

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

Date of Meeting	30 January 2013		
Application Number	12/03291/S106		
Site Address	55b High Street, Corsham, Wiltshire SN13 0EZ		
Proposal	Modification of Legal Agreement dated 15 th June 2004 (02/01962/FUL) relating to restrictions on Access and Use of Land and Buildings		
Applicant	Mr S Van Heijningen		
Town/Parish Council	Corsham Town Council		
Electoral Division	Corsham Pickwick & Rudloe	Unitary Member	Cllr Alan Macrae
Grid Ref	387241 170528		
Type of application	Modification/Discharge of Section 106 Agreement		
Case Officer	Chris Marsh	01249 706657	chris.marsh@wiltshire.gov.uk

Reason for the application being considered by Committee

The application has been called to Committee by Cllr Macrae, in order to consider the extent to which the Agreement continues to serve a useful planning purpose

1. Purpose of Report

To consider the above application and to recommend that the Section 106 Agreement be MODIFIED.

Corsham Town Council has raised no objection to the application. One letter has been received from a neighbour of the site, to the effect that no objection is raised provided that no alterations are made to the access arrangements to the flat to the rear of no.55 High Street.

2. Main Issues

The main issues in considering the application are:

- Impact on the privacy and amenity of existing neighbours and potential occupants (C3)
- Impact on highway safety (C3)

3. Site Description

The site is located on Corsham's historic High Street, accessible by car and within the Corsham Conservation Area. No.55b is a substantial end-of-terrace building comprised, like most of its neighbours, of a commercial unit at ground floor level with a flat above. In 2001, planning permission was initially granted for the conversion of a storage building to the rear of the property to a dwelling, and, later, for its wholesale replacement with the same (N/02/01962/FUL refers).

The building is accessed via a stone path to the North of 55b, across which there is also a right of access to the flat above the shop, leading to a paved courtyard of amenity space toward which the dwelling is orientated. The building itself is a modest, two-storey and two-bedroom property finished in natural rubble stone, with a pitched slate roof over. An access exists to the land to the rear, an area of which is currently leased by the owners and currently used as garden.

The 2003 permission was granted by the Planning Committee subject to a Section 106 Agreement establishing, after a minor variation soon after, that the dwelling should be owned and occupied in conjunction with the retail unit at 55b, that the owners shall not use any other land or buildings and that no access should be made from the dwelling to the adjacent land at Spring Gardens. At this time, the provisions were used to overcome amenity concerns and a highways objection.

4. Relevant Planning History		
Application Number	Proposal	Decision
N/05/02876/S106	Variation of Legal Agreement to Allow Occupation by Persons not Associated with Existing Commercial Premises	Void
N/02/01977/LBC	Demolition of Section of Brickwork Wall Adjoining No.57 High Street and Replacement with New Gable Wall of Proposed Dwelling	Permitted
N/02/01962/FUL	Erection of New Dwelling on the Site of Existing Structure	Permitted
N/02/01961/CAC	Demolition of Existing Single Storey Structure and Erection of New Dwelling to Meet Current Structural Regulations	Permitted
N/01/00330/FUL	Proposed Conversion of Outbuilding into Two Storey Dwelling	Permitted

An application has previously been made to lift the restriction on ownership only (N/05/02876/S106 refers); however the application was made void as it was submitted within five years of the date of the original Agreement, within which time it may not be modified or discharged.

5. Proposal

The application seeks to vary the substantive Section 106 Agreement, removing the provisions that the dwelling shall be owned and used exclusively in conjunction with the retail unit, and that no access shall be created to or use made of the adjacent land by the owners.

The applicant makes the case that the flat above the unit is already in separate ownership and bears a much closer physical and functional relationship, and that as the owners have a long-term interest in amenity land at Spring Gardens, the creation of a formal access and continued use would not cause any further harm.

The fallback position is that the leased land remains accessible to the owners of the property via a narrow space to the side of the building, although the use of and access to the land by the owners is presently unlawful. Whilst an opening has been made in the rear of the building to access said land, and it is understood that this has existed for some time, this is not a relevant consideration.

6. Consultations

Corsham Town Council – no objection

Highways Officer – objects on grounds of inadequate parking provision, and lack of capacity to accommodate suitable parking due to inadequate vehicular access.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

One letter has been received from a neighbour of the site, to the effect that no objection is raised provided that no alterations are made to the access arrangements to the flat to the rear of no.55 High Street.

8. Planning Considerations

The application is considered against the provisions of Section 106A (6) of the Town and Country Planning Act 1990 (Modification and discharge of planning obligations) stating that:

- (6) Where an application is made to an authority under subsection (3), the authority may determine—
- (a) that the planning obligation shall continue to have effect without modification;
 - (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

Impact on the privacy and amenity of existing neighbours and potential occupants

It is understood that the owners of the property have an established and long-term interest in the leased land to the rear of the dwelling, albeit an unlawful one if the land is used for purposes ancillary to the property. Account has been taken of the proximity of a series of dwellings at Smith's Yard to the West, some of which overlook the land, and the existing use of the adjoining land used in association with the properties at Spring Gardens.

Notwithstanding the existence of an unlawful opening in the building to said land, it is agreed that the material difference in terms of use – whether by the owners of 55b or of the properties at Spring Gardens – and amenity is negligible and that a lesser harm would be incurred by using the doorway, rather than circumnavigating the building. This element of the application is therefore considered reasonable, and it is recommended that the Agreement is varied to this effect.

Impact on highway safety

It is considered that the creation of, in effect, a wholly separate dwelling by the lifting of the tie to the retail unit would be unacceptable, owing primarily to the implications in terms of parking. A dwelling of this size requires an off-street parking provision of two spaces in accordance with Policy T3 of the adopted North Wiltshire Local Plan 2011, whilst the dwelling in question has no such parking provision. Further, the potential for separate ownership and use of the retail unit and dwelling could have a duplicated effect of residents travelling away from the site to their place of work and likewise the owners/operators of the shop travelling in from elsewhere.

The highways implications are therefore sufficient to warrant a planning objection in respect of the proposal - noting that an objection on the same grounds was only overcome in the first instance by the extant S106 Agreement - and it can therefore be ascertained that the current S106 provision in this regard continues to serve a useful planning purpose. The Highways Officer has visited the site and usefully added that the existing side access to the property is not considered adequate to provide vehicular access, so that the Authority would not support the creation of parking on site.

Conclusion

In summary, it is considered that the Agreement should be modified to continue to prevent the separate sale of the dwelling and commercial premises, on highways grounds, and to discharge the provisions relating to access onto adjoining land and use of any other land.

9. Recommendation

The Section 106 Agreement be varied to the following effect:

That the following sections be removed:

- b) the Owner will not cause or permit any pedestrian access to be formed by opening in the Dwelling onto any adjoining land whatsoever except by openings onto the Commercial Premises

- c) the Owner will not cause or permit any use to be made by the occupiers for the time being of the Dwelling of any land except the Dwelling and the Commercial Premises

And the following section remain:

- a) the Owner will not cause or permit the Dwelling to be used except by the occupiers for the time being of and wholly in conjunction with the Commercial Premises

For the following reason:

The creation of a rear access to and use of the land at Spring Gardens as residential amenity space to the building known as 55b High Street would not result in the significant loss of residential amenity, in accordance with Policy C3 of the adopted North Wiltshire Local Plan 2011. The Section 106 Agreement should therefore be modified by the discharge of covenants (b) and (c).

The creation of a wholly separate dwelling would give rise to an unacceptable lack of allocated parking provision to both the dwelling and retail unit, contrary to Policy C3 of the adopted North Wiltshire Local Plan 2011, such that covenant (a) of the Section 106 Agreement continues to serve a useful planning purpose and therefore the application to modify the Agreement in this respect should be refused.

