

**DARLINGTON BOROUGH COUNCIL**

**PLANNING APPLICATIONS COMMITTEE**

**COMMITTEE DATE: 31 July 2013**

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<b>APPLICATION REF. NO:</b>	13/00363/FUL
<b>STATUTORY DECISION DATE:</b>	3 July 2013
<b>WARD/PARISH:</b>	HEIGHINGTON AND CONISCLIFFE
<b>LOCATION:</b>	The Cumby Arms, Beech Crescent, Heighington
<b>DESCRIPTION:</b>	Discharge of Section 106 planning agreement (restrictive covenant over land) dated 7 November 1997 attached to planning permission 8/97/249/DM
<b>APPLICANT:</b>	Mr Gary Raistrick

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**APPLICATION AND SITE DESCRIPTION**

The application site is located on the northern edge of Heighington Village on the corner of Hall Lane and Beech Crescent and it is within the Heighington Conservation Area. The site contains The Cumby Arms Public House, a detached bungalow and a sports field. A Public Right of Way (Footpath No 1) runs along the east boundary of the site and along part of the south boundary. Both the bungalow and The Cumby Arms are currently vacant and have been for approximately 18 months.

In 1997 (reference number 8/97/249/DM) planning permission was granted for the erection of a detached single storey dwelling within the curtilage of The Cumby Arms Public House. The planning permission was granted subject to a condition and a Section 106 Agreement restricting the occupation of the dwelling to persons wholly or mainly employed as a Licensee or manager in the adjoining public house or the widow or widower of such a person.

This application is seeking to discharge the Section 106 Agreement that was imposed on the planning permission.

Separate planning applications (ref no: 13/00340/FUL and 13/00349/FUL) have been submitted for this site to remove the planning condition attached to the 1997 approval and to convert The Cumby Arms to a single dwelling and they also form part of this Agenda. The applicant has confirmed that he would occupy the Public House, once converted, and the bungalow would be occupied by members of the same family or by friends/visitors of the family. The bungalow would be an annex to the proposed dwelling.

## PLANNING HISTORY

The site has a detailed history but the most relevant entry is:

8/97/249/DM In November 1997 planning permission was GRANTED subject to a Section 106 Agreement for the erection of a detached single storey dwelling

## PLANNING POLICY BACKGROUND

The National Planning Policy Framework 2011 is relevant to this application along with the following local development plan policies are:

### **Borough of Darlington Local Plan 1997**

E2 - Development Limits

### **Darlington Core Strategy Development Plan Document 2011**

CS1 - Darlington's Sub Regional Role and Locational Strategy

CS11 - Meeting Housing Needs

CS16 - Protecting Environmental Resources, Human Health and Safety

## RESULTS OF CONSULTATION AND PUBLICITY

Three letters of objection have been received following the Council consultation exercises. The comments can be summarised as follows:

- *The land should be returned to agricultural status*
- *I feel this will set a precedent for the possible future development of the site in the form of more private dwellings being built. The infrastructure of the village could not cope with the possible influx of new residents in respect of the school and the local amenities as was raised at the application submitted for the traveller's site. The road structure around the Cumby Arms could not cope with an increase in traffic as this entrance is the only one onto and off the site and the site also has a public footpath running around it and a public right of way through it which could cause serious problems with traffic and pedestrians*
- *The land falls outside the development limits and thus should not be made available for private dwelling*
- *The development of a private dwelling would also mean a loss of another playing field. The field is used regularly by local youth football teams. The applicant has said in principle he would not object to them using it but I cannot see in the future someone letting teams practice and play matches in what would effectively be their front garden. This goes against the campaign for local sports fields to be maintained and used for sport*
- *If the dwelling goes ahead it must be connected to the existing bungalow otherwise it creates two private dwellings. To say no one else is interested in doing anything with the land is completely untrue. One person was trying to get funding to convert the Public House to an old person residence and another was hoping to turn it into a football academy and to create recreational activities.*
- *I am concerned about the discharge of the 106 agreement on the above property, as the property lies within a conservation area and is clearly outside the village boundary. The 106 agreement allowed the construction of the bungalow specifically because it was associated with the sporting facilities on the site which has been used for many years as a*

*recreation field. I suspect that to allow the building which was the Cumby Arms to be transformed into a private dwelling may be in breach of Darlington Borough Council's own long term plan for the conservation area, and could set a precedent for future building applications on what is essentially an open space used for cricket and football by local groups.*

- *I object to the application to discharge the 106 agreement on this property as I am concerned that the property lies within a conservation area outside the designated building envelope for Heighington. The buildings on this land were specifically allowed as they were intended to support a public amenity. To allow the properties to become private dwellings could set a precedent that will challenge the integrity of the village building envelope.*
- *Furthermore, two distinct public footpaths exist across the property, one for general access to Hall Lane and the for pedestrian and vehicle access to the playing field that bounds the land in question. Changing the status of the property from public to private could jeopardise these rights of way.*

### **Consultee Responses**

Heighington Parish Council has objected to the application on the following grounds:

- *The Agreement was originally entered into and the occupancy condition imposed to allow this quasi residential development to take place outside development limits for Heighington. The development would not have been permitted for these important restrictions*
- *The original objective is unchanged and any proposals to develop outside of the identified area for residential purposes are and will continue to be resisted strongly*
- *The application acknowledges that it goes against planning policy in that development outside development limits of the village is limited to development meeting identified rural needs. There is no identified need in Heighington for additional housing*
- *The application is not persuasive in its argument that a public house would not be viable nor does it explore any future potential development that would satisfy identified rural needs of which the Council feels there are many for example a nursing home. The Parish Council believes that insufficient evidence has been submitted in this regard and it is critical to these proposals that a conclusion is reached on this matter*
- *The application appears to propose two separate dwellings on the site which was not the Parish Council's understanding of the applicant's intention. The Parish Council understood that the two buildings were to be linked but this is not indicated on the plans*
- *The site provided an important sporting facility for the local community which the Parish Council and undoubtedly Sport England would like to see retained. It is the Parish Council's knowledge that the site has continued to be used under the current ownership and it would like to see assurances that this will continue in the future. The Cumby Arms was not simply a public house but a sports club providing unique community facility that has been used for competitive football for at least 8 years*
- *Part of the site lies within a conservation area*

### **PLANNING ISSUES**

The Section 106 Agreement was imposed along with a restrictive condition attached to planning permission 8/97/349/DM to restrict the occupation of the bungalow as the site lies outside of the development limits for Heighington as designated by the Proposals Map of the Borough of Darlington Local Plan 1997.

Under the provisions of Section 106(A) of the Town and Country Planning Act 1990 (as amended) a planning agreement can be discharged by the submission of a planning application and the Local Planning Authority must determine:

- whether the agreement shall continue to have effect;
- if the agreement no longer serves a useful purpose so that it can be discharged; or
- that if the agreement continues to serve a useful purpose it can be served equally well subject to any modifications

### **Marketing of the Site**

The site was first inspected by Fawley Watson Booth property consultants in November 2011 and the Agent acting on behalf of the application has confirmed in a supporting statement that formal marketing for the site commenced in March 2012. The freehold interest in the site was offered for sale and also offered to the sitting tenant. There were no prices stipulated and unconditional offers were invited. The property was under offer on a couple of occasions during this marketing exercise both of which were for an alternative use/residential development opportunity and for a sports academy.

Prior to the involvement of Fawley Watson Booth, the freeholders were Enterprise Inns and they had it under offer to the most recent tenant but this was never completed.

Fawley Watson Booth confirm the majority of interest came from prospective residential developers and there were no written offers received from parties interested in carrying on using the property as a public house.

The applicant made an offer to purchase the site in January 2013.

### **Conclusion**

The Local Planning Authority is satisfied that the site has been marketed correctly and for a suitable length of time. Evidence has been provided which states that there has been no interest in the site being reopened and used as a public house. If the planning application to convert The Cumby Arms to a single dwelling is successful the requirements of the Section 106 Agreement would become redundant and it would no longer serve a useful purpose.

Paragraph 55 of the National Planning Policy Framework states: “To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities...” It goes on to state that: “Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as...where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting...” The removal of the Section 106 Agreement would enable the re-use of the currently disused building on the edge of one of the Borough’s larger villages within a conservation area and in this regard, would not be contrary to the policy direction of the NPPF.

Having considered the proposal in conjunction with the other two planning applications for the site which form part of this Agenda, the Local Planning Authority consider that the Section 106 Agreement should be discharged.

### **Other Matters**

#### *Material Planning Considerations*

The Local Planning Authority can only take account of material planning considerations when determining a planning application and the suggestions made by the objectors that the site should be used for other purposes such as agricultural land or a care home is not a material planning consideration. The Local Planning Authority must consider the acceptability of the proposal that is put before them.

#### *Precedent*

Court and appeal decisions have established that it is legitimate for decision makers to give weight to the possibility of creating an undesirable precedent when considering whether to grant permission. However, it is not enough for Local Planning Authorities to have a general anxiety that their decisions may be used in the future to justify other proposals. There has to be evidence that there is a real likelihood that applications, in this case for new build residential development, would be submitted and no such evidence has been provided.

#### *Playing Fields*

The issues relating to the continued use of the playing field for sporting activities is considered in more detail within the report for planning application reference number 13/00349/FUL

### **SECTION 17 OF THE CRIME AND DISORDER ACT 1998**

The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

### **CONCLUSION**

The Local Planning Authority is satisfied that the site has been marketed correctly and for a suitable length of time. Evidence has been provided which states that there has been no interest in the site being reopened and used as a public house. The applicant has also submitted a planning application (reference number 13/00349/FUL) to redevelop the public house for residential purposes and in the opinion of the Local Planning Authority the Section 106 Agreement would no longer serve a useful purpose and should be discharged as per Section 106(A) of the Town and Country Planning Act 1990 (as amended)

### **RECOMMENDATION**

PERMISSION BE GRANTED TO DISCHARGE THE SECTION 106 PLANNING AGREEMENT

### **SUGGESTED SUMMARY OF REASONS FOR GRANTING PLANNING PERMISSION**

The Local Planning Authority is satisfied that the site has been marketed correctly and for a suitable length of time. Evidence has been provided which states that there has been no interest in the site being reopened and used as a public house. The applicant has also submitted a

planning application (reference number 13/00349/FUL) to redevelop the public house for residential purposes and in the opinion of the Local Planning Authority the Section 106 Agreement would no longer serve a useful purpose and should be discharged as per Section 106(A) of the Town and Country Planning Act 1990 (as amended)

**INFORMATIVE TO BE INCLUDED SHOULD PLANNING PERMISSION BE GRANTED**

The applicant is advised that a formal revocation of the Section 106 Agreement will need to be completed and agreed with the Local Planning Authority and contact should be made with the Council's Planning Lawyer (Mr A Errington – 01325 388339) to discuss the matter further.