

**REQUEST TO VARY SECTION 106 AGREEMENT RE CHURCHILL DRIVE,
MILLOM**

Lead Officer: Tony Pomfret – Development Services Manager

Purpose of Report:

To consider a request to vary the Section 106 Agreement relating to highway improvement works at Churchill Drive
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Recommendation: That the request be refused

Resource Implications: Nil

1.0 BACKGROUND INFORMATION

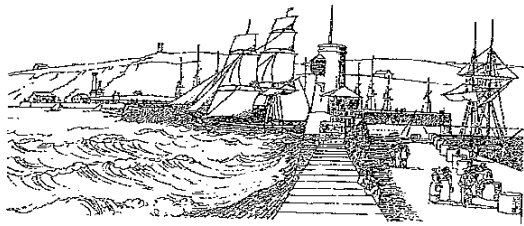
- 1.1 In 1977 planning permission was granted for housing development at Churchill Drive/Pannatt Hill, Millom. The scheme consisted of 36 units in a variety of house types including three blocks of four x two bedroomed flats (4/76/0982 refers). Unfortunately this planning permission did not include any conditions requiring the construction of the roads and footways to adoptable standards.
- 1.2 Development of a block of flats commenced but did not progress beyond first floor level. In May 2004 planning permission was granted to amend the proposal (4/03/0369/0 refers). It involved converting the partially constructed flats into a pair of semi-detached houses and building two detached houses on the site of the adjoining proposed flats.
- In order to remedy the position in relation to the roads the planning permission was subject to a Section 106 agreement. The Third Schedule of the Agreement sets out the developers obligations to provide a specification of works before development commences and to complete the works before any dwelling is occupied.
- 1.3 A subsequent application to modify the Agreement whereby the developer would no longer have to provide a schedule of work but instead would be required to carry out the works in accordance with the standards laid down in the Cumbria Design Guide and to carry out the necessary remedial works in accordance with an agreed phased programme was supported by the Planning Panel on 17 August 2005. The developer, however, subsequently refused to sign the modified agreement which, accordingly, was never entered into.
- 1.4 A request has now been received on behalf of the owners of Plot "C" (one of the two house plots referred to at para 1.2 above), the attached letter dated 18 September 2008 refers.

- 1.5 No progress has been made by the developer towards improving the condition of the roads at Churchill Drive which is a cause of great concern and anguish to local residents.
- 1.6 In my opinion the key issue to consider is whether by acceding to the request there would be increased likelihood of the highway improvement works being carried out. This is clearly not the case as there is no certainty that the proceeds from the sale of the plot will be used by the developer towards implementation of the highway improvements. On this basis the application should be refused.
- 1.7 The relevant period attached to the Section 106 Agreement ends on 20 May 2009, being 5 years from the date the obligation was entered into. Within this relevant period a planning obligation can only be modified or discharged by agreement between the two parties. There is no right of appeal at this stage but once the relevant period has lapsed viz. after 20 May 2009 a formal application may be submitted to the authority for the obligation to be modified or discharged. Should such an application be refused, the applicant may appeal to the Secretary of State.

Contact Officer: Tony Pomfret – Development Services Manager

Others Consulted: Clinton Boyce, Legal Services Manager

Appendix: Letter dated 18 September from HFT Gough & Co
(file Ref. 4/05/2363)



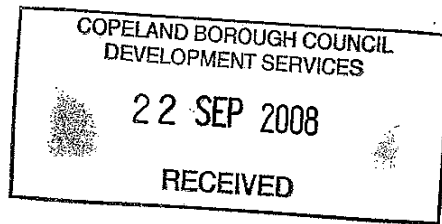
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Cumbria CA28 7SJ

Your ref
Our ref MTS/MF/E15914-1
Contact M T Sandelands
Date 18th September 2008



Dear Sir

**Re: - Section 106 Agreement
Churchill Drive, Millom, Cumbria**

We act for Andrew and Suzanne Elvey the owners of Plot C Churchill Drive.

Please accept this letter as a formal request to vary the Section 106 Agreement dated 20th May 2004 and a subsequent Deed of Modification made in 2005. The proposed variation is to delete Plot C from the obligations set out in the Agreement.

Mr & Mrs Elvey wish to submit the following information in support of their request.

Planning History

In 1979 planning permission was granted for the final phase of the Churchill Drive development. The area of land which in part now comprises Plot C benefited from planning permission to erect two blocks of flats. The majority of the Churchill Drive development was completed during the 1970's and early 1980's. However, the proposed flats remained in a partially constructed state for many years. In 2003 the Developer submitted a planning application to revise the scheme. It was proposed that a pair of semi-detached houses and two detached houses would be developed to replace the flats. This planning application was approved on the 20th May 2004.

The roads serving the development were constructed in the early to mid 1970's but never adopted. By 2003 the condition of the roads had deteriorated considerably. In order to complete the development the Council and the Developer agreed to enter into a Section 106 Agreement requiring the road to be brought up to a standard suitable for adoption. In 2005 there was a subsequent amendment to the Section 106 Agreement relating to minor amendments to the timescale for completing the work.

PARTNERS

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*Member of the Criminal Law Solicitor Association

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The parties appear to have entered into the Agreement in good faith. Both parties assumed that the work to bring the roads up to adoptable standard would involve carrying out remedial works such as; replacing kerbs, ensuring the drains and street lighting are in full working order, and to applying a wearing course.

However, following completion of the Section 106 Agreement it is believed the developer approached the Highway Authority to confirm a specification. The Highway Authority have insisted that the road must be constructed to the standards laid down in the current Cumbria Design Guide. As the Cumbria Design Guide makes specific requirements for sub base construction this means that the entire road would need to be dug up and re-constructed in its entirety to meet the Highway Authority's standards. It is understood that the developer and the Council have made representations to the Highway Authority. However, the Highway Authority will not vary their specification.

The cost of re-constructing the roads (which includes a significant sections of Churchill Drive, Peter's Drive and Pannatt Hill) significantly outweighs the value of the development to be undertaken. Effectively a stalemate has been reached and neither the developer nor the Council have taken any action regarding the Section 106 Agreement.

The applicants purchased Plot C in good faith that the roads would be completed within the prescribed timescale. The applicants are unable to develop their plot due to the non-compliance with the Section 106 Agreement. Furthermore, the applicants cannot themselves comply with the Agreement or implement the "fall back" planning permission.

The Proposal

The relevant period attached to the Section 106 Agreement ends on the 20th May 2009. Whilst the developer may be willing to deal with matters after the 20th May 2009 the applicants have purchased Plot C to erect their family home. The applicants have suffered significant hardship as a result of being unable to commence development. The applicants request that the Section 106 Agreement be varied to delete Plot C from the Section 106 Agreement or for confirmation that the Council will not enforce the obligations of the Section 106 Agreement against Plot C.

Planning Policy

The requirements of the Section 106 Agreement require that the sections of Churchill Drive, Peter's Drive and Pannatt Hill which have not been constructed to current adoptable standards be made up.

The development of Plot C should be considered in accordance with Policy HSG4 of the Copeland Local Plan. Policy HSG4 requires consideration to be given to other policies in the Local Plan. Significantly this would include policy DEV7 which requires development to have safe and convenient access. Access to Plot C would involve crossing short sections of the un-adopted sections of Churchill Drive and Peters Drive. A number of properties already utilise this route as a safe and convenient means of access. These properties include Trinity View which is sited beyond Plot C.

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It is applicant's submission that the making up of the un-adopted sections of Churchill Drive, Peter's Drive and Pannatt Hill is not required to provide safe and convenient access. Any house built on Plot C would enjoy the same means of access as other established properties on the estate. The development of Plot C would comply with the policies set out in the Copeland Local Plan.

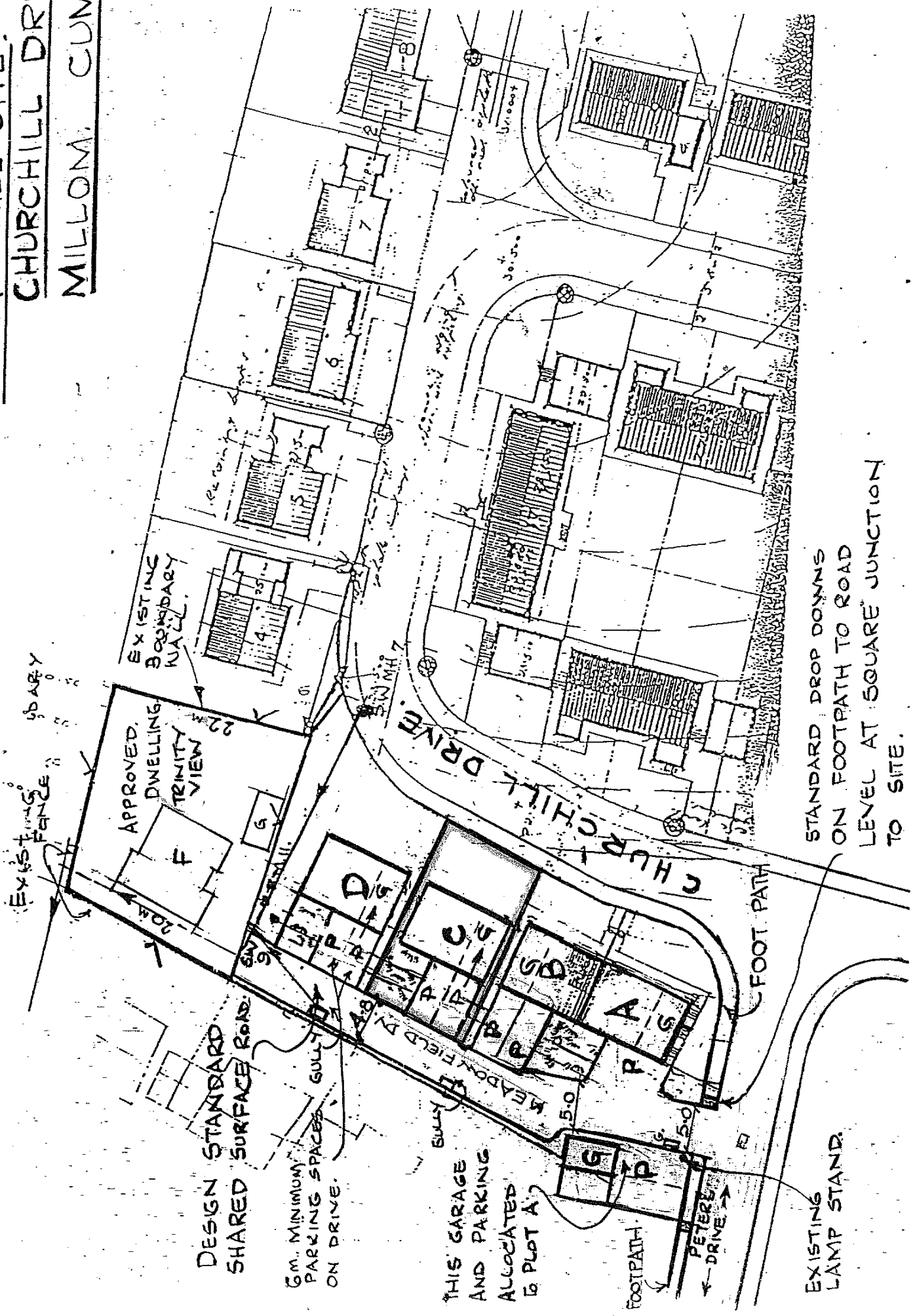
The Council and developer have used all reasonable endeavours to secure the improvement and adoption of the roads serving this development. However, due to the strict requirements of the Highway Authority the scheme has been unable to proceed. The applicants respectfully request that the Section 106 Agreement should be varied in respect of Plot C to enable the applicants to complete the development of their family home.

If the Council requires any further information regarding this matter please do not hesitate to contact the writer.

Yours faithfully

M. F. T. Cogan + Co

PANNATT HILL SITE
CHURCHILL DRIV
MILLOM, CUMB



DESIGN STANDARD SHARED SURFACE ROAD

6m MINIMUM PARKING SPACES ON DRIVE

THIS GARAGE AND PARKING ALLOCATED TO PLOT A

EXISTING LAMP STAND

STANDARD DROP DOWNS ON FOOTPATH TO ROAD LEVEL AT SQUARE JUNCTION TO SITE