

DATED 8th September 2006

COPELAND BOROUGH COUNCIL

-AND-

PETER LOCKHART

Duplicate
S106 AGREEMENT

Relating to

Tarnbank, Braystones, Cumbria

THIS AGREEMENT is made as a Deed the 8th day of September 2006
BETWEEN COPELAND BOROUGH COUNCIL of The Council Offices,
Catherine Street, Whitehaven, Cumbria (hereinafter called "the Council") of the one
part and PETER LOCKHART of The Red Admiral, Boonwood, Gosforth,
Cumbria (hereinafter called "the Applicant") of the other part

WHEREAS

1. The Council is the Local Planning Authority for the purpose of the Town and Country Planning Act 1990 for the area within which the property described in the First Schedule hereto is situated (hereinafter called "the Property") which Property is shown edged red on the plan attached hereto (hereinafter called "the Plan")
2. The Applicant has by an application registered on the 29th March 2005 applied to the Council for planning permission to develop the Property in accordance with the plans specifications and particulars deposited with the Council and set out in the Second Schedule hereto (hereinafter called "the Development")
3. The Council is satisfied that the Development is such as may be approved subject to conditions and the provisions of this Agreement

NOW THIS DEED WITNESSETH

1. This Agreement is made as a planning obligation in pursuance of Section 106 of the Town and Country Planning Act 1990 (as amended) and in consideration of the covenants by the Owner hereinafter contained
2. The Council hereby approves the Development and grants planning permission in accordance with the Grant of Planning Permission ("the Grant") annexed hereto but subject to the conditions set out in the Grant
3. The Applicant hereby covenants with the Council that the Property shall be subject to the restrictions and provisions specified in the Third Schedule hereto

4. The Applicant hereby covenants to carry out the Development (once commenced) in strict conformity with the said plans specifications and particulars (save for such minor modifications and variations thereof as shall be approved by the Council in writing)
5. The expressions "the Council" and "the Applicant" shall include their respective successors in title and assigns
6. The parties hereto intend this Agreement to take effect as a Deed

FIRST SCHEDULE

All that piece or parcel of land at Tarnbank, Braystones, Cumbria as shown edged red on the Plan

SECOND SCHEDULE

The demolition of Tarnbank, Braystones, Cumbria and the erection of three, three-bedroomed link houses and three detached single storey dwellings on the site of Tarnbank as shown edged red on the Plan.

THIRD SCHEDULE

- 1 That the dwellings to be erected on the land shown edged red on the Plan shall not be occupied other than by members of the local community of Loweside Quarter, St John's Beckermest and St Bridget's Beckermest together with their dependants. This definition includes those who: -
 - (i) have at least 5 years residency in the locality, or
 - (ii) have strong connections with the locality through previous residency of at least 5 years duration within the last 10 years or close family association – which could include the need to give care – with an existing resident of at least 5 years residency or
 - (iii) have permanent employment in the locality or have accepted the offer of such employment.

The definition of locality is the Parishes of Loweside Quarter and St Johns Beckermest but if no person can be found who is resident or has connections or

has employment in those Parishes after three months of the relevant dwelling being first marketed then the definition of locality shall be the District of Copeland.

2 That the dwellings to be erected shall not be sold or let unless any sale or lease is within the following definition of affordability: -

- i) housing that is available for an occupier who has
 - (a) purchased an equity share in the property from 25% to 80% of the total market value for a price that at the date of purchase or lease does not equate to more than 3.5 times the local (ie ward level) average in-work income as defined by Cumbria County Council's or any successor local authority's Household Income Survey where such data exists, or by reference to the Copeland average where such ward level data does not exist, and
 - (b) is renting the unpurchased equity share, or
- ii) housing that is available for rent at a weekly rent that does not and will not exceed for a period of not less than 60 years the target rent set by the Housing Corporation or any regulatory successor for an equivalent property provided by a Registered Social Landlord or other not-for-profit organisation, or
- iii) housing that is available for purchase at a price that does not equate to more than 3.5 times the local average in work income (as defined above), or
- iv) housing that is available for an occupier who has purchased an equity share in the property from 25% to 100% of the total market value and is renting the unpurchased equity share (if any) from a Registered Social Landlord and that in the case of subsequent resales is subject to a first opinion in favour of a Registered Social Landlord to purchase for resale on a shared ownership basis.

IN WITNESS whereof the Common Seal of the Council has hereunto been affixed and the Applicant has hereunto set his hand the day and year first before written

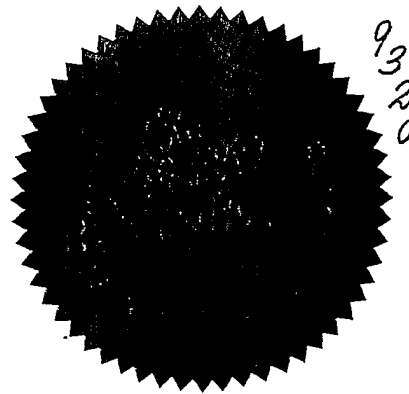
THE COMMON SEAL OF COPELAND

BOROUGH COUNCIL was hereunto

affixed in the presence of:

M. Lockhart

HEAD OF LEGAL AND DEMOCRATIC SERVICES

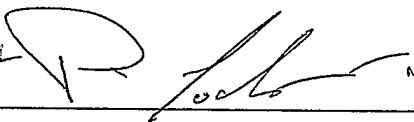


SIGNED AND DELIVERED

as a DEED by the said

PETER LOCKHART in the

presence of:

PL
X  *X*

WITNESS SIGNATURE:

D/H

ADDRESS:

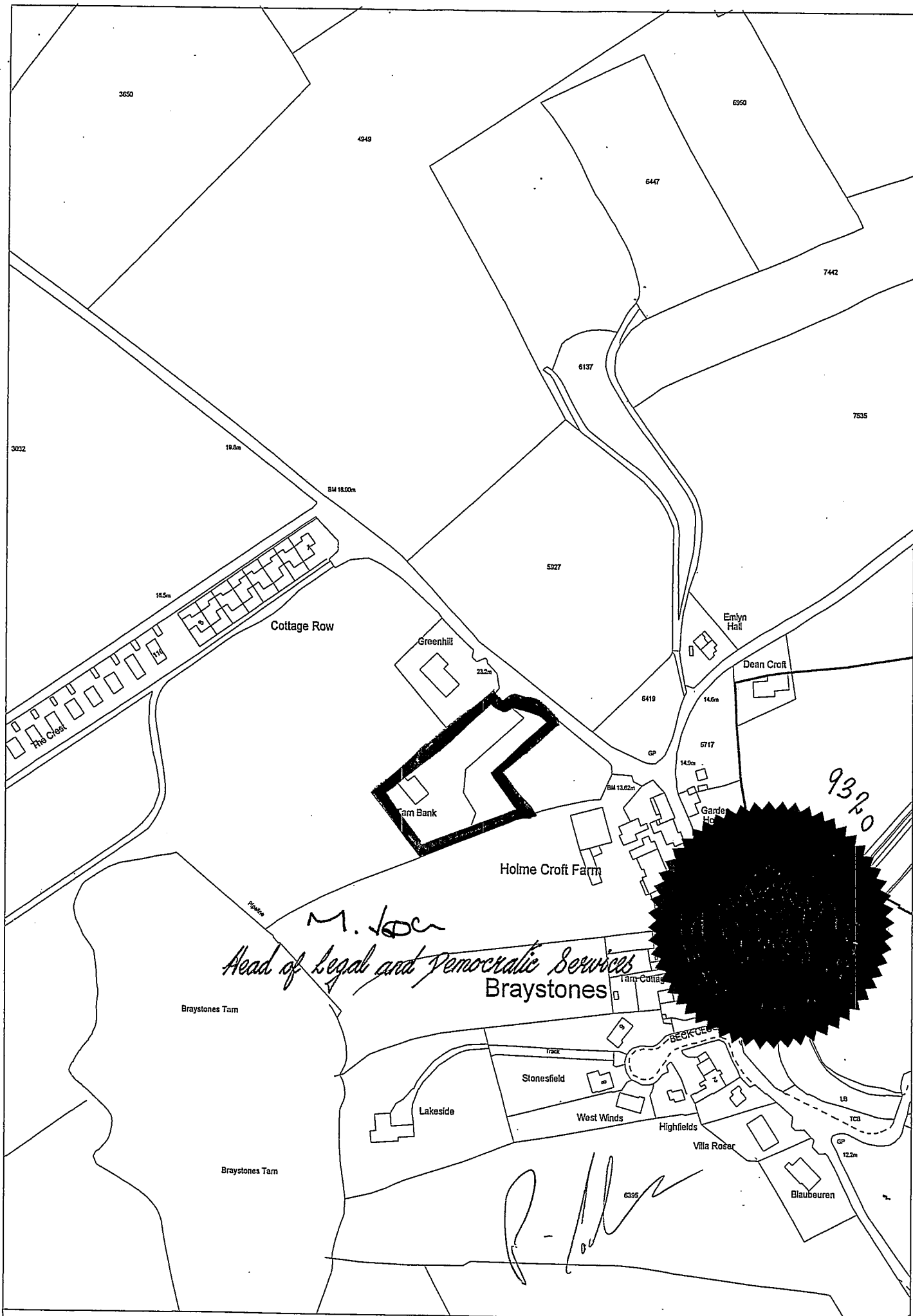
DENTON RISE BUNGALOW

GOSPORTH

SEASCALE

CUMBRIA

CA20 1AS



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Scale: 1:2,500

Date: 18/1/2006

COPELAND BOROUGH COUNCIL

The Copeland Centre, Catherine Street, Whitehaven, Cumbria, CA28 7SJ



**THIS CONSENT IS SUBJECT TO AN AGREEMENT UNDER SECTION 106
OF THE TOWN & COUNTRY PLANNING ACT 1990**

Town and Country Planning Act 1990

App No 4/05/2219/0

MR P LOCKHART
THE RED ADMIRAL
BOONWOOD
GOSFORTH
CUMBRIA.

OUTLINE APPLICATION FOR SIX DWELLINGS AFTER
DEMOLISHING TARNBANK
TARNBANK, BRAYSTONES, CUMBRIA.
MR P LOCKHART

The above application dated 29/03/05 has been considered by the

1. The siting, design and external appearance of the building/s, means of access thereto, and the means of disposal of surface water therefrom, shall be as may be approved by the Local Planning Authority.
2. Detailed plans and drawings with respect to the matters reserved for subsequent approval shall be submitted to the Local Planning Authority within three years of the date of this permission.
3. The development hereby permitted shall be commenced not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
3. Notwithstanding the plans hereby approved full details of site layout, access and parking arrangements shall be submitted for approval by the Local Planning Authority at the detailed design stage.
4. No development shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
5. Details of the design, construction and drainage of the access road/driveway and parking areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.

COPELAND BOROUGH COUNCIL

The Copeland Centre, Catherine Street, Whitehaven, Cumbria, CA28 7SJ



6. The site shall be drained on a separate system with only foul drainage connected into the foul sewer.
7. Notwithstanding Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 no wall, fence or other means of enclosure shall be erected without the prior written consent of the Local Planning Authority.

Reasons for the above conditions:-

For the avoidance of doubt.

To afford reasonable opportunity for an examination to be made to determine the existence of any remains of archaeological interest within the site and for the preservation, examination or recording of such remains.

In the interests of highway safety.

To safeguard the amenities of the locality.

To ensure a satisfactory drainage scheme.

Reason for decision:-

An appropriate scheme to provide affordable rural housing compliant with Policy HSG 11 of the Copeland Local Plan 2001-2016 2nd Deposit Version.

Please read the accompanying notice

08 Sep 06

J. A. Pomfret

Development Services Manager

MAIN AGENDA

In the interests of highway safety and environmental management.

To afford reasonable opportunity for an examination to be made to determine the existence of any remains of archaeological interest within the site and for the preservation, examination or recording of such remains.

Reason for decision:-

An acceptable scheme of residential development for this presently dilapidated site within Egremont Conservation Area in compliance with Policies HSG 4 and ENV 26 of the Copeland Local Plan 2001-2016 2nd Deposit Version.

APPROVED AS ABOVE ✓

2 4/05/2219/0

OUTLINE APPLICATION FOR SIX DWELLINGS AFTER
DEMOLISHING TARNBANK
TARNBANK, BRAYSTONES, CUMBRIA:
MR P LOCKHART

Parish

Lowside Quarter

Strongly object to demolition of Tarnbank, stating that:-

1. This is a substantial house that could be converted into 3 dwellings if extended on one end.
2. There is a lack of statement of local need.

At the last meeting Members resolved to refuse this application. As this resolution was contrary to the officer recommendation a decision was deferred to this meeting in accordance with para. 9.2 of the Planning Code of Conduct approved by Council on 5 March 2002.

In September 2004 an outline planning application to demolish Tarnbank and divide the site into 3 plots was withdrawn (4/04/2516/001 refers). Prior to the application being withdrawn Members had undertaken a site visit.

Tarnbank is a large, detached property occupying a prominent elevated site to the north of Braystones. Tarnside Caravan Park is located immediately to the north. The land to the south separates Tarnbank from Braystones village. However, this land is currently being developed for three detached dwellings (4/04/2168/0F1 refers).

MAIN AGENDA

This application seeks outline planning permission to erect 3 x 3 bedroomed link houses and 3 detached single storey dwellings. It is proposed to realign the existing access road and create a courtyard arrangement to serve five of the dwellings.

A single bungalow will be accessed directly from the adjacent public road. It should be noted that this is an outline application and the house types could vary in any subsequent detailed application.

In the Copeland Local Plan 2001 the site was located within the settlement boundary for Braystones. Accordingly, the proposal would have been considered as infill development. However, the Copeland Local Plan 2001-2016 has reclassified settlements and Braystones no longer has a settlement boundary.

The applicant seeks to rely on Policy HSG 11 of the Copeland Local Plan 2001-2016 2nd Deposit Version to justify the proposal as a form of affordable rural housing. As a previously developed site immediately adjoining the village it satisfies Criteria 1 and 3 of Policy HSG 11. In response to the Parish Council's comments the applicant's agent has pointed out that the existing house is in a state of extreme disrepair and does not lend itself to be sub-divided without substantial demolition, alterations and extension works which would not be economically viable.

Criterion 2 of Policy HSG 11 requires the proposal to be supported by evidence to show that there is a need for the development within the local community as a whole. The applicant has independently undertaken a housing needs survey in Lowside Quarter Parish and the adjoining Parish of St John's Beckermest. A copy of the questionnaire survey and report findings is appended to this report.

The housing need survey concludes that there is a housing need in Lowside Quarter for a minimum of fourteen units. This relates to a variety of house types and sizes. Eleven respondents to the survey wish to live in Braystones, two stating that Braystones is the sole place where they wish to live. However, only three respondents live in or closest to the village of Braystones. The majority of respondents state that their reason for wishing to move relates to the desire to establish their first independent home.

It should be noted that some housing need will be met through general housing provision. This includes housing allocations and existing permissions in Egremont which is the nearest key service centre. Similarly, Beckermest is a Local Centre with an allocated housing site and infill potential. Also, there are a number of existing permissions in Nethertown which will help meet some demand in the Parish.

During the life of the Copeland Local Plan 2001 very few permissions for housing development were granted in Braystones. This probably

MAIN AGENDA

resulted from a tightly drawn infill boundary restricting infill potential and the majority of the village being in an area of high flood risk.

The elevated nature of this site means that it is not subject to flood risk. This, together with its proximity to the physical form of the village and its previously developed status, make it the most viable site for further housing in Braystones.

If Members are minded to grant planning permission the consent should be subject to an obligation under Section 106 of the Town and Country Planning Act 1990. This obligation should ensure that the dwellings are restricted to persons living or working in the locality. Also, the housing should be affordable. Definitions of "locality" and "affordability" are contained within the Copeland Local Plan 2001-2016.

In this case the "locality" should be restricted to Lowside Quarter and St John's Beckermeth Parishes. Given that this is a proposal submitted by a private developer the involvement of a social landlord or a shared equity scheme is considered unlikely. However, "affordability" could be secured by control of the rent or purchase price as outlined in the Copeland Local Plan 2001-2016.

As an indicator the average gross weekly pay in Copeland is £499.20. 3.5 times the local average income provides a purchase price of £90,854. Capping the purchase price at this level should ensure affordability for the majority of people who require housing in the area. However, properties subject to a restrictive Section 106 obligation may be difficult to mortgage or to secure a high percentage loan.

In determining this application Members should consider carefully whether the scheme will deliver genuinely affordable housing in the area for a sustained period of time.

Given the size and characteristics of the site it is likely to deliver a variety of house types and sizes. The incorporation of single storey accommodation should help meet various housing needs including those of the elderly and people with disabilities.

The Highway Authority comment that the road serving the development should be constructed to adoptable standards. Also, it is unclear whether there is adequate space within the site to meet car parking and turning standards.

It should be noted that this is an outline application. There is adequate space to provide turning and parking arrangements but this must be demonstrated at the detailed design stage. One dwelling would be served directly from the public road. It is likely that the remainder of the site could be served by a private driveway.

MAIN AGENDA

On balance this site is considered to represent the most appropriate means of delivering affordable local needs housing in Braystones. The housing development would serve local housing needs at least for the duration of the Copeland Local Plan 2001-2016.

Recommendation

That subject to the applicant entering into an obligation under Section 106 of the Town and Country Planning Act 1990 requiring that:-

- i) The dwellings erected shall only be occupied by members of the local community as defined in the Copeland Local Plan 2001-2016. The definition of locality shall be restricted to the Parishes of Lowside Quarter and St John's Beckermest, and
- ii) The dwellings erected shall only be sold or let within the definition of affordability provided by the Copeland Local Plan 2001-2016.

Outline planning permission be granted subject to the following conditions:-

1. The siting, design and external appearance of the building/s, means of access thereto, and the means of disposal of surface water therefrom, shall be as may be approved by the Local Planning Authority.
2. Detailed plans and drawings with respect to the matters reserved for subsequent approval shall be submitted to the Local Planning Authority within three years of the date of this permission and the development hereby permitted shall be commenced not later than the later of the following dates:-
 - (a) the expiration of five years from the date of this permission; or
 - (b) the expiration of TWO years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
3. Notwithstanding the plans hereby approved full details of site layout, access and parking arrangements shall be submitted for approval by the Local Planning Authority at the detailed design stage.

MAIN AGENDA

4. No development shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
5. Details of the design, construction and drainage of the access road/driveway and parking areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.
6. The site shall be drained on a separate system with only foul drainage connected into the foul sewer.
7. Notwithstanding Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 no wall, fence or other means of enclosure shall be erected without the prior written consent of the Local Planning Authority.

Reasons for the above conditions:-

For the avoidance of doubt.

To afford reasonable opportunity for an examination to be made to determine the existence of any remains of archaeological interest within the site and for the preservation, examination or recording of such remains.

In the interests of highway safety.

To safeguard the amenities of the locality.

To ensure a satisfactory drainage scheme.

Reason for decision:-

An appropriate scheme to provide affordable rural housing compliant with Policy HSG 11 of the Copeland Local Plan 2001-2016 2nd Deposit Version.

Vote 8 for
3 against

APPROVED, IN OUTLINE, AS ABOVE
SUBJECT TO SECTION 106 AGREEMENT

HOUSING NEEDS QUESTIONNAIRE LOWSIDE QUARTER PARISH

INTERPRETATION OF ANALYSIS

A questionnaire survey was undertaken in September/October 2005 to determine the extent of housing needs in Lowside Quarter parish. Following discussions with Copeland Planners, it was suggested that the survey should cover the parish of Lowside Quarter and the adjoining parish of St Johns Beckermat. A draft of the questionnaire was sent to Copeland Planners for comment before being circulated. A copy of the questionnaire circulated is attached as Appendix 1.

Approximately 800 questionnaires were hand delivered to addresses in the two parishes. A stamped addressed envelope was included and responses were requested within seven days. The detailed analysis of the returns is attached as Appendix 2.

298 questionnaires were returned, representing a 37% response, of which 73 (24.5% of those responding) indicated that someone in the household wished to set up home separately. 22 of these were within 1 - 2 years, 8 were 3 - 4 years, 11 were 5 - 6 years and 32 did not specify precisely when.

The reasons for wishing to set up home separately varied, but the largest group (25) indicated a desire for their first independent home.

41 were already home owners (but this did not differentiate between the head of the household and those seeking to move). 15 specified that they were living with parents, 4 were renting from a private landlord and 2 were in tied housing. 11 respondents did not complete this question.

59 respondents were not on housing benefit, whereas 9 indicated that they were.

53 described the property they were living in as in good condition, 15 fair condition and 2 in a poor state of repair. 23 had central heating and 35 double-glazing.

39 indicated that they wished to buy their next home and 15 said "no".

29 respondents lived in or near Thornhill; 24 Beckermat; 4 Egremont with 10 from within Lowside Quarter Parish.

When asked what price they could afford, 15 indicated between £70,000 - £80,000; seven between £80,000 - £90,000; four £90,000 - £100,000; one each in the ranges £110,00 - £120,000, £120,000 - £130,000 and £130,00 - £140,000; with nine in the range £140,00 - £150,000. 34 did not specify.

Nineteen respondents had income below £200 per week, with 34 above and 20 not responding. Fifteen respondents were currently renting and three paid under £40 per week, three £41 - £50 per week; five £51 - £60, three £61 - £70 and one £71 - £80.

45 were in full or part time employment and 6 in further or higher education. Four were employed and seeking work and 19 were retired.

Travel distances to work/college are relatively low. 21 are less than 5 miles with seventeen 5 - 10 miles.

Only two respondents required wheelchair access, 3 accommodation on one level, none sought sheltered accommodation, two needed help with personal care and two had other requirements.

When asked where they would choose to live, 38 replied Thornhill, 33 Beckermest, 10 Braystones, 9 Nethertown, one Middletown and 16 were not specific.

Where they lived now (35) or near to close family (22) were the main determinants of where people wished to live, with 17 near work/college and 12 being born and brought up there.

The types of accommodation required were; 23 seeking 3 bed house; 19 - 2 bed house; 14 - 2 bed bungalow; 13 - 3 bed bungalow; 10 - 4 bed house; 7 - 2 bed flat; 1 - 1 bed house; 4 - 4 bed bungalow; 2 - 3 bed flat and one 1 bed flat. Respondents were asked to tick all that applied.

Conclusions

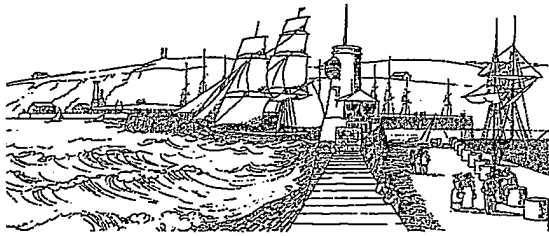
The survey has confirmed that there is a need for affordable housing in Lowside Quarter Parish. Eleven have indicated that they wish to live in Braystones (2 exclusively Braystones and 9 including Braystones with other areas). Additionally, two have mentioned only Nethertown and one Middletown, making 14 positive responses in Lowside Quarter. A further 14 have not been specific where they wish to live.

Of the fourteen showing an interest in low cost housing in Lowside Quarter Parish, 2 sought a one bed house; four a 2 bed house; three a 3 bed house; two a 4 bed house; one a 2 bed bungalow and one a 3 bed bungalow, with one unspecified. There were some multiple answers giving alternatives: - two 2 bed house, one 3 bed houses, one 4 bed house, one 2 bed bungalow, one four bed bungalow and one 2 bed flat.

Of the fourteen who were not specific where they wished to live within the survey area, there were four requests for a 3 bed house, one for a 2 bed bungalow, one for a 3 bed bungalow and eight who did not specify their requirements. Alternatives were given for a 1 bed house and a 2 bed house.

From a 37% response rate to the survey, there has been a positive response from 28 respondents who are seeking low cost housing within the next five years in the Lowside Quarter Parish area. Whereas it is not statistically accurate to interpolate results from a percentage return, it is highly likely that the need figure is significantly higher than that resulting from the survey.

The survey does prove a housing need in Lowside Quarter Parish for a minimum of fourteen housing units. In addition there are a further fourteen, which are needed within the area to the south of Egremont, which could include Lowside Quarter Parish. The need is for a mix of housing accommodation, as above, ranging from one to four bed houses and bungalows.



Whitehaven, Cumberland

H. F. T. GOUGH & CO.

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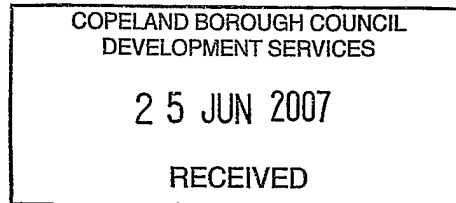
Development Services Manager
Copeland Borough Council
DX 62905
Whitehaven

Your ref TP/SC/4/05/2219/001

Our ref MTS/JC/13629/1

Contact M T Sandelands

Date 19 June 2007



Dear Sirs

Re: - Section 106 Agreement Tarn Bank Braystones Cumbria

We act for Mr Peter Lockhart the owner of the above site.

Please accept this letter as a formal request to vary the Section 106 Agreement dated 8th September 2006 relating to the above property. The proposed variation is to delete clause 2 of the Third Schedule to the agreement.

The applicant wishes to submit the following information in support of the application:

Planning History

On the 8th September 2006 the Council granted outline planning permission for the demolition of Tarnbank and the erection of 6 dwellings (4/05/2219/0 refers). The planning permission is subject to a Section 106 Agreement relating to local affordable housing.

The application was accompanied by a local Housing Needs Survey of Lowside Quarter Parish. The survey concluded that there was a housing need in Lowside Quarter for a minimum of 14 units. The need related to a variety of house types and sizes. A significant number of the respondents to the survey expressed a wish to live in Braystones. A majority of the respondents stated that their housing need related to a desire to establish their first independent home.

It is clear from the report to the Planning Panel on the 7th December 2005 that the Council agreed that there was a need to provide local affordable housing in this area of the Borough where housing development has historically been limited. In recent years the trend for new housing development in Lowside Quarter has been for large high value detached houses.

Cont...

PARTNERS

J. C. Taylor (*H. M. Coroner*) D. Ll. Roberts, LL.B. *Solicitor - Advocate (Higher Courts Criminal)* R. J. Eastoe, BSc.
*Claire Madden, LL.B. ~ S.P.P. Ward, LL.B. M.A. Little, LL.B. *Elizabeth C. Sandelands, LL.B. *Ryan T. Reed LL.B.
Assistant Solicitor: Michael T. Sandelands, BSc. LL.B. MRTPI *Legal Executives*: Jacqui Herbert FILEX. Joann O'Neill

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⌘Member of the Criminal Law Solicitor Association

Cont/2...

The Planning Panel report notes that the Council accepts that the involvement of a social landlord or a shared equity scheme for this development is unlikely. At the time, the Council considered it appropriate to control the future rent or purchase price of the properties by the obligations in clause 2 of Schedule 3 of the Section 106 Agreement.

Following the Council's resolution to grant planning permission the applicant was happy to sign the Section 106 Agreement. However, since the grant of planning permission the applicant has sought advice from a chartered surveyor and other professionals regarding the development of the site.

Following the grant of planning permission it has become clear that the planning permission is not capable of implementation in its current form. Furthermore, if the development were to be implemented in its current form the effect of the affordability clause would be to cap the purchase price at 3.5 times the local average income. This will seriously affect the ability of buyers to raise mortgage finance against the properties. It is likely that lenders will lower their loan to value ratios. The effect of this is that the buyers will be required to contribute a higher than normal cash contribution towards the purchase price. This will adversely affect first time buyers and others who have difficulty entering the property market. This is precisely the sector which the Council is seeking to assist through the Section 106 Agreement.

Planning Policy

The obligations contained in the Section 106 Agreement are justified on the basis of policy HSG11 of the Copeland Local Plan 2001-2016. This policy is subject to four criteria. As a brownfield site well related to the village of Braystones the site satisfies criteria's 1 and 3. Criteria 2 is satisfied by the evidence of local housing needs demonstrated in the Local Housing Needs Survey.

Criterion 4 requires the proposal to be the subject of a planning obligation or condition which requires occupation of the dwelling in perpetuity to be by households which conform to requirements to meet a need within the local community as a whole for such development.

Although the plan provides definitions of locality and affordability in the narrative the direct application of the definitions is not required by the policy. These definitions primarily relate to development by social landlords and not private developments.

If local affordable housing is to be provided by private developers some degree of flexibility is required. The obligation that the market value of the properties must not equate more than three and a half times the local average income means that the value of the property approximately equates to the building cost. Clearly local affordable housing cannot be delivered on this basis.

Clause 1 of the Third Schedule of the Section 106 Agreement requires future residents to live or work in the locality. The locality is defined as the parishes of Lowside Quarter, St. Johns Beckermat and St. Bridgets Beckermat. The rural nature of these parishes means that there is a very limited number of people who would be eligible to occupy the development. The retention of this clause in itself will secure affordability. It is estimated that the open market value of the properties will be reduced by approximately one third by this obligation. The applicant is happy for this obligation to be retained to ensure the housing meets local affordable needs.

Cont...

Alternative Development

Retention of clause 2 of the Third Schedule of the agreement renders the scheme unviable. In planning terms normally the viability of a scheme is not material. It is usually the choice of the developer whether or not to progress the scheme.

However, as a site for local affordable housing this site offers a unique opportunity to Braystones and Lowside Quarter Parish. Due to proximity to the River Ehen, the vast majority of Braystones village is located in an area of high flood risk. The majority of land immediately adjoining the village is not suitable for residential development due to flood risk. This site is elevated, previously developed and adjoins existing development.

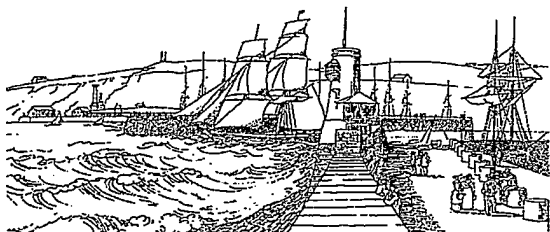
Abandonment of this local affordable housing scheme will result in the only viable alternative use being the refurbishment of the existing large house. This unique opportunity for development will be lost. Given the size and characteristics of the existing house it will add to the stock large high value housing of which there is already a considerable supply in Lowside Quarter.

There is proven evidence that some residents of Lowside Quarter (particularly the young and elderly) cannot access the property market. Some find accommodation on the numerous caravan sites within this part of the borough. Whilst the standard of accommodation on these sites may be high in terms of tourist accommodation it does not represent the quality and opportunities of traditional housing stock. Ownership of these units does not allow residents the opportunity to build equity and therefore it restricts social mobility. Furthermore, the large site at Lakeland View Nethertown restricts occupancy to over 50's.

In conclusion, it is clear that the Council supports the proposal to provide housing within this area to meet local affordable housing needs. This site represents a considerable opportunity to make a valuable contribution towards the variety of affordable housing stock in this area. Clause 2 of the Third Schedule of the Section 106 Agreement is preventing development progressing. Without variation the opportunity to provide local affordable housing on this site will be lost with limited or no viable options to provide affordable housing in the Braystones area in the medium or long term future.

Yours faithfully

H.F.T Gough & Co
HFT Gough & Co



Whitehaven, Cumberland

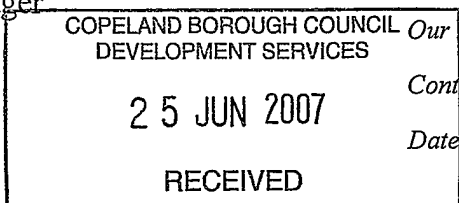
H. F. T. GOUGH & CO.

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Tony Pomfret
Development Services Manager
Copeland Borough Council
DX 62905
Whitehaven

Your ref



Our ref

MTS/JC/13629/1

Contact

M T Sandelands

Date

19 June 2007

Dear Mr Pomfret

Re: - Tarn Bank Braystones Cumbria

Further to our meeting on the 4th June 2007 Mr Lockhart has instructed that I submit a formal request to vary the Section 106 Agreement.

Please find enclosed a letter which I should be grateful if you would accept as Mr Lockhart's request to vary. I understand that the proposal must be determined by the Planning Panel.

If further information is required please do not hesitate to contact me. Also, I would be happy to discuss the terms of any Deed of Variation.

Mr Lockhart thanks you for your helpful advice regarding alternative forms of development on the site. Having considered the various options the only viable schemes are the refurbishment of the existing house as a single dwelling or implementation of the local affordable housing scheme with the Section 106 Agreement varied as submitted.

During our meeting you suggested use of the existing house as either tourist accommodation or a restaurant. The house is located immediately adjacent to the large Tarnside caravan park. Tarnside provides caravan and bungalow accommodation. The repair costs of the house are estimated to be in the region of at least £100,000. Refurbishment of the house as tourist accommodation is not a viable option. In addition, existing hotels and bed and breakfast accommodation are readily available closer to the A595 which serves the needs of Sellafield.

Similarly, the cost of repairing the building and then fitting it out as a restaurant is unviable. Again, a restaurant in this location would be seriously disadvantaged in terms of its location.

Cont...

PARTNERS

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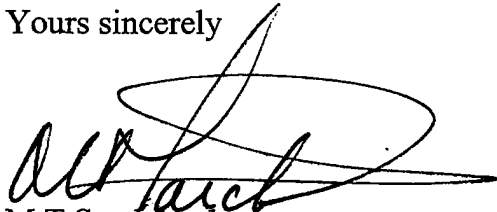
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⌘Member of the Criminal Law Solicitor Association

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Mr Lockhart considers that the proposal to amend the Section 106 Agreement represents the most appropriate form of development on this site delivering local affordable housing in an area of identified need.

Yours sincerely



M T Sandelands