

Council of the Isles of Scilly

Delegated Planning Report

DISCHARGE OF CONDITION

Application Number: P/21/042/S106MO

Received on: 21 May 2021

UPRN: 000192002427

Application Expiry date: 22 July 2021

Neighbour expiry date: 18 June 2021

Site notice posted: 28 May 2021

Site notice expiry: 18 June 2021

Applicant: Mrs J House and Mrs L Hicks

Site Address: Owners Accommodation
April Cottage
Church Road
Hugh Town
St Mary's
Isles of Scilly
TR21 0NA

Proposal: Application for the discharge of the section 106 planning obligation in relation to planning permission P5418 dated 4th January 2006 restricting occupancy of the owners accommodation to staff of the business at April Cottage and so that it is not sold, let or disposed of as a separate unit of accommodation.

Application Type: Section 106 Modification

Recommendation:

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1. That the application for the discharge of Section 106 planning obligation in relation to planning permission P5418 dated 4th January 2006 is **APPROVED** for the reasons set out below.
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Site Description and Proposed Development

April Cottage is a detached dormer bungalow located on Church Road in Hugh Town, St Mary's. The original property was subject to a planning application in 1959 with a later workshop and garage permitted in 1970 and rear conservatory in 1989.

There is no record of the dwelling being changed to a guesthouse but in 2006 permission was granted for improvements to the 'owners' accommodation as part of the use of the property as a Bed and Breakfast.

The improved owners accommodation was subject to a Section 106 to require it to be retained as part of April Cottage and that it would only be occupied as staff.

Description of the Proposal

The owners' are now selling the property as a single dwelling and on the basis that it is no longer operating as a B&B or guesthouse they wish to discharge the planning obligation on the use of the annexe accommodation.

As noted above the obligation attached to the property requires the two bedroom annexe to only be used by staff as part of the B&B business. It also requires the accommodation not to be sold off or separated from the main house.

The B&B business ceased operating in 2016 and since that time the property has been used as a single property with two generations of the same family occupying the main house and the 'annexe' accommodation. Under the Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulations 1992 the current owner is now seeking to discharge the S106 as it serves no useful planning purpose.

Background and Relevant History

As noted above the main planning history relevant to this application is the 2006 permission for a large two storey side extension, as improved owners accommodation. This was granted under P5418 and was subject to the S106 to restrict occupation of the extended accommodation. The full planning history is set out below.

Reference	Description	Decision	Date
P0236	erection of house	PER	16.02.1959
P0765	The erection of two dwellings at the rear of April Cottage, Church Road, St Mary's	WDN	28.10.1968
P0901	The erection of a workshop and storage shed for non-industrial use at April Cottage, Church Road, St Mary's	PER	17.03.1970
P1859	Provision of a car port at April Cottage, Church Road, St Mary's	REF	04.12.1979
P2868	The provision of conservatory to the rear elevation of April Cottage, Church Road, St Mary's	PER	22.03.1989
P4056	Extension for en-suite facilities.	PER	13.08.1996
P5418	Extension to improve owners accommodation.	PER	05.01.2006
P/06/075	Change external colour of property from grey to buttermilk	PER	20.09.2006
P/06/087	Remove and replace existing conservatory	PER	16.11.2006
P/20/015/HH	Replace glass panels on conservatory roof with tiles.	PER	29.04.2020

Consultations and Publicity

A site notice has been on display in the vicinity of the application site for a period of 21 days (28/05/2021 – 18/06/2021). Neighbouring properties have been written to directly. No letters of representation have been received.

Primary Legislation and Planning Policy

Primary Legislation

The Town and Country Planning Act 1990

Section 106 of the Town and Country Planning Act enables any person interested in land in the Local Authority area to enter into an agreement or obligation (enforceable by injunction, against any person entering into the obligation and against any person deriving title from that person) restricting the development or use of the land in any specified way. The Council of the Isles of Scilly generally only use Section 106 obligations to require dwellings permitted, to be occupied in accordance with local need qualifying criteria. In this case an extension to an existing dwelling to only be occupied to meet the operational business needs of the property.

Section 106A allows, on agreement between the parties by and against which the obligation is enforceable, for the obligation to be modified or discharged.

Planning Policy

National Planning Policy Framework (NPPF) 2019

At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

Isles of Scilly Local Plan (2015-2030)

Policy LC5 seeks to enable the removal of restrictions on property where these no longer serve a useful purpose. It is accepted that there will be circumstances where staff accommodation is no longer required for the purpose for which it was originally intended. Any application to remove an occupancy condition for staff accommodation will need to demonstrate that the need for which the dwelling was originally approved no longer exists. There are many other 'occupancy restrictive' conditions known to apply to various types of residential accommodation. Any applications to remove these will be dealt with on their individual merits.

Planning Assessment

Planning permission was granted in 2006 for the erection of a large extension to an existing dwelling, on the basis of the property operating as a guesthouse. The existing dwelling did not secure a change of use to operate as a guesthouse, and as such no permission has been sought to cease operating as a guesthouse. April cottage B&B ceased operating as business in 2016. The dwelling therefore, has ceased to comply with the requirements of the S106 since the business ceased trading and the property stopped taking in paying guests. This is clearly evidenced by the submission of evidence:

- September 2016: The property was removed from the Environmental Health Database as a B&B establishment, on the basis that it was confirmed the business had ceased.
- A letter from a neighbour confirming that the B&B business ceased in 2016
- Statement of Accounts confirms cessation of April Cottage as a B&B
- Confirmation that an entry in the Visitor Book from a guest commented on the closure of the B&B as of September 2016.
- The rented credit/debit card machine (PDQ) used by B&B guests, was returned to Barclays Bank 29/09/16 when the B&B ceased trading.
- Final Trip Advisor review is dated September 2016

It is not considered reasonable for the staff accommodation to be marketed as staff accommodation in its own right, on the basis that it is connected to and is

part of April Cottage. It is noted that whilst the S106 restricts specifically the separating-off of the annexe from the main house, the removal of this restriction, through this discharge application, would not override the fact that such a split of the property into two units would require planning permission. The annexe accommodation is attached and linked to the main property of April Cottage. Unless a Certificate of Lawful use is secured to demonstrate 4 years of continuous separate occupation of the two units, planning permission would be required for a change of use of one dwelling into two dwellings. No such certificate of lawful use has been made to this effect and the applicant states that it has only been used by a single family.

The relevant case law on whether a S.106 satisfies a useful planning purpose is set out in the following cases:

- What is meant by the term "a useful purpose" in section 106A(6)? Whether the expression "a useful purpose" should be read as a "useful planning purpose" has been the subject of differing opinions. In *R (Batchelor Enterprises Ltd) v North Dorset DC* [2003] EWHC 3006 (Admin), the High Court suggested that the relevant question was whether the obligation still served a useful planning purpose.
- In *R (Renaissance Habitat Ltd) v West Berkshire DC* [2011] EWHC 242 (Admin), the High Court cast some doubt on the Batchelor case and expressed a reluctance to narrow the range of public interest purposes that an obligation may serve to purely planning purposes.

As noted above the guesthouse/B&B business that previously justified the creation of annexe accommodation no longer exists and has not existed since 2016. Requiring the annexe to only be occupied by staff of the business therefore no longer serves a useful planning purpose.

It could be argued that the S106 could be 'modified' to ensure that the annexe remains part of the main dwelling and is not sub-divided. As such a separation from the main dwelling would itself require planning permission, it is considered that this part of the obligation also serves no useful planning purpose.

It is considered that the decision in relation to the discharge should reflect the current lawful use of the dwelling as a single C3 dwellinghouse to avoid any confusion about the current lawful status of the former B&B use of the property. Any future use of April Cottage as a guesthouse should be subject to an application for a change of use to provide a formal assessment as to the material planning impacts of such a use of what is now a 6 bedroom property. Overall it is considered that the discharge of this S106 agreement can be granted in this case on the basis that it no longer serves a useful planning purpose.

**Lead Member
for Planning:** Dan Marcus 30/07/2021

Print Name: Lisa Walton 30/07/2021

Job Title: Chief Planning Officer

Signed: 

Authorised Officer with Delegated Authority to determine Planning and related Applications
