

# **BOROUGH OF BARROW-IN-FURNESS**

## **PLANNING COMMITTEE**

Meeting, 8th October, 2013  
at 2.30 p.m. (Drawing Room)

### **A G E N D A**

#### **Site Visit**

2013/0449 Land at Maidenlands, Tarn Flatt, Marton

Depart Town Hall Court Yard at **1.00 p.m.**

#### **PART ONE**

1. To note any items which the Chairman considers to be of an urgent nature.
2. To receive notice from Members who may wish to move any delegated matter non-delegated and which will be decided by a majority of Members present and voting at the meeting.

3. **Admission of Public and Press**

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

4. **Declarations of Interest**

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

5. **Apologies for Absence/Attendance of Substitute Members.**
7. **To confirm the Minutes of the meeting held on 3rd September, 2013 (copy attached) (Pages 1-).**
8. **Delegated Approvals – For Information (booklet attached).**

## **FOR DECISION**

- (D) 9. Planning Applications (booklet attached).
- (D) 10. Deferred Planning Application (booklet attached) – **TO FOLLOW**.
- (D) 11. Ombudsman's Investigation into Complaint against Cumbria County Council and Barrow-in-Furness Borough Council.

### **INVITATIONS TO SPEAK TO THE COMMITTEE (2.30 p.m.)**

2013/0354 Land at Elliscales, Askam Road, Dalton-in-Furness.

**NOTE (D) – Delegated  
(R) – For Referral to Council**

## **Membership of Committee**

### **Councillors**

M. A. Thomson (Chairman)  
C. Thomson (Vice-Chairman)  
Derbyshire  
Husband  
Johnston  
R. McClure  
Murphy  
Murray  
Preston  
Thurlow  
Williams  
Wilson

### **For queries regarding this agenda, please contact:**

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Published: 30th September, 2013

## **PLANNING COMMITTEE**

Meeting: Tuesday 3rd September, 2013  
at 2.30 p.m. (Drawing Room)

PRESENT:- Councillors M. A. Thomson (Chairman), C. Thomson (Vice-Chairman), Doughty, Hamilton, R. McClure, Murphy, Murray, Sweeney, Thurlow, Wall and Williams.

### **165 – Declarations of Interest**

Councillor Doughty declared an other interest in all applications relating to Dalton North and Dalton South Wards as he lives in the area.

Councillor McClure declared an other interest in Planning Application No. 2013/0354 – Elliscales (land at) Askam Road, Dalton-in-Furness (Minute No. 206).

Councillor Thurlow declared an other interest in all applications relating to Dalton North and Dalton South Wards as she lives in the area.

Councillor Williams declared an other interest in Planning Application No. 2013/0354 – Elliscales (Land at) Askam Road, Dalton-in-Furness (Minute No. 206) as the architect was known to him and had done plans for him in the past. He also declared an other interest in Planning Application No. 2013/0220 – Sinkfall Farm, field adjacent to Park Road close to Brest Mill Beck Road, Barrow-in-Furness (Minute No. 211) as an objector to the application was known to him as an ex-employee and friend.

### **166 – Apologies for Absence/Attendance of Substitute Members**

Apologies for absence were received from Councillors Derbyshire, Husband, Johnston, Preston and Wilson.

Councillors Sweeney, Wall, Hamilton and Doughty had attended as substitutes for Councillors Derbyshire, Husband, Preston and Wilson respectively.

### **167 – Minutes**

The Minutes of the meeting held on 6th August, 2013 were agreed as a correct record.

### **Town and Country Planning Acts**

The Assistant Director of Regeneration and Built Environment submitted for information details of planning applications in this report which he had determined under delegated authority (Minute No. 254, Planning Committee, 3rd September, 2002, confirmed by Council 24th September, 2002). The decisions are reported for your information. The plans recommended for approval under the Town and Country Planning Acts will be subject to the standard conditions referred to in Minute No. 208 (April, 1971) of the Plans Sub-Committee, Barrow-in-Furness, County Borough

Council, in addition to any conditions indicated hereunder. Applications with a (P) besides the applicant's name denotes those applications that were reported to the Planning Panel.

RESOLVED:- (i) To note the decisions made under the Town and Country Planning Act 1990 (as amended) as follows:-

- 168 2013/0301** Application for a Minor Material Amendment following granting of planning permission 2012/0012 (Construction of new office (1133m<sup>2</sup>) and warehouse building (1192m<sup>2</sup>) and associated works to allow relocation of external bin store and fuel tank at DONG Walney (UK) Ramsey Way Barrow-in-Furness.
- 169 2013/0302** Application for approval of details reserved by Condition No. 3 (external lighting) and No. 11 (Storage of Fuel) of planning permission 2012/0012 (Construction of new office (1133m<sup>2</sup>) and warehouse building (1192m<sup>2</sup>) and associated works to allow relocation of external bin store and fuel tank at DONG Walney (UK) Ramsey Way Barrow-in-Furness.
- 170 2013/0439** Application for Prior Notification of proposed demolition Town and Country Planning (General Permitted Development) Order 1995 Schedule 2 Part 31 at WIP Building (B40) BAE Systems Buccleuch Dock Road Barrow-in-Furness.
- 171 2013/0351** Variation of Condition No. 16 of approved planning permission 2012/0468 to allow the installation of an Electrostatic Precipitator Extraction System at proposed Premier Inn Development North Road Barrow-in-Furness.
- 172 2013/0337** Conversion of a ground floor shop into a bed-sit including alterations to the front and rear elevations at 54 Rawlinson Street Barrow-in-Furness.
- 173 2013/0336** Conversion of ground floor shop into a one bedroom flat including alterations to the front and rear elevations at 52 Rawlinson Street Barrow-in-Furness.
- 174 2013/0392** Application for a Certificate of Existing Use or Development (CLEOUD) for previous works to roof (replacement) at 45 St Vincent Street Barrow-in-Furness.
- 175 2013/0409** Rear ground floor lounge and store room extension at 8 Church Close Lindal-in-Furness.
- 176 2013/0470** Application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) for a rear dormer bedroom at 6 Chapel Street Dalton-in-Furness.

- 177 2013/0432** Application for prior notification for an agricultural steel framed building to use as a feed store, workshop, implement storage and a segregation area for animals receiving veterinary care on land at High Ridding Farm Ireleth Road Askam-in-Furness.
- 178 2013/0464** Application for prior notification of proposed demolition. Town and Country Planning (General Permitted Development) Order 1995 Schedule 2 Part 31 at Furness Tavern Duke Street Askam-in-Furness.
- 179 2013/0408** Application for approval of details reserved by Condition No. 8 (window details) of Planning Permission 2011/0721 at Cavendish Arms Market Place Dalton-in-Furness.
- 180 2013/0334** Two storey extension forming a play room on the ground floor and a bedroom and a walk-in wardrobe on first floor at 78 Stainton Drive Dalton-in-Furness.
- 181 2013/0476** Application for Non Material Amendment following grant of planning permission 2013/0242 for addition of a bay window to front elevation and re-cladding elevations in Lime Stone at 28 Merlin Drive Dalton-in-Furness.
- 182 2013/0356** Application for approval of details reserved by Condition No. 3 (project design for archaeological works) and No. 5 (schedule of demolition works) of Listed Building Consent 2011/0721 at Cavendish Arms Market Street Dalton-in-Furness.
- 183 2013/0394** Single storey extensions forming lobbies, shower rooms, utility room, kitchen and office at 1 and 2 Longlands Cottage Longlands Dalton-in-Furness.
- 184 2013/0494** Application for a Certificate of Lawfulness of Proposed Use or Development for a ground floor toilet extension at Fairways Romney Park Dalton-in-Furness.
- 185 2013/0410** Side and rear ground floor bike store extension at 43 Undergreens Road Barrow-in-Furness.
- 186 2013/0297** Proposed rear ground floor sun room, bedroom with en-suite and store at 13 Egremont Gardens Barrow-in-Furness.
- 187 2013/0425** Non Material Amendment following grant of planning permission 2013/0091 to allow a change from a Nightingale house type to a Chaffinch on land at Holker Street Barrow-in-Furness.
- 188 2013/0415** Change of use to a Gym (D2) from a Landscape Gardening Business at 7 James Freel Court James Freel Close Barrow-in-Furness.

- 189 2013/0405** Application for Non Material Amendment following grant of planning permission 2008/1522 to extend the length of landscaped earth mound with wildflower planting towards the south of the site. Minor amendment of tree positions to north of MUGA pitch. Extend line of timber boundary fencing to south of site around channelside highway at Furness College Channelside Barrow-in-Furness.
- 190 2013/0361** Application for minor alterations to front elevation at Unit J (Former Comet) Hollywood Park Hindpool Road Barrow-in-Furness.
- 191 2013/0455** Change of use to convert part of former retail outlet to a children's soft play area with ancillary café at part of 331 Rawlinson Street Barrow-in-Furness.
- 192 2013/0295** Application for approval of details reserved by Condition No. 3 (foul water drainage details), No. 4 (surface water drainage details), No. 11 (roof tiles and brick details) and No. 13 (highways details) of planning permission 2012/0769 at Friars Hotel Friars Lane Barrow-in-Furness.
- 193 2013/0318** Change of Condition No. 3 of planning permission 2013/0523 (erection of new four bedroomed dwelling with attached garage) to allow the foul surface water drainage to be on a combined system to discharge into the main drainage on land adjacent to 21 Croslands Park Barrow-in-Furness.
- 194 2013/0371** Approval of Reserved Matters following outline consent 2011/0513 (industrial development) for layout (siting of smaller industrial units) and appearance and scale (new building) at Gyrodata Drilling Automation Ltd Meetings Industrial Estate Park Road Barrow-in-Furness.
- 195 2013/0435** Application for a Certificate of Lawfulness of Proposed use or Development (CLOPUD) for a rear ground floor kitchen and lounge extension at 8 Lyndale Avenue Barrow-in-Furness.
- 196 2013/0378** Change of use to re-establish one dwelling house into two separate dwelling houses at 38-40 Provincial Street Barrow-in-Furness.
- 197 2013/0422** Porch extension to front, bedroom extension to side and conservatory extension to side and rear elevations at 30 Rowan Drive Barrow-in-Furness.
- 198 2013/0365** Listed Building Consent for a storm porch to front elevation at The Dry Stank Lane Stank.

- 199 2013/0421** Rear elevation two storey extension at 1 Croftlands Cottages Stank Lane Stank.
- 200 2013/0462** Application for Non Material Amendment following grant of planning permission 2012/0824 (first floor bedroom extension over attached garage) to change construction of external surfaces from the agreed bricks to a wet dash render to match that used on the front elevation of the property at 6 Liddle Close Barrow-in-Furness.
- 201 2013/0397** Variation of Condition No. 2 of planning permission 2012/0781 to permit the retention of the temporary construction workers compound until 31st December, 2016.
- 202 2013/0434** Two storey side extension forming study/kitchen to ground floor and bedroom over at 5 Lowther Crescent Barrow-in-Furness.
- 203 2013/0431** Erection of an agricultural livestock building on land at Piel View Farm Biggar Village Barrow-in-Furness.

The following applications were withdrawn:-

- 204 2013/0166** Change of use from a house in multiple occupation where the numbers of persons present does not exceed 6 (Use Class C4) to a house in multiple occupation where the numbers of persons present does not exceed 8 (sui generis) at Millwood Hall Millwood Lane Barrow-in-Furness.
- 205 2013/0474** A rear and side extension forming kitchen and sun lounge at 19 Hornedale Avenue Barrow-in-Furness.

(ii) To note the decisions made under the Building Act 1984/The Building Regulations 2010 as submitted by the Principal Building Control Surveyor.

### **Town and Country Planning Acts**

The Assistant Director of Regeneration and Built Environment reported on the following planning applications:-

#### **206 – Elliscales (land at) Askam Road, Dalton-in-Furness**

From Mr and Mrs M. Duerden in respect of the erection of a farmhouse and extension to existing agricultural building to form feed store, implement storage building and temporary portacabin at Elliscales (land at) Askam Road, Dalton-in-Furness as shown on plan number 2013/0354.

The results of consultations were reported.

The applicant attended the meeting and whilst making no presentation, answered questions from Members of the Committee.

It was moved by Councillor M. A. Thomson and seconded by Councillor Thurlow that consideration of the application be deferred to the next meeting since the Committee were minded to refuse on the grounds that a building of that size would not be sustainable in the long-term.

A vote was taken on the motion, the results being 5 for and 5 against and with the Chairman's casting vote it was,

RESOLVED:- That consideration of the application be deferred to the next meeting since the Committee were minded to refuse on the grounds that a building of that size would not be sustainable in the long-term.

### **207 – Land at Marsh Farm, Duddon Road, Askam-in-Furness**

From Mr T. Johnson in respect of the installation of 1 no. micro scale wind turbine (14.97m to hub, 5.6m diameter blades) to provide renewable energy for use on site as shown on plan number 2013/0399.

Representations received and the results of consultations were reported.

RESOLVED:- It was agreed that planning permission be granted subject to the Standard Duration Limit and the following conditions:-

2. The development shall be carried out in full accordance with the specification of the 5.0kW Micro scale wind turbine (14.97m to hub height and 17.7m to blade tip) as defined by the application and supporting information dated 30.05.2013 and drawing numbers: QR-H5 Rev 1 hereby approved.

#### Reason

To ensure that the development is carried out only as indicated on the drawings approved by the Planning Authority

3. This consent is for a period not exceeding 20 years from the date that the development is first connected to the electricity grid. The dates of (a) first connection to the grid and (b) of the full operation of the turbine shall be notified in writing to the Local Planning Authority within 28 days of each of these two events occurring.

#### Reason

In order to control the expected operational life of the development.

4. No later than 4 months from the date that the planning permission hereby granted expires, the turbine shall have been decommissioned and all related above ground structures shall be removed from the site. Twelve months before the decommissioning commences a scheme for the restoration of the site shall be submitted to the Local Planning



Authority for written approval. The scheme shall make provision for the removal of the wind turbine and any associated ancillary equipment and foundations to a depth of at least 1 metre below ground. All decommissioning and restoration works shall be carried out in strict accordance with the approved scheme.

Reason

In order to ensure the satisfactory restoration of the site and its immediate surrounding area.

5. All cabling associated with the development shall be placed underground at the appropriate depth specified by the utility authority for the duration of the development, unless prior written approval has been granted by the Local Planning Authority.

Reason

In order to minimise the visual impact of the proposal and thus ensure compliance with the saved policies of the Development Plan.

6. Condition no. Before any equipment relating to the development is brought to site a plan showing the route for construction traffic produced in conjunction with advice from National Grid relating to High Pressure Gas Pipeline infrastructure shall be submitted to an approved in writing by the Local Planning Authority.

Reason

In order to safeguard the High Pressure Gas Pipeline.

7. Before any equipment relating to the development is brought to site the route for construction traffic and the development site itself shall be marked out under the supervision of National Grid and maintained for the duration of the approved works.

Reason

In order to safeguard the High Pressure Gas Pipeline.

8. Notwithstanding the details relating to colour and finish identified in the supporting specification submitted with the application the turbine housing and rotor shall be finished and thereafter permanently maintained, in Matt Grey to BS EN 1461 to match the appearance of the mast.

Reason

In order to reduce the visual impact of the development on the local and wider landscape.

9. At any noise sensitive location, noise from the wind turbine(s) shall not exceed the daytime noise level of 35dB LA90, 10 Minutes at all operating wind speeds. Assessment of Noise from the wind turbines shall be carried out in accordance with the ETSU-R-97 Guidance – The Assessment and Rating of Noise from Wind Farms (Note: the noise is measured 3.5 metres away from any reflective surface, other than the ground, at a height of between 1.2 and 1.5 metres.)

Reason

In order to minimise the potential for noise nuisance and thus ensure compliance with saved policy D47 of the Development Plan.

10. At the request of the Local Planning Authority following the receipt of a complaint the wind turbine operator shall, at its expense, employ an independent consultant approved by the planning authority, to assess whether noise emissions at the complainant's dwelling are compliant with Condition 9.

Reason

In order to minimise the potential for noise nuisance and thus ensure compliance with saved policy D47 of the Development Plan.

11. Within 21 days of a written notification by the Local Planning Authority that a complaint has been made to it about noise emissions from the wind turbine at any dwelling lawfully existing or with planning permission at the date of this permission and that the Local Planning Authority considers that Excess Amplitude Modulation (EAM) as defined in Guidance Note 5 is present in said noise emissions and a reason for the complaint, the wind farm operator shall appoint an independent consultant. The consultant shall implement the procedures outlined in Guidance Note 5.

Reason

In order to minimise the potential for noise nuisance and thus ensure compliance with saved policy D47 of the Development Plan.

12. If EAM is determined and notified to the wind farm operator by the Local Planning Authority to be present following the receipt by it of the opinion provided for in step (d) of the Guidance Note 5 the wind farm operator shall within 21 days of said notification submit a scheme, for the written approval of the Local Planning Authority, providing for the investigation and control of EAM. The scheme shall be implemented as approved.

Reason

In order to minimise the potential for noise nuisance and thus ensure compliance with saved policy D47 of the Development Plan.

## **208 – Morgans Yard, Marsh Street, Barrow-in-Furness**

From Mr J. Morgan in respect of an application for Outline Planning Permission with all matters reserved for residential development for twenty housing units (16 flats/4 houses) at Morgans Yard, Marsh Street, Barrow-in-Furness as shown on plan number 2013/0253.

Representations received and the results of consultations were reported.

RESOLVED:- It was unanimously agreed that Outline Planning Permission be granted subject to the Standard Outline Conditions and the following conditions:-

3. The development shall be carried out in accordance with the application dated 28/06/2013 and the hereby approved location plan and associated documents identified as; Ecological Report (by Lloydbore), the Phase 1 Risk Assessment (ref No 13646/1) and Site Investigation and Contamination Assessment (ref 13646/2) both by Arley Consulting, except where varied by the conditions below.

### Reason

To retain the development to within the terms applied for.

4. No development approved by this permission shall commence until a method statement and risk assessment has been submitted to, and approved in writing by, the Planning Authority, showing that the development, during the construction and occupational phases, does not affect the safety, operation or integrity of the operational railway land and its infrastructure, or undermine or damage or adversely affect any railway land and structures.

### Reason

To ensure that the construction and subsequent maintenance of the proposal can be carried out without adversely affecting the safety, operational needs, or integrity of the railway.

5. The development shall not commence until the appropriate visibility splays providing clear visibility along the nearside channel lines of the public road from a position 2 metres inset from the carriageway edge, on the centre line of any access, have been provided in accordance with details which shall be submitted to and approved in writing by the Planning Authority. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be permitted to grow so as to obstruct the visibility splays.

### Reason

In the interests of highway safety.

6. No development approved by this permission shall commence until a scheme for the disposal of foul and surface water has been submitted to and approved in writing by the Planning Authority. Unless otherwise agreed in writing surface water must drain separate from foul and no surface water will be permitted to discharge directly or indirectly into the existing foul or combined sewerage system. Any surface water draining to the public surface water sewer must be restricted to a maximum pass forward flow equivalent to greenfield run-off rates or 5 litres per second whichever is the greater. This development shall be completed, maintained and managed in accordance with the approved details.

### Reason

To ensure a sustainable form of development, to prevent an undue increase in surface water run-off and to reduce the risk of flooding.

7. Prior to the commencement of any development, a Construction Management Method Statement shall be submitted to, and approved in writing by, the Planning Authority. The statement should cover all phases of the development and take account of all contractors or sub-contractors and must be submitted for approval by the Planning Authority, prior to the commencement of the development. Construction management method statements will be expected to include the following:
  - Details of phasing of the construction work including a programme of work for the demolition and construction phase;
  - A Traffic Management Plan to include all traffic associated with the development, including site and staff traffic;
  - Procedures to monitor and mitigate noise and vibration from the construction and demolition and to monitor any properties at risk of damage from vibration, as well as taking into account noise from plant, machinery, vehicles and deliveries, with reference to BS 5228 - Code of practice for noise and vibration control on construction and open sites. All measurements should make reference to BS 7445 - Description and measurement of environmental noise;
  - Hours of working and deliveries;
  - Mitigation measures to reduce adverse impacts on residential properties from construction compounds including visual impact, noise, dust and light pollution;
  - Mitigation measures to control the emissions of dust and dirt during construction and demolition;
  - A written procedure for dealing with complaints regarding the construction or demolition; A site log book to record details and action taken in response to exceptional noisy incidents or dust-causing

episodes. It should also be used to record the results of routine site inspections;

- Details of lighting to be used on site;
  - Mitigation measures to ensure that no harm is caused to protected species during construction;
  - The provision of facilities for the cleaning of vehicle tyres where haul routes meet the public highway to avoid deposition of mud/debris on the public highway and the generation of dust.
8. Where contamination is found which poses unacceptable risks, no development shall take place until a detailed Remediation Scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme must include an appraisal of remedial options and proposal of the preferred option(s), all works to be undertaken, proposed remediation objectives, remediation criteria and a verification plan. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use.

Reason

In the interests of human health and the environment.

9. In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the Planning Authority. Development on the part of the site affected must be halted and Field Investigations shall be carried out. Where required by the Planning Authority, remediation and verification schemes shall be submitted to and approved in writing by the Planning Authority. These shall be implemented prior to occupation of the development.

Reason

In the interests of human health and the environment.

10. The approved Remediation Scheme shall be implemented and a Verification Report submitted to and approved in writing by the Planning Authority, prior to any beneficial use of the development.

Reason

In the interests of human health and the environment.

11. No soil material is to be imported to the site until it has been tested for contamination and assessed for its suitability for the proposed development. A suitable methodology for testing this material should be submitted to and approved by the Planning Authority prior to the soils being imported onto site. The methodology should include the sampling frequency, testing schedules, criteria against which the analytical

results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out as per the agreed methodology with verification of its completion submitted to and approved in writing by the Planning Authority.

Reason

In the interests of human health and the environment.

12. All carriageways and footways where shown to be provided, shall be designed, constructed, drained and lit to a standard suitable for adoption and in this respect further details, including longitudinal and cross sections, shall be submitted to the Planning Authority for approval before any work commences on site. No work shall be commenced until a full specification has been approved in writing. These details shall be in accordance with the standards laid down in the relevant Cumbria Design Guide. Any works so approved shall be constructed in accordance with a scheme of phasing subject to prior written agreement with the Planning Authority.

Reason

To ensure a suitable standard of provision for pedestrians and vehicles associated with the development.

13. No dwelling shall be occupied until its vehicular access and parking requirements have been constructed in accordance with the approved details.

Reason

To ensure a suitable level of parking provision for the development.

14. The parking spaces and access thereto must be reserved for the garaging or parking of private motor vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking and re-enacting that Order with or without modifications) or not, shall be carried out on that area of land or in such position as to preclude vehicular access to the development hereby permitted.

Reason

To ensure a suitable level of access and parking provision for use in relation to the development.

**209 – Crooklands Gardens (land adjacent to 4), Ulverston Road, Dalton-in-Furness**

From Mrs S. Stoker in respect of the construction of two, four bedroomed semi-detached houses with detached garages and one, four bedroomed detached dwelling

with two detached garages (one for home office) at Crooklands Gardens (land adjacent to 4), Ulverston Road, Dalton-in-Furness as shown on plan number 2012/0184.

Representations received and the results of consultations were reported.

The agent attended the meeting and made representations to the Committee.

The Committee had undertaken a site visit prior to the meeting.

RESOLVED:- It was agreed that planning permission be refused for the following reasons:-

1. The application proposes speculative residential development of a green field site at a time when the Planning Authority can demonstrate a 5 year housing land supply. The application is therefore contrary to the NPPF which requires authorities to adopt a sequential approach in such circumstances whereby previously developed land is favoured before green field locations. There are no material considerations to warrant deviation from this sequential approach.
2. The application site forms part of a wider, partially developed, area of land allocated for employment purposes by Saved policy A1 of the Borough of Barrow in Furness Local Plan Review. No justification has been provided by the applicant to override this allocation hence approval of the application is considered to be contrary to Section 38 of the Planning and Compulsory Purchase Act 2004 and Paragraphs 11-12 of the NPPF.

### **210 – 18 Stoneham Close, Barrow-in-Furness**

From Mrs P. Leonard in respect of an application for Outline Planning Permission with all matters reserved for construction of a two storey detached house at 18 Stoneham Close, Barrow-in-Furness as shown on plan number 2013/0303.

The results of consultations were reported.

The Committee had undertaken a site visit prior to the meeting.

RESOLVED:- It was unanimously agreed that Outline Planning Permission be refused for the following reason:-

The development would result in the loss of an area of land which contributes positively to the amenities of the area, and replacing it with a cramped form of development, with potentially restricted amenities for the occupants of the proposed dwelling. Approval of the proposal would therefore be contrary to NPPF paragraphs 14 and 49 and local saved policy B3 of the Barrow in Furness Borough Council Local Plan Review 1996-2006.

**211 – Sinkfall Farm, field adjacent to Park Road close to Brest Mill Beck Road, Barrow-in-Furness**

From Mr B. Armistead in respect of the installation of 2 x WES80 80kW wind turbines on 24.83m monopole masts (33.83m to blade tip) at Sinkfall Farm, field adjacent to Park Road close to Brest Mill Beck Road, Barrow-in-Furness as shown on plan number 2013/0220.

Representations received and the results of consultations were reported.

The agent and an objector attended the meeting and made representations to the Committee.

The Committee had undertaken a site visit prior to the meeting.

RESOLVED:- It was agreed that planning permission be refused for the following reasons:-

1. The proposed turbines would appear as isolated and prominent vertical structures which would appear incongruous in its surroundings when seen from sensitive viewpoints including Park road and Millwood Lane. As a consequence the turbines would have a harmful effect on the appearance of the landscape contrary to saved policy D47 with the harm outweighing the benefits arising from the development and the relevant policy support in favour of renewable energy.
2. The southern turbine would be located closer to the southern field boundary hedgerow than the minimum recommended by Technical Note TIN051, Natural England 2012 and as a result the development represents an unacceptable risk to bats contrary to saved policy D47.

The meeting closed at 3.32 p.m.



<b>PLANNING COMMITTEE</b>	<b>(D) Agenda Item 11</b>
<b>Date of Meeting: 8th October, 2013</b>	
<b>Reporting Officer: Deputy Executive Director (Monitoring Officer)</b>	
<p><b>Title: Ombudsman's Investigation into Complaint against Cumbria County Council and Barrow-in-Furness Borough Council</b></p> <p><b>Summary and Conclusions:</b></p> <p>The Council has received a report from the Local Government Ombudsman concerning an investigation into a complaint made by a member of the public.</p> <p><b>Recommendation:</b></p> <p>Members are recommended to note the Ombudsman's report.</p>	

### Report

The Local Authority Ombudsman has sent to the Council a report dated 10th September (embargoed until 19th September) attached at **Appendix 1**.

The Ombudsman found evidence of maladministration by both the Borough Council and Cumbria County Council and has recommended that the complainant receives compensation from both organisations.

### Background Papers

Nil

# Report

on an investigation into  
complaint nos 11 006 104 & 11 001 341  
against Cumbria County Council &  
Barrow-in-Furness Borough Council

10 September 2013

EMBARGOED UNTIL 19.09.13

# Investigation into complaint no 11 006 104 & 11 001 341 against Cumbria County Council & Barrow in Furness Borough Council

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TILL: 19.09.13

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

This report has been produced following the examination of relevant files and documents and interviews with the complainant and relevant employees of the Councils.

The complainant and the Councils were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Report summary

### Planning Enforcement – Waste Processing

This is a complaint about the use of land for processing waste metal and other materials just a few metres from the complainant's home. I have found evidence of maladministration because of delay. Barrow Borough Council failed to refer the matter to Cumbria County Council at the earliest opportunity. Cumbria County Council did not carry out an adequate investigation when the matter was reported to it. The complainant has had to endure noise, smoke and dust for a prolonged period as a result of these delays.

### Finding

Maladministration causing injustice

### Recommended remedy

To remedy the injustice:

- Barrow Borough Council should pay £4,500 for the harm caused by its failure to refer the matter to the Waste Planning Authority, the County Council, for three years.
- Cumbria County Council should pay £3,000 for the harm caused by its failure to carry out an adequate investigation once it did become aware of the matter.

Both Councils should each pay £250 to acknowledge Mr X's time and trouble in bringing his complaints to my attention.

EMBARGOED FULLY 19.09.13

## Introduction

1. Mr X complains the Councils have failed to protect him from the unauthorised use of land behind his home for processing waste metal and other materials.

## Background

2. Mr X tells me he has had to endure nuisance, noise and dust caused by cutting and burning of waste on land behind his home. The nuisance intensified in 2007 when the landowner began recycling waste on the land behind Mr X.
3. Large lorries visit the site to deliver and collect waste. Mr X says the site operates from early morning until late at night, every day. He says he only gets some respite during poor weather, when the men work indoors.

## Legal and administrative background

4. Generally, planning permission is needed to change the use of land and/or for developments on land<sup>1</sup>.
5. Most local planning responsibilities rest with district councils. Barrow Borough Council is a district council. However the County Council is the planning authority for waste and minerals issues and would normally take the lead on waste enforcement action. Waste planning authorities control the use of land for the storage or disposal of waste<sup>2</sup>.
6. Where there has been a change of use of land without planning permission, the planning authority may not take enforcement action after a period of 10 years beginning with the date of the breach<sup>3</sup>.

## Investigation

7. My investigator visited Mr X and discussed his complaint with him. I have considered documents and photographs he has provided.
8. My investigator has made enquiries of both Councils and considered their responses. He visited both Councils and examined documents from their files. He met with officers of the County Council and interviewed an officer of the Borough Council.

## Findings

9. Mr X has been complaining for a long time that the land behind his home was used for processing waste. He reported metal cutting with angle grinders, fires burning plastic from cable, cars, vans and washing machines lifted with heavy machinery. Large vehicles used the track beside his home to deliver and collect waste. Planning authorities do not normally allow waste processing such as this so close to residential areas.

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<sup>1</sup> Section 57 of the Town and Country Planning Act 1990

<sup>2</sup> Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, SI 2003/1033

<sup>3</sup> Section 171B of the Town and Country Planning Act 1990

10. Mr X has sent me copies of his letters and the Councils' responses, going back to 1993. Long before this, he had objected to the use of the land behind him and another area next to it which was used as a scrap yard. His documents record a history of complaints about planning applications, applications for Certificates of Lawful Use and representations to planning appeal enquiries since 1968.
11. In 2007 the problems intensified when the landowner began recycling waste. Mr X made regular complaints to the Borough Council about the site and its impact on him but the Council took no action.
12. Mr X made a complaint to the Borough Council in June 2010 about its failure to act. In its response to Mr X, the Borough Council said that an allegation of this kind was, for planning purposes, a County matter. The Borough Council said that an investigation in liaison with the County Council would take place.
13. Mr X wrote to the County Council in August 2010, requesting information about the site and stating the land behind his home was an unauthorised scrap yard. He asked whether the County Council had ever granted planning permission. In this letter he also made a service request. He asked, if there is a breach of control, whether the Council would stop this use.
14. The Council treated this letter as a request for disclosure of information under the Freedom of Information Act 2000 (a FOI request). In its response the County Council told Mr X that it had carried out a joint site meeting with officers from the Borough Council in July 2010. The County Council went on to say:

“Whilst there was a number of possibly unroadworthy vehicles washing machines, fridges and skips on the site there was no evidence that any breaking up of vehicles, white goods etc for scrap taking place and no significant quantity of scrap metal was present on site, which would have indicated scrap yard use.”
15. The County Council Officer took photographs during the site visit. The photographs show waste skips and storage containers filled with waste materials, disused washing machines and fridges, what appear to be unroadworthy cars and an industrial weighing machine laden with scrap metal.
16. Mr X responded to this letter in October 2010, expressing surprise that officers had not asked him for evidence to support his claim. He sent and referred to photographs which showed men cutting up waste metal, forklift trucks, large skips and lorries visiting the site to collect and deliver loads of waste materials. The County Council says it has no record to show the letter and photographs arrived.
17. In its response to my enquiry, the Borough Council stated there is a history of scrap metal storage on the site behind Mr X's home. There are time limits on when a planning authority may take enforcement action. The Borough Council said the use occurred over a long period of time and has not been overridden by more recent planning applications. It said it was too late to take enforcement action.

18. However, this was not correct. The Borough Council's files show the area behind Mr X's house did not have a history of use for waste recycling.
19. In July 2012 officers of the County Council viewed the Borough Council's planning files for the site. When shown the evidence on the Borough Council's files, the officers decided the land directly behind Mr X did not have an established waste recycling use.
20. The County Council officers visited the site again. The owner of the land behind Mr X's home also owns the land beside it. On this land he runs a second hand goods business. Recently the County Council granted planning permission to carry out the 'de-pollution of motor vehicles' in a building behind the second hand goods shop. The owner was using the land behind Mr X in conjunction with this business. He claimed he could establish more than 10 years continuous use and so be free from planning controls.
21. The owner did not provide evidence of continued use, nor did he put in a planning application for waste recycling. Soon after, the owner told the County Council he would stop using the site for waste processing.
22. My investigator visited the County Council and met with planning officers. He was told there was clear evidence on the Borough Council's planning file to show the land behind Mr X had been used for light industry, but not waste processing.
23. My investigator showed the County Council officers Mr X's photographs. The officers said if they had seen the photographs sooner, they would have:
  - carried out more monitoring and unannounced visits, including 'out of hours' if necessary;
  - used Mr X's photographs and statement as evidence of unlawful use of the land;
  - given Mr X diary sheets to show the nature and extent of activity on the site.
24. The photographs showed waste recycling, with metal being cut from vans and cars and sorted into bins. The County Council officers pointed out an industrial weighing machine in one of Mr X's photographs. This same weighing machine can be seen on a photograph taken by the County Council during its site visit in July 2010.
25. Mr X tells me that waste recycling and processing has resumed on the land behind him.

## **Conclusion**

26. There is evidence to show maladministration causing injustice to Mr X.
27. The Borough Council decided it was not the appropriate planning authority to deal with a waste use on the site. It should have referred Mr X's complaints to the County Council at the earliest opportunity. Its failure to do so caused a three year delay. This delay is maladministration.

28. There was a joint site visit in July 2010 but it was maladministration to conclude there was insufficient evidence of waste processing on the basis of one visit and without further investigation.
29. It was reasonable for the County Council to treat Mr X's letter of August 2010 as a FOI request. However this letter also contained a service request that needed a planning enforcement response but this did not happen.
30. I would expect that to satisfy itself that there was no unlawful use in this case, the County Council should have returned to the site after its initial visit in July 2010 and following Mr X's letter of August 2010, to monitor use. I would have expected its officers to speak to Mr X about the nature of the use and to check whether he had any evidence that it could use.
31. The County Council's failure to carry out an adequate investigation in July 2010 is maladministration and it has caused an injustice to Mr X.

### **Injustice and remedy**

32. Because of the combined failures of both Councils, Mr X has been seriously affected. He lived next to a site which was used unlawfully for cutting, sorting and processing waste metal and other materials for much longer than was necessary.
33. The failure to control the site caused serious harm to his amenity. He has suffered from loud noise from angle grinders, heavy lorries and machinery. There was dust and smoke from the cutting and burning of metal and other waste materials.
34. The Borough Council should pay Mr X £4,500 for the nuisance he experienced because of its three year delay in referring the matter to the County Council.
35. The County Council should pay £3,000 to Mr X for the nuisance he experienced because of its failure to carry out an adequate investigation in July 2010.
36. Both Councils should each pay Mr X £250 for his time and trouble in bringing his complaints to my attention.
37. The County Council should continue to monitor the site and investigate allegations that are brought to its attention.

  
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**10 September 2013**