

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 delete a section of the road from the road improvement scheme which is outside the applicants ownership

Recommendation: That the request be approved and the Section 106 Agreement amended accordingly by way of a Deed

Resource Implications: Nil

1.0 BACKGROUND INFORMATION

- 1.1 At the last meeting Members resolved to carry out a site visit before determining this request to vary a Section 106 agreement. The site visit took place on 1 September 2010.
- 1.2 In September 2004 outline planning permission was granted for the erection of two dwellings on this area of land at Gilgarran Park (4/04/2157/001 refers). Approval was granted subject to the applicants entering into a Section 106 Agreement. 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.
- 1.3 In 2007, reserved matters for the detailed design of the dwellings were approved (4/07/2245/0R1 refers). Both properties were on the market for over twelve months with no success of a sale, despite prices being reduced inline with current market values in this depressed climate. As a result the road improvement works did not commence.
- 1.4 A formal request was agreed by Members in November 2009 and again in April 2010 to modify the agreement to allow one of the dwellings to be occupied right away on the basis that the road improvement works would be completed by 31 July 2010.
- 1.5 Whilst the works now approach completion an issue has arisen regarding land ownership and the type of kerbing to be used adjacent to Gunroom Cottage. As such, a formal request has now been received to delete a small section of the road adjacent to Gunroom Cottage from the Section 106 Agreement. A copy of this request is annexed to this report together with confirmation, via the applicant's solicitor, that an H.M. Land Registry Search has revealed that the

land edged red on the accompanying plan is unregistered and, therefore, there is no public record of ownership. This is being validated by the Council's legal department and will be verbally reported at the meeting.

1.6 Representations in respect of this request to vary the Section 106 Agreement have been received from three residents of Gilgarran Park citing concerns relating to:-

- surface water run off from the newly surfaced road
- gullies not in working order
- road realignment
- access to properties impeded

Whilst the above issues need to be properly addressed I would stress that this report must be determined on legal issues relating to land ownership.

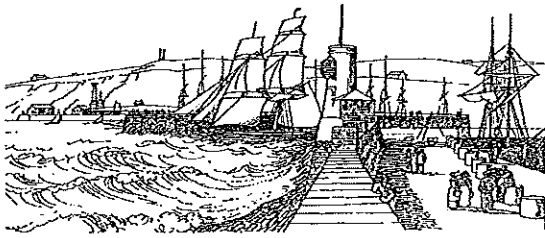
1.7 On the basis that the applicant does not, in fact, own or have a legal interest in the area of land in question the request to vary the Section 106 Agreement accordingly should be supported.

Contact Officer: Rachel Carrol, Planning Officer

Others Consulted: Martin Jepson, Head of Legal & Democratic Services

Appendices: Letter and accompanying plan dated 3 August 2010 from Mr Kevin Wirga

Letter and accompanying plan dated 17 August 2010 from H F T Gough & Co, Solicitors



Whitehaven, Cumberland

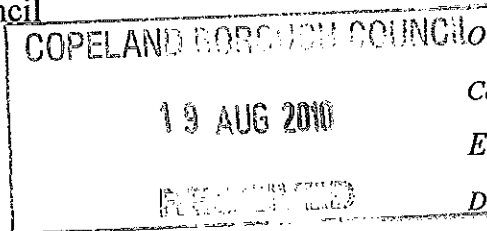
H. F. T. GOUGH & CO.

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

Mr D Wright
Copeland Borough Council
The Copeland Centre
Catherine Street
Whitehaven
Cumbria



Your ref

Our ref

Contact

E-mail

Date

MTS/MF/18653G-2

Mr. M T. Sandelands (Ext.221)

mts@goughs-solicitors.com

17 August, 2010

BY FAX 01946 598306

Dear Mr Wright

**Re: - Gilgarran Estates Limited
Land at Gilgarran Park, Gilgarran, Workington, Cumbria**

We are instructed by the above named client in respect of land and property at Gilgarran Park, Gilgarran.

We can confirm that our client does not own the land shown edged red on the enclosed plan. Furthermore, we can confirm that we have carried out investigations with HM Land Registry. The land is unregistered and therefore there is no public record of ownership. We can confirm that during the course of dealings with our client's land we have attempted to ascertain the identity of the owner of the land (as had our clients predecessor). All such attempts to identify the owner have been unsuccessful.

We trust this is of assistance.

Yours faithfully

H F T Gough & Co

Enc

PARTNERS

D. Ll. Roberts, Ll.B. HM 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. Nicholas Taylor Ll.B.
Legal Executives: Jacqui Herbert FILEX. Louisa Bestford FILEX.

Practice Manager: Yvonne Wilkinson

Regulated by the Solicitors Regulation Authority No:50015

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

*Member of the Children Panel *Resolution Accredited Specialist and Family Law Panel *Member of APIL

*Member of the Criminal Law Solicitor Association

Land Registry Index map plan

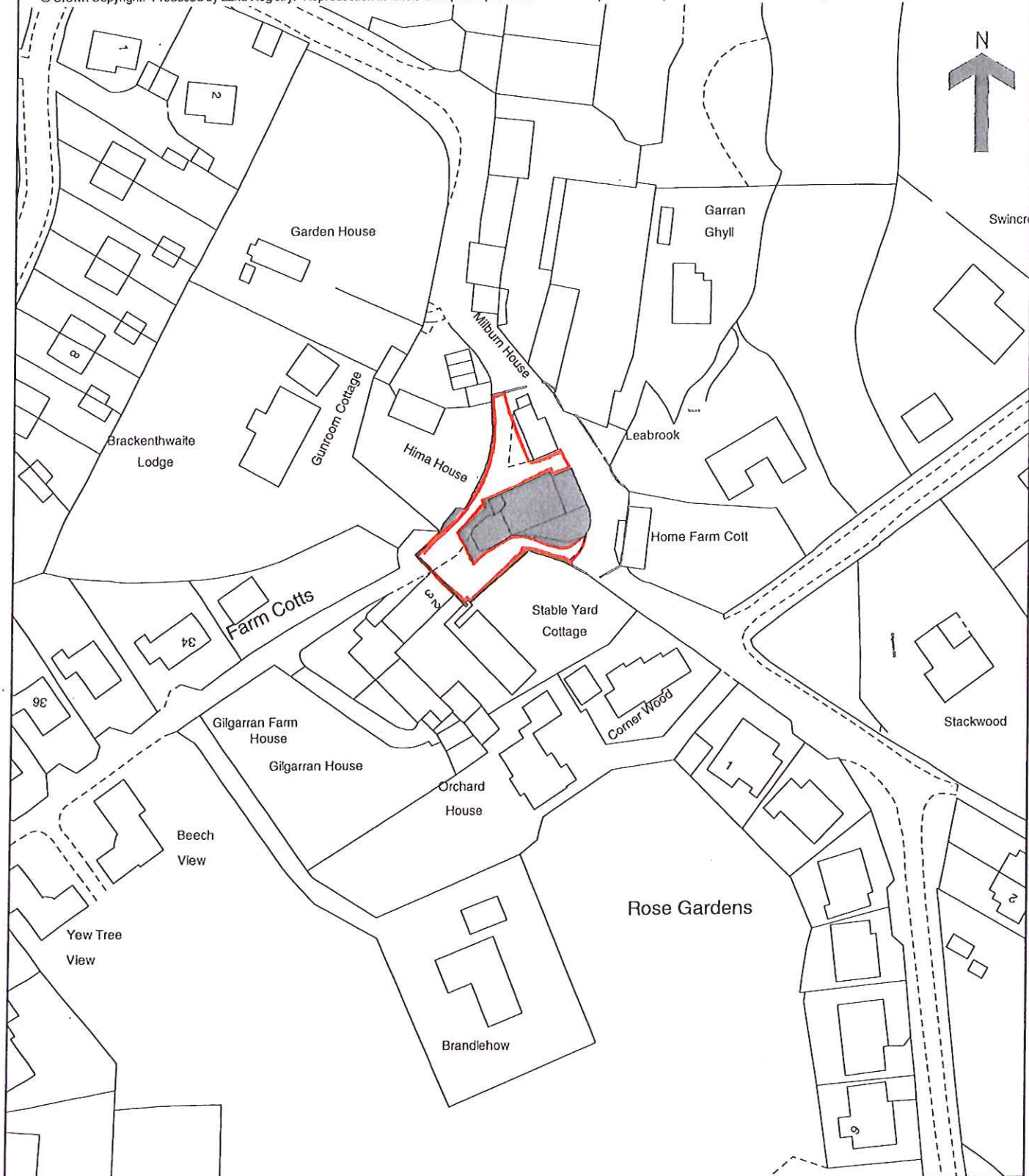
Ordnance Survey map reference NY0323SW

Scale 1:1250

Plan prepared on 21/07/2010 at 00:00:01



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

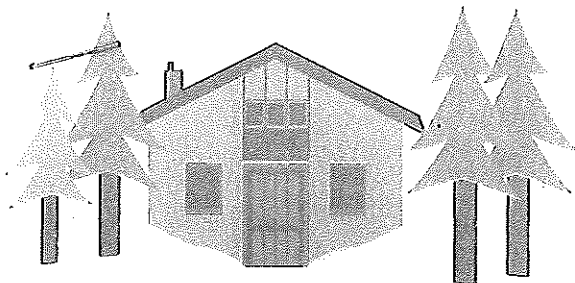


This plan should be read in conjunction with result S97LNJB.

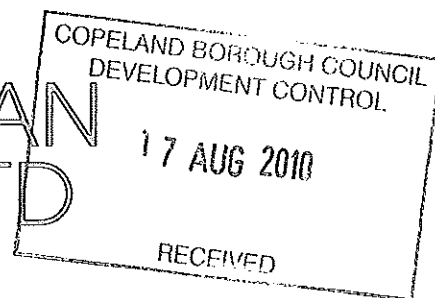
This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.



1 4 5 8 0 2 5 0 0 3



GILGARRAN
ESTATES LTD



Mr T. Pomfret,
Copeland Borough Council,
The Copeland Centre,
Catherine Street,
Whitehaven,
Cumbria.
CA28 7SJ

Date: 3rd Aug 10

Subject : My letter dated 29th July 10.

Dear Mr Pomfret,

Further to our telephone discussion on the 3rd Aug 10 and subsequent discussions with David Wright on the 16th Aug regarding the above letter and your request for a drawing (please see attached). The copy of the drawing attached has been taken directly from the approved Capita drawing which details the existing drainage; the aforementioned drawing has no scale.

I believe that the dimensions are irrelevant as the relevance of the matter is that all the land in the area indicated by the colour 'pink and orange' is unregistered. However, to confirm, I have highlighted in orange the area which I am proposing to delete from the original specification of the section 106 agreement, which extends to approx 20m

The works on the unregistered land in pink has now been completed as per the original section 106 agreement, and I believe therefore that it should be considered to be a bonus with regards to the general benefit of the scheme in total, given the problems which have arisen.

The extent of the unregistered land referred to above has I believe been very recently confirmed by my solicitor as unregistered land and conveyed to the council

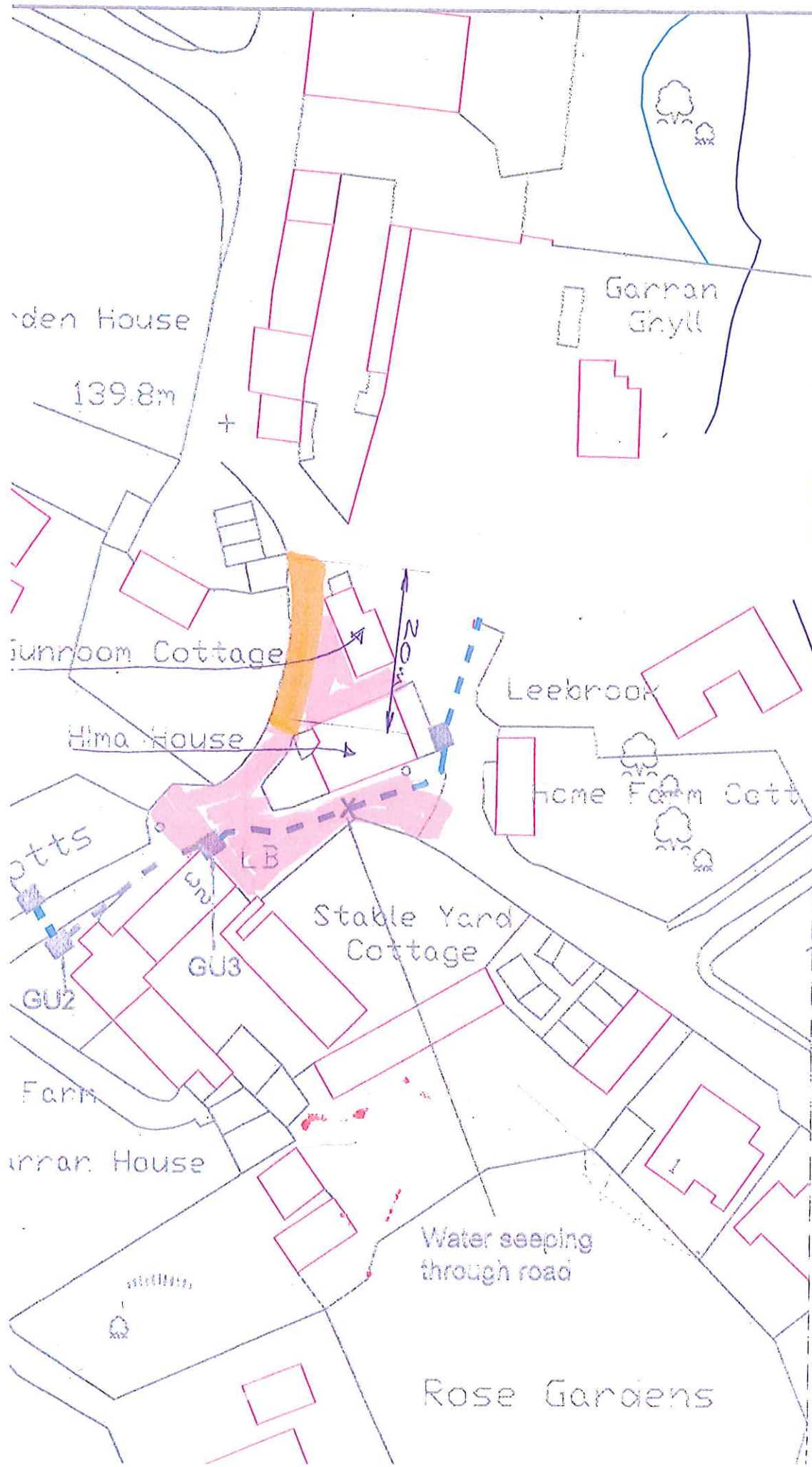
Finally, I should also just like to update you on another incident in the very same area which I am unable to complete outside Gunroom Cottage. Prior to the initial event at

Gunroom Cottage, we actually managed to install all the kerbstones on the far side of the roadway immediately in front of the property.







Due to the incident at this property we were unable to lay kerbstones on the side of the roadway nearest to Gunroom Cottage and hence there are no restrictions for vehicles in that area. However, on Monday, the bin lorry knocked out a large number of the remaining kerbstones on the far side of the road.

I believe that this latter incident is yet another reminder that the area in front of Gunroom Cottage is very restricted for access by large vehicles and hence even if we had completed the improvement scheme as per the agreed drawing, it would still have created unmanageable problems in that area.

Yours faithfully,
Kevin Wirga.



KEY:

-  Existing
-  Existing Manhole
-  Existing Tank
-  150m
-  225m
-  Surface water drain