

**CHERWELL DISTRICT COUNCIL**

**PLANNING COMMITTEE**

**12 MARCH 2008**

**REPORT OF THE HEAD OF DEVELOPMENT CONTROL AND MAJOR DEVELOPMENTS**

**DISCHARGING OF S106 AGREEMENT YELLOWELL HOUSE, HORTON LANE, HORLEY**

**1 Introduction and Purpose of Report**

- 1.1 To inform Members that a request to rescind or discharge an existing S106 Agreement has been received, following the granting of consent (08/02398/F - delegated) for the erection of a house and dwelling at the above site.

**2 Wards Affected**

- 2.1 Wroxton

**3 Effect on Policy**

- 3.1 Horley is a Category-2 settlement as designated in the adopted Cherwell Local Plan which restricts residential development to infilling or environment improvement under Policy H14. The construction of a dwelling on the land in question is minor development on previously developed land within the built up limits of the village that does not harm the character or appearance of the locality and does not seriously harm the amenities of the neighbouring properties. The development therefore complies with Policy G2 of the Oxfordshire Structure Plan 2016 and C28, C30 and C14 of the adopted Cherwell Local Plan.

**4 Contact Officer(s)**

- 4.1 Tracey Morrissey (Ext 1812).

**5 Background**

- 5.1 The site and the whole grounds of Yellowell House, has a long history dating back to 1986, when originally under application CHN.76/86, one dwelling (known as Gracombe House) was granted consent. A legal agreement however was made that restricted the construction of further development within the grounds to just that of the one dwelling, Gracombe House.
- 5.2 Then in 1993 under application CHN.247/93, an appeal decision allowed a further dwelling, within the grounds immediately to the south of Yellowell House. The consent has been renewed every 5 years with the legal agreement being varied each time, until this latest consent under application 08/02398/F.
- 5.3 It would appear that the original intention of the legal agreement was to retain the open spacious character of this part of the village and to try to ensure that the site is not developed by more than one dwelling other than Gracombe House. However, by granting

the planning permission under CHN.247/93 at the appeal, the Inspector allowed a dwelling to be constructed, contrary to the original intention of the legal agreement.

- 5.4 Having considered the planning history and the merits of the legal agreement it actually appears to serve no planning purpose whatsoever. It is therefore recommended that instead of varying the S106 Agreement, it should be completely discharged as it no longer serves a planning benefit.
- 5.5 Should the applicant seek further development of the site other than that permitted, then the merits of the case would be considered against the relevant development plan policies.

## **6 Risk Assessment, Financial Effects and Contributions to Efficiency Savings**

- 6.1 Risk assessment agreed by Rosemary Watts (Ext 1566).  
If the Council refuses to agree to vary or discharge the S106, the matter could be subject to an appeal and if it is considered that the Council have behaved unreasonably by refusing to agree to this variation or discharging, costs could be made against it.
- 6.2 Financial effects approved by Eric Meadows (Group Accountant) (Ext 1552)  
The cost of discharging the legal agreement will be borne by the applicants.
- 6.3 Efficiency savings – None

## **7 Recommendation**

- 7.1 It is recommended

That the Planning Committee resolves to discharge the S106 Agreement which no longer serves a planning benefit.

Background Papers:

- (a) Application files 08/02398/F, 03/01767/F, 98/01918/F, CHN.247/93, CHN.76/86