

DEVELOPMENT CONTROL COMMITTEE

FRIDAY 25 JANUARY 2013 AT 10.00 AM

PRESENT: Councillor Scarborough (Chairman), Councillors Bloxham, Cape, Craig, Earp, Graham, McDevitt, Mrs Parson, Mrs Prest, Mrs Riddle, Mrs Warwick and Whalen

ALSO

PRESENT: Councillor Bainbridge attended the meeting as Ward Councillor in respect of applications 12/0942 and 12/0943 (Waverley Viaduct, River Eden, Willowholme, Carlisle, CA2 7NY)

Councillor Hendry attended part of the meeting as an Observer

OFFICERS: Director of Economic Development
Director of Governance
Principal Planning Officer
Planning Manager
Planning Officers (BP, RJM, SE, SD, ST)
Planning Enforcement Officer
Landscape Architect and Tree Officer

DC.03/13 APOLOGIES FOR ABSENCE

There were no apologies for absence submitted.

DC.04/13 DECLARATIONS OF INTEREST

Councillor Bloxham declared a registrable interest in accordance with the Council's Code of Conduct in respect of agenda item A.2 – Update regarding Application 10/1116, Carlisle Lake District Airport, Carlisle, Cumbria. The interest related to the fact that he lived in the area.

Councillor Cape declared a registrable interest in accordance with the Council's Code of Conduct in respect of application 12/0820 – Townfoot Farm, Talkin, Brampton, CA8 1LE. The interest related to the fact that he was a member of the same sporting club as the agent.

Councillor Craig declared a registrable interest in accordance with the Council's Code of Conduct in respect of applications 12/0942 and 12/0943 – Waverley Viaduct, River Eden, Willowholme, CA2 7NY. The interest related to the fact that he had previously registered an interest on the application as he had been named incorrectly by objectors in his association with the application.

Councillor Craig declared a registrable interest in accordance with the Council's Code of Conduct in respect of application 12/0622 – land north of Peastree Farm, Durdar, Carlisle, CA2 4TS. The interest related to the fact that he was the Ward Councillor and had been contacted by the developer.

Councillor Graham declared a registrable interest in accordance with the Council's Code of Conduct in respect of application 12/0820 – Townfoot Farm, Talkin, Brampton, CA8 1LE. The interest related to the fact that he was a member of Hayton Parish Council.

Councillor Scarborough declared a registrable interest in accordance with the Council's Code of Conduct in respect of application 12/0904 – Botcherby Community Centre, Victoria Road, Botcherby, Carlisle, CA1 2UE. The interest related to the fact that he was Chair of Botcherby Community Centre Management Committee.

Councillor Whalen declared a registrable interest in accordance with the Council's Code of Conduct in respect of applications 12/0942 and 12/0943 – Waverley Viaduct, River Eden, Willowholme, CA2 7NY. The interest related to the fact that he had assisted the electorate.

Councillor Whalen declared a registrable interest in accordance with the Council's Code of Conduct in respect of applications with issues relating to Cumbria County Council. The interest related to the fact that he was a member of Cumbria County Council

DC.05/13 MINUTES

The minutes of the site visit meeting held on 9 November 2012 were signed by the Chairman as a correct record of the meetings.

The minutes of the site visit held on 23 January 2013 were noted.

DC.06/13 PUBLIC REPRESENTATIONS IN RESPECT OF PLANNING APPLICATIONS

The Director of Governance outlined, for the benefit of those members of the public present at the meeting, the procedure to be followed in dealing with rights to speak.

DC.07/13 CHAIRMAN'S ANNOUNCEMENT

The Chairman advised that Agenda Item A.2 would be considered as the first item on the agenda.

DC.08/13 UPDATE ON APPLICATION 10/1116: CARLISLE LAKE DISTRICT AIRPORT, CARLISLE, CUMBRIA

The Principal Planning Officer submitted Report ED.01/13 that provided an update on the work undertaken and the further issues and queries raised regarding associated procedural and material matters concerning Application 10/1116, Carlisle Lake District Airport, Carlisle, since it was considered by the Development Control Committee in August 2012.

The Principal Planning Officer reminded Members that at the meeting held on 3 August 2012, the Development Control Committee had given authority to issue approval to the Director of Economic Development subject to:

1. the acceptance of the Appropriate Assessment concerning the River Eden/clarification on Natural England's position regarding Great Crested Newts;

2. the receipt of advice regarding the implications of the Commission's guidance on the "financing of Airports and Start-up Aid to Airlines Departing from Regional airports" (2005) and State Aid;
3. the completion of a Section 106 Agreement.

Since that meeting the River Eden Special Areas of Conservation Appropriate Assessment had been completed and signed.

The City Council's independent ecological consultant had confirmed that the approach of the applicant to use the existing "fire ponds" as an emergency water supply only when, and in the unlikely event that, the Airport's hydrant system was not available to refill fire tenders, was acceptable although Natural England had highlighted that if the ponds were used, the operator of the Airport may have to justify their actions in court if legally challenged under the Habitats Regulations. Natural England had also confirmed that providing the new attenuation ponds were designed in such a way as to prevent Great Crested Newt access in the future, there should be a minimal risk of offences being committed under the legislation.

In a letter dated 22 August 2012 Dickinson Dees, on behalf of their client, wrote to the Secretary of State requesting that the application be called in for consideration by way of a public inquiry. The Department for Communities and Local Government replied in a letter dated 18 September 2012 confirming that, in the opinion of the Secretary of State, the proposals did not involve conflict with national policies on important matters, did not have significant effects beyond their immediate locality, did not give rise to substantial regional or national controversy, did not raise significant architectural and urban design issues or involve the interests of national security or of Foreign Governments. Nor did he consider that there was any other sufficient reason to call in the application for his own determination. The Secretary of State therefore decided not to call in the application.

On 21 September 2012 Dickinson Dees wrote to the Council requesting copies of a considerable amount of documentation including confirmation on what was being followed in respect of obtaining advice on State Aid. Having collated the information, Officers of the City Council responded formally in a letter dated 24 October 2012. The Principal Planning Officer advised that Dickinson Dees, in their letter, dated 22 January 2013, made no reference to those issues with the exception of State Aid and he confirmed that the Council had taken legal advice regarding State Aid.

The terms of the Section 106 Agreement had been agreed and the Agreement awaited engrossment.

The Principal Planning Officer explained that as a precaution, because it was not believed that Councillors' resolution would have been, or would be, different, the application was brought back to Members to take account of new information submitted by interested parties.

In an e-mail received on 19 November 2012, and a letter dated 26 November 2012 the occupier of Oakfield House, Mr D Ransley, raised a number of queries in the light of a press article and statement, explaining that Air Lingus Regional was to discontinue their London Luton, Southend and Manchester services from Waterford Airport. On 26 November 2012 Dickinson Dees also expressed the views of their client concerning the announcement that Aer Lingus Regional/Aer Arann were ceasing operations from Waterford Airport. On 21 December 2012 Dickinson Dees also said that they were

considering the implication, if any, of the recently enacted Civil Aviation Act 2012. In addition, Mr Brown had himself written to the Council concerning the change in market conditions/performance of the Stobart Group on the stock market.

Following the preparation of the agenda report, Members would be aware that the Council had received further correspondence from Dickinson Dees dated 22 January 2013, (inclusive of a Joint Opinion) regarding State Aid, Aer Arann, material considerations (oral representation and due consideration of the Joint Opinion), and the allegation that the Council would not be able to enforce the Section 106 Agreement because it contained no definition of viability or economic viability.

Stanwix Rural Parish Council had raised the issue of the possible de-trunking of the A69/trunking of the A689, and a local resident had raised issues based on newspaper articles concerning the possibility of the Stobart Group being broken up and the recent change in the Chairman.

As part of that process Members would be aware that Dickinson Dees had requested that Ms Congdon of York Aviation be allowed, on behalf of their client, to make oral representations to the Committee. The evening before the meeting, Dickinson Dees confirmed that Mr Brown wished to speak in lieu of Ms Congdon of York Aviation. Mr Brown (Objector) was invited to make his representation to Members.

Mr Brown thanked the Committee for the opportunity to address them on issues that had arisen since the last meeting. He believed that the closure of the Waterford-Southend route by Aer Arran was a material consideration as it demonstrated that the airline was not willing to operate a route, even to one of Stobart's own airports – that carried only 66,000 passengers as it was not viable for them. The Council's consultant had suggested that the route between Carlisle and London would carry a maximum of 66,000 passengers. York Aviation had suggested a figure between 30,000 and 50,000 which was below the threshold for route viability.

Mr Brown further believed that the report was misleading as it stated that ASA had said that the route would initially be profitable. Mr Brown quoted from that report which advised that the route would require subsidy both initially and on an ongoing basis. That had wider implications for the assessment of the commercial viability and therefore any attempt to operate a service could only serve to bring forward a point of closure.

Much of the hope for the airport's viability was based on Stobart Air's claims about the success of Southend Airport and Mr Brown queried what assurances the Council had received that Southend Airport was operating in a viable manner. The Section 106 Agreement contained no definition of viability and Mr Brown believed that key terms within it could be manipulated to secure closure. He added that it was ironic that the agreements designed to keep the airport open could turn out to be its death warrant and he had been advised that the Agreement was unenforceable.

With regard to State Aid, Mr Brown had also received advice from Counsel which he had shared with Officers, that the issue of State Aid was complicated and that approval of the planning permission would be unlawful if the Council did not seek prior clearance from the Commission. Mr Brown believed that the Council did not consider the matter as complex and believed that State Aid rules were not infringed which inferred that the Council had not received sufficient information from the Commission or the relevant Government department.

Given that the Officer's report stated that the decision whether to grant planning approval was "very much in the balance" Mr Brown considered that issues which he had highlighted tipped the scales towards refusal and that to grant approval would be unlawful.

The Principal Planning Officer responded by stating that there were 6 issues (market conditions/new Chairman, Civil Aviation Act, de-trunking of A69, Aer Arran and Waterford Airport, the Section 106 Agreement and State Aid) of which 3 had been raised by Mr Brown.

With regard to market conditions/new Chairman, it was considered that neither the intricacies of the stock market nor the change in the Chairman of Stobart Group had a material bearing on the main planning issues. Dickinson Dees had made no mention of the issue in their letter of 22 January 2013.

In respect of the Civil Aviation Act 2012, Dickinson Dees in their letter of 21 December 2012 stated that they were considering the implications of the Act. The applicants believed that to be a non-issue as far as the plans for Carlisle were concerned as the Act was primarily about how responsibilities currently undertaken by the Department of Transport would migrate to the Civil Aviation Authority over time, and the Act sought to regulate "dominant airports" but it had not been suggested that the "market power" test would relate to Carlisle Airport. Therefore it was not considered that the Act raised material issues, and Dickinson Dees had made no reference to the Act in their letter of 22 January 2013.

The Principal Planning Officer advised that the applicant and Cumbria Highway Authority had responded to the Parish Council's letter regarding the potential de-trunking of the A69 and explained that the access to the proposed development would be by a new spur road off a roundabout junction on the northern side of the A689. If the trunking of the A69 went ahead that roundabout may need to be enlarged. However, there were no published proposals for de-trunking/trunking and it may not be for another 27 years, if it did indeed take place. For those reasons the Principal Planning Officer advised that it should not be afforded much weight.

In their letter of 22 January 2013 Dickinson Dees referred to the fact that Aer Arran were not willing to continue to operate a route to Waterford Airport, even to a Stobart Group airport, at a volume of passengers of a similar order or greater than that which might reasonably be expected to use any Carlisle to London service. They alleged that the Officer's report was misleading and misrepresented the advice of the Council's own specialist consultant because he had never stated that a route between Carlisle and Southend would initially be profitable but that it might be operated for an initial period if Stobart Air were initially prepared to provide a subsidy, points that were raised by Mr Brown when addressing the Committee. The applicant had responded by explaining that there were many factors that influenced why a particular route may be withdrawn or introduced and consideration of passenger numbers in isolation was not a reliable indicator of viability but must be considered "in the round". A business plan had been provided by Stobart Air which was unaffected by the withdrawal of the Waterford route and they were confident that it would support a commercially successful/viable airport.

The Principal Planning Officer reminded Members that presentations made at the meeting in August 2012 referred to Southend Airport. Officers believed that it should not be inferred that the applicant's present development of Southend would be replicated at

Carlisle and the news about Aer Arran/Aer Lingus Regional ceasing services from Waterford underlined the dangers of drawing parallels. There were evident differences between Carlisle and Waterford Airports; the Stobart Group owned the leasehold; wished to invest in Carlisle Airport; and had a major interest in Aer Arran. The submitted business plan for Carlisle was based on a more holistic approach which was based on the Group exploiting what they considered were currently untapped passenger services and involved utilising airports under their direct control. Different routes led to the different utilisation of aircraft within an operator's fleet and there were likely to be different costs/sources of income for an operator/airport. The "Carlisle Airport Viability Assessment" attached to the draft Section 106 Agreement included the Internal Rate of Return which took account of the "Total Operation Revenue" including Net Revenue accruing to London Southend Airport.

Dickinson Dees had recognised that the situation regarding Waterford Airport was not seen in itself as representing a fundamental change in circumstances concerning Carlisle Airport. The difference of views in the forecasts between the various aviation consultants involved, and the difficulties in making forecasts had previously been acknowledged. Dickinson Dees had not alleged that the report to Committee on 3 August 2012 was misleading.

The Principal Planning Officer read the following quotes from the letter dated 26 June 2012 from the Council's aviation consultants, Alan Stratford Associates (ASA) regarding the viability of air services from Carlisle and the economic case for Stobart.

"In summary, we believe that commercial passenger services from Carlisle are of borderline financial viability for Aer Arran (or any other operator). We recognise that Stobart Air may initially be prepared to subsidise these, either directly by financial support to Aer Arran or by reduced airport charges at Carlisle and Southend. In the longer term, however, we cannot see how either commercial passenger or air freight services from Carlisle could be financially viable or in the interests of Aer Arran or Stobart Air."

Looking at the "Economic case for Stobart" ASA states that:

"Even if the airport were developed, we do not believe that commercial air services would themselves be sustainable in the longer term.

Despite this, our financial analysis indicates that, if the airport infrastructure capital and financing costs are treated as sunk costs (e.g. as a precondition of planning consent), then the potential rental received from the FDC would provide the necessary subsidy needed in order to maintain commercial services at the airport. The rental paid could be reduced (effectively to the level of the airport's current operating loss) if it did not introduce (or discontinued) the commercial services proposed."

The spreadsheet that accompanied the ASA letter showed that up to 2035, with the rental income from the distribution centre, the Airport was viable for commercial services (without the distribution centre income the airport was not viable) and the subsidy was, in effect, the rental income from the distribution centre. The "Carlisle Airport Viability Assessment" attached to the draft Section 106 Agreement included the actual, theoretical and potential income from the freight distribution centre.

In conclusion the Principal Planning Officer advised that when assessing the proposal it remained the case that it would at least achieve runway renewal and would keep the

airport open when, if planning permission was refused, it could potentially close the day after, although the Council's independent consultant did not consider that commercial air services would themselves be sustainable in the longer term, even with distribution centre income.

With regard to the Section 106 Agreement and State Aid the Director of Governance advised that the issues were firstly raised by Dickinson Dees just prior to the Committee meeting in August 2012. The Council wrote to Dickinson Dees in October 2012 and said that the Council was prepared to share advice with them, in exchange for sight of their advice, as part of an open and transparent process. The Council requested confirmation from Dickinson Dees that a copy of their advice would be forthcoming. No such confirmation was received. In an exchange of correspondence in December 2012, the Council wrote on 21 December 2012 and said, with regard to its previous offer in relation to an exchange of Opinions, that the Council would first await sight of Dickinson Dees Opinion before considering its position.

Dickinson Dees had written to the Council on 22 January 2013 and enclosed a copy of a Joint Opinion obtained by them. Due to the recent receipt of the aforementioned letter and Joint Opinion, it had not been possible in the timeframe to prepare advice and guidance for Members on the matters raised. It was envisaged that such advice would be available for Members the following week and to enable the Council to deal with all of the issues, the Director suggested, following consideration of the other business on the Development Control Committee's Agenda, that Agenda Item A.2 and the meeting be adjourned until 10:00am on 31 January 2013 to ensure that full advice could be given to the Members.

A Member queried why so much information had been supplied if the proposal was to adjourn the meeting to enable further information to be obtained. The Director of Governance explained that the Principal Planning Officer had spent a lot of time and effort on the report and that had been scheduled on the Agenda and published before receipt of the correspondence from Dickinson Dees. The adjournment was proposed so that Members could properly consider the matters that had been raised.

RESOLVED: That the agenda item in relation to Application 10/1116, Carlisle Lake District Airport, be adjourned until 10:00am on 31 January 2013.

DC.09/13 CONTROL OF DEVELOPMENT AND ADVERTISING

RESOLVED – That the applications referred to in the Schedule of Applications under A, B, C and D be approved/refused/deferred, subject to the conditions as set out in the Schedule of Decisions attached to these Minutes.

(1) Erection of 1no dwelling, Townfoot Farm, Talkin, Brampton, CA8 1LE (Application 12/0820)

The Planning Officer submitted the report on the application, which had been deferred at the previous meeting to enable a site visit to be undertaken. The site visit had taken place on 23 January 2013. The Planning Officer outlined for Members the proposal and site details, together with the main issues for consideration. The Planning Officer advised that the application had been advertised by means of a site notice as well as notification letters sent to the occupiers of 6 neighbouring properties. In response, 6 letters of objection and a petition signed by 36 people had been received. The Planning Officer summarised the issues raised therein.

The Planning Officer presented slides showing views of the site from a number of positions.

The Planning Officer believed that he considered that a dwelling in the location would be sustainable as it was on the edge of the village on a site that was currently used as a car park and garden. The National Planning Policy Framework stated that where there were groups of smaller settlements, development in one village may support services in villages nearby. The occupiers of the proposed dwelling would support services in Talkin and the nearby settlements of Castle Carrock and Brampton. The proposed building was well related to other dwellings and lay opposite to Park House and adjacent to Stackyard House. The plot size was acceptable and would have reasonably sized front and back gardens. The access was currently used to provide access to the car park and the field to the rear of the site and would be improved in line with comments made by the Highways Authority.

Therefore the Planning Officer recommended that the application be approved.

Mr Thorne (Objector) stated that the Planning Officer had advised that the Local Planning Policies had been superseded by the National Planning Policy Framework that stated that new developments could only be located in villages if they would enhance or maintain the village. The National Planning Policy Framework further stated that new dwellings could only be developed under specific circumstances where there was rural need for accommodation near or at a place of work. The applicant currently lived in America and it was unlikely that she would live permanently in the house in the future.

Mr Thorne did not believe that the site was large enough to accommodate the proposed dwelling and that the dwelling had been squashed onto the site and therefore it was inappropriate and unjustified to build on the site. In order to accommodate the proposal the garden would extend into the field behind the dwelling. The main entrance to the site was through the field gate and Mr Thorne did not believe that the issues had been fully addressed. He believed that approval of the application and future applications would be against the Council's own policies.

With regard to vehicular access Mr Thorne stated that the Highway Authority had advised that the access was unsafe. He explained that there was no clear line of sight and to improve the visibility from the right the height of a wall would need to be reduced but the applicant was not the owner of the wall and the removal of the fence post would not help the situation. For those reasons Mr Thorne requested that the application be refused.

Mr Taylor (Agent) believed that the proposal complied with policy, was acceptable in scale, was appropriate to the area's character, would have no adverse impact on adjoining properties and there were no material considerations that would justify refusal of permission. The applicant had sought advice prior to submission of the application and the Planning Officer had referred to Local Plan policy H1 and explained how the Council had approved new housing on the edge of settlements similar to Talkin. The proposal would not be a prominent intrusion on the village and there would be localised visual effects which the policies anticipated. The Council recognised the National Planning Policy Framework adopted the approach to landscape character and the Planning Officer confirmed that traditional materials would be used on the dwelling and there would be no adverse impact on the landscape character.

With regard to plot size, the proposed development had a building ratio of 20% compared to that of Stackyard House (35%) and Park House (45%) therefore assertions that the development would be cramped were not justified.

In conclusion, Mr Taylor advised that with regard to visibility that issue could be dealt with through the imposition of a condition.

The Committee then gave consideration to the application.

A Member stated that she did not believe that the construction of a ramp at the access to the site would have any great advantage. She agreed that nothing could be done about the wall and that visibility from the right would not be improved by the removal of the gate post. The Member also believed that the development would be too large for the site as it was intended to extend the site into the garden at the rear. Talkin was not a sustainable village as there was no school, no shop and no bus service. In the Member's opinion the development would impact on the neighbouring properties and therefore she moved that the application should be refused.

A Member stated that whilst he had sympathy with the previous Member Talkin was not on a straight road and the access was on a slight bend. The houses in the village were close to the road, which was not large or wide, and motorists needed to drive with caution through the village. The Member was concerned about visibility of the access from the left as it approached the site from a slight hill. The Member was also concerned that if a ramp was constructed at the access there was a danger that cars could take off above a certain speed.

With regard to local need the report stated that Talkin was identified as a second tier settlement in the Policy H1 which only permitted small scale infill development which was evidenced by local need. However paragraph 55 of the National Planning Policy Framework stated that housing should be located where it would enhance or maintain the vitality of rural communities. If the application was approved there needed to be evidence of local need and the Member believed that in rural areas there was always local need.

The Member believed that there was a case for the development but it would be necessary to address the issues around the access and local need.

A Member reminded the Committee that the proposed dwelling would not directly face the building on the opposite side of the road. The access was already used for agricultural purposes but he was concerned about visibility if the wall was not lowered. The Member was also concerned about the use of materials on the proposed dwelling. However the Member moved the Officer's recommendation for approval of the application.

With regard to visibility at the access a Member reminded the Committee that the site was already used as a car park and he believed that the visibility from the right was quite good. The Highway Authority had raised no objection to the proposal subject to conditions that would ensure the visibility issues were addressed. With regard to the comments made by Mr Thorne that the development would be squashed, the Member believed that would mean it to be enclosed on all 4 sides when in fact the north and west aspects looked onto open fields. The Member seconded the motion to approve the application.

A Member queried who was currently using the car park, how often it was used and why concerns were being raised now when none had been raised by local people in the past.

The Planning Officer advised that the car park was used by Mr Thorne with permission of the applicant and he was not aware of any complaints from residents.

A Member believed that there was a need in Talkin for houses that people could aspire to and that if properties were built in rural areas they would no longer need to comply with local need. The Planning Officer advised that there were conditions that required Affordable Housing but that local need was no longer appropriate under the National Planning Policy Framework which was Government guidance.

Following a vote it was:

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

It was agreed that the following two applications, 12/0942 and 12/0943, would be considered together as they related to the same development.

- (2) Temporary consent for retention of existing steel palisade security fences located at each end of viaduct for a further 3 years, Waverley Viaduct, River Eden, Willowholme, CA2 7NY (Application 12/0942)**
- (3) Temporary consent for retention of existing steel palisade security fences located at each end of viaduct for a further 3 years (LBC), Waverley Viaduct, River Eden, Willowholme, CA2 7NY (Application 12/0943)**

The Planning Officer submitted the reports on the applications, and outlined for Members the background to the applications, the proposal and site details, together with the main issues for consideration which was the impact on the character of the area and on the listed viaduct.

The Planning Officer advised that the applications had been advertised by means of site and press notices as well as notification letters sent to the occupiers of 73 properties. In response 44 letters of objection and 1 letter of support had been received and the Planning Officer summarised the issues raised therein. A petition containing 2,500 signatures in favour of the re-opening of the viaduct had also been received previously.

The Planning Officer reminded Members that similar applications had been before Panel twice before and a site visit had been held before consideration of the applications on the last occasion in December 2011.

The Planning Officer presented slides of the viaduct and the fencing and informed Members that, whilst the current fencing was unsightly and had an adverse impact on the character of the area, and on the listed viaduct, its retention for a further temporary twelve month period would be acceptable, whilst a long-term solution was sought and options considered. The Right of Way across the viaduct was an issue as well as the land ownership on the northern side of the viaduct. The Planning Officer advised that the applicants had requested a three year consent.

Mr Bain (Objector) reminded Members that the viaduct was a Listed Building and although there were issues about land ownership north of the river Kingmoor Parish Council who in the past had supported BRB now made no comment on the applications. The Planning

Officer had referred to the Council's lack of resources but Mr Bain was unsure whether he was referring to financial resources or manpower or both. The report overlooked the fact that there were plenty of funding bodies to approach such as the National Lottery Fund although it would be premature to apply at the present time as it would be necessary to submit a complete scheme. With regard to footpaths the Council had a policy in 1976 that would include the viaduct as part of a circular walk. Mr Bain requested that there be no further reprieve and that the application be refused.

Mr Ramshaw (Objector) stated that there had been a lot of co-operation from several Councillors over the last year including e-mails and meetings. The arguments for removing the barrier had not changed. Mr Ramshaw reminded Members that DEFRA had submitted a grant of £228,000 to help with the upkeep of parks by the river and the repair of footpaths. The re-opening of the footpath would provide a second traffic free crossing over the river which would go towards a more complete footpath network linking Rickerby Park, The Sheepmount, Bitts Park, Engine Lonning and the Siding and Kingmoor Nature Reserves.

The proposed change of ownership of the viaduct from BRB to the Department of Transport would not happen for several years. The Ward Councillor was against the re-opening of the viaduct but there was no evidence that his views reflected those of the population of residents of Stanwix Rural Ward who supported the re-opening of the viaduct.

As a listed structure it was the responsibility of BRB to maintain the viaduct and they have a budget of £5million for such maintenance. There was already evidence of water damage under the southernmost arch through which Hadrian's Wall Walk passes. If left much longer there could be a danger of bricks falling out of the structure.

Mr Ramshaw requested that, if permission was granted, that it be for a one year period only and a condition imposed that repairs would be undertaken within the next few months. If those repairs were carried out the City and County Councils should be prepared to take on a long term lease at a peppercorn rent in order to resolve the egress issues at the northern end of the viaduct and added that he believed that the total funding for the work would be no more than £20,000.

Mr Ramshaw stated that everyone he had met wished the viaduct to be re-opened and it would satisfy many criteria including that of the Healthy City initiative and would increase tourism due to better footpaths and the historical interpretation of the City's heritage.

Mr Kirkpatrick (Objector) reminded Members that the re-opening of viaduct was supported by a petition containing 2500 signatures and there was no access across it. He believed that an opportunity had been lost as BRB had a legal duty to maintain the parapets, a duty with which they were not complying, but the Council were not taking steps to enforce. There was support for the re-opening of the viaduct from all political parties and it had been stated in the past that there was a hope that the Council would buy the viaduct. Whilst Mr Kirkpatrick was not asking the Council to buy the viaduct at the present time, he did want someone to pay for the parapet and decking to be maintained. He was saddened that the Planning Officer did not know the cost of the maintenance of the parapet and decking and believed that those elements needed to be costed before responsibility of the repairs to the viaduct could be given to the City Council and/or BRB. The report had not been considered by the Highways Working Group.

Mr Kirkpatrick presented slides of the bridges at Haltwhistle and Kirkby Stephen that both had low parapet walls and railings. A further photograph showed the graffiti on the screens at the southern end of the viaduct which Mr Kirkpatrick stated was an embarrassment.

Councillor Bainbridge (Ward Councillor) presented slides of the viaduct and the screens at the northern end of the viaduct. He advised that whilst the barriers would not win beauty awards they did serve their purpose which was to stop people accessing the bridge. From the top of the northern end of the barrier there was a considerable drop into the river due to the removal of the old embankment to allow the river to flow more freely. Councillor Bainbridge reminded Members that this was the third time an application of this nature had been before Committee and that the position was no further forward. He hoped that Members would take the view that retaining the barriers for the longer period would provide more time for people to talk to each other and to assist the campaign to re-open the viaduct. Discussions between the Council and BRB had been ongoing for some time but the issues had not been resolved. If permission was granted for another 12 month period the position would remain the same. If it was extended and the viaduct was re-opened that would supersede any decision made at the meeting.

The Committee then gave consideration to the application.

A Member believed that bridges brought communities together. He requested that, if the application was approved, the condition of the bridge should be brought up to a weatherproof condition. Members were urged to think of the impact on the economy as a whole and not just the leisure aspect. The Member was disappointed that the application had been brought back to Members and asked whether a Section 106 Agreement would cover the weatherproofing of the viaduct. The Director of Economic Development advised that as the viaduct was a Listed Building the Council had a watching brief and worked with the owners to take action over maintenance and there was, therefore, no necessity for a Section 106 Agreement. The Planning Manager advised that the repairs to the fencing on the bridge were being carried out as well as an assessment of the structure. There was no earlier commitment to the maintenance of the parapet walls and it was not high on the agenda of work to be done by the owners.

The Member believed that if enforcement action was taken that would encourage the owners to carry out the required work.

A Member was concerned about the condition of the viaduct and stated that if permission was granted for a three year period there may be no viaduct remaining at the end of the period. The Member queried whether a 2 year period would be more appropriate. The Member was also concerned that no comments had been received from the Highways Authority, English Heritage or the Council's Green Spaces team. The Planning Officer advised that none had been received as they did not consider the issues to be relevant as the application was in respect of the barriers at each end of the viaduct and not the public Right of Way. He reminded Members that the Green Spaces team had responded to the previous application. A condition could be imposed for a specific number of years and if a solution was reached earlier the barriers would be removed.

A Member queried whether 1 year would be sufficient time to resolve the issues and put a maintenance programme in place and whether the viaduct would remain the responsibility of the County Council when the palisades were removed. He stated that the palisades were a disgrace and should be painted over as soon as possible either by BRB or by the

City Council. The Planning Officer explained that 1 year was probably not sufficient time to resolve the issues. If the barriers were removed the County Council would be obliged to create a Right of Way as there was none at present and it would be their responsibility. The Planning Officer further advised that even if the barriers were removed the palisades would remain. He agreed that the barriers could be painted.

A Member stated that, although he had said in the past that the Council should do something about the issue, they were not in a position to do anything at the present time. The barriers were an eyesore and a disgrace and while the viaduct was an asset to the City the barriers were an obstacle to residents regardless of whether they could get off the viaduct at the northern side. Time was needed to resolve the issues and the Member was encouraged that work was being done but the main work was on the palisades and safety barriers along the top and that work should be carried out.

The Member believed that if residents and Councillors formed a trust a submission could be made to English Heritage for a grant towards the required work. The Member agreed with the suggested 2 year permission but added that a recommendation should be made to English Heritage, the Council's own Heritage Officer and BRB that the Council would want to see something happening after that time. The Director of Economic Development advised that she would write to English Heritage and other relevant bodies with the Members' concerns and would speak with the Director of Local Environment regarding the painting of the barriers.

A Member queried whether 2 or 3 years would be sufficient time to resolve the outstanding issues regarding the northern access and the barriers removed. The Member advised that she supported the retention of the barriers at the present time but added that she would not do so in the future. The Member queried whether the Council could issue a Listed Building repair notice. The Director of Economic Development advised that if a repair notice was produced the Council would have a duty to decide what repairs were needed and there would be a cost to do that.

A Member agreed with the comments that had been made and added that he would not want to be responsible for someone falling from the viaduct if the barriers were removed. It was moved and seconded that the application be approved for a 3 year period.

A Member stated that he would be happy to agree to approval of the application for a 3 year period provided something was done in the meantime to resolve the issues.

The Planning Officer, in response to a query, advised that weatherproofing of the viaduct could not be ensured by the imposition of a condition but that English Heritage and the Council's Heritage officer could put pressure on BRB to do so.

A Member moved that the application be approved for a 2 year period. A Member seconded that proposal on condition that if the issues were resolved within that time the barriers be removed.

Following a vote it was:

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

(4) Erection of 5no dwellings (Outline Application), land adjacent 445 Durdar Road, Durdar, CA2 4TT (Application 12/0832)

The Planning Officer submitted the report on the application, which had been the subject of a site visit on 23 January 2013 and provided slides of the site from various locations. The Planning Officer outlined for Members the background to the application, the proposal and site details, together with the main issues for consideration. The Planning Officer advised that the application had been advertised by means of a site notice as well as notification letters sent to 8 neighbouring properties. In response 4 letters/e-mails of objection had been received during the consultation period; however, two of the objections were from the occupiers of the same residential property.

The Planning Officer informed Members that following the site visit the Ward Councillor had sent an e-mail which the Planning Officer read to the Members. Whilst the Ward Councillor was satisfied that the Case Officer had dealt with the issues raised in his earlier submission with respect to the access road (as the Highways Authority were now satisfied), the dwelling nearest to Woodhayes was to be single storey, there could now be no subsequent upward extensions or dormers, and the surface water drainage was to be piped across the field to the watercourse under SUDS (Sustainable Urban Drainage System), he still raised the issue of the concerns about the capacity of the foul sewage network and felt that this had not been adequately addressed. The Planning Officer had contacted United Utilities who had since confirmed that, according to their records, there had been one flooding incident at the upstream of the wastewater network system in August 2006 and since then they had not received any hydraulic incapacity flooding incidents in the area. Following a technical review United Utilities had confirmed that the existing wastewater network system had capacity for foul flow only from the proposed development.

The Planning Officer advised that the principle of development of the site was acceptable under the provisions of the National Planning Policy Framework. Cumbria County Council, as Highways Authority, had not objected subject to the imposition of appropriate conditions with regard to the formation of the proposed access to serve the site and parking. Other matters in respect of appearance, landscaping, layout and scale would be subject to consideration upon receipt of a further application.

In overall terms, the proposal was considered to be compliant under the provisions of the National Planning Policy Framework and the objectives of the relevant Local Plan policies. Accordingly, the Planning Officer recommended that authority to issue approval be granted subject to the completion of a Section 106 Agreement to secure the provision of an affordable house and a financial contribution to be used by the Parish Council towards the maintenance of play facilities within the Parish.

RESOLVED – That authority to issue approval be granted to the Director of Economic Development subject to the completion of a Section 106 Agreement to secure the provision of an affordable house and a financial contribution to be used by St Cuthbert's Without Parish Council towards the maintenance of play facilities within the Parish.

(5) Installation of 1no 225kW wind turbine with a hub height of 30.5m (height to tip 45m), access and associated works, land north of Peastree Farm, Durdar, Carlisle, CA2 4TS (Application 12/0622)

The Planning Officer reminded Members that, at the meeting on 14 December 2012, Members of the Committee had raised a number of issues relating to the application. Following discussion at the meeting, Members were minded to refuse the application and deferred the decision to enable Officers to consider the issues raised.

The Planning Officer presented slides showing maps of the area and the surrounding area indicating wind turbines of various heights currently in the area.

The Planning Officer submitted the report on the application and outlined for Members the background to the application, the proposal and site details, together with the main issues for consideration.

The application had been advertised by means of site and press notices as well as notification letters sent to fifty neighbouring properties. In response 3 letters of objection had been received and the Planning Officer summarised the issues raised therein.

The Planning Officer advised that the proposal involved the erection of a single turbine to serve the needs of Peastree Farm. The applicant's agent had confirmed that the driving force behind the proposal was the rapidly rising cost of electricity, associated with the significant power demand of a modern dairy farm. The Planning Officer confirmed that it was not the applicants' intention to erect both turbines on the site. If the application was approved they would not erect the smaller turbine and were happy for that to be included within the conditions.

National planning policy promoted targets for renewable energy and looked to Local Authorities to support proposals for renewable energy developments which did not have unacceptable impacts. Taking account of the scale and technical specifications of the proposal, as well as the levels of screening from nearby properties, along with the electricity pylons to the south of the site, it was the Officer's opinion that the turbine would not have a detrimental effect on the character of the landscape or cause unacceptable harm to the living conditions of residents.

Following the initial report and further discussions with the applicant, it was not considered that the Officer was able to change the recommendation. As such, the Officer advised Members that, in her opinion, the proposed development accorded with the provisions of the Carlisle Local Plan 2001-2016 and, as there were no material considerations which indicated that it should be determined to the contrary, it would be determined in accordance with the Local Plan and, as such, was recommended for approval subject to the imposition of appropriate conditions.

The Committee then gave consideration to the application.

A Member stated that new, smaller turbines were able to generate more power and that there was no set guidance on the maximum height/minimum distance and that it was a matter of opinion to decide the height of the turbine in each situation. The Lavender test did not state size or proximity but stated that it should not overwhelm or be unacceptable or become such that it would become an unattractive place to live. The location of the

proposed turbine was such that there were properties 550m away whose main windows would face the turbine. Whilst he was not against wind turbines in general the Member believed that they should be of an appropriate type and size and that the application before Members was too big. He believed that the Council should have its own set of guidelines and moved that the application be refused under policies CP1 and CP8 of the Carlisle District Local Plan and R44 of the Cumbria and Lake District Joint Structure Plan.

A Member believed it would be illogical to refuse an application for a wind turbine when an earlier one had been approved on the basis of height. A site visit had been undertaken which indicated that the proposal was acceptable. Therefore the Member moved the Planning Officer's recommendation for approved on condition that there would be only 1 wind turbine on the site. The proposal was seconded.

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

(6) Erection of mobile lodge to provide 1 no agricultural workers dwelling, land adjacent Priests Hill, Beaumont, Carlisle, CA5 6EG (Application 12/0773)

The Planning Officer submitted the report on the application and reminded Members that consideration of the application had been deferred at the last meeting to allow further comments to be received in respect of the re-siting of the building. Both the Parish Council and the Solway Coast AONB had raised no objection to the proposal.

The Planning Officer outlined for Members the proposal and site details, together with the main issues for consideration. The application had been advertised by means of a site notice and in response 1 letter of support had been received.

The Planning Officer informed Members that in overall terms, the proposed development was outwith any identified settlement within Policy H1 of the Local Plan and would result in built development in the undeveloped open countryside. The applicant had provided additional supporting information that justified the application in terms of the National Planning Policy Framework and Local Plan policies. The proposal would not adversely affect the character of the area or adversely impact on the occupiers of the neighbouring property. In all aspects, the proposal was compliant with Local Plan policies and was recommended for approval.

The Committee then gave consideration to the application.

A Member queried the floor plan of the mobile home and queried whether it was in fact "mobile". The Director of Governance advised that the definition was based on case law and depended upon the degree of permanence of the dwelling.

It was moved and seconded that the application be approved.

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

(7) Reconstruction of collapsed section of boundary wall to a reduced height of 2 metres (LBC), The Dower House, Moorhouse, Carlisle, CA5 6HA (Application 12/0800)

The Planning Officer submitted the report on the application and outlined for Members the proposal and site details, together with the main issues for consideration. The Planning Officer explained that the structure subject to the application was a substantial garden wall that divided the general rear garden of Moorhouse Hall from a separate walled garden to the west which was now occupied by a new dwelling, The Dower House. Following severe weather the wall had partly collapsed. On examination by the applicant's structural engineer, it was determined that the collapse was partly due to the original construction of the wall which was not tied together. The Planning Officer presented slides of the site.

With regard to the character of the Listed Building, it was accepted that the walled garden was a distinctive feature. It was previously considered that the lowering of the entirety of the wall to a more residential height would reduce its character and appear at odds with the character of the imposing Listed Building. However, the proposal was now seeking only to lower a 20.05m section of the wall to the western side of the Listed Building, situated between Moorhouse Hall and The Dower House.

It was considered that the revision would reduce the impact of the proposal which would not be immediately visible from public vantage points and would only have a direct impact upon the occupiers of The Dower House, who were the applicants and Moorhouse Hall, which was currently for sale.

The application had been advertised by means of a site notice and press notices and notification letters sent to 10 neighbouring properties. In response 7 letters of objection had been received from the occupiers of 6 properties but it was considered that the proposal would not have a direct impact upon the occupiers of any of the properties, of which only 2 were located within Moorhouse village.

In all aspects the proposal was compliant with the objectives of the Carlisle District Local Plan 2001-2016 and the application was recommended for approval subject to conditions indicated in the report.

The Director of Economic Development advised that a description of the coping stones would be included in the application.

It was moved and seconded that the application be approved.

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

It was agreed that the following two applications, 12/0835 and 12/0836, would be considered together as they related to the same development.

- (8) Change of use of part of a residential property including part demolition and rebuilding, upgrade of the existing swimming pool complex to form a spa facility, licensed cafe and restaurant, along with associated parking and amenity space, Rickerby Cottage, Rickerby Park, Carlisle, CA3 9AA (Application 12/0835)**
- (9) Demolition of redundant store and first floor building (Conservation Area Consent), Rickerby Cottage, Rickerby Park, Carlisle, CA3 9AA (Application 12/0836)**

The Planning Officer submitted the report on the applications and reminded Members that the applications had been withdrawn from discussion at the last meeting of the Committee due to issues regarding the use of the existing access, which did not meet visibility standards and which could not be improved. The application was now seeking to create a new access, the location of which had been agreed with the Highway Authority. The Planning Officer presented slides of the site.

The Planning Officer outlined for Members the background to the application, the proposal and site details, together with the main issues for consideration. The application had been advertised by means of site and press notices as well as notification letters sent to the occupiers of 22 neighbouring properties. In response 15 letters of objection (including one from Friends of Rickerby Park), 13 letters of support and 1 comment had been received and the Planning Officer summarised the issues raised therein. The Planning Officer advised that a letter had also been received from the occupier of the adjacent property, Rickerby Lodge, concerned that the new access would be liable to flooding and that could prevent emergency vehicle from accessing the property. The new entrance would have been 1.89m below the 2005 flood levels and 1m below the 2009 flood levels.

The occupier of Rickerby Lodge wished to convert his garage into a dwelling but had been advised by the Environment Agency that he had to wait for flood remodelling which was due to take place in the spring. He had queried why the applicant had not been given the same advice. The occupier was also concerned that the applicants would submit a request in the future to increase the number of covers in the restaurant and that would lead to more noise and disruption for neighbours. The Planning Officer advised that the issue had been covered by the imposition of a condition.

The Planning Officer explained that he had consulted the Environment Agency on the flooding issues who accepted that the new access would be nearer to the point where the onset of flooding would occur but did not believe that the proposal would increase flood risk. The road from Rickerby park from the city end would be under water and impassable before the access was affected. The Environment Agency suggested retaining the original access as an emergency access; that would be included as a condition.

The Planning Officer further explained that the reason the Environment Agency had advised the neighbour to wait until the spring before undertaking the conversion of his garage was because a dwelling was a more vulnerable use as it would be a single storey dwelling with no safe refuge. That was different to a cafe/restaurant where nobody would be sleeping.

A letter of objection had been received to the further revised plans but the issues were the same as those that had been dealt with in the report. A further letter of support had also been received.

Friends of Rickerby Park had also submitted a further letter of objection as they were concerned about the width of the road through Rickerby Park which was not wide enough to allow 2 lorries/delivery vans to pass forcing them onto the grass verge. There were also concerns about flooding and the width of the cattle grids and bridge that again forced vehicles onto the grass verges. It was suggested that the road could be widened at those points. The letter also queried whether a check had been undertaken on the structure of the bridge.

The Planning Officer informed Members that he had spoken to an Officer in the Highway Authority who had advised that he accepted that the road was narrow but as deliveries would be infrequent the need for such vehicles to pass would be remote. No traffic count had been undertaken but the Officer stated that vehicles were infrequent. Traffic counts at the access based on peak times had been considered and goods vehicles would arrive outside those peak times. Rickerby Bridge had been structurally assessed in 1993 and had passed the loading assessment. There was no weight restriction on the bridge. The bridge was inspected every 6 years and had been inspected after the 2005 floods and no significant issues were found. The Officer advised that if the application was refused on highway grounds alone an appeal would be successful and therefore the County Council would not support any appeal process.

The Planning Officer advised that the issue of maintenance of the road through the park was the responsibility of the City Council and the issue of vehicles driving off the road onto the park was a long standing issue that had been exacerbated by the recent bad weather. It was also not unreasonable to assume that people would not use the facility in times of flooding.

The original application was for a 162 seat restaurant/cafe and 12 camping pods. The revised plans had removed the camping pods and any reference to the number of covers in the restaurant/cafe. The Planning Officer advised that a restaurant/cafe in the location would be acceptable providing it was of an acceptable scale and the opening times were restricted. The numbers would be restricted to 48 covers all of which should be within the building and all customers to leave the premises by 10:00pm. The swimming pool, gym and treatment rooms, with a maximum of 12 customers at any one time, would be open until 9:00pm. Deliveries would be restricted to 9:00am to 5:00pm.

The glazing of the east elevation would be obscured glass to prevent overlooking by Rickerby Lodge and the balcony over the swimming pool would be used as a fire escape only. That issue was covered by a new condition.

In all aspects, the proposal was compliant with the relevant planning policies contained within the Carlisle District Local Plan 2001-2016. Therefore the Planning Officer recommended that the application be approved.

Mr Taylor (on behalf of Mr Gray – Objector) stated that his client was concerned about the scale of the proposal and the impact on the area due to activity, noise and overlooking but acknowledged that the glazed balcony and emergency egress would avoid overlooking. The property was in a Conservation Area and maintained quiet qualities for residents and users of the park. The scale of the proposal was the same as the original proposal and if

the applicants wished to limit the impact the scale should be reduced accordingly. Traffic and noise levels would rise, increasing the potential harm to residents. Mr Gray had queried who would police the conditions on the application; he believed it would be him and that would worsen his relationship with his neighbours. He requested that if the application was approved that the access be put in place before construction started. Mr Gray requested Members to give careful consideration to the application as it involved a new access, expanding visual splays and the removal of trees in a Conservation Area that was contrary to Council policy. Mr Gray believed that the scale of the proposal would be more appropriate in a city centre location.

Before the agent responded it was moved and seconded that a site visit be undertaken and a further report be submitted to a future meeting of the Panel.

The Chairman advised Mr Taylor that, as the rights to speak submissions had been stopped before the agent had responded and as there could be further issues to be considered following the site visit, he would be allowed to speak at the future meeting of the Committee when the proposals were considered following the site visit. The agent, Mr Price, agreed to reserve his right to speak at the future meeting.

RESOLVED – That consideration of the application be deferred to enable a site visit to be undertaken and to await a further report on the applications at a future meeting of the Committee.

(10) Extension of Community Centre to provide a gymnasium, Botcherby Community Centre, Victoria Road, Botcherby, Carlisle, CA1 2UE, (Application 12/0904)

Having declared an interest Councillor Scarborough left the Chamber. Councillor Whalen thereupon took the Chair.

The Planning Officer submitted the report on the application and presented a slide of the plan of the proposal. The Planning Officer outlined for Members the proposal and site details, together with the main issues for consideration. The application had been advertised by the direct notification of 15 neighbouring properties and the posting of a site notice. In response 31 letters of objection had been received together with a petition signed by 4 residents. The majority of the objections related to highway concerns. The proposal sought to retain sufficient off-street parking provision that totalled 27 spaces. The Highway Authority had raised no objection.

The Planning Officer advised that the principle of development on the site was acceptable given the scale of the proposal together with the existing use of the site. Cumbria County Council, as Highways Authority, did not object to the proposal. The proposal would not have a detrimental impact on the living conditions of the occupiers of neighbouring properties or biodiversity. Other matters in respect of vehicle speeds, provision of bus stops and the introduction of a residents' car parking scheme were not subject to planning legislation.

In overall terms, the proposal was considered to be compliant with the objectives of the relevant Local Plan policies and accordingly, the application was recommended for approval.

The Committee then gave consideration to the application.

A Member moved the Officer's recommendation and added that he was pleased to see the proposal as it would support Carlisle's Healthy City initiative. The Officer's recommendation was seconded.

RESOLVED – That permission be granted subject to the conditions indicated in the Schedule of Decisions attached to these Minutes.

Councillor Scarborough returned to the Chamber and resumed his role of Chairman.

(11) Variation of Condition 2 of previously approved application 09/0886 to allow the occupation of two plots by the applicants and their families (Retrospective), Woodlands View, Sandysyke, Longtown, Carlisle, CS6 5SR (Application 12/0990)

The Planning Officer submitted the report on the application and outlined for Members the background to the application, the proposal and site details, together with the main issue for consideration which was whether the principle of the Variation of the Condition was acceptable. The application had been advertised by means of a site notice as well as the direct notification to the occupiers of 14 of the neighbouring premises. In response 6 letters of objection had been received and the Planning Officer summarised the issues raised therein. Since the schedule and supplementary schedule had been completed, a further letter of objection had been received which raised concerns about the applicants continuing to reside on the site.

Since the previous planning appeal permanent planning consent had been granted for 3 pitches which were occupied. Further planning permission had also been granted for 15 pitches at Ghyll Bank House, 10 of which were restricted to occupation by gypsies and travellers. The combined existing and planned provision therefore equated to 60 gypsy and traveller pitches in the District.

The Planning Officer advised that, in overall terms the proposal reasonably complied with other criteria of the Policy H14 of the Local Plan. Whilst the number of pitches, together with those for which consent had been granted, exceeded the Gypsy and Traveller Accommodation Assessment (GTAA) requirements until 2016, the issue was that there were insufficient physical pitches in the District. Approval of the application would allow an opportunity for updating the GTAA figures for reasons stated in the report to provide a more robust basis for considering long term need for a site such as that in the application. More particularly, the personal needs of the applicant weighed in favour of the continued occupation of the site. The need for the application site as an element of long-term provision in the area was insufficient to over-ride the harm to the area's environment which was required to be planted with trees and restored upon cessation of the use of the land.

The application fell within the definition of gypsies under the National Planning Policy Framework and approval of the application would not increase the timescale for the use of the site imposed by the Inspector. Refusal of the application would result in an interference with the occupiers' rights, under Article 8 of the European Commission on Human Rights, to respect their private and family life and their home. For those reasons it was considered that the variation of the planning condition was acceptable and the application was recommended for approval subject to a revision to Condition 2 whereby the name "John" should be amended to "James".

Mr Miller (Objector) stated that the original applicants had moved from the site but he had remained. However, following threats and threatening letters, he had decided to move from the site to protect his family. He had obtained letters from his solicitors requesting the applicants to vacate the site. Mr Miller alleged that HGVs were brought onto the site and waste oil stored there and that the applicants refused to empty the cess pit on his property. Mr Miller had lived in Carlisle all of his life and was saddened that he had been forced to leave the site.

Mrs Taylor (representative from Talking Travellers) advised that, following discussion with Planning Officers, there were 2 aspects of the planning recommendations outstanding. They were the drainage and soakaway report and the remediation work and replanting of the site on its vacating. The applicants believed that the Planning Consultancy and Mr McDonald had resolved those issues after the original planning application was heard. With regard to drainage and soakaway, the applicants had sought professional advice and a full report outlining the rate of drainage and additional information regarding the septic tanks. The report had been submitted. The applicants had also sought advice from the Landscape Architect/Tree Officer regarding replanting of the woodland and had provided an outline of the area to be replanted, size of saplings and the varieties of trees to be planted. Details of remediation work had also been outlined stating that the site would be returned to its original state at such time as the site was vacated.

The applicants had worked hard to ensure all aspects of the planning requirements had been met since they moved onto the site. Mrs Taylor advised that the applicants had moved onto the site in December 2010 and not 2011 as stated in the supporting evidence. The applicants were constantly trying to improve the appearance of the site and would begin planting around the boundary bank in the spring.

In respect of the Change of Licence agreement Mrs Taylor explained that the applicants had been approached by Mr George McDonald and Mr John McDonald in 2010 and asked if they would be interested in buying into the family site as John and Martha McDonald had decided to move from the site. The applicants, James and Rose Devers, and their son and daughter-in-law and their 4 children, moved onto the site on 31 December 2010. Mr George McDonald's wife was the daughter of Mr Devers Snr and the sister of Mr Devers Jnr. Prior to the move onto the site the Devers did not have a permanent base. The Devers' 4 children attended the local school where their attendance had been excellent and great progress made. The 2 elder boys were planning to start secondary school in September 2013. The children had been encouraged to take part in extra curricula activities and develop a friendship group with children from the settled community, and would like them to go on to achieve GCSEs. Mrs Cherie Devers also volunteered at the school, recently helping out with a school trip, and was presently trying to set up a dance class for children after school. Mrs Devers Snr had a medical condition which had been exacerbated by the current situation. The Devers regularly attended church in Carlisle and had made friends with people in Longtown. They paid their rates and utility bills and that was one of the main triggers for seeking the change of name on the licence.

The Committee then gave consideration to the application.

A Member reminded the Committee of the background to the application and stated that when the application was refused he believed that the site had been sold by the then owner who had removed trees protected by a Tree Preservation Order and had been prosecuted. An application had been received to convert the site into a traveller site which had been refused but overturned on appeal. The applicant at that time, Mr McDonald, was

no longer on the site and the other resident, Mr Miller, had been forced to move off the site for the reasons stated. The Director of Economic Development had suggested that there were sufficient pitches to accommodate the travelling community but the Member advised that some of those pitches were not yet available. The Member believed that the Council should try to assist the family by allowing them to remain on the site on a temporary basis and work with housing Officers to find a permanent base. The Director of Economic Development advised that Officers could work with colleagues in housing but that work could not be imposed as a condition.

A Member was concerned about Mr Miller's situation and believed that the Council should look at the needs of the children.

A Member queried if any of the named persons on the temporary consent remained on site. The Planning Officer advised that the McDonald family were no longer on the site although they retained a property within the site.

The Member believed that a permanent base needed to be found for the family as, if a temporary permission was granted for 3 years, the children would still be at school. The Member queried whether a timescale could be placed on the work to find a permanent base.

The Planning Manager advised that Officers would work with colleagues in housing and that there was a waiting list for the Council's own site which operated on a points system. If no place was currently available on a permanent site the family would progress up the list. The availability of other sites was currently being investigated along with colleagues from other Districts.

The Planning Officer explained that the remediation work was still to be undertaken and that would be done when the site was vacated. With regard to previous operations on the land, they were undertaken by Mr McDonald who was no longer on the site.

In response to a query the Director of Economic Development advised that while it was unusual to name people who were permitted to live on a site it was not unknown.

A Member believed that, as the McDonalds and the Millers were no longer on the site, the Planning Inspector's condition would be required to be met. The Planning Manager advised that part of the issue was who was permitted to live on the site. The extreme view would be that as the named persons were no longer on the site the tree replacement should be undertaken. However, the present occupants had tried to deal with the planning conditions and had been on the site since December 2010. If they moved Mr Miller and his family could return to the site. The Planning Manager suggested that the Devers should be allowed to live on the site in accordance with temporary conditions and the civil matters with Mr Miller resolved.

A Member stated that Mr Miller had the right to go back to the site and remain until 2016 and disagreed with the addition of other names until 2016.

The Director of Governance explained that the people who had originally taken their appeal to the Planning Inspector had demonstrated a need which was approved until 2016. Now new people had outlined similar circumstances and highlighted the same justification as the previous occupiers.

A Member stated that the only legitimate resident at present was Mr Miller who was no longer on the site as he had been forced out, but he still had the legitimate ruling of the Planning Inspector. The Director of Governance explained that while Mr Miller would continue to have the right to live on the site extra names could be added without Mr Miller losing that entitlement.

A Member moved refusal of the application.

The Planning Officer explained that approval of the application would not lead to any increase in the number of residents on the site or the timescale of the consent. The Director of Governance advised that use of the site until 2016 had been established and the applicants had demonstrated a social and educational need to remain on the site. There was no evidence of available accommodation for travellers in the area therefore approval for temporary accommodation was justified until the Council had demonstrated need.

A Member suggested, as Members did not have access to relevant information regarding how many sites were available, that consideration of the application be deferred until the information was available.

RESOLVED – That consideration of the application be deferred in order to investigate the availability of Gypsy and Traveller pitches within the District and to await a further report on the application at a future meeting of the Committee.

DC.10/13 SUSPENSION OF COUNCIL PROCEDURE RULE

During consideration of the above Item of Business, it was noted that the meeting had been in progress for 3 hours and it was moved, seconded and **RESOLVED** that Council Procedure Rule 9, in relation to the duration of meetings be suspended in order that the meeting could continue over the time limits of 3 hours.

DC.11/13 UNAUTHORISED BOUNDARY WALL AT ATCHIN TARN/HAWTHORNS, LOW HARKER, CARLISLE

The Principal Planning Officer submitted Report ED.02/13 concerning an unauthorised boundary wall at Atchin Tan/Hawthorns, Low Harker, Carlisle. He explained the location of Hawthorns and provided a description of the site. The Principal Planning Officer presented slides of the site.

The Principal Planning Officer advised that in April 2009, under application 08/1204, planning permission was given for the private Gypsy and Traveller site at Atchin Tan. In October 2012 the occupiers of the adjoining Ghyll Bank Park visited the Civic Centre to state their objection to the erection of a concrete wall 2.4 metres in height delineating the boundary with Atchin Tan; in particular a north eastern section of the wall approximately 20 metres in length. Available records indicated that the wall replaced a chain link fence with barbed wire above and was constructed prior to June 2010 in association with the implementation of the permission granted under 08/1204.

During a site meeting on 23 November 2012 the occupier of Ghyll Bank Park, Mr Francis, explained that there were concerns regarding the wall. In response to those concerns, and with the then agreement with Mr Francis, the operator of Atchin Tan, Mr Stewart,

consented to the insertion of additional wall plugs and the planting of wall climbing species.

On 5 December 2012 the Council received a letter from an agent acting on behalf of Mr Francis explaining that, since the site meeting, his client and his family was not now satisfied with the suggested solution. The letter stated that the wall had been erected in the last couple of years without planning permission and allegedly transgressed the boundary line between the two properties. Mr Francis now wanted the Council to take enforcement action to have the wall removed, a wish that was reiterated by Mrs Francis and her daughter when visiting the Civic Centre on 5 December 2012.

An assessment of the wall had been undertaken and determined that it was evident that the wall exceeded the 2.0m high threshold of what constituted permitted development under the relevant Order. Having advised Mr Francis of that information he had agreed to undertake mitigation that was in line with the original agreement of Mr Francis in the context of Policies H11 and H14 of the Carlisle District Local Plan 2001-2016.

Nevertheless, and following further comments received from the occupiers of Ghyll Bank Park, Mr Stewart formally submitted an application on 14 January 2013 seeking planning permission for the wall. Although the occupiers of the neighbouring property at Ghyll Bank Park wished enforcement action to be initiated and the wall removed, it was considered that that would be premature ahead of determination of the application seeking to rectify the technical breach of control. Therefore the Principal Planning Officer recommended that no enforcement should be taken ahead of determination of the application.

RESOLVED: 1. That Report ED.02/13 – unauthorised boundary wall at Atchin Tan/Hawthorns, Low Harker, Carlisle – be noted

2. That no enforcement be taken ahead of determination of the application.

DC.12/13 QUARTERLY REPORT ON PLANNING ENFORCEMENT

The Planning Enforcement Officer submitted Report ED.03/13 updating Members on the scope of activities undertaken by the Planning Enforcement Officers.

He explained that, as at 31 December 2012, 179 enforcement cases had been recorded during 2012. The Planning Enforcement Officer outlined the nature of those cases. He added that 126 cases had been resolved, while 10 cases from 2011 and 2 cases from 2010 were still active.

Since the report was produced the Planning Enforcement Officer advised that with regard to Keysmount Farm enforcement action was being pursued in respect of the silo, and it was expected that the existing dwelling at Beyond the Moss, Penton would be demolished by 31 March 2013.

The Planning Enforcement Officer had received an e-mail from the valuers acting on behalf of the administrators confirming that everything had been agreed in respect of the sale, other than a land charge on the property, which both solicitors were trying to get to the bottom of. As soon as that point was overcome, it would be possible to then complete the sale. The proposed purchasers had confirmed a willingness to comply with the outstanding conditions.

Two training events were scheduled for 2013. They were the Cumbria Planning Enforcement Group scheduled to be held in May 2013 and the Trevor Roberts Associates Enforcement Forum scheduled for October 2013.

RESOLVED: That Report ED.03/13 be accepted and noted.

DC.13/13 USE OF DWELLING AS A GUEST HOUSE AT SCARROW HILL HOUSE, DENTON MILL

The Planning Enforcement Officer submitted Report ED.05/13 that presented the background to the use of Scarrow Hill House, Denton Mill, near Brampton, as bed and breakfast accommodation.

The Planning Enforcement Officer had received complaints from the occupants of Scarrow Hill, Brampton, which was a different property located on the opposite side of the A689 beyond the junction to Denton Mill heading towards Low Row. The original complaints resulted from guests arriving at Scarrow Hill in error, when they were actually looking for Scarrow Hill House. On one occasions the occupiers of Scarrow Hill arrived home to find guests in their garden waiting for the guest house to open. All seven dwellings at Denton Mill, including Scarrow Hill House, had their own postcode and Scarrow Hill has its own separate address.

The occupiers of Scarrow Hill had sought clarification as to whether Scarrow Hill House had or required planning permission to operate as a bed and breakfast establishment. The available records indicated that the use of Scarrow Hill House as a bed and breakfast establishment commenced approximately 5 years ago and the property was registered with the City Council as a guest house. The proprietors had always believed that planning permission was not necessary. Representations had been received from the occupants of Scarrow Hill and another resident of Denton Mill.

The Planning Enforcement Officer had visited Scarrow Hill on 19 November 2012 and the occupiers confirmed that no further visitors had mistakenly arrived at their property but vans from United Utilities and British Gas had entered their drive and reversed back onto the A689 heading towards the Denton Mill junction. On a more recent occasion a parcel had been delivered to Scarrow Hill instead of Scarrow Hill House. Both properties now have separate post codes which should help delivery drivers and visitors to reach the correct destination.

The Planning Enforcement Officer had visited Scarrow Hill House on 12 December 2012 and inspected the internal layout of the document which he explained. The establishment was advertised as a 4-star quality bed and breakfast in a country house and in general catered for walkers, cyclists and golfers.

The Planning Enforcement Officer explained the criteria for Use Class 1 which included guest houses.

In conclusion the Planning Enforcement Officer advised that in overall terms the property remained a primary residential with a bed and breakfast use operating between April and October each year. The property was detached from the rest of the dwellings in Denton Mill and had little effect on the immediate neighbourhood. The use had operated for almost 5 years and case law suggested that the use of 2 bedrooms in a property of that

size could be tolerated. It was therefore recommended that an application for planning permission to use 2 bedrooms for bed and breakfast purposes was not pursued.

RESOLVED: 1. That Members noted the content of Report ED.05/13 - use of dwelling as a guest house at Scarrow Hill House, Denton Mill.

2. That Members confirmed that it was not expedient to pursue enforcement action in relation to the use of the property for bed and breakfast purposes.

DC.14/13 UNTIDY CONDITION OF A PROPERTY AT 7 BRIAR BANK, CARLISLE

The Planning Enforcement Officer submitted Report ED.06/13 that presented an update on the current position and sought authority to enter the land and carry out direct action to tidy up the gardens.

The Planning Enforcement Officer presented the background to the report and advised that the current owner of the property, the son of the former owner, lived in Essex and to date had not responded to any correspondence from the Enforcement section asking him to tidy up the gardens. The original owner was in a care home and there was a considerable charge on the property owed to Cumbria County Council.

The Planning Enforcement Officer advised that local residents and Members had voiced their concern about the continuing deterioration of the property and in particular the state of the gardens.

Discussion had taken place in 2012 between the Director of Governance and the Legal Solicitor at Cumbria County Council who were keen to see the property tidied up. They agreed that the cost of serving a Section 215 Notice and carrying out works to tidy up the gardens may be deducted from the sale proceeds of the property, provided that such costs did not exceed the sum of £3000.

A Section 215 Notice had been served on the current owner requiring that all the grass, weeds, hedgerows, trees and shrubs and all other vegetation in both the front and rear gardens to be cut down and, where relevant, removed from the land. The Notice also required the removal of all other items of plastic, timber, damaged fence panels and other discarded items of rubbish. It would also be necessary to erect a 1.8m high boundary fence to the rear of the property to prevent further trespass and fly tipping.

As anticipated there had been no contact from the land owner and no compliance with the Section 215 Notice. An estimate had been sought from the Council's Green Spaces team to cut back and remove all of the vegetation along with other items and discarded rubbish and soil, etc. The total inclusive cost amounted to £1812.50 and a further £450 to erect a fence. The Planning Enforcement Officer recommended that those actions be undertaken and that the Green Spaces team be authorised to enter the land to carry out the works at their earliest convenience.

RESOLVED: 1. That Members noted the content of Report ED.06/13 – untidy condition of gardens at 7 Briar Bank, Carlisle.

2. That Members recommended that the estimates provided by the Green Spaces team of £1812.50 to tidy up the gardens and a further £450.00 to erect a fence be accepted.

3. That Officers from the Green Spaces team be granted authority to enter the land to carry out the works at their earliest convenience.

DC.15/13 CONFIRMATION OF TREE PRESERVATION ORDER 262

The Landscape Architect/Tree Officer submitted Report ED.07/13 that considered the confirmation of Tree Preservation Order 262 – Over Eden, Wetheral – and representations to the making of the Order.

The Landscape Architect/Tree Officer presented the background to the report and advised that on 8 October 2012 a notification of intention to carry out extensive lopping of a mature oak tree was received by the Local Planning Authority. On receipt of such a notice, the Local Planning Authority had 3 options which the Landscape Architect/Tree Officer outlined.

As part of the notification process the City Council sought representations on the proposed works, including from the Parish Council, who responded that “...whilst they feel that some pruning would be acceptable the proposed work was too severe.” On 13 November 2012 an Officer visited the site to assess the proposed works to the tree and to determine whether a Tree Preservation Order was appropriate. The tree, along with two adjacent oak trees, was assessed using the Tree Evaluation method for Preservation Orders. The assessment determined that the group of three oak trees was worthy of protection.

On 13 November 2012, having considered the representations of the Parish Council and the outcome of the assessment, Carlisle City Council made Tree Preservation Order 262, which was served on the owners of Over Eden and those persons interested in the land affected by the Order. One letter supporting the Order and 7 objections, 2 of which were subsequently withdrawn, were received by the City Council. The Landscape Architect/Tree Officer summarised the issues raised therein. Officers had responded to the objections.

Following production of the report the Landscape Architect/Tree Officer had received an application from the owner to prune branches that were overhanging the road. As part of the application the owner had received a report from an arboreal consultant who had confirmed that a branch had fallen from the tree due to exposure and excessive load but that there was no evidence of decay.

There was no evidence of dysfunction of the trees and the Landscape Architect/Tree Officer considered that it was safe for the trees to be retained. The Landscape Architect/Tree Officer had contact the Highway Authority who had confirmed that they had no concerns about the trees and were happy for them to be retained.

Having duly considered the objections and Officers’ observations the Landscape Architect/Tree Officer outlined the options available to Members and recommended that Tree Preservation Order 262 – Over Eden, Wetheral, Carlisle – be confirmed without modification to ensure the continuity of the visual amenity provided by the trees.

RESOLVED: That Tree Preservation Order 262 – Over Eden, Wetheral, Carlisle – be confirmed without modification.

The meeting adjourned at 1:25pm to be re-convened at 10:00am on Thursday 31 January 2013 to ensure that full advice regarding State Aid and the Section 106 Agreement in

respect of Application 10/1116 – Carlisle Lake District Airport, Carlisle – can be given to the Members.

DEVELOPMENT CONTROL COMMITTEE – RECONVENED MEETING

THURSDAY 31 JANUARY 2013 AT 10.00 AM

PRESENT: Councillor Scarborough (Chairman), Councillors Bloxham, Cape, Craig, Earp, Graham, McDevitt, Mrs Parson, Mrs Riddle and Mrs Warwick

ALSO

PRESENT: Councillor Collier attended the meeting as an Observer
Councillor Hendry attended the meeting as an Observer

OFFICERS: Director of Economic Development
Director of Governance
Planning Manager
Principal Planning Officer

DC.16/13 APOLOGIES FOR ABSENCE

Apologies for absence were submitted on behalf of Councillors Mrs Prest and Whalen.

DC.17/13 DECLARATIONS OF INTEREST

By way of reiteration Councillor Bloxham declared a registrable interest in accordance with the Council's Code of Conduct in respect of agenda item A.2 – Update regarding Application 10/1116, Carlisle Lake District Airport, Carlisle, Cumbria. The interest related to the fact that he lived in the area.

DC.18/13 CHAIRMAN'S ANNOUNCEMENT

The Chairman welcomed Members and visitors to the re-convened meeting of the Development Control Committee and reminded Members that the meeting held on 25 January 2013 had been adjourned to ensure that full advice regarding State Aid and the Section 106 Agreement in respect of Application 10/1116 – Carlisle Lake District Airport, Carlisle – can be given to the Members.

The Chairman asked Members to confirm that they had received the information and that they had had sufficient time to digest and be fully conversant with the information.

All Members agreed that they had.

DC.19/13 UPDATE ON APPLICATION 10/1116: CARLISLE LAKE DISTRICT AIRPORT, CARLISLE, CUMBRIA

The Principal Planning Officer advised that further to the additional correspondence (inclusive of that received since 25 January 2013), Members should be aware that the occupier of Oakfield House (Mr Ransley) had also forwarded an article on the Stobart Group that appeared in the Financial Times on 26 January 2013 concerning the

appointment of an Executive Chairman to ensure, amongst other things, that the right value was obtained for shareholders, and assets (including Southend Airport) realised their full potential.

Factual clarification had separately been sought from an interested party on the size of the LPG tank which had been answered.

The update had highlighted that all the points mentioned in the Council's resolution of 3 August 2012, pending the Opinion on State Aid, had been satisfactorily addressed.

Mr Brown, when speaking at the meeting, and Dickinson Dees in their most recent letters of 22 January 2013 and 28 January 2013 had not, subsequently, raised any further issues with regard to such matters as:

- the additional information received from the applicant in relation to the Environmental Statement;
- correspondence with natural England;
- the Appropriate Assessments undertaken;
- the impact on protected species including Great Crested Newts;
- how the amount required to undertake the habitat environment scheme had been calculated;
- market conditions/stock market; and
- the Civil Aviation Act 2012.

The appointment of an Executive Chairman of the Stobart Group and the future possibility of de-trunking the A69/trunking of the A689 were not considered to have a material bearing on the main planning issues.

The news about Aer Arran/Aer Lingus Regional ceasing services from Waterford Airport underlined the danger of drawing parallels between airports. Members would recall the presentations made on behalf of the applicant during the meeting on 3 August 2012 which referred to Southend Airport. In Officers' view, and for the avoidance of any doubt, it should not be inferred that the applicant's present development of Southend would be replicated at Carlisle. It was partly out of recognition of such that the recommendation to Members was very much on balance.

There were differences between Carlisle and Waterford Airports, circumstances changed, and the business plan submitted on behalf of the applicant for Carlisle was based on a more holistic approach. Any assessment just based on the consideration of passenger numbers in isolation would be partial. The situation regarding Waterford Airport was not seen as representing a fundamental change in circumstances concerning Carlisle Airport.

The "Carlisle Viability Assessment" attached to the draft Section 106 Agreement included the Internal Rate of Return which took account of "Total Operating Revenue" including, but not exclusively, Net Revenue accruing to London Southend Airport.

When considering Carlisle Airport, and in the context of Dickinson Dees/Mr Brown alleging that the Committee Report was misleading and misrepresented the advice of the Council's own specialist consultant, Members would also be aware of the difference of views in the forecasts between the various aviation consultants involved, and the difficulties in making forecasts.

As was the case in August 2012, Members would also be aware of the risks associated with the proposal, namely:

- i. if not economically viable the Airport was likely to close;
- ii. even with permission there was no incentive to promote the Airport for passenger movements and/or freight if it is not particularly profitable to do so;
- iii. if the airport was not viable there may be further applications for enabling development; and
- iv. if the airport was not viable, the grant of permission could result simply in an HGV distribution Centre in the countryside.

As in August, it was still the case that the proposal, in itself, would at least renew the runway, through the use of a planning condition preventing occupation of the freight distribution centre until the works had been completed, and keep the Airport open when, if planning permission was refused, it could potentially close the day after. However, it was the case that the Council's independent consultant (Alan Stratford Associates) did not consider that commercial air services would themselves sustain in the longer term even with the distribution centre income.

The spreadsheet produced by Alan Stratford Associates which accompanied their letter of 26 June 2012 showed that up to 2035, with the rental income from the proposed distribution centre, the Airport was still viable for commercial services, without the distribution centre income, the Airport was not viable, and the subsidy was, in effect, the rental income from the distribution centre.

The Director of Governance reminded Members that there were two legal issues in particular that had been raised by Mr Brown's solicitor on which the Council wished to give further advice. The issues had been raised in correspondence from Dickinson Dees and also in a Joint Opinion from Counsel submitted by them. The issues were State Aid and the Section 106 Agreement.

Turning first to State Aid the Director explained that Officers had obtained an Opinion from Mr Denis Edwards who was Counsel with expertise in that area of law. His Opinion, which had been circulated to Members, Dickinson Dees, and was available on the Council's website, dealt with the issues raised in the Joint Opinion. Members had had the opportunity to read and digest the Opinion and, whilst not repeating the Opinion, the Director quoted paragraph 6 where Mr Edwards stated:

"In summary, I do not consider that there are any issues arising from EU law on state aid which are relevant to the determination of SA's planning application for the FDC. Having read the joint opinion carefully, I consider it to be, at most, equivocal on the key question of whether any economic benefits which flow from a grant of planning permission can be attributed to state resources. For my part, I do not consider that the grant of planning permission gives rise to any "economic aid" granted by the state to SA or, if it does, that any such "economic aid" is attributable to state resources."

The Director advised that, having reasoned through the above statement, Mr Edwards turned to the Joint Opinion itself and stated in paragraph 19:

"At paragraph 10 of the joint opinion, the criteria for state aid were set out in substantially the same terms as I have explained above. I agree with the joint

opinion that, if it is established that there is a grant of “economic aid” to SA which is attributable to state resources, then such aid favours SA on a selective basis and has a potential effect on inter state trade. However, I disagree with the joint opinion’s conclusion that a grant of planning permission by a public authority gives rise to “aid” for the purposes of the state aid rules. Further, even if I am wrong on that point, a grant of planning permission does not give rise to “aid” which is attributable to state resources.”

The Director advised members that Mr Edwards then went on to explain why he disagreed with the Joint Opinion.

In paragraph 31 Mr Edwards stated:

“I do not accept the arguments in the joint opinion that a grant of planning permission to SA for the FDC and improvements to the airport infrastructure, combined with a s.106 agreement to keep the airport open as long as it is economically viable, the assessment of which is to include the future rental income from the FDC, gives rise to economic aid for the purposes of the state aid rules. Nor do I accept that if this were to give rise to economic “aid”, that it is attributable to state resources.”

The Director further advised that Members would have noted that Mr Edwards went on to explain the rationale behind his assertion.

Whilst making the point that the Joint Opinion did not rely on the Altmark case, Mr Edwards, for completeness, covered the point, concluding in paragraph 57 that:

“In short, just as the state aid rules do not apply to the state’s exercise of regulatory powers, nor can lawful exercise of those powers amount to “compensation” for the purposes of the Altmark case.”

In his conclusion Mr Edwards wrote:

“58. It is well established that the EU state aid rules do not apply to the state acting in its official capacity. What this means is that where the state is acting in a role which only the state is able or empowered to perform, the state aid rules do not apply. Only the state can grant planning permission. Accordingly, the state aid rules do not affect its powers in this field.

59 In any event, even if it were possible to identify any relevant “aid” to SA arising by virtue of the grant of planning permission for the FDC, which I advise is not possible, such aid is not attributable to state resources. Accordingly, even if the state aid rules could apply to a grant of planning permission, the threshold conditions for state aid to arise are not satisfied.

60. There is no “compensation” being paid by the Council to SA in return for keeping the airport open. Accordingly, no issue arises from the ECJ’s judgment in Altmark.”

The Director advised Members that, clearly, Mr Brown’s advisers had a different view but the Council was charged with the responsibility of determining the planning application before Members. The Council had taken account of the Joint Opinion submitted by

Dickinson Dees and sought out specialist advice to assist them in their role as the independent Local Planning Authority. That was the advice from Mr Edwards that was presented to Members.

The second issue which was raised related to the proposed Section 106 Agreement. In the documentation submitted to Members was a letter of advice from Eversheds solicitors. For the benefit of Members the letter outlined what the Section 106 Agreement sought to achieve including the mechanism relating to keeping the airport open. The Director reminded Members that the letter concluded by advising that:

“...the draft section 106 agreement sets out what is required of the Applicant with regard to keeping the airport open for non-commercial purposes and the basis on which the viability of the airport will be assessed. “Economic Viable Operation” is clearly defined within the draft agreement and the matters to be addressed in the Viability Assessed are plainly set out in Schedule 1.

On this basis we are of the view that the terms of draft section 106 agreement are capable of being enforced by the City council.”

In conclusion, a number of matters had been raised for Members to consider. They had been dealt with by the Principal Planning Officer's commentary and also in the advice received from Counsel and Eversheds solicitors.

The Principal Planning Officer advised that very much on balance, and having taken account of all the new information, the proposal was still recommended for approval subject to the engrossment of the Section 106 Agreement and the imposition of relevant conditions.

The Committee then gave consideration to the application.

A Member moved approval of the Officer's recommendation.

A Member stated that whilst he did not have a problem with either the airport or the Freight Distribution Centre, he was concerned about the highways issues. He disagreed that there would not be any impact on the highways and added that there were problems on the A689 at present. The Member blamed Cumbria County Council for not taking cognisance of the problems and believed that they could have improved the junctions of the highway. With regard to the de-trunking of the A69, that may not happen for another 25 years but the Council should be looking to the future and acknowledging that it would be an improvement for residents.

The Member also felt uncomfortable that both the Counsels' opinions came from the same chamber and office.

The Member was also concerned that Dickinson Dees, in their letter dated 22 January 2013, stated that regarding state aid advice should have been sought from the Commissioners. Nowhere in the advice from the City Council's Counsel was there any rebuttal of that statement.

The Director of Governance explained that the Opinion and Eversheds letters had been provided in full so that there was no doubt about the advice that was being given to Members. He reminded Members that, at the outset of the meeting, the Chairman had

asked whether they had read and digested the information that had been submitted and they all agreed that they had.

With regard to both barristers working from the same office, the Director confirmed that that was not unheard of and that the barristers received instructions and advised their individual clients. It should be reassuring to Members that the Opinions demonstrated different positions.

The Director advised that, with regard to comments about the EU Commissioner, that comment was made by Dickinson Dees on the basis that state aid rules were engaged. Mr Edwards had advised that that was not the case and therefore there was no need for reference to the Commission.

The Member asked the Principal Planning Officer to read out the recommendation again to ensure Members were absolutely clear on what the recommendation was.

Following the previous decision made by the Committee 3 Members had been questioned at length by the District Auditor about making a decision without a firm Officer's recommendation.

The Director of Governance advised that the meeting on 25 January 2013 had been adjourned to ensure Members were given advice in response to the Dickinson Dees letter and Joint Opinion. That information had been e-mailed to Members on the afternoon of 29 January 2013 with hard copies being delivered to Members' homes on the morning of 30 January 2013. As had been stated earlier, the Opinion and Eversheds letter had been provided in full so that there was no doubt about the advice that was being given to Members.

The Director reminded Members that at the outset of the meeting the Chairman had asked Members whether they had read and digested the papers and all stated that they had. It was very important that that was the case and if any Members were of a different opinion and required more time to read the papers, the Director advised that the meeting should be adjourned again.

The Principal Planning Officer repeated the recommendation which was that, very much on balance, and having taken account of all the new information, the proposal was still recommended for approval subject to the engrossment of the Section 106 Agreement and imposition of relevant conditions.

With regard to the additional information that had been circulated, the Director of Governance requested Members to confirm that they had had sufficient time to consider and absorb the information. All Members agreed that they had.

A Member stated that he had received the information on Tuesday (29 January 2013) afternoon and read it through thoroughly that evening. A hard copy was received on Wednesday (30 January 2013) morning. The Member confirmed that he had read through all the papers and was happy that he had had plenty of time to absorb the information. The Member seconded approval of the Officer's recommendation.

The Chairman again asked Members to confirm that they had absorbed and were conversant with the additional information. All confirmed that they were.

A Member stated that he had never suggested that he had not had time to digest the information but that it had been difficult to read and digest and that he was uncomfortable with a number of points which had subsequently been answered by the Director of Governance.

The Director of Economic Development advised that a number of issues had been raised with the Highways Authority on a several occasions and they had been consistent in their response.

RESOLVED: that Application 10/1116 – Carlisle Lake District Airport, Carlisle, Cumbria be approved subject to the engrossment of the Section 106 Agreement and the imposition of relevant conditions.

(The meeting ended at 10:30am)