

Planning Committee

Discharging of S106 Agreement at Dingers Cottage, The Dickredge, Steeple Aston

4 November 2010

Report of Strategic Director Planning, Housing and Economy

PURPOSE OF REPORT

To seek the discharge of S106 Agreement in order that the original cottage and the residential accommodation/annex development can be used separately and independently rather than be restricted to family use.

This report is public

Recommendations

The meeting is recommended:

- (1) To confirm the discharge of the S106 Agreement

Executive Summary

Introduction

- 1.1 Planning permission was granted for the construction of a "single storey side extension, rebuild rear extension, double garage with storeroom and residential accommodation to rear" at Dingers Cottage in 1999 under application 99/00925/F. To date only the garage and residential accommodation (annex) have been constructed.
- 1.2 The 1999 consent was subject to a S106 legal agreement that effectively restricted the use of the cottage and residential accommodation/annex to family use only, and until recently this has been the case with the exception of the cottage being used by a family friend for approx. 10 months in 2005/06.
- 1.3 The one bedroom annex was originally constructed to accommodate the applicants' elderly mother who owned Dingers Cottage. Upon completion of the garage and annex, the applicants' mother moved into the annex and the applicant moved into Dingers Cottage and thereafter cared for his elderly mother until her death in 2003. The annex then remained unoccupied for

about 2 years, whilst refurbishment works were undertaken.

- 1.4 The applicant then moved into the annex to allow refurbishment works to be undertaken to Dingers Cottage and has remained in the annex ever since. With the exception of the family friend staying in Dingers Cottage for 10 months in 2005, the cottage has been occupied by family members on and off, until the beginning of 2010. Since then the cottage had remained empty, until recently, whereby it is now being occupied by an elderly family friend, who was potentially homeless.
- 1.5 By allowing this friend (Mrs Lester-George) to occupy Dingers Cottage, the applicant is currently in breach of the S106 Agreement.

Proposals

- 1.6 In order to regularise the occupancy the applicant has applied to discharge the legal agreement to allow both the annex and Dingers Cottage to be occupied independently and separately and not just restricted to family use.
- 1.7 The applicant has applied for the planning obligation to be discharged. No modifications are proposed short of a full discharge. The question to be asked in determining whether to discharge the obligation is whether it continues to serve a useful purpose. If it no longer serves a useful purpose it shall be discharged.
- 1.8 **The current obligation** reads as follows:

The Owner (and successors in title and assign hereby covenants and undertakes with the Council that she:

- a) shall not erect or create or cause or permit to be erected or created any dwelling on the Land other than the existing dwelling known as Dingers Cottage and the Development.
- b) shall not use or occupy the Development or cause or permit the Development to be used or occupied for any purpose other than as a garage and for residential use ancillary to the existing dwelling known as Dingers Cottage, The Dickredge, Steeple Aston by the Owner
- c) shall, on ceasing to occupy the Land, ensure that that part of the Development comprising the living accommodation adjoining the garage be converted into a garden store/sun room for use solely in connection with the Land by the owners of the Land.
- d) Shall not convert the Development to provide additional living accommodation
- e) Shall not sell, let or occupy the Development or cause or permit the Development to be sold, let or occupied independently of the existing

dwelling known as Dingers Cottage, The Dickredge, Steeple Aston.

- f) Shall not sell, let or occupy the existing dwelling known as Dingers Cottage, The Dickredge, Steeple Aston or cause or permit the said existing dwelling to be sold let or occupied independently of the Development.
- g) Shall not claim any compensation in respect of any other provisions hereof
- h) Shall forthwith on completion of this Deed of Agreement pay to the Council its legal costs of and in connection with this Deed of Agreement.

1.9 **What purpose does this fulfil?** The legal agreement was originally set up to prevent the separate and independent use of the annex for the following reasons:

- Highway safety: Oxfordshire County Council as local highway authority had concerns about the intensification of traffic using The Dickredge, as it is a narrow road, that lacks a turning facility and footway and its junction with the Heyford Road is also substandard. Traffic generated as a product of the separate use would result in further hazard and would be detrimental to the safety of other road users.
- The physical relationship with the pattern of development on the north-western side of the Dickredge in the context of a separate dwelling is poor.

1.10 Does it continue to serve a **useful purpose?** S106A (6) provides that an authority which receives an application for modification or discharge of a planning obligation may determine it by refusing it; or, if the obligation no longer serves a useful purpose, by discharging it; or, if the obligation continues to serve a useful purpose but would serve that purpose equally well with the modifications specified by the applicant, by consenting to the modifications sought. The Secretary of State considers that the expression "no longer serves any useful purpose" should be understood in land use planning terms. (Circular 05/2005 A20)

1.11 As set out in 1.9 above, Oxfordshire County Council as local highway authority had concerns about the independent use of the annex and cottage during the consideration of the 1999 application. However, as part of the consultation for this current application to discharge the legal agreement, the following comments were made:

1.12 "No objection subject to two no. parking parking spaces for each unit. Due regard has been given to the present use of the annex, its history and location. It is considered that in view of the recent history and location, it is unreasonable to recommend other than approval subject to conditions".

1.13 The Parish Council have raised an objection to the application on the following grounds:

"Concerned that the amount of parking normally on the site may well indicate a used car business being carried out from the property. Please take note of neighbours' comments. The original application in which S106 was agreed

we felt was necessary at the time and whilst we have no objection to the family use being removed, the property should be kept under one ownership. Parking and access on the road is a continuing issue. Vehicles owned by the owners of this property are frequently parked in other residents spaces”.

- 1.14 Given the response from the County Council and notwithstanding the comments made by the Parish Council it is considered that should this application be refused on highway grounds, the reasoning of such would not be supported by the local highway authority and therefore I do not consider that any reason to refuse the application in this regard could be sustained at appeal.
- 1.15 In respect of the second reason for the legal agreement, this is more subjective. Essentially a dwelling has been created in the garden of a 3 no. bedroom cottage. Impact on neighbouring residential amenity, parking provision and amenity space are factors to consider, when considering the acceptability of such a development.
- 1.16 Essentially the resultant amenity space for Dingers Cottage would be a small courtyard that would be enclosed for privacy. The annex accommodation in turn would have a large garden area and access to the annex would be past the side and rear of Dingers Cottage. Whilst this garden size arrangement is not ideal, and not particularly commensurate with the size of the two units, it could be said that not everyone desires a large garden and therefore a small courtyard would be welcomed by some.
- 1.17 The garage/annex has an external staircase and small balcony on the north-eastern elevation that would potentially overlook the amenity area and rear of Dingers Cottage.
- 1.18 The majority of the windows in the annex accommodation are on the north-eastern and northern elevations but it is considered that none of these will directly overlook Dingers Cottage or the other neighbour at The Cottage. No letters of representation have been received from any neighbour.
- 1.19 Whilst there were concerns about the relationship of the annex accommodation and Dingers Cottage and the surrounding pattern of development from an amenity and form and character perspective, it is considered that essentially, the harm is relatively minor and whilst the site is within a Conservation Area, the building already exists, its residential use would continue and therefore on balance the relationship is considered acceptable in this particular case.
- 1.20 The applicant has provided an indicative plan demonstrating that parking provision could be provided for both dwellings along with bin storage areas, fencing and amenity areas.
- 1.21 However, Members are advised that by confirming the discharge of this planning obligation no conditions could be imposed restricting permitted development rights and securing the provision of 2 no. parking spaces suggested by the local highway authority. Also the applicant could continue to construct the extensions to Dingers Cottage that were approved under the 1999 consent.

Conclusion

- 1.22 Taking into account the above assessment and history relative to this site, it is considered that the S106 no longer serves a useful purpose and it is therefore recommended that Members confirm the discharge of the entire obligation detailed in the covenants at paragraph 1.8 which will allow the two units to be sold, let or occupied separately and independently.

Background Information

- 2.1 S106A of Town and Country Planning Act 1990 as substituted by S12 Planning and Compensation Act 1991
- 2.2 Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004
- 2.3 Circular 05/2005 : Planning Obligations
- 2.4 SI 1992 no. 2832 The Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulations 1992

Key Issues for Consideration/Reasons for Decision and Options

None

Consultations

The application has been advertised by way of a site notice, press notice and neighbour notification

[Consultee] Oxfordshire County Council as Local Highway Authority – see paragraphs 1.11 and 1.12

[Consultee] Steeple Aston Parish Council - see paragraph 1.13

[Consultee] Strategic Housing Officer - Whilst this is not strictly one for affordable housing, this has come to our attention due to the need to utilise empty properties wherever possible to meet housing need. Whilst I understand that there is a need to restrict highways access to the property it does not seem to me this is achieved by restricting use to family members only. I understand there is a prospective tenant for the property who does not drive and whose family are already living in the village and who is potentially homeless and it seems in commonsense terms entirely reasonable she should be allowed to rent the property.

I would be grateful if you could consider amending the restriction to allow this woman to occupy. If not there is a danger that she will present as homeless causing increased cost to the Council in prevention or placement work.

Implications

Financial: The cost of discharging the legal agreement will be borne by the applicants. There are no direct financial implications from discharging the legal agreement.

Comments checked by Joanne Kaye, Service Accountant
PHE 01295 221545

Legal: This is an application to modify or discharge a planning obligation pursuant to section 106A Town and Country Planning Act 1990. Section 106A(6) gives the local planning authority the power to determine this application.

Comments checked by Ross Chambers, Solicitor 01295
221690

Risk Management: If the Council refuses to agree to 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 its discharging, costs could be made against it.

Comments checked by Rosemary Watts, Risk
Management & Insurance Officer, 01295 221566

Wards Affected

The Astons and the Heyfords

Document Information

Appendix No	Title
Appendix 1	site location plan
Background Papers	
99/00925/F – approved 5 th October 1999	
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