

Report of	Meeting	Date
Director of Partnership, Planning and Policy	Development Control Committee	23 April 2013

LAND ADJACENT HURST BROOK, CHAPEL LANE, COPPULL, CHORLEY – NON- COMPLIANCE OF PLANNING CONDITIONS OF PLANNING PERMISSION REF. 00/00492/FUL AND PROPOSED SUPPLEMENTAL PLANNING OBLIGATION

PURPOSE OF REPORT

1. To consider whether it is necessary to enforce against conditions numbered 15, 16, 22 or 24 of planning permission reference 00/00492/FUL.
2. Condition no. 15 requires the submission and approval of a landscaping scheme.
3. Condition no. 16 requires the implementation of the approved landscaping scheme and the replacement of trees and shrubs that die or become seriously damaged or diseased within 5 years of the completion of the development.
4. Condition no. 22 requires the submission and approval of a scheme for the provision of public open space and play areas.
5. Condition no. 24 requires the submission and approval of the phasing provision and equipping of the public open space and play areas.

RECOMMENDATION(S)

6. The Council does not enforce against the non-compliance of conditions numbered 15, 16, 22 and 24 of the planning permission reference 00/00492/FUL and enters into a supplemental Section 106 agreement that effectively removes the obligation on the developer to lay out an equipped play area and instead pay a commuted sum of £25,000 for the Play and Recreation Fund to be allocated across the borough and in addition a commuted sum of £11,892 as a maintenance contribution for the POS defined as Recreation Land in the original agreement.

EXECUTIVE SUMMARY OF REPORT

7. This report details the non-compliance of conditions attached to planning permission 00/00492/FUL and sets out the provisions to be included within a new supplemental Section 106 Obligation.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

8. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	X
Clean, safe and healthy communities		An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

9. Planning permission was granted in March 2002 for the erection of 70no. dwellings and associated infrastructure on land adjacent to Hurst Brook, Chapel Lane, Coppull, Chorley (Ref: 00/00492/FUL)
10. Permission was granted subject to a number of conditions and also separate obligations contained within a Section 106 Agreement.
11. Of particular relevance here are conditions 15, 16, 22 and 24 that required the submission and approval of a landscaping scheme and its implementation; the submission and approval of a landscaping scheme for the provision of public open space and play areas; and the submission and approval of the phasing provision and equipping of the public open space and play areas.
12. However there is no record held on file that any of these conditions of the planning permission were formally discharged before the development commenced.
13. It is accepted however that the landscaping of the site and the area of public open space indicated on the approved plans has been laid out to the satisfaction of the Council although no play equipment has been provided. According to the Council's Building Control records the development was completed in November 2005 and therefore the time period to require any of the landscaping to be replaced has lapsed in any event.
14. In addition, the terms of the original S106 obligation required the developer to lay out, landscape and provide play equipment on the play area for use as an equipped play area, and lay out and landscape an area of casual open space and amenity space.
15. The Council were obliged to adopt, and thereafter maintain the recreational land comprising the play area, casual open space and amenity open space and accept a transfer of that land from the landowner following the payment of commuted sums.
16. The need for a supplemental s.106 agreement has come to light during the adoption process of the public open space that has been laid out by the developer.
17. Under the provisions of the original Section 106 agreement the developer was obliged to pay a commuted sum of £19,192 as a maintenance contribution for the on-site public open space including the equipped play area that was to be provided.
18. However, it would appear that it was decided, by former employees of the Council, that the equipped play area need not be provided and instead a further commuted sum was to be paid. This approach is now being reported to members for their approval.
19. The Council sent a draft supplemental s.106 agreement to the developer in 2008 which provided for payment of sums totalling £36,892. The developer indicated that such a supplemental s.106 agreement was acceptable in principle.
20. In addition the developer was given the option of pursuing the variation of the conditions by way of a formal s.73 application to regularise the planning position although they were advised that the Council could not insist upon this.

21. The developer has chosen not to apply to vary any conditions formally so it is proposed that the Council proceeds directly to a supplemental s.106 and resolves not to take any action with regard to the non-compliance of conditions 15, 16, 22 and 24 of the planning permission.
22. It is considered appropriate in this instance to proceed on the basis that the Council makes a formal decision not to enforce the conditions since the landscaping has been provided to an acceptable standard. The supplemental s.106 now proposed will provide the necessary certainty for the adoption of the public open space and will secure the funds for it to be appropriately maintained.
23. The proposed supplemental s.106 agreement obliges the Council to adopt the recreation land that has been laid out in return for a commuted sum payment of £25,000 to fund off-site play space provision within the borough of Chorley. The Council will also receive £11,892 to maintain the recreation land and will also be obliged to accept a transfer of the water vole habitat for which a commuted sum of £12,500 has previously been paid to the Council.
24. A plan is attached to this report as an Appendix, which shows the parcels of public open space proposed to be transferred to the Council edged red. The plan needs to be amended slightly to exclude some land not owned by Rowland Homes. This revised plan has yet to be received from the developer. However the plan attached is substantially the same as the land to be adopted by the Council. The paths which cross the public open space are excluded from the transfer as they have already been adopted by Lancashire County Council.

PROCEDURAL MATTERS

25. A planning obligation can be modified by agreement between the Council and the appropriate persons against whom the obligations are enforceable or by application. An application under S106A is the Secretary of State's preferred method of modifying planning obligations, however it is not necessary provided the parties have consented to the variations and they are agreed by deed.
26. The Council would be able to register the Deed in the Local Land Charges Register without the submission of an Application.

IMPLICATIONS OF REPORT

27. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal		Integrated Impact Assessment required?	
No significant implications in this area	X	Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

28. If the recommendation to receive a £25,000 commuted sum for play facilities is approved, it would be allocated to projects through the Council's Play and Recreation Fund mechanism after it is received. Once use of the sum was approved, the relevant projects would be added to the revenue budget or capital programme as appropriate. The commuted sum for maintenance of public open space would be credited to the People and Places revenue budget for that purpose over an appropriate number of years.

COMMENTS OF THE MONITORING OFFICER

1. The Council has a discretion not to enforce planning conditions if it would not be in the public interest to do so. A supplemental s.106 agreement is required to give effect to the change in the commuted sums and the removal of the obligation to install a play area agreed with the developer.

Lesley-Ann Fenton
Director of Partnerships, Planning and Policy

Report Author	Ext	Date	Doc ID
Iain Crossland	5903	4 April 2013	***

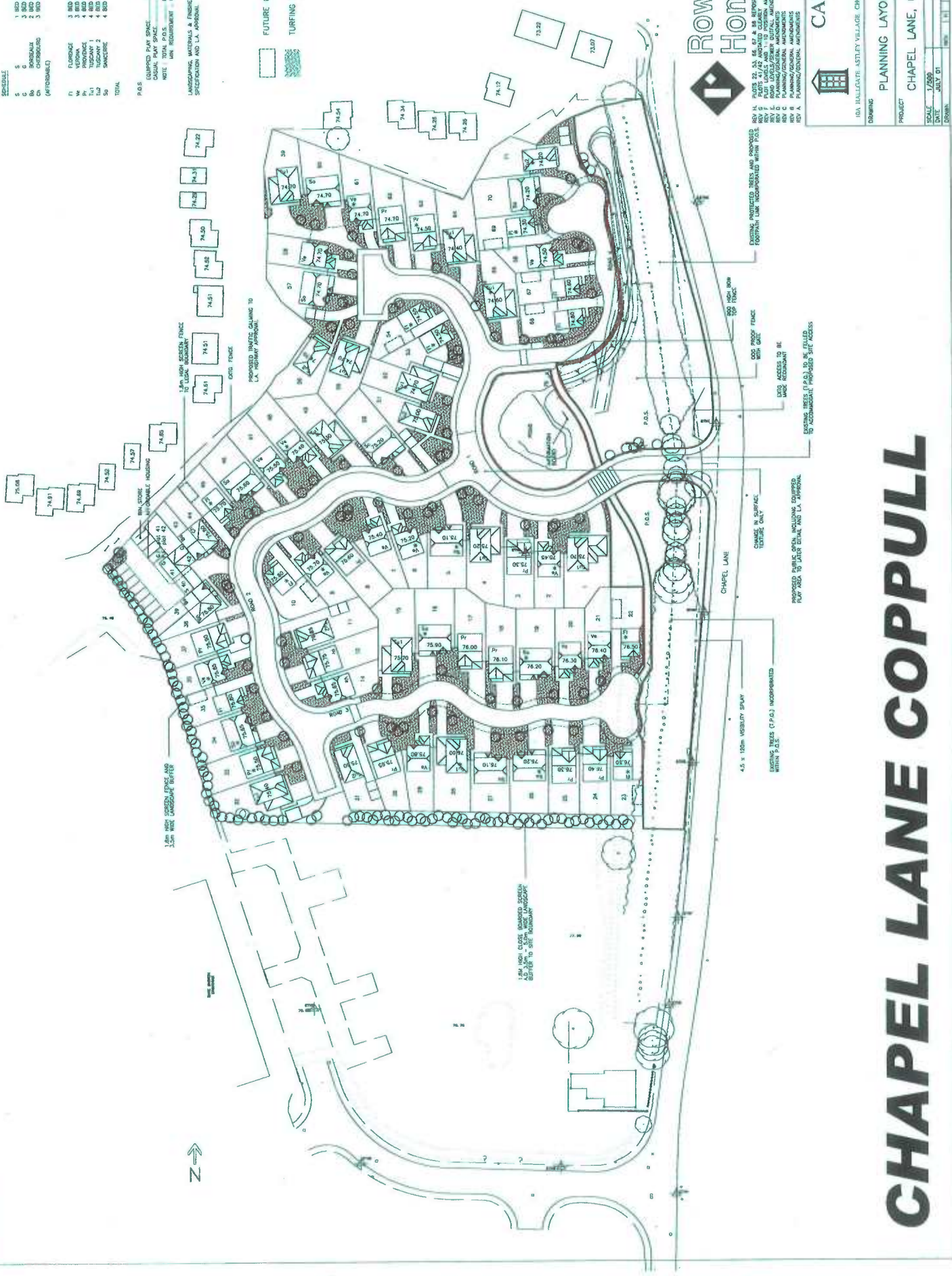
OR

Background Papers			
Document	Date	File	Place of Inspection
Planning Application file	Approved March 2002	00/00492/FUL	Union Street Offices

SCHEDULE	
C	3 BED DET HOUSE
C	3 BED CORNER HOUSE
C	3 BED HOUSE
C	3 BED HOUSE (PREFERABLE)
F1	3 BED DET HOUSE
F2	3 BED DET HOUSE
F3	3 BED DET HOUSE
F4	3 BED DET HOUSE
F5	3 BED DET HOUSE
F6	3 BED DET HOUSE
F7	3 BED DET HOUSE
F8	3 BED DET HOUSE
F9	3 BED DET HOUSE
F10	3 BED DET HOUSE
F11	3 BED DET HOUSE
F12	3 BED DET HOUSE
F13	3 BED DET HOUSE
F14	3 BED DET HOUSE
F15	3 BED DET HOUSE
F16	3 BED DET HOUSE
F17	3 BED DET HOUSE
TOTAL	70 NO

P.O.S. (PROPOSED OPERATING SERVICE)
 CONSTRUCTION SERVICE
 CARRINGTON DESIGN

NOTE: TOTAL P.O.S. 0.45 ACRES (0.180 HECTARES)
 MAXIMUM PERMITTED USES TO LATER SPECIFICATION AND L.A. APPROVAL



Rowland Homes

CARRINGTON DESIGN

10A HALLGATE, ASTLEY VILLAGE, CHESTER, PRETIA, TEL: 01257 27108

PLANNING LAYOUT

PROJECT: CHAPEL LANE, COPPULL

SCALE: 1/1000
 DATE: JULY 01
 DRAWING NO: ROW-CL-101

CHAPEL LANE COPPULL