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Date: 19th June 2023

Development Control
Wiltshire Council
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Sir/ Madam,

RE: DISCHARGE OF SECTION 106 AGREEMENT DATED 2ND AUGUST 2012 UNDER PLANNING PERMISSION W/11/0217/FUL

AT: TUDOR COTTAGE, 14 HIGH STREET, BULKINGTON, WILTSHIRE, SN10 1SJ

We write on behalf of our clients, Mr and Mrs Difford, to support their application to remove (discharge) the legal agreement dated 2nd August 2012 under planning permission W/11/0217/FUL. This application to discharge the planning agreement follows the approval of planning application PL/2023/02173 on the 31st May 2023 at the application site for the change of use of the residential annex to independent residential use.

The proposals concern a building providing annexed accommodation for Tudor Cottage on the High Street in Bulkington. Unusually, the annex is positioned some 30m to the west of Tudor Cottage, with the two units of accommodation physically separated by 18 High Street and the detached garage associated with no.18.

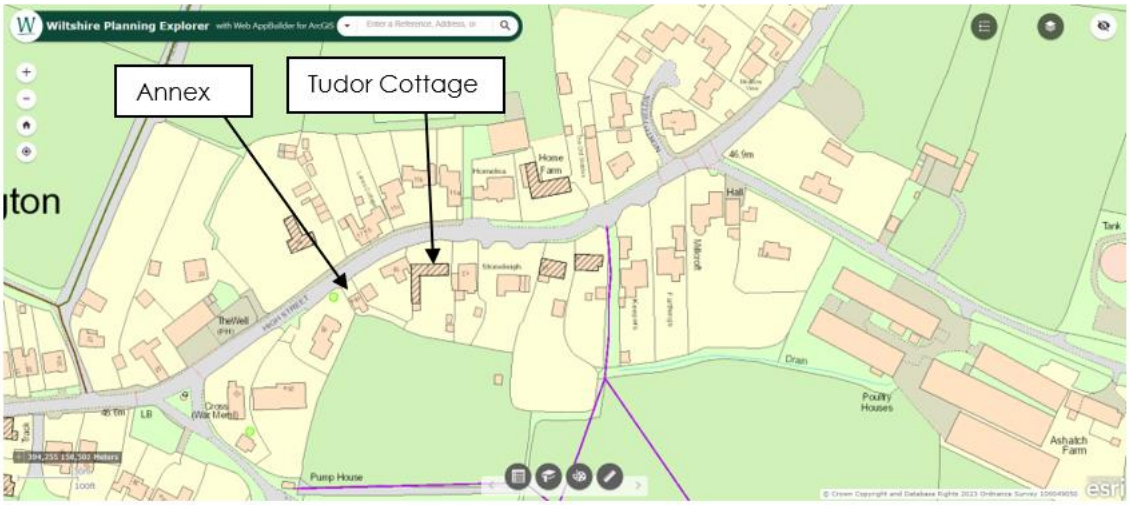


Figure 1: Site Location Plan – black hatched lines indicate listed buildings and green/purple lines depict the rights of way network. (source: https://wiltscouncil.maps.arcgis.com)

The annex was originally constructed as a garage under planning permission W/08/01842/FUL. Planning permission W/11/02717/FUL subsequently approved alterations and an enlargement of the garage to form a residential studio/annex and was subject to a condition (number 04) which restricted the occupation of the building so that it remained ancillary to the residential use of Tudor Cottage. This reads:

4	The building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Tudor Cottage. REASON: The creation of an independent dwelling in this location would give rise to additional planning considerations, including parking and amenity issues.

In addition to condition 04, the approval was also made subject to a Section 106 legal agreement (S106) which, under Schedule 1, ties the occupation of the annex to Tudor Cottage. The extract below is from Schedule 1 of the agreement:

FIRST SCHEDULE

The Owner's Covenants with the Council

The Owner hereby covenants with the Council:

1. Not to occupy the Studio other than in conjunction with the House as ancillary accommodation and not to sell, lease or otherwise dispose of the Studio unless such sale, lease or disposal shall include the sale, lease or disposal of the Land and the House and every part thereof.

2. Not cause or permit any separate curtilage to be formed around the Studio

3. The Owner shall provide to the Council on demand copies of any documents or other evidence as the Council may reasonably require to satisfy itself as to the nature of any occupation of the Land, Studio and House

The annex is now surplus to requirements and for it to be occupied independently both the condition and legal agreement imposed upon W/11/02717/FUL have to be removed/ discharged.

Planning permission PL/2023/02173 has addressed the matter of condition 04 and discussed the planning merits surrounding the removal of the occupancy condition.

This application specifically deals with the matter of the S106 legal agreement and approval is sought for the discharge of the agreement and obligations under section 106A of the Town and Country Planning Act 1990 (as amended). Section 106A allows for such an application to be made once 5 years have passed since the obligation was entered into. For such an application to be successful, it needs to be shown that the obligation no longer serves a useful purpose, or

the revised proposed terms would serve the original purpose just as effectively as the original deed. The test of 'no longer serving a useful planning purpose' is in practice interpreted in a liberal way, which allows applications to be made where obligations are unworkable, are superseded by fresh planning guidance or alternatively fail to comply with the CIL regulations.

In this case, it is argued that the legal agreement no longer serves a useful planning purpose and this has already been demonstrated with the approval of planning permission PL/2023/02173. As Schedule 1 is no longer relevant, the S106 should be discharged in its entirety.

The planning merits of such a request have already been fully address as part of the previous planning application and fully supported by the council with that application being approved.

We therefore conclude that the legal agreement is overly restrictive and is certainly no longer required to make the dwelling acceptable in planning terms. The Council is therefore requested to agree to discharge the S106 Planning Agreement.

Please do not hesitate to contact me if you have any queries concerning the application.
Yours sincerely

Victoria Cains

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