

REPORT OUTLINE FOR AREA PLANNING COMMITTEES Report No.

Date of Meeting	4 th February 2021
Application Number	20/05658/106
Site Address	Coldharbour Barn, High Street, Pitton SP5 1DQ
Proposal	Discharge of S106 Agreement dated 15 th March 2005 under S/2004/1131 in respect of public meeting area
Applicant	Mr & Mrs. Inman
Town/Parish Council	Pitton and Farley Parish Council
Electoral Division	Cllr Christopher Devine
Grid Ref	
Type of application	106
Case Officer	Mrs. Becky Jones

Reason for the application being considered by Committee

Cllr Devine has called the application to committee to be determined if recommended for approval (to remove the S106 Agreement) by officers, on the following grounds:

- to consider the need for the public meeting area in the village centre and the local interest in the application

1. Purpose of Report

To consider the above application and the recommendation of the Area Development Manager that the application to remove/discharge the legal agreement should be APPROVED for the reasons detailed below.

2. Report Summary

The main issues which are considered to be material in the determination of this application are listed below:

1. Planning history and reasons for the S106 Agreement under S/2004/1131
2. Purpose of planning agreements (or obligations) and “useful” purpose
3. Highway & pedestrian safety and visibility splay
4. Public open space provision (Policy R2)
5. The planning balance

The application generated 3 letters of objection (including legal representation and a final statement) from Pitton and Farley Parish Council on the grounds that the public open space is still wanted, useful and necessary. 9 letters of support and 10 letters of objection.

3. Site Description

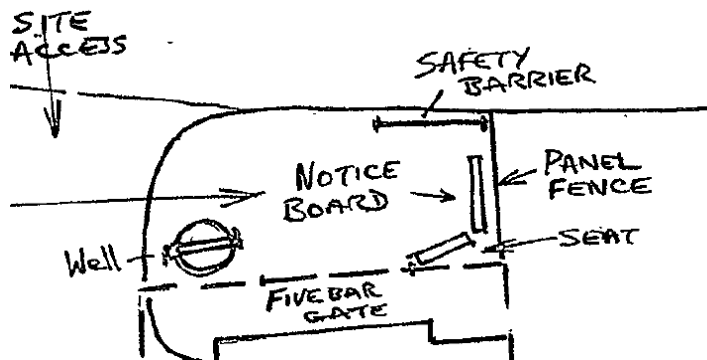
The site comprises a partially enclosed, paved open space in front of a residential dwelling known as the Black Barn. The site lies opposite the Post Office and village shop on the High Street of Pitton.

A Section 106 Agreement identifies the area as a “Public Meeting Area.” The site lies within the Conservation Area. Coldharbour Farmhouse and its outbuilding to the south west of the dwelling are Grade II listed. High Street is an adopted Class C highway and the

site lies within Flood Zone 3.



Approved Amended Site Plan layout approval dated 23 March 2005:



4. The Proposal

The applicant is seeking to remove the Section 106 Agreement (or planning obligation) under S/2004/1131 tying the occupiers of the Black Barn development to retain the use of the site as a public meeting area. They wish to bring the area back within their residential curtilage. The applicant has set out *their* reasons for the application. Primarily, *they* are concerned about having to take on the public liability that may be associated with them in allowing the installation of a notice board on their land, and attracting members of the public onto the private land which is (in their view) in a location considered to be dangerous for pedestrians and highway safety.

6. Planning Policy

The following planning policies are considered to be relevant to the determination of this application:

National Planning Policy Framework (NPPF 2019) and National Planning Practice Guidance

NPPG Guidance on Planning Obligations

Section 106A(6) of the Town and Country Planning Act 1990
(Modification and discharge of planning obligations and useful purpose)

Wiltshire Core Strategy (WCS) adopted Jan 2015:

- CP60: Sustainable Transport
- CP61: Transport and Development
- Saved Policy R2 (annexe D of WCS) Public Open Space Contributions
- Saved Policy R5 (annexe D of WCS) Loss of Public Open Space

Draft Southern Wiltshire Area Board Profile Documents from the Wiltshire Open Space Assessment 2020 study

6. Consultations

WC Conservation - No comment

Highways – No objection to the removal of the legal agreement. Planning condition for the visibility splay would be retained.

Open Spaces – the draft Wiltshire Open Space Assessment leans towards there being sufficient recreation space in Pitton and Farley.

7. Publicity

The application was advertised by site notice and neighbour consultation.

9 letters **supporting** the removal of the S106 Agreement were received on the following grounds:

- Site is inaccessible and dangerous due to traffic when crossing from the shop. Poor visibility of space to approaching traffic.
- Space is pointless and purposeless, notice board has gone and is unsuitably located
- Area has not been maintained for sightlines
- The legal agreement does not require the owners to install a notice board or bench on the site
- Area is not well used and to enter it would feel like trespassing into Coldharbour Barn's garden
- Pitton has other, better and safer meeting areas. Eg bus shelter at the crossroads; the bottom of the footpath leading from the High Street up to the Close and the children's play area or; outside the village hall. These have off road areas where notices can safely be viewed and none require individuals to cross the road at such a dangerous point.
- Notice board was moved to the shop before its recent removal.
- Present occupiers were not party to the legal agreement process.

10 letters **objecting** to the removal of the S106 Agreement were received on the following grounds:

- Public meeting area should be completed (bench and notice board) and retained for its original purpose. It is used and the fence makes it safe for pedestrians
- Proposal to remove the public meeting area goes against Parish Council's intentions
- No traffic accidents have occurred at the site. It is a safe refuge at the centre of the village opposite the village shop
- Other public areas are less safe / accessible (eg playpark, bus shelter and village hall)
- Permission for the public meeting area is tied to the permission for the dwelling
- Well was lost as part of the development and was useful flood risk measure
- The old Black Barn was a popular location for local information and obtaining measurements for flood warnings
- Informal use as a bus drop off
- No pavements so this is a safe place to cross to the shop in busy times

8. Planning Considerations

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. (Section 70(2) of the Town and Country planning Act and Section 38(6) of the Planning and Compensation Act 2004). The NPPF is also a significant material consideration and due weight should be given to the relevant policies in existing plans according to their degree of consistency of the framework.

8.1 Planning History and reasons for the S106 Agreement under S/2004/1131

Planning permission was granted for S/2004/1131 by the Southern Area Planning Committee. The application sought to demolish a building known locally as the "Old Black Barn" and to replace it with a new dwelling now known as the Black Barn.

The Old Black Barn had a pair of barn doors opening onto High Street which had been used over the years for the display of notices and posters for local information. The development proposals sought to push the new dwelling back into the site away from the road frontage and provide, in front of the new dwelling, a "public meeting area" and to accommodate the existing well which served a useful flooding prediction purpose.

Officers recommended the application for refusal on the grounds of highway safety and inadequate visibility. However, Members undertook a site visit and subsequently approved the application subject to a Section 106 Agreement which achieved two matters:

Firstly, to secure a financial contribution (commuted sum) towards the cost of the Council and Pitton Parish Council (or a Parish adjoining Pitton Parish Council) of providing/improving and/or maintaining adult or children's sport, play or recreation facilities or installing or maintaining equipment in connection with such facilities on land certified by the Heads of the services. This was a standard clause at the time under policy R2 of the Plan for all new dwellings.

The second part of the legal agreement sought the following:

7. The Owner covenants with the Council at his own expense to clear and keep the Public Meeting Area available for public use by members of the public at all times upon completion of the Proposed Development PROVIDED ALWAYS IT IS HEREBY AGREED AND DECLARED that the Owner will at all times be responsible for maintenance of the Public Meeting Area and PROVIDED FURTHER that the Council shall have no responsibility whatsoever for the Public Meeting Area
8. The Council and the Owner agree that the actual area of the Public Meeting Area may be adjusted so as to reduce its size by adjusting the south eastern boundary being the boundary marked 'A' and 'B' on the said plan attached hereto so as to produce a space of up to 1.5 metres between the proposed house and the public meeting area PROVIDED ALWAYS that such adjustment shall be by agreement in writing with the Council's Head of Development Services

The above clauses and requirements are the matters subject of this application.

The content of the Planning Permission

A notice board, bench and timber guard rail were shown on the amended plan approved on the date of the decision notice (23/3/05). The application was also approved subject to conditions including the ongoing maintenance and provision of a visibility splay across the site frontage.

The decision notice states that:

“In pursuance of its powers under the above act and in accordance with the terms of the application reference S/2004/1131 dated 18/05/2004 and the plans and particulars submitted therewith, Salisbury District Council hereby grant permission.....”

Consequently, officers consider that the planning application and other evidence were incorporated within the planning permission and that the amended plan forms part of the permission.

The development undertaken on site

In due course following the issuing of permission, the previous barn was removed, and the new dwelling was provided. As the development proceeded, the historic well was regrettably filled in and replaced with a faux well. The “public meeting area” was provided, surfaced and enclosed by a timber guard rail to provide pedestrian safety and its layout appears to be in accordance with the approved amended plan with the measurements being well within the tolerance of Clause 8.

The bench and notice board were not installed. However, as there are no conditions or terms in the S106 requiring their installation, the installation of such equipment cannot be enforced. Further, as the amended site plan approved was not annexed to the S106 Agreement, it does not form part of the S106 obligations.

Furthermore, no arrangements were included within the S106 for the space to pass to the Parish Council and out of the owners' control or ownership. Ownership has since passed forward to the present applicant and their consent as landowner is required for any further installations on the land pursuant to any planning permission (or advertisement consent for the notice board) that may or may not be required.

Legal issues between the parties

The applicant has submitted a number of statutory declarations and two legal statements by Trethowans. The latter document looks at the legality of the S106 Agreement and the status of several approved plans. The applicants case is essentially that the S106 requirements no longer serve a useful purpose, and that even if it did, the S106 does not require the public notice to be provided.

In contrast, the Parish Council has also submitted a legal statement by Parker Bullen which questions the maintenance of the meeting area and encroachment by the hedge into the space and sets out the arguments in favour of retaining the meeting area within the village. The Parish Council has also submitted a response to the Trethowan's legal statement in response to the objections and a final statement in response to the applicant.

The need for further consents

The need for further planning permission to be obtained for a notice board has been considered. In fact, the notice board is likely to be considered an advertisement under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and an application would need to be made by the Parish Council for consent to erect it on the land. Consent from the landowner to display the advertisement would be required and, it is understood, unlikely to be forthcoming.

Local need for the facilities

Members will see from the third party representations received for this application that the issue has become blurred with non-planning (but nevertheless important) local issues and debate about the provision of a central public meeting space, bench and notice board in the village. The representations are roughly split, with half of the respondents purporting that the space is used, safe, necessary and should be "completed" with the provision of a bench and replacement notice board for villagers. The other half of respondents argue that the site is never used, dangerous for pedestrian access due to traffic in High Street and that there are alternative, better and safer locations within the village for the notice board and meeting places.

8.2 Purpose of Planning Agreements (or Obligations) and "useful" purpose

The NPPG sets out that planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the statutory tests that they are necessary to make the development acceptable in planning terms. They must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Planning obligations assist in mitigating the impact of development which benefits local communities

and supports the provision of local infrastructure. Local communities should be involved in the setting of policies for contributions expected from development.

The applicant has applied to discharge (or remove) the S106 Agreement. With specific reference to the renegotiation of a S106 Agreement, para 020 of the NPPG provides:

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see [section 106A of the Town and Country Planning Act 1990](#)).

Section 106A(6) of the 1990 Act states:

(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.

Therefore, in determining this application, the relevant test for Members to consider is whether the legal agreement still **serves a useful purpose** or not.

Whether or not a planning obligation serves a useful purpose, or would do so equally well if modified, does not require that the useful purpose is related directly to the underlying development or its mitigation. It may also follow that the purpose now served by an obligation may be a different one from that intended to be served when the planning obligation was entered. It is clear to officers from case law that Members are able to consider a broader range of purposes than just the provision of amenity open space when considering whether the planning obligation serves a useful purpose, potentially some of those suggested by the Parish Council in paragraph 11 of Parker Bullen’s Statement, such as a “safe place” into which to step when vehicles pass or in flood conditions or to assist with the social distancing of members of the public queuing for the Post Office.

There is no particular need to revisit the planning merits of the underlying development and s.38(6) of the 2004 Act (determination to be made in accordance with the development plan) does not apply to a decision to discharge or modify a Planning Agreement.

Therefore, Members are advised to focus on addressing the specific requirements of s.106A(6) and may determine this application by:

- Refusing the request and the S106 remains in force
- Discharging it; if it no longer serves any useful purpose or
- Modifying it; if the obligation would serve an equally useful purpose with the modifications sought.

Officers consider that there are several “useful purposes” for the public meeting area for Members to consider, namely highway and pedestrian safety, the visibility splay across the space, and the original financial contribution for public open space provision under Policy R2.

8.3 Highway and Pedestrian Safety and Visibility Splay

At the time of the 2004 application, the highway officer recommended refusal of the application on safety grounds and had particular concerns regarding the safety of the public meeting area. He stated:

Whilst it is acknowledged that the proposed development will result in improved visibility at the site access, visibility will still fall short of the laid-down standards. I therefore recommend that this application be refused on highway grounds for the following reason:-

The site has insufficient frontage to the north-east to enable the access to be satisfactorily laid-out incorporating the necessary visibility splay which is essential in the interests of highway safety.

If, notwithstanding the above, your Council are minded to approve this application then visibility should be provided at the access with nothing over 1.0m in height above the adjacent carriageway level being planted, erected or maintained in front of a line measured 2.0m into the access back from the carriageway edge, extending to the north-east corner of the site frontage. I am particularly concerned that the layout of the meeting area as submitted, may lead to pedestrians stepping into the carriageway at its north-eastern corner at a point where intervisibility between pedestrians/drivers is virtually nil. Notwithstanding my visibility requirements above, I consider that a section of high visibility pedestrian guard rail should be installed at this point in the event of planning permission being granted and I shall be glad to provide details if required.

The highways officer has assessed this application. He stated:

I note the proposal seeks to confirm that the obligations within the S.106 Agreement dated 15th March 2005 for application S/2004/1131 have been complied with/discharged and presumably to allow the land charge to be removed from the register.

I do not think the discharge of the clauses in respect of the public meeting area will cause a highway safety issue, as the concerns regarding visibility at the site access are mitigated by Condition 2 of the consent (see below). Additionally, concerns regarding pedestrian safety are also mitigated by the Condition 3 of the consent (also below). Therefore, I do not believe that discharge of the S.106 Agreement will cause an issue in Highway terms.

(2) Before the dwelling hereby approved is first occupied, visibility shall be provided at the access with nothing over 1metre in height above the adjacent carriageway level, being planted, erected or maintained in front of a line measured 2.0m into the access back from the carriageway edge, extending to the northeast corner of the site frontage.

(3) A pedestrian guard rail (timber) shall be installed adjacent to the highway and the "public meeting area" in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and maintained in this condition hereafter.

NOTE: It should be noted that this Highway Authority has raised concerns on more than one occasion about the substandard visibility at the site access. Any proposed discharge of the said Agreement must not affect the restrictions/conditions placed on this development in regards to vehicle and pedestrian visibility.

The applicant considered this response and submitted a Technical Note, which disagreed that the conditions satisfactorily dealt with the safety matters and agreed that visibility for people trying to cross the road at this point is inadequate, for the following reasons:

- No safety audit has ever been undertaken
- Potential conflict between pedestrians and reversing cars using the parking area at the front of the shop and also the No 87 bus.

- Pedestrians have to step out into the carriageway to cross from the meeting area.
- There is an existing hedge to the north east, outside the adjoining property which severely restricts the ability for pedestrians stepping out into the carriageway to see, or be seen by oncoming vehicles. Ordinarily pedestrian intervisibility splays of 2.0m are provided at accesses onto pedestrian footways, but in the absence of a footway, there is very limited visibility.
- Advice contained within Manual for Streets suggests that a sight stopping distance of 43.0m should be provided on a road of this nature. Given the limited site frontage, combined with the lack of any pedestrian footway a sight stopping distance of just some 3.0m is achievable
- It is also evident that there is no dropped crossing or the presence of any tactile paving, which is advocated by Manual for Streets to aid those with mobility impairments.
- The lack of any street lighting within the vicinity of the meeting area also makes exiting the area more dangerous during periods of darkness, or through Winter months.

The highways officer looked at the Technical Report and reiterated his comments:

*As mentioned previously, I have no objection to the discharge of the 106 Agreement obligation related to the public meeting area. **The removal of the public meeting area will be of benefit to highway safety.***

However, it is imperative for reasons of highway safety that condition 2 below remains on the consent, to ensure that the maximum visibility is maintained at the site vehicular access. It appears from the photos provided in the attached that the applicant may actually already be in breach of this condition, due to the tall vegetation circled in the below image. It is however not possible to confirm whether this vegetation is within 2m of the carriageway edge, without viewing on site.

Despite this, I am mindful that this application only seeks to remove the public meeting area obligation and I have no issue with this proposal.

The applicant subsequently confirmed that the nearest edge of the bush is 2.4m from the highway's edge and so there is no breach of the condition that seeks to protect the visibility splay for vehicles.

In considering the application to remove the S106 Agreement and the meeting area from accessible public use, officers are mindful of the previous decision taken by Members to approve the development in 2004 and also the many views recently expressed by residents and the Parish Council. Nevertheless, the point has also been made by some third parties that by providing a notice board and bench on this site, and thus actively encouraging more people to use the space and cross to and from the shop, the *likelihood* of an accident may be increased.

The highways officer therefore supports the removal of the S106 on highway safety grounds and it may be concluded that the Legal agreement does not serve a useful purpose in this respect.

8.4 Public Open Space Provision and Financial Contribution

The first clause in the Legal Agreement required the financial contribution towards open space provision and maintenance under saved Policy R2. This sum was received and the 5 year deadline for any repayment of this sum has long passed. Therefore, it can be concluded that the legal agreement no longer serves a useful purpose in this respect.

The second part of the Legal Agreement relates to the provision and maintenance of the public meeting area and this was imposed as an additional requirement for the development, over and above the

standard financial contribution under saved Policy R2. This policy provides for additional amenity space and landscaped areas and states:

New residential development will be required to make provision for recreational open space (comprising facilities for communal outdoor sport and children's play) in accordance with a standard of 2.43 hectares per 1000 population. Additional amenity open space (including landscaped areas, public gardens and roadside verges) will be sought as appropriate.

The site constitutes a public meeting area on privately owned and controlled land, and was considered by Members at the time to meet the three tests, namely:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The land is retained by the Legal Agreement for public use and owner is lawfully required to enable the use of the public meeting area in accordance with the S106 Agreement.

It would seem given the application to remove the S106, that 15 years later, the land owner no longer wishes to be party to this arrangement or to provide their agreement to any further installations on the land which would encourage or increase public access or to accept responsibility for any public liabilities associated with the use.

The main formal public open space within the village is Pitton Village Hall Playing Field managed by the trustees of the hall and is used by a number of village clubs. There is also the play area situated between High Street and The Green, accessed by footpath PIFA16:



The open spaces team have considered the draft Southern Wiltshire Area Board Profile Documents from the Wiltshire Open Space Assessment 2020 study. This draft study which includes Pitton and Farley Parish leans towards there being sufficient recreation space.

Consequently, in land use Planning terms related to policy R2, there would appear to be no justification for this additional area of public open space.

However, if Members may feel that the public meeting area is still serving a useful purpose within the village today, as a pedestrian refuge, informal bus stop, and a safe place from vehicles despite the highway concerns and the prohibitive restrictions of private ownership and control. Therefore, removal of the Section 106 Agreement can be resisted if Members feel that there is still a need for this public

meeting area and there is no better, alternative open space provision in Pitton for this purpose, or that there is an under-provision of such space in the village, or that the meeting area fulfils some other useful purpose.

9. Conclusion

Following legal advice, officers have no objections to the removal of the S106 agreement for the following reasons:

The Agreement – The present Agreement and permission do not contain provisions for the land to be transferred to the Parish Council, or to provide the public notice board. Thus, the land remains in private hands and there is no requirement for the landowner to erect a notice board.

Highway safety - The 2004 application for the Black Barn was approved contrary to the safety recommendation of the highways team at that time, following a site visit by Members. However, no safety audit was undertaken then and the highways team continue to raise concern about the use of the space as a public meeting area on restricted visibility grounds and consider that the removal of the public meeting area will be ***of benefit to highway safety***.

Open space - The adopted Policy R2 of the WCS seeks to secure a financial contribution towards open space provision as part of new development and the provision of amenity or landscaped areas as part of new residential development. Given that the financial contribution was paid and the deadline for repayment is long expired, the Legal Agreement no longer serves a useful purpose in this matter. The Council's open space officer has also confirmed that the public space in front of the barn is not required for that purpose.

Therefore, whilst an area of open space for the purposes of community meeting within the village is still welcomed and is likely to be valued by many residents and the Parish Council, the planning balance is tilted, in officers' views, by the safety concerns of any increased use of the meeting area for use by pedestrians, due to the restricted visibility outlined in the Technical Report. In officers' views, these concerns outweigh any useful purpose that the privately owned and controlled land may serve.

Therefore, officers raise no objection to the removal of the Section 106 Agreement and the return of the land to private domestic use only. The site would still be subject to the visibility splay condition attached to S/2004/1131 for highway safety purposes.

10. RECOMMENDATION

The application should be APPROVED and the Section 106 Agreement should be discharged.