

SECTION 106 AGREEMENT - LAND AT GILGARRAN PARK, GILGARRAN

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.

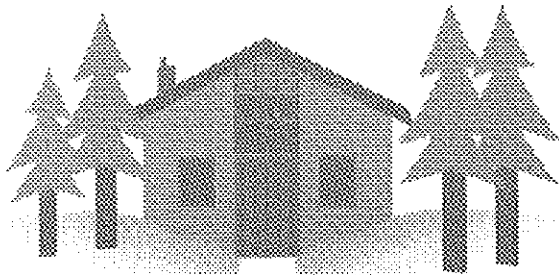
Resource Implications: Nil

1.0 BACKGROUND INFORMATION

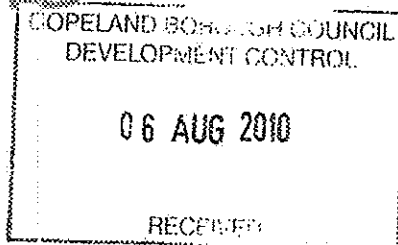
- 1.1 In September 2004 outline planning permission was granted for the erection of two dwellings on this area of land at Gilgarran Park (4/04/2157/001 refers). Approval was granted subject to the applicants entering into a Section 106 Agreement. In summary, the Third Schedule sets out the developer's obligation to carry out upgrading of the access road serving Gilgarran Park prior to the dwellings being occupied.
- 1.2 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 sale prices being reduced inline with current market values in this depressed climate. As a result the road improvement works did not commence.
- 1.3 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.
- 1.4 Whilst the works have commenced and are well underway 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. The applicant has given verbal assurance that the land ownership discrepancy will be confirmed by his Solicitor who is currently away from the Office.
- 1.5 In conclusion, subject to receiving written confirmation from the applicant's solicitor, I would accept the argument put forward and consider that the proposed amendment offers a suitable way forward in securing the road improvement works which will benefit the community as a whole.

Contact Officer: Rachel Carrol, Planning Officer

Appendices: Letter from Mr Wirga



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 regarding the above letter and your request for a drawing (please see attached). This will support the general understanding of the location and size of the area which I am unable to complete, due to reasons set out in the above letter. Therefore, to confirm, I have highlighted in orange the area which I am proposing to delete from the original specification of the section 106 agreement.

I have also highlighted the same area of unregistered land in pink. This area 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.

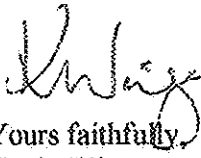
As we discussed, should it be necessary to confirm my position via my solicitor upon his return from leave then I am sure it can be arranged. However, I am very confident regarding the legal obligations of this matter and hence may I respectfully suggest that the matter will be confirmed via your own legal department and hence negate the need to involve my solicitor.

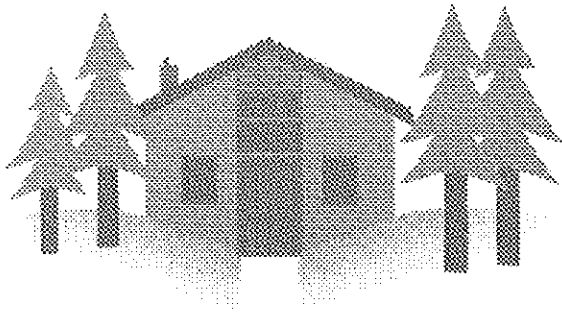
Finally, I should also just like to update you on another incident in the very same area which I am unable to complete outside Gunroom Cottage. Prior to the initial event at Gunroom Cottage, we actually managed to install all the kerbstones on the far side of the roadway immediately in front of the property.

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

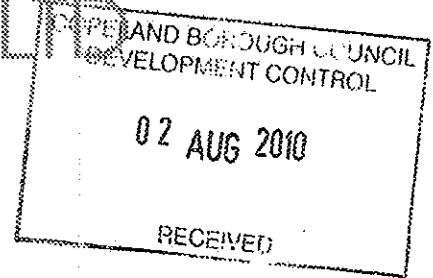
that area. However, on Monday, the bin lorry knocked out a large number of the remaining kerbstones on the far side of the road.

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.



GILGARRAN
ESTATES LTD



Date: 29th July 10

Subject: Variation to section 106 re planning application- 04/04/2157/001

Dear Mr Pomfret,

Further to our telephone conversation on the 28th July with regard to problem issues in relation to the completion of the road works within the village of Gilgarran.

Firstly, I should like to point out that my solicitor is away on holiday and is hence unable to respond to this matter personally and officially. However, we have had discussion on the following matter and hence have a clear view on the following:-

Summary.

I am unable to complete a small section of the roadworks which are subject to the above section 106 due to vandalism, and neither myself nor the council are able to enforce the installation of the works in the specific location as the title of land in that area is unregistered.

Background and problem discussion.

Kerbstones were installed in an area immediately in front of a property known as Gunroom Cottage on the 13th July. However, during the evening of the 13th, the entire kerbstones (approx 20 metres) were maliciously pulled out of their locations. The occupants of Gunroom cottage admitted the matter and subsequently the police were called (crime no WC1002046).

The occupant of Gunroom Cottage (who is a tenant) stated to the police that he did not wish for that type of kerb to be installed and hence he pulled them out.

The conclusion of the police enquiry was that it was not considered to be criminal damage even though the kerbs were not actually on the registered land of Gunroom Cottage and hence there was nothing the police could do to prevent the matter from happening again or infact could they take any formal action on this immediate occasion.

The owner of Gunroom Cottage has also requested that a different type of kerb stone to be installed which is different from the type stated on the approved drawing.

The aforementioned change of kerb stone would require:-

a) a variation to the section 106

b) the provision of a legal disclaimer document due to the increased risk of Gunroom Cottage property flooding as a consequence of the change.

Initially, the owner of Gunroom Cottage has suggested that she would sign a disclaimer in respect of the proposed change. However, there are costs associated to the production of the disclaimer and also for materials which the owner of Gunroom Cottage would be required to be cover. It is deemed highly unlikely that the aforementioned costs would infact be covered.

The owner of Gunroom Cottage has been contacted on numerous occasions by myself and also the council with regard to a written response to this matter, however, to date three weeks have elapsed since the damaged occurred and there has still been no response. This time scale also presents a significant extension to the planned completion date of the project which also has a bearing on cost in addition to the initial damage incurred.

Additionally, it will take a further approx 6-8 weeks from today to produce the disclaimer.

The contractor is unable to wait 6-8 weeks to complete the works and would charge a significant premium to return to complete the works as this change has not been planned.

It is my view that a further significant period of time will elapse without any prospect or conclusion of an agreement on this matter.

Conclusion:

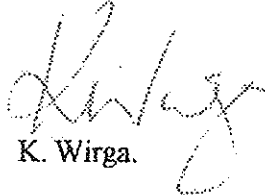
My solicitor has advised me that the section 106 is clear in its specification and binding to both parties. Additionally, it is totally unacceptable for me to be burdened with the matter of effecting a change to the agreed document for a third party or subsequently incurring significant charges which are outwith the specification and agreement.

Also, as the land in the specific problem area is unregistered, no one or body can enforce the installation of the road works. Hence the only way forward is to complete the project short of the problem area and hence discharge my obligation to the section 106 agreement.

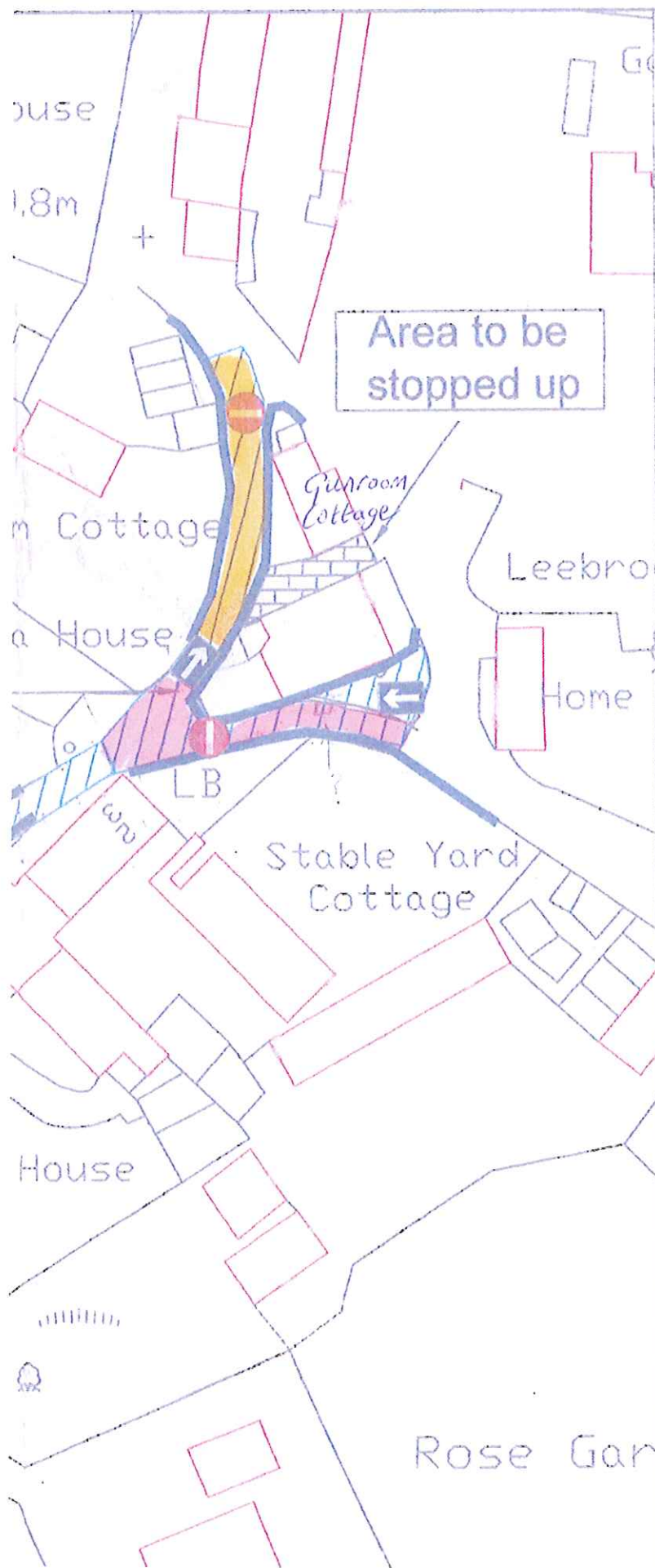
Finally, I should like to point out that I have installed an additional 60metres of public pavement and 30 metres of new roadway in addition to the already onerous obligation to the section 106 agreement in good faith of the project. Also, I have already borne substantial unnecessary charges due to a number of previous incidents of vandalism in my attempts to complete this project.

I trust that you will appreciate the efforts that have been made to complete this project in compliance with the agreed specification, but due to events which are outside of my control I am unable to resolve this latter problem.






Yours sincerely,

A handwritten signature in cursive script, appearing to read 'K. Wirga', written in dark ink.

K. Wirga.



KEY:

-  New Footway
-  Resurface existing footway
-  100mm c/way resurfacing
-  Patch c/way surfacing (100mm)
-  New kerbs (bull nose and HB2)
-  **X** Proposed new gullies (subject to drainage survey)