

Application Ref: NP/13/0480

Application Type	Discharge of planning obligation
Grid Ref:	SN13590498
Applicant	Mr A J Collins
Agent	Mr Steve Hole, Steve Hole Architects
Proposal	Discharge a Section 106 Agreement requiring access/parking of vehicles
Site Location	Fig Tree Cottage, Wogan Lane, Saundersfoot, Pembrokeshire, SA69 9HA
Case Officer	Vicki Hirst

Summary

This matter is reported to committee as the application is a matter related to the planning application NP/13/0448, which is also on this committee agenda.

The application seeks permission to discharge the Section 106 agreement in relation to the provision of access and parking to the north of Wogan Lane for the property Fig Tree Cottage.

The key issue in this case is whether the Section 106 agreement still serves a useful purpose, when considered against the tests set out in Circular 13/97.

The associated application on this agenda under reference NP/13/448 for a new vehicular access and parking in the curtilage of the dwelling would, if approved, negate the need for parking and access provision to be provided to the north of the site. In the event that this application is approved, the Agreement would no longer be necessary, nor relevant to the development or reasonable. The Obligation would therefore no longer be considered to meet the tests set out in Circular 13/97.

In the event that the associated application is refused, it remains your officer's view that the details of the obligation no longer accurately relate to the current parking layout required by conditions on subsequent applications and is considered to be unenforceable in its current form. As such it is not considered that the obligation is necessary, nor relevant to the development or reasonably related in scale or kind or reasonable in light of the changes to the parking layout for the development which were secured through subsequent conditions attached to planning permissions. As such the obligation fails to continue to meet the tests of Circular 13/97.

The application is therefore recommended for approval subject to the receipt of an accurate plan specifying the original area defined in the Section 106 agreement.

Consultee Response

Saundersfoot Community Council: Objecting - Members were not happy with this road being 2 way as it was not suitable for this. Also, people are parking cars there causing problems.

Public Response

A site notice was posted in accordance with the requirements of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. A letter of objection has been received to the proposed discharge of the Section 106 Agreement, which raises the following concerns;

- The Section 106 Agreement was not given, as stated, to cover the annex originally built by Mr Collins. It was granted to the previous owner of the land to cover any dwelling house on the site – exactly what is there today.
- The parking/access has not been lost by the approval and building of a garage at Plot 3, now Abingdon House. At the site meeting with yourself... you stated that the parking area had been re-sited to the Authority's satisfaction, and this was confirmed in a letter from Mr Ifor Jones dated 13.6.07 in which he also confirmed that the Authority were in a position to enforce the car parking requirements of the Fig Tree Cottage consent. Also with reference to the "garage" application [NP/222/03], Infrastructure Management advised that the two parking spaces associated with Plot 2 "shall be created and available for use before construction commences on the double garage
- It is understood that a Section 106 Agreement is a legally binding document, and can only be discharged if there is a material change of circumstances. There has been no material change, the only difference is Mr Collins ignoring the Authority's decisions and being able to do so due to non-enforcement by P.C.N.P of its own planning conditions.
- The Section 106 Agreement was the only reason any planning consent was ever given on this site, and the reason was basically "TRAFFIC SAFETY". This has been the reason given on several occasions by PNCPA and the then Welsh Office. We would like to add that traffic has greatly increased in the last twenty five years, and no consideration seems to have been given to pedestrians on what is after all a public footpath in the Pembrokeshire National Park.
- Our last concern is that the discharge of a legal document, and advice from a Government Inspector should be considered by anyone other than the Planning Committee with access to the full case history of this site.

Policies considered

Please note that these policies can be viewed on the Policies page
Pembrokeshire Coast National Park website -

<http://www.pembrokeshirecoast.org.uk/default.asp?PID=549>

LDP Policy 01 - National Park Purposes and Duty

LDP Policy 04 - Saundersfoot Local Centre

LDP Policy 08 - Special Qualities

LDP Policy 15 - Conservation of the Pembrokeshire Coast National Park

LDP Policy 30 - Amenity

LDP Policy 53 - Impacts on traffic

PPW6 Chapter 04 - Planning for Sustainability

PPW6 Chapter 08 - Transport

SPG06 - Landscape

TAN 18 - Transport

Officer's Appraisal

Background and site description.

Fig Tree Cottage is a modern detached bungalow located on the southern flank of Wogan Lane, to the north of the main village of Saundersfoot. The property sits in a slightly elevated position above the lane, and within a modest garden plot. There are existing dwellings either side of the application site. The existing access and parking arrangement for the property is required by a section 106 agreement and planning conditions to be on land to the rear of Abingdon House to the north of Wogan Lane. This relates to the provision of two parking spaces, with a pedestrian access from this land across Wogan Lane to Fig Tree Cottage.

Planning history.

The site has a lengthy planning history and can be summarised as:

- **NP/125/94**

An outline planning application for a single dwelling on land at Wogan Lane (referred to as Plot 2), with access and parking for the dwelling proposed on part of the land to the north of the site (also subject of a planning application for two new dwellings (Plots 1 and 3) -NP/124/94). The application was approved subject to a Section 106 Agreement in respect of access and parking.

- **NP/366/96**

Full application for a residential annex to Plot 3, Frances Lane, on the land at Wogan Lane. The access and parking was as approved under NP/125/94 and as per the Section 106 agreement made under NP/125/94. The application was approved, and the current Section 106 Agreement relates to this permission.

- **NP/048/98**

Amendment of Conditions 10 and 11 of NP/366/96 – occupancy of unit on Frances Lane as separate unit – No. 3 Frances Lane, Saundersfoot. This application was intended to allow the annex to be occupied without tie to Plot 3, Frances Lane, and was approved, subject to the parking and access remaining as approved under NP/366/96.

- **NP/03/222**

Approval for a double garage at Abingdon House (Plot 3). The siting of the garage was over the original parking spaces for the property now known as Fig Tree Cottage, with an alternative provision of two parking spaces on the original turning area to compensate for the loss of the spaces. The planning permission includes a condition which required the 'The two parking spaces associated with Plot 2 (Wogan Terrace) shall be created and available for use before construction commences on the double garage' (Condition 5). The existing section 106 Agreement was not varied to take account of this change to the location of the parking spaces.

- **NP/05/521**

Application for a new vehicular access to Plot 2, Wogan Cottage, Wogan Lane. The Highways Authority objected to the proposal, and the application was refused.

- **NP/06/455**

Application for a proposed vehicular access onto Wogan Lane. On this occasion the Highways Authority recommended conditional consent. Given the history of refusals on highway grounds, officers sought further clarification of the consultation response, and were advised that the response to the application was made due to the full residential status, the loss of the parking and turning space for Plot 2 within the garden of Plot 3 owing to the construction of the double garage consented under NP/03/222 and that vehicles delivering/loading/unloading to Plot 2 would otherwise block the lane. The application was reported to committee, who resolved to support the application, subject to the Section 106 Agreement being discharged (which had not been formally sought at this time). The application was

subsequently refused on the ground that the accompanying application to discharge the Section 106 agreement was not received.

- **NP/07/123**

Application for an extension and double garage at Fig Tree Cottage, Wogan Lane. The double garage element is subsequently omitted as vehicular access to the site was not yet approved (an application to discharge the Section 106 Agreement had not yet been submitted to the Authority). The extension element of the proposal is approved at committee.

- **NP/08/385**

Application for discharge of the Section 106 Agreement, but the submission had insufficient information included to enable the Authority to determine the application and was refused at committee.

In summary, Fig Tree Cottage, the subject of the current application has a full residential use, with parking required to be provided to the north on the other side of Wogan Lane and accessed from Frances Lane. Permission was given however to provide the property with its own vehicular access but this was never formally granted as the associated application required to discharge the existing Section 106 agreement was never received in a sufficient form to approve.

Current Application

The current application seeks permission to discharge the Section 106 agreement in relation to the provision of access and parking to the north of Wogan Lane. The applicant's agent states that the discharge of the obligation is sought due to the now full residential status of Fig Tree Cottage and the loss of the original spaces through the provision of a garage and following discussions with the Highways Authority to provide vehicular access to the property off Wogan Lane.

An application for a new vehicular access and parking to serve the property from Wogan Lane has been made under reference NP/13/448 and appears elsewhere on your agenda.

Members resolved at the Development Management meeting on 19th March 2014 to visit the site.

The application is on the agenda as the accompanying application NP/13/448 is being considered by members as the recommendation is contrary to the view of Saundersfoot Community Council.

Since the application was submitted a further letter has been received from the applicant's son. This letter states that only one letter of objection has been received, with support being given to this proposal by Saundersfoot

Community Council. Furthermore, he states that his parents suffer from poor health and moved to Wogan Lane to be in a bungalow close to their daughter. Regular access is needed to the house by carers. He also states that Fig Tree Cottage is the only property in Wogan Lane without vehicular access and parking and allegations of the public footpath status could deny all properties access.

Legislative Powers/Policy Framework

Section 106A of the Town and Country Planning Act 1990 includes provisions for the modification of planning obligations. These modifications cannot be sought prior to the expiry of five years from the original obligation; in this instance the five years has clearly expired. On expiry of the five years applications can be submitted to modify or discharge planning obligations and in the event of such a request being refused there is a right of appeal to the Planning Inspectorate.

Circular 13/97 – Planning Obligations provides advice on the imposition and subsequent modification of planning obligations. In view of the history of this site, and the fact that the applicant has now applied for planning permission for access and parking adjoining Fig Tree Cottage (in a different location to that currently required on the other side of Wogan Lane), the applicant's agent has submitted a formal application to discharge the planning obligation.

Circular 13/97 also sets out the main criteria to be met in requesting a planning obligation and these are similar to those required to be met in imposing a planning condition. Obligations should be necessary, relevant to planning, directly related to the development, fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. They should also enhance the quality of the development and enable proposals to go ahead which might otherwise be refused.

Officers Appraisal

The key issue in this case is:

- Whether the Section 106 agreement still serves a useful purpose, when considered against the tests set out in Circular 13/97.

The applicant's agent has stated that:

‘This condition has been superseded by consents relating to the use of Fig Tree Cottage as an independent dwelling, not annexed to Plot 3 (Abingdon House). The parking/access has been lost by approved garaging at Plot 3.’

In determining this application, it is necessary for the Authority to consider whether this planning obligation still serves a useful purpose, which, to comply with the requirements of Circular 13/97, should be necessary, relevant to planning, directly related to the development, fairly and reasonably related in

scale and kind to the proposed development and reasonable in all other respects.

Whilst the applicant's agents comments are noted in that the garage was built on the parking area originally associated with the application site, alternative provision was in fact made through the creation of alternative parking spaces and required for provision under planning conditions. Furthermore there is nothing to preclude the new garage being used for the parking associated with Fig Tree Cottage. Notwithstanding this, the associated application on this agenda under reference NP/13/448 for a new vehicular access and parking in the curtilage of the dwelling would, if approved, negate the need for parking and access provision to be provided to the north of the site. In the event that this application is approved, the Agreement would no longer be necessary, nor relevant to the development or reasonable. The Obligation would therefore no longer be considered to meet the tests set out in Circular 13/97

Should the planning permission be refused under NP/13/448, it is considered that the planning obligation should still be discharged. The details of the obligation no longer accurately relate to the current parking layout required by conditions on subsequent applications and in the light of the previous decisions accepting the principle of discharging the s.106 agreement officers have been advised that now seeking to enforce the obligations (which would entail an application to the Court) would face significant obstacles.. As such it is considered that it is no longer reasonable for the Authority to retain the obligation and that it is no longer either necessary or reasonably related to the the development at Fig Tree Cottage in light of the changes to the parking layout for the development which were secured through subsequent conditions attached to planning permissions. Those permissions were considered to be acceptable having regard to the planning policies in place at the time and provided alternative means of parking for Fig Tree Cottage and contemplated the discharge of the obligation at that time.

Accordingly it is considered that the Obligation is therefore no longer considered to meet the tests set out in Circular 13/97.

Having considered the detail necessary for the Section 106 Agreement to be discharged - which is contained in Section 3 of the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992- the applicant is required to submit a block plan, in order to identify the land to which the planning obligation relates (criterion (b)). The block plan submitted does not show all of the land to which the agreement relates, and officers have previously requested this information. A further request for this information will be made to ensure that it corresponds with the original details of the planning obligation, and any discharge of the planning obligation should be subject to receipt of an appropriate plan.

Other Matters

It will be noted from the above that a letter of objection has been received in respect of this application. As set out in this report, whilst planning obligations are legally binding, there are mechanisms within the Planning Acts to enable an application to be made for a variation/discharge of such an obligation after five years. The decision as to whether to agree to that variation/discharge lies with the planning authority with regard to the tests set out in Circular 13/97 and with regard to all material planning considerations in place at the time. There is no framework for any other party to make the decision as suggested by the objector.

The letter received from the applicant's son is also noted, but issues relating to the personal needs of the occupants are not material considerations in determining the application. The issues relating to vehicular access and the status of the lane as a footpath are addressed in the accompanying report under reference NP/13/0448.

Conclusions

In conclusion, the associated application on this agenda under reference NP/13/448 for a new vehicular access and parking in the curtilage of the dwelling would, if approved, negate the need for parking and access provision to be provided to the north of the site. In the event that this application is approved, the Agreement would no longer be necessary, nor relevant to the development or reasonable. The Obligation would therefore no longer be considered to meet the tests set out in Circular 13/97.

In the event that the associated application is refused, it remains your officer's view that the details of the obligation no longer accurately relate to the current parking layout required by conditions on subsequent applications and is considered to be unreasonable to enforce in its current form and fails to continue to meet the tests of Circular 13/97.

Recommendation.

Subject to the prior receipt of an amended plan which clarifies the extent of the land subject of the Section 106 Agreement, dated the 16th May 1995 for clarification, that the obligation be discharged on the grounds that it no longer serves a purpose when considered against the tests set out in Circular 13/97.

