

**SECTION 106 AGREEMENT – LAND AT GILGARRAN PARK, GILGARRAN**

**Lead Officer:** Tony Pomfret – Development Control Manager

To consider a request to vary the Section 106 Agreement dated 30 September 2005 relating to the above site by amending clauses 1 and 2 of the Third Schedule to allow occupation of one of the properties on the basis that the required road works are completed by 30 April 2010.

**Recommendation:** That the request be approved.

**Resource Implications:** Nil.

## **1.0 BACKGROUND INFORMATION**

- 1.1 In September 2004 outline planning permission was granted for the erection of two dwellings on this area of land at Gilgarran Park (4/04/2157/O01 refers). Approval was granted subject to the applicants entering into a Section 106 Agreement, a copy of which is annexed to this report. In summary, the Third Schedule sets out the developer's obligation to carry out upgrading of the access road serving Gilgarran Park prior to the dwellings being occupied.
- 1.2 In 2007, reserved matters for the detailed design of the dwellings were approved (4/07/2245/OR1 refers). One of the dwellings is complete whilst the other is still nearing completion. Both properties have now been on the market for over twelve months with no success of a sale, despite sale prices being reduced in line with current market values in this depressed climate. As a result the road improvement works have yet to be carried out and the road continues to deteriorate.
- 1.3 A formal request has now been submitted by the owner of the site to modify the agreement. A copy of this request together with supporting letters from a solicitor and estate agent are annexed to this report. In effect, interest has been expressed to rent one of the dwellings with a view to subsequently purchasing the property. The modified agreement would allow one of the dwellings, known as Yew Tree View, to be occupied right away on the basis that the road improvement works would be completed by no later than 30 April 2010. Should the proposed amendment not be agreed it is unclear when the road works will be carried out.
- 1.4 Following consultation, the Council's Head of Legal and Democratic Services has raised no objections to the proposal. No comments have been received from the Parish Council.

DATED 30<sup>th</sup> September 2005

**COPELAND BOROUGH COUNCIL**

**-AND-**

**THE TRUSTEES OF  
THE McCABE FAMILY TRUST**

**S106 AGREEMENT**

Relating to

The erection of two dwellings at Gilgarran Park, Distington, Cumbria

● THIS AGREEMENT is made as a Deed the 30<sup>th</sup> day of September 2005  
BETWEEN COPELAND BOROUGH COUNCIL of The Council Offices,  
Catherine Street, Whitehaven, Cumbria (hereinafter called "the Council") of the one  
part and LESLIE DOUGLAS McCABE and ELIZABETH ANN WAITE WARD  
McCABE both of 26 Kohutuhutu Road, Raumati Beach 6010 Kapiti Coast, New  
Zealand being the trustees of the McCabe Family Trust (hereinafter called "the  
Trustees") of the other part

**WHEREAS**

1. The Council is a 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 Trustees have by an application registered on the 2<sup>nd</sup> March 2004 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 Trustees 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 Trustees hereby covenant with the Council that the Property shall be subject to the restrictions and provisions specified in the Third Schedule hereto

4. The Trustees hereby covenant to carry out the Development 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 Trustees" shall include their respective successors in title and assigns
6. No person shall be liable to the Council for any breach of the provisions of this Agreement committed after such person has parted with all of his or her interest in the property or the part in respect of which the breach occurs.
7. This Agreement shall take effect upon the commencement of the Development pursuant to the Grant within the meaning of Section 56 (4) of the Town and Country Planning Act 1990 (as amended).
8. The liability of the Trustees under this Agreement shall be limited to the assets from time to time of the McCabe Family Trust.
9. The parties hereto intend this Agreement to take effect as a Deed

#### **FIRST SCHEDULE**

All that piece or parcel of land being situate and known as Gilgarran Park, Distington, Cumbria as shown edged red on the attached plan hereto

#### **SECOND SCHEDULE**

The erection of two single storey dwellings on 0.135 hectares of land at Gilgarran Park, Distington, Cumbria as shown edged red on the attached plan

#### **THIRD SCHEDULE**

1. That the Trust will at its own expense carry out upgrading of the access road serving Gilgarran Park as shown on the attached Capita Symonds plans and numbered 05/4057222/01/AmO and 05/4057222/02/AmO
2. That the dwellings to be erected on the said property shall not be occupied until the access road to Gilgarran Park has been upgraded in accordance with 1 above.

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

THE COMMON SEAL OF COPELAND  
BOROUGH COUNCIL was hereunto  
affixed in the presence of:

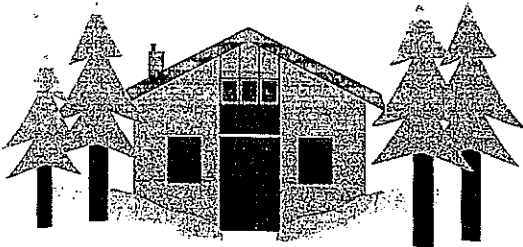
9/29

*M. J. Doe*  
*Head of Legal and Democratic Services*  
~~CHIEF LEGAL OFFICER~~

SIGNED AND DELIVERED  
AS A DEED BY THE  
SAID LESLIE DOUGLAS McCABE *Leslie*  
and ELIZABETH ANN WAITE WARD *E. Ann*  
McCABE in the presence of

*S. G. Pratley*

S. G. PRATLEY  
NORHAM HOUSE  
MAIN STREET  
COCKERMOUTH  
CUMBRIA CA13 9JS  
SOLICITOR



# GILGARRAN ESTATES LTD

Ms R Carol,  
Copeland Borough Council,  
The Copeland Centre,  
Catherine Street,  
Whitehaven.  
CA28 7SJ

COPELAND BOROUGH COUNCIL  
DEVELOPMENT SERVICES  
25 SEP 2009  
RECEIVED

Date : 21<sup>st</sup> Sept 09

Subject: Residential development at Gilgarran ref: 4/07/0417/1

Dear Ms Carol,

Further to our meeting on the 21<sup>st</sup> Sept 09 regarding the implementation of the Gilgarran roadway improvement scheme. I should like you to consider the following proposal and supporting information for the amendment of the current 106 section agreement, in specific respect to the timing of completion.

In a 'normal' economic climate, a developer would expect to build properties with a view to securing an outright sale.

Therefore, in this current depressed housing market climate I believe other opportunities have to be pursued to secure a house sale, and with respect to this particular development discharge the requirements to implement the Gilgarran highway improvement scheme. The Gilgarran highway improvement scheme requires a significant investment, an investment which could only be justified by the prospect of the outright sale of either of the associated properties namely Yew Tree or Beech View.

I can confirm that I currently have a client who wishes to rent one of the dwellings, after which they would then purchase the property. The proposal to rent Yew Tree View has been confirmed for your information as appendix No1 by my solicitor, please see attached

The principal difference with regard to the time scales of contract completion in relation to renting to buy versus outright purchase is the time required to permit entry of the property i.e. rental clients require entry within a very short time scale, a timescale which is too short to permit the implementation of the highway improvement scheme and also to support the investment required.

If the aforementioned planning condition cannot be relaxed to permit the dwelling to be occupied for the purpose of renting, then this opportunity to sell the dwelling will be lost

and effectively delay the implementation of the Gilgarran roadway improvement scheme for some considerable time.

My understanding with regard to the state of the housing market and specifically the sale of Yew Tree View has been derived following discussions and correspondence from my estate agent in the attached letter, please see appendix No2.

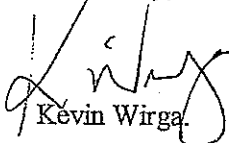
Subject to your consideration and approval, I should like to propose that you permit my client to enter Yew Tree View for the purpose of renting prior to the implementation of the Gilgarran highway improvement scheme detailed in the planning approval above, but **subject to the following conditions:-**

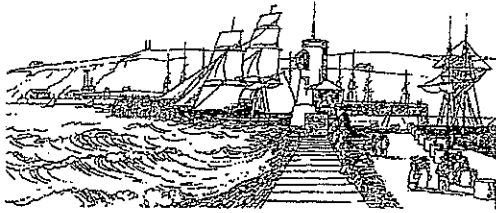
- 1) **That I would guarantee to implement and physically complete the Gilgarran Highway Improvement scheme no later than 30th April 10.**
- 2) **Failure to meet the above completion date would require the tenants to be vacated immediately from the property.**

I truly hope that this proposal is not seen in anyway as a ploy to "bend the rules", it is simply just a proposal to try and move the project forward for the benefit of all parties in this depressed climate. If things stay as they are with regard to the planning condition requiring that the 'roadway improvements are completed before the dwellings are occupied', then I believe in the current climate, the roadway improvement scheme may not be implemented for some considerable period of time, a situation which is not good for all parties

I should be grateful if you can confirm whether this proposal and amendment to the section 106 can be agreed.

Yours truly,

  
Kevin Wirga



Whitehaven, Cumberland

**H. F. T. GOUGH & CO.**  
SOLICITORS & COMMISSIONERS FOR OATHS

38/42 Lowther Street Whitehaven  
Cumbria CA28 7JU  
Tel. (01946) 692461  
Fax. (01946) 692015  
DX 62900 Whitehaven  
www.goughs-solicitors.com  
e-mail: admin@goughs-solicitors.com

To Whom It May Concern

*Your ref*  
*Our ref* MTS/CAH/W11679/8/2390  
*Contact* Mr. M. T. Sandelands  
*Direct Dial* 01946 518321  
*E-mail* M.Sandelands@goughs-  
solicitors.com  
*Date* 23 September 2009

Dear Sirs,

**Re: Yew Tree View, Gilgarran, Workington, Cumbria, CA14 4RF**

We are instructed by Gilgarran Estates Limited in connection with the above property.

This transaction is proceeding as follows :-

1. The prospective Buyer is to enter into an Assured Shorthold Tenancy Agreement to rent the property for a period of twelve months.
2. There will be a concurrent Contract for the Buyer to purchase the property at the end of the twelve month period.

We can confirm that contract documentation has been issued to the prospective Buyer's Solicitor in accordance with the above agreement. The Buyer's Solicitor has confirmed that they are similarly instructed.

Yours faithfully,

**H.F.T. Gough & Co.**

**PARTNERS**

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

Regulated by the Solicitors Regulation Authority No 50015

\*This Firm does not accept service of documents by e-mail

\*Member of the Children Panel \*Advanced Member of the Family Law Panel \*Resolution Accredited Specialist \*Member of APL  
\*Member of the Criminal Law Solicitor Association

h/Yew Tree View



\* APPENDIX NO 2 \*

3 Station Street,  
Cockermouth

21<sup>st</sup> September 2009.

Mr K Wirga,  
Brandle How,  
Gillgarran,  
Workington,  
Cumbria.  
CA14 4RF

Subject: Sale of Yew Tree and Beech View at Gillgarran.

Dear Mr. Wirga,

Further to our recent discussion. I can confirm that the housing market is still in a state of depression; one of the principal reasons for this condition is that potential housing purchasers are unable to satisfy the requirement to produce the 10-15% deposit required by the lenders.

As a direct result of the aforementioned condition, we are seeing a much higher trend of potential purchases who wish to rent with a view to buying the property at a later date.

As you are aware, the properties have been on the market of over twelve months now and with no success of an outright sale. We have also reduced the sale price of both properties inline with current market vales in this depressed climate and unfortunately it has not resulted in an outright sale. Therefore, we advise that you should take advantage as soon as possible of the current opportunity with the client we have recommended who wishes to rent Yew Tree View, with a view to outright purchase at a later date.

We conclude by saying that if you reject this offer with the current client who seeks to rent Yew Tree View in favour of an outright purchase of either property, then you may not secure a sale of either property for some considerable period of time.

Yours sincerely,

Joan Postlethwaite

# Memo



To: Martin Jepson, Head of Legal and Democratic Services  
From: Rachel Carrol, Planning Officer  
Ref: RC/4/04/2157/001  
Date: 28 September 2009  
Re: Section 106 Agreement – Residential Development, Gilgarran

The above planning application was approved subject to a Section 106 Agreement requiring the developer to carry out road improvement works prior to the dwellings being occupied. I am now in receipt of a formal request to allow one of the dwellings to be occupied prior to the road works being carried out. The developer confirms that all road works will be completed by no later than 30 April 2010.

It is proposed to report the request to the Council's Planning Panel on 14 October 2009 and I should be grateful to receive a legal opinion on the matter and what procedures should be followed should Members be minded to approve.

Rachel Carrol  
PLANNING OFFICER

Enc



Rachel

The s.106 Agreement can be modified to make it a requirement that the roadworks be completed by 30 April 2010. This would replace Parts 1 + 2 of the 3rd Schedule. It would be possible to require any tenants to vacate the properties. However, we would need to ensure the tenancy agreements are such that Mr. Wipe would be able to recover possession of them. We could require sight of them before completion of the tenancy agreements. However, we are then reliant on Mr. Wipe (PTO)



# GILGARRAN ESTATES LTD

COPELAND BOROUGH COUNCIL  
DEVELOPMENT SERVICES

28 SEP 2009

RECEIVED

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Copeland Borough Council,  
The Copeland Centre,  
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Whitehaven.  
CA28 7SJ

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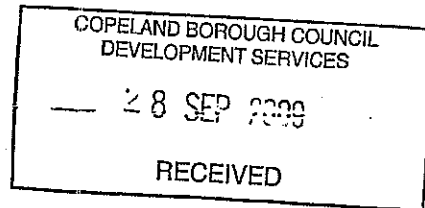
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A handwritten signature in black ink, appearing to be "D. Wirga".