

Somerset County Council

Regulation Committee – 1 December 2022

Report by Service Manager - Planning & Development, Enforcement & Compliance:

Application Number: SCC/4005/2022

Date Registered: 18 August 2022

Parish: East Brent Parish Council, Lympsham Parish Council

District: Sedgemoor District Council,

Member Division: Brent,

Local Member: Councillor Bob Filmer

Case Officer: Ruth Amundson

Contact Details:

Description of Application: Discharge of s106 obligation

Grid Reference: Easting - 334325, **Northing** - 153427

Applicant: Yvonne and John Hopkins,

Location: Delhorn Lane Lympsham Grid ref 334176 153444

Bridleway AX22/11 & AX17/11

1. Summary of Key Issues and Recommendation(s)

The application seeks to discharge the requirements of a section 106 agreement entered into between the applicant and Somerset CC in 2016. The section 106 agreement secured, inter alia, the payment of financial contributions to SCC for vegetation clearance and repairs to the surface of a bridleway which the application was seeking to divert in order to carry out a development.

The key issue is whether or not the section 106 agreement still serves a useful purpose

It is recommended that the requirements of the agreement should remain in force and the application for discharge be refused.

2. Description of the Site

2.1 The application site is located just outside the village of Lympsham, approximately 5.8 kilometres south of Weston-Super-Mare and 5.7 kilometres north-east of Burnham on Sea. The site is surrounded by agricultural fields and a holiday park lies to the east.

3. The Proposal

3.1 The application seeks to discharge the requirements of the section 106 agreement. In support of the request, the applicant states:

“SCC should not have used a retrospective s106 as leverage to try and prevent a legal process of diversion of path. S36 of the HA states that a path created or diverted under s247 is maintainable at public expense.

A legal process should not be used against a member of the public in order to create barriers for a legitimate application in which it fulfilled the criteria. Complete lack of parity in service provision. SCC canvassed and pressured other consultees to uphold objection

The Ramblers and Sedgemoor DC were told what to do. Ramblers retracted objection no other objectors however SCC went to Axe Brue drainage board who did not object initially telling them a PROW could not go against a water course which we know is not fact.

This s106 has been used to extract money from me for the whole length of the path maintenance where they had never spent 1p. The s106 is a negotiated document used in the right way. This was a weapon, I never had explanation as to why I was funding all the path maintenance not just the increased length of between 50-70 metres they refused to answer any of my questions not a professional stance.”

4. Background

4.1 Permission was granted by Sedgemoor District Council in 2013, reference 24/13/00013, for a new agricultural barn on the site. The barn affected public rights of way AX 22/11/12, AX 22/11/1 and AX 17/11/1, obstructing the statutory PROW.

4.2 The applicant applied to Sedgemoor District Council for the diversion of the bridleway away from the agricultural barn to a route along the applicant’s field boundary and adjacent to a drainage ditch. The proposed route was longer and in the council’s view likely to give rise to additional maintenance costs.

4.3 Consequently a diversion order was made in 2016 and a legal agreement signed between the applicant and SCC providing, inter alia, for the applicant to make a payment of £4,000 for vegetation clearance for the new bridleway and a payment of £3,000, which has since been repaid, to be used by the County Council for repairs or reinstatement of the surface of the bridleway arising within 5 years of the date provided, in addition to a payment to cover the legal costs of the council in drawing up the order. The legal agreement allowed the county

Council and Sedgemoor District Council to withdraw objections to the diversion order which in turn enabled the approved development to be carried out.

5. The Application

5.1 Documents submitted with the application:

Application form and certificate

Copy of legal agreement

5.2 The application seeks to discharge the requirements of a section 106 agreement entered into between Somerset County Council and Mr J and Mrs Y Hopkins in 2013.

6. Environmental Impact Assessment (EIA)

No new development is proposed, and EIA is not relevant in this case

7. Consultation Responses Received

External Consultees

7.1 None required

Internal Consultees

7.8 SCC PROW

The money that was secured for future maintenance (of only the diverted section of path) is still required for the purpose it was secured – keeping the surface free of vegetation. This was an additional cost to the Council that arose from the development related diversion order and that is why it was secured. In that regard, we cannot agree to the variation of the s106.

Publicity

7.10 The application was advertised by means of a notice posted on the site and a notice published in a newspaper circulating in the locality. No response was received.

8. Comments of the Service Manager – Planning Control, Enforcement & Compliance

8.1 Section 106A(6) TCPA 1990 provides that where an application is made to an authority under subsection (3) to discharge a planning obligation, the authority may determine—

- (a) that the planning obligation shall continue to have effect without modification; or
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged.

The essential questions to be considered in relation to an application to discharge the obligation are:

- i. What is the current obligation?
- ii. What purpose does it fulfil?
- iii. Is it a useful purpose?

Case law has established that in considering whether the purpose served is a useful purpose there is no need to address that question solely in the planning context. There is no need to revisit development plan policies, although these are set out below for context and to demonstrate that the original decision was appropriate.

8.2 The Development Plan

Sedgemoor Local Plan 2011-2032 adopted February 2019

Policy D29 Protection and Enhancement of Existing Green Infrastructure Resources

Green Infrastructure (GI) will be safeguarded, maintained, improved, enhanced and added to, as appropriate. Development proposals which compromise the integrity of the Green Infrastructure network will be resisted. The impact of new development on existing Green Infrastructure should be properly considered. Any new development which is likely to increase usage of existing green infrastructure should recognise that increased usage may result in degradation of the existing standard of provision. In addition, maintenance costs for those who own and maintain the infrastructure may increase, and any such costs or improvements necessary should be borne by the development. Master-planning of Strategic Site Allocations on greenfield sites should make provision for a network of green spaces linking the site to the wider Green Infrastructure network.

8.3 Material Considerations

National Planning Policy Framework 2021

Paragraph 100

Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails

Analysis

Agreements under section 106 of the town and Country Planning Act 1990 are obligations entered into to mitigate adverse impacts of a development proposal where it is not possible to mitigate the impacts through planning conditions. Such an agreement can make a proposal acceptable in planning terms, whereas it would otherwise be refused. They must meet the tests of being necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

The Section 106 agreement in this case was entered into following the grant of planning permission. The planning permission could not grant approval for the diversion of the bridleway or make it the subject of a planning condition as the diversion was the subject of separate statutory process. The section 106 agreement was agreed as part of that other statutory process.

Where the obligation is more than five years old an application may be made to change the obligation where it no longer serves a useful purpose or would continue to serve a useful purpose in a modified manner.

Local planning authorities are expected to use all of the funding received as a result of the obligation as set out in the agreement.

In this case, Somerset County Council could not have supported the diversion order without provision to meet the additional costs incurred. The obligation was, therefore, necessary to make the agricultural building development acceptable and was directly related to the proposed development that obstructed the existing PROW.

Policy D29 in the Sedgemoor Local Plan requires the authority to have regard to the impact of any new development on green infrastructure, including public rights of way, and to ensure that where maintenance costs increase, those costs are met by the development. The obligation is in accord with that policy.

Paragraph 50 of the National Planning Policy Framework advises that planning decisions should protect and enhance public rights of way. Without the diversion order, enabled by the section 106 agreement, there would have been a detrimental effect on the PROW network.

The planning obligation sought financial provision to cover reasonable costs arising from the seasonal vegetation clearance of the diverted section of headland bridleway. Since 2017 the monies have provided for up to three cuts a year along the 238-metre diverted section of path. Therefore, the total cost for the calendar years 2018 – 2022 is £616.42. The requirements of the obligation are, therefore, fairly and reasonably related in scale and kind to the development.

The application does not provide any evidence to justify the discharge of the agreement but points to perceived shortcomings in the process. However, as described above the diversion order was required as a result of a development proposal by the applicant and the obligation sought to recover additional costs incurred by the county council as a result.

Conclusion

The financial provision that was secured through the section 106 agreement for future maintenance (of only the diverted section of path) is still required to keep the surface free of vegetation. This is an additional cost to the Council arising from the diversion order, as a consequence of a development proposal for an agricultural building which obstructed an existing PROW.

The planning obligation continues to serve a useful purpose and no evidence has been presented that justifies its discharge.

9. Recommendation

9.1 It is recommended that the application to discharge the section 106 agreement and refund the amount paid be refused.

Reason: The planning obligation continues to serve a useful purpose and no evidence has been presented that justifies its discharge.

10. Relevant Development Plan Policies

1 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the development plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in: -

Sedgemoor Local Plan 2011-2032 adopted February 2019

The policies in the development plan particularly relevant to the proposed development are: -

Policy D29 Protection and Enhancement of Existing Green Infrastructure Resources

3 The County Planning Authority has also had regard to all other material considerations.

4 Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015

In dealing with this planning application the County Planning Authority has adopted a positive and proactive manner. The Council offers a pre- application advice service for minor and major applications, and applicants are encouraged to take up this service. This proposal has been assessed against the National Planning Policy Framework, Minerals Local Plan and Local Plan policies, which have been subject to proactive publicity and consultation prior to their adoption and are referred to in the reasons for approval. The County Planning Authority has sought solutions to problems arising by liaising with consultees, considering other representations received and liaising with the applicant/agent as necessary.

