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*By Lisa Walton at 6:18 pm, Jun 22, 2021*

TOWN AND COUNTRY PLANNING ACT 1990

## **Planning Statement**

*Discharge of s106 Agreement*

Owner's Accommodation

April Cottage

Church Road

St Mary's

Isles of Scilly

TR21 0NA



## **1 Introduction**

- 1.1 This statement is made in support of an application by Mrs Janet House & Mrs Louise Hicks to discharge the s106 agreement on the owner's accommodation at April Cottage, Church Road, St Mary's, Isles of Scilly, TR21 0NA.
- 1.2 At the end of September 2016, April Cottage ceased to accept guests and was used solely as a residential dwelling.
- 1.3 The s106 agreement dated 04 January 2006 provides that the owner's accommodation was solely to be occupied by a person employed or managing April Cottage and that it should be occupied as an integral part of the existing premises.

## **2 The relevant law**

- 2.1 The Town and Country Planning Act 1990 provides that where an application is made to an authority to modify or discharge a s106 the authority may determine:-
  - (a) *that the planning obligation shall continue to have effect without modification;*
  - (b) *if the obligation no longer serves a useful purpose, that it shall be discharged; or*
  - (c) *if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications....*
- 2.2 Here it is considered that the planning obligation no longer served a useful purpose and that therefore it should be discharged.

## **3 History of use**

- 3.1 Prior to 1999 April Cottage was run as a small B&B. In that year, Louise Hicks became a joint owner of the property.
- 3.2 On 12 December 2003 an application was made (P5418) for an extension to improve the owner's accommodation. This was granted on 05 January 2006, following the entering into of the s106 agreement which is the subject of this application.
- 3.3 At this time Janet House retired from the B&B and lived in the ground floor of the main part of the house and Louise Hicks lived in the owner's accommodation, running two upstairs bedrooms in the main part of the house as a B&B.
- 3.4 In 2013 Louise sought employment as the B&B was becoming unsustainable.
- 3.5 April Cottage ceased to accept guests at the end of September 2016 and was used solely as a residential dwelling thereafter.
- 3.6 Whilst April Cottage was occupied by Janet House on the one part and Louise Hicks' family on the other part, they shared facilities, amenity space, utility bills etc and therefore in planning terms the use was as one dwellinghouse – they were both physically and functionally one dwellinghouse.

## **4 Evidence of use**

- 4.1 This change in use is demonstrated by a number of different sources as set out below.
- 4.2 Statements from Janet House and Louise Hicks dated 18 June 2021 and 21 May 2021, made with the application.
- 4.3 The applicants' Contemporaneous response to the Council's letter dated 20 March 2018 (see below) which confirms that they both occupied the property, but referring to the separate parts of it. They also disclosed in that response that April Cottage had ceased to run as a 2x bedroom Bed & Breakfast in October 2016. Hence, the position, as set out the Council in this application was known to the Council back in March 2018 (or thereabouts). This is strong corroborating evidence to the other evidence now put forward, the applicant's position has been consistent throughout.
- 4.4 Further, an email dated 17 April 2017 was sent to David Currie, Environmental Officer at the Council of the Isles of Scilly to confirm that April Cottage B&B was no longer being run as a B&B establishment as of September 2016. Mr Currie responded that the premises was being removed from the records. Again, this is contemporaneous evidence which was, and is, available to the Council.
- 4.5 A letter from neighbour of 16 years to confirm that the B&B ceased trading in 2016 and that the family have continued to live in the property as their residential home since.
- 4.6 The Accountant's statement, confirms the cessation of April Cottage B&B accounts with HMRC for Louise Hicks.
- 4.7 The visitors book concludes in September 2016, with the guests commenting on the closure of the B&B.
- 4.8 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.
- 4.9 The final online review from Trip Advisor is dated September 2016.
- 4.10 The April Cottage B&B website: [www.scillybandb.com](http://www.scillybandb.com) ceased at the end of 2016 and the April Cottage B&B ceased to advertise with Island Partnership at the end of 2016.
- 4.11 Louise Hicks Transition into employment before ceasing the B&B business – Council of the Isles of Scilly/Park House Care Home/Care Assistant–first wage slip 30/06/13 confirms the points made in the statement.
- 4.12 Louise Hicks – NHS first wage slip for second job as Bank Health Care Assistant 31/10/15 – confirms her address at April Cottage and confirms the points made in the statement.

## **5 Changes in Planning Policy**

- 5.1 In March 2018 the Council wrote to all owners/occupiers of property subject to s106 Specific Local Need and Key Worker Occupancy Restrictions on the Isles of Scilly.

- 5.2 This letter set out that for those properties where the occupancy restriction already includes SLN or KW, then the new qualifying criteria (the Interim Policy) would automatically apply to the current s106 and no further action is required. Putting aside for one moment the legal issues in respect of this, it is clear therefore that the Council were (in March 2018) casting aside the need to be a Key Worker, intending to replace that with a SLN.
- 5.3 In this case, the obligation was considered to be 'staff', which the Council set out that an application would need to be made – and that it remains an option.
- 5.4 The letter set out that should an application be made to modify the agreement then an assessment will be made as to whether it is appropriate to widen any existing agreement.
- 5.5 Whilst Policy LC5 of the new Local Plan discusses removal of Occupancy Conditions, this is not applicable here. Firstly, this is not a condition, but an obligation and secondly, as shown by the above, the continued occupation of April Cottage as a dwelling is now lawful and hence no 'permission' is now required.
- 5.6 Further, as set out below, the obligation relates to part only of April Cottage (the owner's accommodation) and it would therefore be illogical to retain the obligation. Policy LC5 does not consider this type of scenario.

## **6 Other considerations**

- 6.1 The s106 is applicable to only part of April Cottage, the owner's accommodation. It is therefore permissible for the main part of the house to be occupied as a dwellinghouse and with that in mind the occupation of the owner's accommodation by a relative is of no consequence.
- 6.2 The s106 does not oblige anyone to continue to run a business at April Cottage.
- 6.3 The consequence of enforcing the s106 agreement now would be to require the owner's accommodation to left vacant – which would serve no useful purpose to either the owners or the Council. It would result in a new dwelling having to be found to occupy family members who could otherwise reside at April Cottage.
- 6.4 As set out above the property has been used as a single dwellinghouse by members of one family for a period of over 4 years. As such its lawful planning use is a C3 use as a single dwellinghouse. Accordingly, planning permission is required to use April Cottage as two separate dwellinghouses. Discharging the s106 agreement does not allow April Cottage and the owner's accommodation to be used separately.
- 6.5 The obligation was imposed on a property free from other planning obligations due to the request for an extension. It would be inequitable to now seek to impose further requirements in respect of local need on a property which was previously free from such an obligation – it would also likely have a significant effect on the value of the property and such an obligation would (given the circumstances) represent an unwarranted interference with article 1, Protocol No.1 rights. It would also be outwith the terms of s106A(6) – see below.

- 6.6 Any attempt to vary the obligation to a new form of obligation would run into difficulties immediately given that the current obligation applies only to the owner's accommodation – it would not apply to the main part of the house.

## **7 Application of s106A(6)**

- 7.1 The three options available to the Council on the application are set out above.
- 7.2 The consequences of determining that the obligation shall continue to have effect without modification (a) are that if the obligation is enforced, family members will be unable to continue to reside in the property and would be forced to seek accommodation elsewhere on the islands.
- 7.3 Determining that the obligation may be discharged (b) is appropriate in this case: where the use of the property as a single residential dwelling is lawful in planning terms; the obligation was applied solely as a result of an extension to the property; there were no other obligations on the property prior to the extension; the obligations only apply to the extension; the B&B use ceased as it was unviable.
- 7.4 A variation of the obligation (c) can be dismissed immediately for the reasons set out in relation to (a) above. Modifying the obligation to serve the same purpose would continue to serve a purpose which is no longer useful. It is not possible under s106A(6)(c) to modify the obligation to some other purpose.
- 7.5 In any event, in relation to (c), as set out by Richards J in *R (Garden & Leisure Group Ltd.) v. North Somerset Council* [2004] 1 P. & C.R. 39:

*“...the question whether the statutory test is met must be decided by reference to the entirety of the modifications specified in the application. It is an all or nothing decision. It is not open to the authority to decide that the obligation shall have effect subject to only some of the proposed modifications. If the authority considers that some of the proposed modifications are acceptable but others are unacceptable, it can of course invite the applicant to submit an amended application or a new application containing only the acceptable modifications; but in the absence of an amended or new application it must determine that the obligation shall continue to have effect without modification.”*

## **8 Conclusion**

- 8.1 The above demonstrates that the planning obligation dated 04 January 2006 relating to the owner's accommodation at April Cottage should be discharged pursuant to s106A(6)(b) of the Town and Country Planning Act 1990.
- 8.2 Should the application be approved, a decision notice is sufficient to discharge the s106 agreement.

**Stephens Scown LLP**

21 June 2021