
Application Ref: NP/14/0102

Application Type	Modification of Planning Obligation
Grid Ref:	SM87510663
Applicant	Mr Davies
Agent	
Proposal	Modification of a Section 106 Agreement
Site Location	South Hook Lng Terminal, Herbrandston, Milford Haven, Pembrokeshire, SA73 3SU
Case Officer	Vicki Hirst

Summary

This report relates to an informal request seeking the modification of the Section 106 obligation in respect of the South Hook LNG Terminal to remove the requirement for the re-opening of the public footpath to the north of the terminal.

The request to modify the obligation is made principally on the basis of the applicant's involvement in a separate public access improvements scheme in the locality which provided a new Shared Use Path (SUP) between Herbrandston and Hubberston. In contributing to the development of this scheme South Hook LNG (SHLNG) considers that obligation has effectively been discharged in relation to the reinstatement of a public footpath to the north of the development site, albeit being provided in a different way.

The main issues to be considered in this case are whether the modification of the planning obligation would meet adopted planning policy, whether the planning obligation continues to meet the requirements of Circular 13/97 and whether there are other material considerations that would support the modification of the obligation.

It is considered that the requirement to re-instate the public footpath to the north of the site continues to meet adopted planning policy and to meet the tests set out in Circular 13/97. However, it is considered that the material considerations in this instance whereby an alternative Shared User Path has been provided with financial contributions from SHLNG is sufficient to justify the removal of the requirement in the original Section 106 obligation as the need for a path has been met through a different means.

The request to modify the Section 106 obligation is therefore recommended for approval.

Public Response

Any comments received will be reported verbally at the meeting

Policies considered

Please note that these policies can be viewed on the Policies page Pembrokehire Coast National Park website - <http://www.pembrokeshirecoast.org.uk/default.asp?PID=549>

LDP Policy 52 - Sustainable Transport

LDP Policy 54 - Cycleways

PPW5 Chapter 06 - Conserving the Historic Environment

TAN 18 - Transport

Officer's Appraisal

Background

Planning permission was granted at the Authority's (then) Development Control Committee on the 15th October 2003 for a reception storage area and gasification of LNG at the former Esso Refinery in Herbrandston. That permission was subject to a Section 106 obligation requiring the dedication of the path to the south of the site as part of the coastal path, the re-opening of a former path for public use to the north of the site and the management of 140 acres in the western part of the site as a nature conservation area. (Reference NP/03/225).

An amendment to that permission under Section 73 of the Town and Country Planning Act 1990 was granted at the Development Control committee on 22nd February 2006 which allowed for the variation of condition 2 requiring the implementation of the development in accordance with the deposited plans. The approval also revised the original Section 106 obligation to tie the requirements in that obligation to the varied permission (NP/05/570).

At the time of both applications, the obligations set out above were offered by the applicants. The offer for the re-opening of the former path to the north of the site was it is understood, offered on the basis of the history of the site, whereby a network of eight public rights of way across agricultural land between Herbrandston and Hubberston were closed as a consequence of the Act of Parliament in 1957, which allowed for the construction of the former Esso oil refinery on the site. As this network had previously provided a short cut for pedestrians between the two settlements it was considered to be an appropriate obligation for the applicant to seek to restore at least one footpath link running to the north of the development site. The National Park Authority had also received a number of requests from two residents of Herbrandston for the restoration of a public footpath dating between 2000 and 2011.

National Park Authority officers met with representatives from South Hook LNG and identified a suitable route corridor, which would cross tenanted land in the ownership of Exxon to join the existing public footpath at Exxon's property boundary with Milford Haven golf course. The National Park Authority also advised on necessary improvements to establish a public footpath here.

Legislative Powers/Policy Framework

Circular 13/97 is relevant to the imposition of planning obligations and sets out the main criteria to be met in requesting a planning obligation. 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. These tests now have a statutory status under Regulation 122 of the Community Infrastructure Regulations 2010.

Section 106 of the Town and Country Planning Act 1990 includes provisions for the modification of such obligations. These modifications cannot be sought prior to the expiry of five years from the original obligation; in this instance the five years has been exceeded. Circular 13/97 – Planning Obligations provides advice on the imposition and subsequent modification of planning obligations and advises that the preferred option for variation of obligations is through agreement with the parties concerned rather than through a formal application and appeal procedure.

Current Application

As such an “informal” request seeking the modification of the Section 106 obligation to remove the requirement for the re-opening of the public footpath to the north of the terminal has been made. In such cases no appeal route is available in the event that the request is refused.

The request to modify the obligation is made principally on the basis of the applicant's involvement in a separate public access improvements scheme in the locality. Alongside the road from Herbrandston to Hubberston a new “shared use path” for cyclists and pedestrians has been constructed along the roadside verge. The improvements scheme was undertaken by Pembrokeshire County Council and SHLNG made a significant contribution (£40,000) to the cost of its construction. In contributing to the development of this scheme South Hook LNG (SHLNG) considers that obligation has effectively been discharged in relation to the reinstatement of a public footpath to the north of the development site, albeit being provided in a different way.

The other requirements within the Section 106 obligation remain.

Officers Considerations

The main issues to be considered in this case are:

- Whether the modification of the planning obligation would meet adopted planning policy
- Whether the planning obligation continues to meet the requirements of Circular 13/97

- Other material considerations that would support the modification of the obligation

Whether the modification of the planning obligation would meet adopted planning policy

The policy framework set out above clearly relates to a different development plan to that in place at the time of the original and amended planning permissions. Nonetheless the principles of the policy framework in relation to this site remain similar, and policy 52 of the current adopted LDP requires all development to improve and promote accessibility and reduce the need to travel by car through, amongst other things, ensuring new development is well designed by providing appropriate access for pedestrians, cyclists, and vehicles.

The amendment of the Section 106 obligation to delete the requirement for a public footpath to the north of the site would therefore not fully meet the aims of this policy to provide appropriate access for pedestrians and to enable access to the site from the local villages by means other than the private car. It is therefore your officer's view that the original reasons for the planning obligation were clearly justified in policy terms, there has been no substantive change to policy that would now justify the modification of part of the obligation. As such the request on policy grounds must fail.

Whether the planning obligation continues to meet the requirements of Circular 13/97

As set out above, a planning obligation must meet a number of "tests". As set out in the policy section above, it is considered that the planning obligation was required on planning policy grounds and as such was relevant to planning. Furthermore it was directly related to the development in that the proposals continued to result in the loss of a network of public rights of way originating from the Esso Refinery and that the re-instatement of one of these was thus fairly and reasonably related in scale and kind to the proposed development and reasonable in all other respects. The new re-opening of this path also enhanced the quality of the development by providing a new public right of way to link Herbrandston to the golf course.

As such it is your officer's view that the obligation met the tests of Circular 13/97 and continues to do so and the amendment of the obligation to no longer require the re-opening of a public right of way would not be justified.

Other material considerations that would support the modification of the obligation

Whilst the obligation to re-instate a particular route has not been carried out, it is necessary to consider the other material considerations that have been presented in seeking to modify the original obligation. This is namely the provision of an alternative route.

While the shared use path (SUP) from Herbrandston to Hubberston is not the most direct route, it does provide a hard surface all weather path, segregated from vehicular traffic for access by pedestrians, cyclists, wheelchairs and buggies. A public footpath across agricultural land to the north of the development site would only have provided access for pedestrians and would have in essence been a country path, maintained with a natural surface.

Taking the starting point to be Herbrandston village green and the termination to be the public footpath road junction at the golf club near Hubberston, the comparative distances show that the SUP is 2.7km while the route that was identified through negotiations in respect of the Section 106 obligation is 2.1km. In addition, the provision of the SUP meets the requirements of policies 52 (referred to above) and policy 54 which encourages the provision of cycleways where, amongst other things, they have little environmental impact, fulfil a strategic or local need, contribute to road safety improvements, and provide improved opportunities for sustainable travel. It is considered that the SUP that has been provided results in a public benefit that exceeds the original obligation in that it serves a wider user group than the originally required public right of way that was essentially a country path.

As such, in this instance, it is considered that the multi-user benefits and higher standard of accessibility of the SUP outweigh the need to continue to pursue the reinstatement of an additional public footpath to the north of the development site and are sufficient justification to agree to the modification of the Section 106 obligation in this regard.

Conclusion

It is considered that the requirement to re-instate the public footpath to the north of the site continues to meet adopted planning policy and to meet the tests set out in Circular 13/97. However, it is considered that the material considerations in this instance whereby an alternative Shared User Path has been provided with financial contributions from SHLNG is sufficient to justify the removal of the requirement in the original Section 106 obligation as the need for a path has been met through a different means.

Recommendation

That the Section 106 obligation in respect of the South Hook LNG terminal be modified to remove the requirement to re-instate the public footpath to the north of the site.

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