
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	Caroline Phillips Bowen

Last month it was reported that:-

This matter is reported to committee as the officers recommendation is contrary to that of the Community Council, and due to the previous planning history of the site.

Summary

The application site consists of a small, detached single storey dwelling, located on the south western side of Wogan Lane, which runs between Church Terrace and Wogan Terrace in Saundersfoot. The dwelling falls within the Centre Boundary, as defined for the purposes of the Pembrokeshire Coast National Park Local Development Plan. The application site is subject of a Section 106 agreement, which was originally made in 1995 following the grant of outline planning permission for a single dwelling on the site. The Agreement required the access and parking for the dwelling to be provided on land to the north east flank of Wogan Lane and accessed via Frances Lane to the north of the site.

This application is seeking to discharge the Section 106 Agreement currently in place for the vehicular access arrangement for Fig Tree Cottage..

Having considered the planning history for the site, the development was in accordance with the requirements of the Section 106 Agreement until 2003, when planning permission was granted for a double garage at Abingdon House on the site of the two parking spaces for Plot 2 (Fig Tree Cottage) required by the Section 106 Agreement. A condition was attached to that planning permission in respect of two parking spaces to be provided for the benefit of Plot 2 (Fig Tree Cottage), sited opposite the garage, but the original Section 106 Agreement was not modified to show the change in the position of the parking. The garage has now been built on the site of the parking provision required by the Section 106 Agreement and the site of the two alternative parking spaces is still available for use. It is considered, therefore, that the Section 106 Agreement as originally enacted, no longer serves a useful purpose, as that purpose is instead provided for by the condition.

The recommendation is, therefore, that the Section 106 Agreement be discharged.

Consultee Response

Saundersfoot Community Council: No objection

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
- We understand a Section 106 Agreement is a legally binding document, in this case made between the then Dyfed County Council and Mr A Howells and his successors in title 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 for twenty five years by yourselves, the Highways Department and a Welsh Office Inspector who stated in 1988, concerning the two junctions with the County roads "*Visibility severely constrained to a distance far below that suggested by Welsh Office Advice Note TA 20/84 and I therefore regard as unacceptable any development likely to increase the use of the lane*". 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.

Officer's Appraisal

Background and Site Description

Fig Tree Cottage was originally granted planning permission in 1996 as an annexe to a new build dwelling, now known as Abingdon House. Abingdon House lies to the opposite north east flank of Wogan Lane and is accessed via Frances Lane to its north. Two parking spaces and a pedestrian access for the annexe on Wogan Lane were to be included within the curtilage of Abingdon House, and were intended to be the only form of access to the annexe. This was because a separate access via Wogan Lane to serve the annexe was not considered suitable on highway safety grounds. In order to secure the parking and access for the annexe within the curtilage of the main dwelling, Abingdon House, the development was subject of a Section 106 Agreement, which had originally been put in place on an earlier outline planning permission for a dwelling, made by a previous owner of the land.

Planning permission was subsequently granted in 1998 for the annexe to be used as a separate dwelling unit, and that decision was subject to conditions requiring that the access and parking arrangement for the property - shown within the grounds of Abingdon House - was to be provided prior to the dwelling being occupied. The consent did not tie the dwelling to Abingdon House and did not refer to the Section 106 Agreement in the decision notice.

In 2003, a detached garage was granted consent in the garden of Abingdon House, which was sited on the parking spaces originally to be used by Fig Tree Cottage. An alternative parking provision was required to be provided for Fig Tree Cottage close to the original spaces.

A planning application was submitted in 2005 for a separate access, parking and turning to the dwelling and this was refused on highway safety grounds. It had been noted at the time of the 2005 application, that the parking and access required under the condition had not been completed, and following investigation by the Authority's Enforcement Officer, a planning application NP/06/455 was submitted for the creation of a vehicular access, parking and turning area to the south east side of the property. Members resolved to approve this application, subject to the discharge of the Section 106 agreement, which was subsequently submitted under NP/08/385. This application to discharge the agreement was then refused due to insufficient information, therefore the application for the new vehicular access was brought back before committee, and was refused.

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 that the applicant now wishes to apply for planning permission for access and parking on the application site (in a different location to that currently required by the condition), the applicants 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.

Key issues.

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

The applicant 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.

The details of the Agreement no longer accurately relate to the current parking layout required by condition and is considered to be unenforceable in its current form. As such it is not considered that the Agreement is necessary, nor relevant to the development or reasonably related in scale and kind or reasonable in light of the changes to the parking layout for the development, which was secured through subsequent conditions attached to planning permissions. Those permissions were considered to be acceptable having had regard to the planning policies in place at the time and provided alternative means of parking for Fig Tree Cottage. 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. .

Response to neighbours 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. Planning permission was granted in 1996 for an annexe to be built on the land, and the Section 196 Agreement was carried over to that consent.*

- *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.*

The parking/access provision for Fig Tree Cottage was altered by the grant of planning permission for the double garage in place of the original parking spaces, with the requirement for new parking spaces the subject of a planning condition..

- *We understand a Section 106 Agreement is a legally binding document, in this case made between the then Dyfed County Council and Mr A Howells and his successors in title 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. Following a request to monitor the site in respect of the parking and access activity at the site it was found that the development was not occupied in 2010. The double garage had been constructed by that time and the alternative parking requirement had not been laid out. There was accordingly a technical breach of condition but the matter was not pursued further as the property was not occupied. No further complaint in respect of the site has been received by the Enforcement Section since this date. It is however understood that the property is now occupied. Officers of the Authority are working with the owner to resolve matters. A planning application for an alternative parking provision has been made (reference NP130448) and is being considered by officers. This will be reported to committee in due course. If that application is not successful, then the site of the alternative parking required by current conditions is still available which could be enforced if need be.*

- *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 for twenty five years by yourselves, the Highways Department and a Welsh Office Inspector who stated in 1988, concerning the two junctions with the County roads “Visibility severely constrained to a distance far below that suggested by Welsh Office Advice Note TA 20/84 and I therefore regard as unacceptable any development likely to increase the use of the lane”. 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.*

The replacement parking arrangements are required by a condition attached to the permission for the double garage development. The safety aspects of that proposal were considered at the time the condition was imposed and found to be acceptable. It is not open to the Authority to reconsider the requirements of those conditions. The Highway Authority has been consulted on this application and has raised no objection on safety grounds. Discussions with the Highway Authority in respect of any further changes to the parking arrangements (which are the subject of application NP130448) are ongoing, and the safety aspects of the same will be considered at the time of reporting of those proposals, in due course. The current parking provision, required by condition can be enforced, if the further proposed are found to be unacceptable.

- *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.*

The responsibility for the modification or discharge of planning obligations lies with the Local Planning Authority, and it is appropriate for the Authority to determine the application.

Recommendation.

Subject to the 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 Agreement be discharged. In the event that such a plan has not been provided by the date of the Committee meeting it is suggested that the decision to approve the application be delegated to Officers.

Addendum

The above planning application was reported at the February Committee where Members resolved to undertake a site visit. This application will be brought back before Committee in March, and the officer's recommendation will be as originally reported.