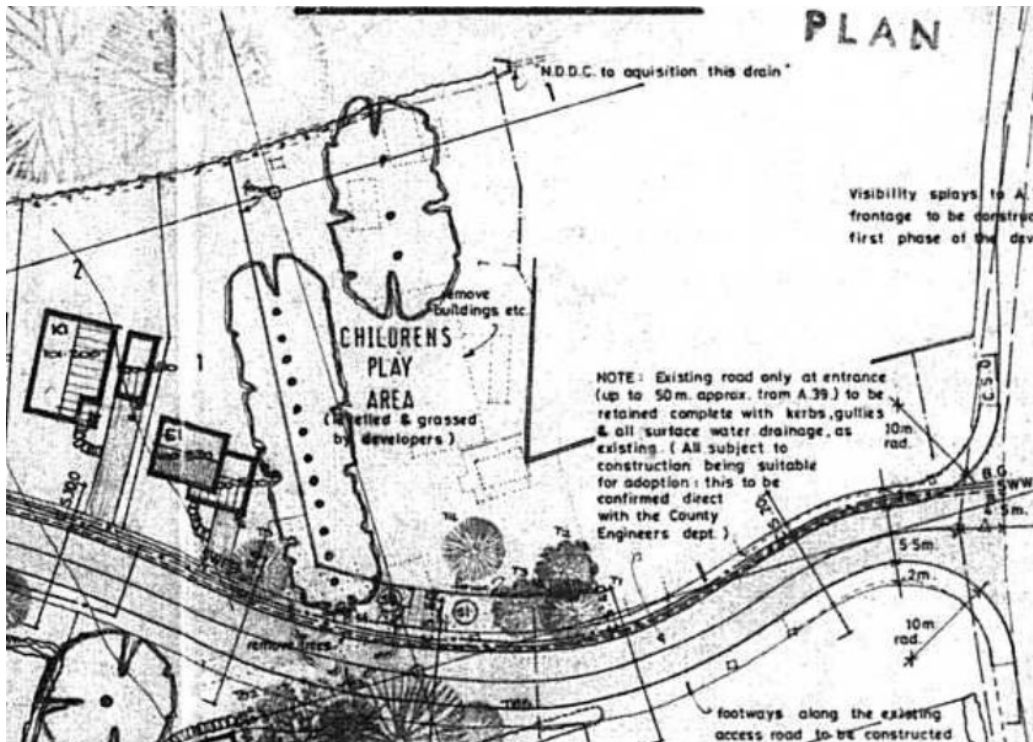


Lagoon View Public Open Space – Officer Note on Planning Status

1. The development at Lagoon View was determined under outline planning permission 2/85/2047/1 whereby condition 7 secures a children's play area which was to be conveyed to the Council when it agreed to take over the land. (see extract below):

7. Details required by condition 2 shall include the detailed setting out of a substantial children's play area within field Pt OS 0686 to be laid out and equiped to the adoptable standards of North Devon District Council and thereafter dedicated to the Local Planning Authority, but maintained by the developers until such time as the Local Planning Authority agrees to take over the maintenance of the area.

2. The condition refers to condition 2 which requires the submission of detailed drawings, being the reserved matters application. The reserved matters (application ref: 697) details a children's play area to be levelled and grassed but no equipment is demonstrated as below:



Extract of approved plan no. 86035/SK3/D

3. A letter submitted by the agent at the time confirms that there was no agreement to equip this area and that it would be levelled and grassed which is what is detailed on the approved plan. It is understood that the area has been used as a community orchard in the intervening period since its development and the current day. In planning terms, use as a public community orchard would be a form of acceptable Public Open Space (POS). As such, the Local Planning Authority (LPA) is content that the established land use is Public Open Space.

4. The outline permission confirms that this area is intended to serve as Public Open Space, however no legal agreement exists in relation to this consent requiring the conveying of the land to the district, it is secured only by the condition, however there is no timescale by which the LPA should be conveyed the land.
5. Advice provided by the Council's Legal Services department, confirms that the acquisition of private land for public use by condition has been tested through planning case law and has been proven to be unreasonable and thus fails one of the six tests required for imposition of planning conditions. Furthermore, the condition imposed lacks precision in terms of its maintenance requirement; again another area on which the condition could be challenged were enforcement proceedings through a breach of the condition pursued by the Council.
6. It is not uncommon for historic planning permissions of this age to present these sorts of problems as the planning system and planning case law has significantly evolved in the 40 years since this planning application was made.
7. However the use of the land as public open space, which has been its lawful use since its provision, is enforceable and any alternative use of this land can be enforced by an enforcement notice. However, the LPA can only enforce against this once a demonstrable breach has occurred.
8. At this stage in time there is nothing that the LPA can enforce against as a breach is yet to occur. In the instance a planning application is presented to change the use of this piece of land to an alternative from the approved public open space, the loss of POS would need to be considered under Policy DM09: Safeguarding Green Infrastructure which is detailed below:

Development involving the loss of green infrastructure including public open space will only be supported where:

- (a) alternative green infrastructure is provided of at least equivalent size, quality and accessibility to that being lost; or***
(b) the green infrastructure network in the locality can be retained or enhanced through redevelopment of a small part of the site; and in either case
(c) there is no net loss in sustainable travel options.

9. It is also a material planning consideration in addition to the above policy considerations that the area has been designated as an Asset of Community Value which would also be weighed in the balance with a change of use application. Any application would be subject to public consultation and have potential for committee call-in under current Council constitution.
10. In light of the above, we are not in a position to enforce against any breach of planning controls as this has not yet occurred however safeguards on the land exist in the form of

material planning considerations which would be weighed in a planning balance if any alternative use or development is presented as part of a formal planning application.

11. Due to the number of informal comments regarding this matter, the decision to respond with a comprehensive note to all concerned was taken to maintain Officer efficiency given there is no formal breach or planning application linked to the comments.

12. If any individual is unhappy with the reply they may contact the Council's feedback team who will follow up the comments. The link below is for the Feedback pages of the Council's website: <https://www.northdevon.gov.uk/council/feedback-complaints-and-whistleblowing/feedback-and-complaints>