Lift Housing To 0.3 Metres Above The Roof;  
And Raise The Ridge On The East And North Elevations To 1.8 Metres  
Above Existing Terrace Floor Level

**Amendment:**

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## **REPORT**

**Case Officer:** Richard Maunsell

### **Decision on Appeals:**

**Appeal Against:** Appeal against refusal of planning perm.

**Type of Appeal:** Written Representations

**Report:**

**Appeal Decision:** Appeal Allowed with Conditions      **Date:** 19/12/2017

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## Appeal Decision

Site visit made on 31 October 2017

**by John Dowsett MA DipURP DipUD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 19<sup>th</sup> December 2017**

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**Appeal Ref: APP/E0915/W/17/3177835**

**Skelton Court (Formerly Skelton House), Wetheral CA4 8JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Dean Montgomery of Citadel Estates Limited against the decision of Carlisle City Council.
  - The application Ref: 17/0304, dated 3 April 2017, was refused by notice dated 5 June 2017.
  - The application sought planning permission for demolition of house, adjoining barn and outbuildings; redevelopment of site for the erection of single block comprising 15no. two-bed apartments with dedicated access, off-street parking and private amenity spaces, without complying with a condition attached to planning permission Ref: 14/0472, dated 11 November 2014.
  - The condition in dispute is No 1 which specifies the approved documents for the Planning Permission.
  - The reasons given for the condition is: To define the permission.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of house, adjoining barn and outbuildings; redevelopment of site for the erection of single block comprising 15no. two-bed apartments with dedicated access, off-street parking and private amenity spaces at Skelton Court (Formerly Skelton House), Wetheral CA4 8JG in accordance with the application Ref: 17/0304 dated 3 April 2017, without compliance with condition number 1 previously imposed on planning permission Ref: 14/0472, dated 11 November 2014, and subject to the conditions in the attached schedule.

### Procedural matters

2. Although the application was made under Section 73 of the Town and Country Planning Act 1990 (as amended) (the Act) to carry put development without complying with a condition attached to planning permission Reference 14/0472, the condition in question is one which specified the drawings that were approved as part of that planning permission. The application that forms the subject of this appeal sought to substitute a new set of drawings that cover both works that have previously been carried out that are not in accordance with the currently approved drawings, and additional new works to alter some aspects of these previous unauthorised works.

3. Planning permission reference 14/0472 was also a Section 73 application that had the effect of substituting amended drawings for those of an earlier planning permission<sup>1</sup>. As an application made under Section 73 is to carry out the original act of development without complying with a condition or conditions attached to the permission and results in a new planning permission being created for that development which is subject to different conditions, for the purposes of the appeal I have used the description of the original planning permission taken from the planning history section of the **Council officer's** report.
4. As a result of the works that have been carried out that are not in accordance with the current approved drawings, an additional flat and roof terrace have been formed, effectively adding a fourth floor of accommodation to the current three storey element of the building. These works have already been carried out and I was able to see them during the course of my site visit.
5. The application that forms the subject of this appeal sought to substitute new drawings that would allow for the retention of the additional flat at third floor level. It also proposed new works comprising alterations to increase the ridge heights to the north and east elevations of the building, and a reduction in the height of the lift housing that has previously been installed to a height of 300mm above the level of the roof.
6. Section 73A of the Act makes allowance for the submission of a planning application for development which has been carried out before the date of the application. I have therefore dealt with the appeal on the basis that the effect of allowing the appeal would be to grant planning permission for both the works that have already been carried out and for the additional works to carry out alterations to these.

## **Main Issues**

7. The main issues in this appeal are:
  - The effect that removing the condition would have on the character and appearance of the Wetheral Conservation Area;
  - The effect that removing the condition would have on the setting of an adjacent Listed Building known as Acorn Bank; and
  - The effect that removing the condition would have on the living conditions of the occupiers of neighbouring residential properties.

## **Reasons**

### ***Character and appearance of the conservation area***

8. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a Conservation Area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. Paragraph 132 of the National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation.

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<sup>1</sup> Planning Permission Reference 10/1066

9. The Wetheral Conservation Area encompasses the historic core of the village and extends in a linear manner to cover parts of Plains Road and the north side of the road where the appeal building site is located. It comprises predominantly single and two storey buildings with a small number of taller buildings, including the appeal building. Buildings of a range of ages and architectural styles are present, however, certain shared characteristics such as window shapes and proportions, similar solid to void ratios, use of slate roofs and a limited range of materials provide a relatively consistent character and appearance. In the vicinity of the appeal building, the presence of a three storey building at the end of a short, two storey, terrace to the east of the appeal site and the mid to late Twentieth century housing on the opposite side of the road, beyond the conservation area boundary, result in a slightly different character to the more informal nature of the main historic core of buildings grouped around the village green and church.
10. **The Council's principal concerns as set out in its appeal statement are in** respect of the roof terrace and lift housing. The basic form height and massing of the building has been approved under the terms of planning permission reference 14/0472. It is not in dispute that the proposed works to increase the height of the roof structure on the east and north elevations of the building would result in the roof terminating at the same height as that which was approved by planning permission 14/0472. Whilst there are some limited views of this from the main road and longer range views from the rear of some properties in Hall Moor Court and the Public Right of Way footpath that runs adjacent to the railway to the north, the overall effect of these works would be no greater than the previously approved scheme.
11. The Council suggest that roof terraces are not a characteristic feature of the area and that the use of lighting would increase its visual presence. Whilst the former may well be the case, the proposed works would enclose the terrace with a structure similar in appearance to the roof of the building to the extent that any activity associated with its use would not be readily apparent. The submitted plans do not indicate that lighting is to be provided but, even if it were, there is no substantive evidence that would indicate that any light spill would be of intensity or duration that would be discernible over the level of the existing street lighting or cause harm to the character of the area.
12. The lift housing is clad in metal and when I visited the site I saw that this had weathered to a dull grey colour which did not strongly contrast with the colour of the roof coverings. It is proposed to reduce this from its present height of 900mm to 300mm. In the overall context of the building the lift housing is a relatively small structure. Even at its present height, I saw that it was not visible from street level at the front of the building although it is visible from parts of Hall Moor Court, the footpath to the north and the gardens of neighbouring properties. Whilst its form is different from the sloping roofs on the rest of the building, the proposed reduction in height, combined with the colouration would significantly reduce its visual presence compared to its present form. When taken in the context of the varied roof slopes of Skelton Court itself and the nearby buildings, I find that the overall effect on the character and appearance of the conservation area would be a neutral one.
13. Although it has not been raised as an issue by the Council, it is clear from comparing the plans submitted with the appeal proposal to those that were approved under planning permission reference 14/0472 that the central section

of the flat roof over the three storey element of the building has been increased in height to accommodate the additional flat and incorporates a number of roof lights that project above the plane of the roof. This increased height does not exceed the height of the main roofs to the front of the building, although it has altered the roof profile to the north elevation of the building resulting in a less balanced composition than that shown on the drawings approved under the previous planning permission. During my site visit I observed that there are, however, only a limited number of viewpoints where this balance and symmetry would have been readily perceived, with the majority of views being off axis.

14. My attention has been drawn to the findings of a previous Inspector who considered a number of earlier appeals at this site in respect of similar issues<sup>2</sup>. Whilst it was noted that there was an increase in the height of the flat roof, the **Inspector's analysis was limited to the effect of the lift housing** and the roof terrace.
15. The increased height of the flat roof is not readily apparent from street level due to its central location on the building. When approaching from the west the additional height has been integrated into the roof slope and from the east it is concealed by intervening buildings. As with the other high level features on the building it can be seen from parts of Hall Moor Court, the footpath to the north and the gardens of neighbouring properties. However, in these views it is seen in the context of the complex roof forms of the building and does not fundamentally alter the height and massing of the building compared to what was previously approved. Similarly, the roof lights are relatively small features compared to the overall mass of the building and do not materially impact on its appearance. Again I find that this has a neutral impact on the character and appearance of the conservation area.
16. I therefore conclude that, taken as a whole and having regard to what has previously been approved on the site, that removing the condition would not cause harm to the character and appearance of the Wetheral Conservation Area. It would comply with the relevant requirements of Policies SP6, HO2 and HE7 of the Carlisle District Local Plan 2015-2030 (the Local Plan), which seek to ensure that development responds to its local context and the historic environment, and preserves or enhances the character and appearance of conservation areas. It would also be consistent with the policies in the Framework which expect new development to be of a high standard of design and seek to ensure the conservation of heritage assets.

### ***Setting of the listed building***

17. Section 66 of Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
18. The neighbouring dwelling, Acorn Bank, is a Grade II Listed Building. There is little evidence before me with regard to the significance of the building, although its most obvious feature of architectural interest is the two storey,

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<sup>2</sup> Appeal references: APP/E0915/C/16/3151214 and APP/E0915/W/16/3150248. Three other appeals were considered at the same time, however, these related to matters which are not before me in the present case.



stone built, curved bay at the east end of the building. The Framework defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced. The Framework also sets out that the extent of the setting is not fixed and may change as the asset and its surroundings evolve.

19. The setting of Acorn Bank now includes the appeal building, the position, overall height and form of which have already been granted planning permission. The construction of the appeal building has previously altered the setting of Acorn Bank, however, this alteration must not have been considered harmful to the setting. The alteration to the roof, reduction in height of the lift housing and the increase in the height of the roof slope on the east and north elevations would not materially alter the spatial relationship between the two buildings.
20. The Council suggest that the roof terrace to the flat in the roof space increases the overall perception of the height and massing of the building and as such causes harm to the setting of the neighbouring two storey building. I am mindful, however, that the increase in height proposed to the roof structure surrounding the terrace would result in a built form that is the same height and general appearance to that which was previously approved by planning permission reference 14/0472. Consequently, I do not find the Council's argument in this respect a compelling one. Acorn Bank is primarily seen from the highway it fronts onto, although there are private views to the rear and some views from the footpath to the north. The modest effect resulting from the revised lift housing, combined with the limited views of this, would not cause any material alteration to the setting of the adjacent Listed Building and the context within which it is experienced, or reduce the understanding of its principal architectural features.
21. I conclude that removing the condition would not cause harm to the setting of the adjacent Listed Building known as Acorn Bank. It would comply with the relevant requirements of Policy HE3 which expects development to have regard to the significance of heritage assets. It would also comply with the policies in the Framework which seek to ensure the conservation of heritage assets and their settings.

### ***Living conditions of the occupiers of neighbouring properties***

22. Policy SP6 of the Local Plan expects, among other matters, that new development should not have an adverse effect on the living conditions of neighbouring occupiers. Further guidance on protecting living condition is set out in the Achieving Well Designed Housing Supplementary Planning Document 2011 (the SPD) which has to be read alongside the more general policy.
23. The Council suggest that the roof terrace would impact on the occupier of adjacent property by way of overlooking, in addition to noise and the loss of residential amenity as a result of being aware of external activity at a higher level. It is also suggested that the increased height of the development would result in overbearing of the adjacent house.
24. I saw when I visited the site that whilst there are no windows in the side elevation of Acorn Bank facing the appeal building, there is a rear addition to the house that has a large glazed skylight. I was also able to view the appeal building from within this rear addition and from the garden of both this house and its neighbouring property, Jasmine Cottage.



25. At the time of my site visit, the appellant had erected a temporary structure on the roof terrace to the height of the proposed works, which would be to a height of 1.8 metres above the level of the terrace. From the roof terrace with this temporary structure in place I was not able to see into the adjoining buildings or their gardens, and I am satisfied that were the roof structure to be increased to the height proposed that there would be no mutual overlooking between the roof terrace and the neighbouring houses.
26. The Council have referred to noise and disturbance from activity at a higher level, however, there is little elaboration with regard to the type of noise or activities, or their frequency and duration. In the absence of any substantive evidence to the contrary, I do not consider that the level of activity associated with normal domestic occupation is likely to cause significant disturbance to adjoining occupiers.
27. With regard to the increase in perceived height and overbearing, I am again mindful that the proposed works to increase the height of the roof structure would not exceed the height of the development which was approved under planning permission reference 14/0472. Having regard to this, and from what I saw when I visited the site, I do not consider that the proposed works would appear overbearing to the neighbouring occupiers.
28. I conclude that the removal of the condition would not cause harm to the living conditions of the occupiers of neighbouring residential properties. It would comply with the relevant requirements of Local Plan Policy SP6 and the guidance in the SPD. It would also be consistent with the Framework which seeks to ensure a high standard of amenity for all occupiers.

### **Other matters**

29. Altering the list of approved drawings would have the effect of authorising an additional flat within the development at third floor level. The Council has not raised objections to the principle of an additional residential unit, and its appeal statement sets out that it is the consequential effects in the form of the roof terrace and lift housing that the Council found objectionable. The Framework seeks to boost the supply of housing, and there is no substantive evidence before me that would indicate that providing additional living accommodation within the building would not be acceptable in principle.
30. I have had regard to the letters received from local residents both in connection with the original planning application and the appeal. In general these raise matters which have already been covered above and there were no points raised that would lead me to a different conclusion on the main issues.

### **Conditions**

31. I have considered the conditions that have been suggested by the Council. In order to provide certainty with regard what has been granted permission I have attached a condition specifying the approved plans. As the building has already been constructed, albeit in a slightly different form to that now proposed by the appeal scheme, it is necessary to impose a condition requiring the proposed alterations to be carried out within a specified time period. I have amended the wording suggested by the Council to also address the fact that some of works have already been carried out.

32. The purpose of the condition is to require the appellant to comply with a strict timetable for carrying out the alterations to the building which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition, therefore, provides for the loss of the effective benefit of the grant of planning permission where the required alterations are not undertaken during the time set by the condition. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
33. The Council have suggested a time period of one month from the date of the decision for the commencement of the works and that they should be completed within two months of commencing. Due to the time of year that this decision is being issued and the possibility of inclement weather, I consider that it is more reasonable to allow three months for commencement. As the works are relatively minor in nature it is, however, reasonable to allow two months for their completion once commenced.

### **Conclusion**

34. I have found that the effect of removing Condition 1 from planning permission reference 14/00472 and replacing it with a new condition specifying a different set of approved drawings would not cause harm to the character and appearance of the Wetheral Conservation Area, the setting of the adjacent Listed Building or the living conditions of the occupiers of neighbouring properties. The works set out in the revised drawings would comply with the relevant requirements of the development plan and the Framework.
35. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*John Dowsett*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan & Site Location Plan (Drawing no. 03/2010/00 rev G); Existing North Elevation (Drawing no. 07E Revision E); Proposed North Elevation (Drawing no. 03/2010/07F); Existing East Elevation (Drawing no. 08E revision E); Proposed East Elevation (Drawing no. 03/2010/08F); Existing West Elevation (Drawing no. 09D Revision D); Proposed West Elevation (Drawing no. 03/2010/09E); Existing Third Floor Plan (Drawing no. 03/2010/211B); Proposed Third Floor Plan (Drawing no. 03/2010/211C); the Existing Roof Plan (Drawing no. 03/2010/212); and Proposed Roof Plan (Drawing no. 03/2010/212A).
- 2) The building operations hereby permitted shall be removed and all materials resulting from the demolition shall be removed from the site within 30 days of the date of failure to meet any one of the requirements set out in i) to iii) below:
  - i) Within 3 months of the date of this decision works shall be commenced to alter the building in accordance with the details shown on drawing numbers 03/2010/07F; 03/2010/08F; 03/2010/09E; 03/2010/211C; and 03/2010/212A.
  - ii) The approved works shall have been carried out and completed within 5 months from the date of this decision.
  - iii) Within 5 working days of the completion of the works, the Local Planning Authority shall be notified in writing of the date of completion.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.