

6 DCSE2007/1771/G - VARIATION OF SECTION 106 AGREEMENT REF: SH940997PF AT LAND ADJACENT TO CARADOC, SELLACK, ROSS-ON-WYE, HEREFORDSHIRE, HR9 6LS.

For: K H Brooker per Carr and Company, 9 Broughton Road, Banbury, Oxfordshire, OX16 9QB.

Date Received: 11th July, 2007 Ward: Llangarron Grid Ref: 56091, 27298

Expiry Date: 5th September, 2007

Local Member: Councillor Mrs JA Hyde

1. Site Description and Proposal

- 1.1 Caradoc Court is a Grade II* listed country house built (according to the listing) in the sixteenth and seventeenth centuries but remodelled in the mid-nineteenth century. The front of the house is of ashlar stone construction but timber-framing remains on the rear elevation. The building was seriously damaged by fire during the 1980s. A scheme to restore the building as a single dwellinghouse and to erect 6 houses as enabling development on land about 260 m. east of Caradoc Court was submitted in 1994. The main walls of the house, together with chimney stacks and stone internal walls, remained more or less intact. It was proposed to re-construct the house within this shell as it existed before the fire, subject to minor alterations and to replace some of the later alterations and additions with features present prior to the Edwardian period.
- 1.2 The enabling development comprised 6 houses on plots of about 0.05 ha. to the east of East Cottage. Access would be along a private unmetalled drive (in part a bridle way) which leads from the entrance to the Court by Caradoc Lodge to Sellack Church. To the north of the site is wooded hillside falling to the valley of the River Wye.
- 1.3 A Section 106 Agreement was entered into which required that the restoration of Caradoc Court be completed before works on the first of the new dwellings commenced. The extent of restoration works was specified in a schedule of works and included the full external envelope of the building and roof and their structural support, all main services brought into the building, together with those internal walls and floors essential to the structural integrity of the envelope, reinstatement of main staircase to first floor level. Access roads and landscaping would be laid out and planted following the conclusion of these works. In addition the Agreement required:
- a) the remainder of the approved building works be carried out prior to occupation of the sixth dwelling
 - b) the dwellings were to be of natural stone or traditional timber-frame construction
 - c) no further dwelling should be erected or residential mobile home sited on the land.

Planning permission and listed building consent were granted on 24th February, 1995.

- 1.4 The essential restoration works have been undertaken with one main exception. The west wing has not yet been roofed. The remainder of the building has been made habitable, with occupation of the East Wing commencing about 2000. In order to finance the remaining restoration works the developer has requested a variation of the main requirement of the Agreement so that the schedule of works would be fully carried out prior to works commencing on the sixth house rather than the first. A draft of the proposed variation is included in the Appendix to this report.

2. Policies

2.1 Planning Policy Statements

PPG15 – Planning and the Historic Environment

2.2 Herefordshire Unitary Development Plan 2007

Policy H7	-	Housing in the Countryside outside Settlements
Policy H13	-	Sustainable Residential Design
Policy HBA1	-	Alterations and Extensions to Listed
Policy LA1	-	Areas of Outstanding Natural Beauty
Policy LA4	-	Protection of Historic Parks and Gardens
Policy LA5	-	Protection of Trees, Woodlands and Hedgerows

3. Planning History

3.1	SH890963PF	Restoration and extension to form 20 apartments and erect 5 cottages in walled garden.	-	Not determined.
	SH940997PF	Re-build fire-damaged house to original state as single dwelling and 6 houses on adjacent land.	-	Approved 24.2.95
	SH940998LA	Clear out fire-damaged and derelict element, repair existing walls and replace missing floors, roofs and fillings to form single residence.	-	Consent 24.2.95
	SE2006/1684/V	Certificate of Lawful Development for 6 new houses.	-	Certificate granted 6.12.06
	DCSE2007/0330/U	Use of East Wing as residential unit	-	Not determined.

4. Consultation Summary

Statutory Consultations

- 4.1 No statutory or non-statutory consultations are required.

Internal Council Advice

- 4.2 The Traffic Manager has no objection to the grant of permission. The variation of the Section 106 Agreement would not appear to affect public bridleway SK6.

4.3 The Conservation Manager advises:

"The original 106 agreement, made with a commercial developer, required the shell of the fire-damaged Caradoc Court to be 'complete' before the site could be released for development. However the applicant has instead proceeded with an incremental total restoration and has completed approximately 80% of the building, including the interiors, with only the western-most bay remaining unroofed. I consider that the restoration has achieved sufficient momentum for it to be more than likely that the applicant, a private individual, will complete the work without the sanction of terms of the original agreement."

5. Representations

5.1 One letter has been received from the applicant's agent responding to some of the representations reported in paragraph 5.2 below. In summary it is pointed out that:

- 1) There is a neighbour dispute and a number of attempts to prevent a sale of the residential development land are itemised.
- 2) A number of letters of objection incorrectly suggest there is a problem with vehicle access over the element of access way within a neighbour's (Major Darling) ownership.
- 3) The development land enjoys a full right of way by virtue of a grant contained in a 1987 Conveyance and it has now been accepted by Major Darling that there exists a right of way at all times with or without vehicles and that this track immediately adjoins the boundary of the applicant's and Major Darling's properties.
- 4) We believe this application is straightforward and non contentious.
- 5) Over the past 12 years the Court has been substantially restored to an extremely high standard at very considerable expense and effort – the applicant has no intention whatsoever of not completing the restoration.
- 6) As the great majority of the Court has already been restored, how can there be a real risk that it will remain a ruin?
- 7) The applicant is more than happy for some safeguard to ensure restoration is completed – the application has been made to provide funds to achieve this.

5.2 6 letters have been received from or on behalf of local residents objecting to variation of the Section 106 agreement. The reasons given are:

- 1) To accept modification would mean no safeguard that the agreed works will be carried out by current owner or his successor – the original terms should be rigorously enforced.
- 2) The test to be applied to a modification is whether it would serve the purpose equally well.
- 3) That purpose was set out in the report to Committee in October 1994 viz:
 - it was essential enabling development,
 - only acceptable as enabling development,

- a Section 106 Agreement could ensure the link between restoration of Caradoc Court and the development of houses,
- 4) It is clear that permission was only granted to enable Caradoc Court to be resorted as a single dwelling and the Council properly used a Section 106 agreement to achieve this purpose.
- 5) Current proposal would allow 5 of the 6 houses to be occupied without further work being undertaken to Caradoc Court and Council does not have powers to ensure monies raised are spent for this purpose.
- 6) Clause 1 still serves a useful purpose but a modified agreement would not serve equally well as the Council would have conceded its only means of securing restoration.
- 7) A High Court case is quoted which makes clear that the application cannot be varied by the Council, only approved or refused.
- 8) Proposed modification is not clear and application may not comply with relevant Regulations.
- 9) Monies from development site may not be sufficient to complete restoration.
- 10) Current agreement has not been adhered to; the separate flat contravenes use as single dwelling clause and a very large mobile home at Caradoc Court contravenes Clause 4.

5.3 In addition concerns are raised with regard to the adverse impact of the development, in particular:

- 1) most significant part of the historic landscape garden including famous terrace walk with ravishing views would be bargained away for development – proposal compared unfavourably with Riovaux Terrace and Farnborough Hall (both NT),
- 2) new houses would be in AONB and in middle of old estate,
- 3) access too narrow and no opportunity for passing places, for the significant increase in traffic with no parking/turning areas,
- 4) access to highway dangerous and would be conflict along drive (a bridle way) with walkers and riders,
- 5) harm wildlife and concern expressed for 21 lime trees along the drive and some large oaks,
- 6) for above reasons permission for 6 houses should be re-considered.

The full text of these letters can be inspected at Southern Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Sub-Committee meeting.

6. Officer's Appraisal

6.1 Caradoc Court is an important historic building, being an example of a late Elizabethan country house. English Heritage strongly supported restoration and advised that

enabling development would be justified in view of the extensive restoration works. The house had been fire-damaged 8 years earlier and further deterioration was inevitable unless the building was properly roofed and structurally secured. It was fully appreciated by the Sub-Committee of the former South Herefordshire District Council that the erection of 6 houses would conflict with policies for residential development in the countryside and that there would be harm to the landscape. Nevertheless this was considered to be a cost that was out-weighed by the benefits of ensuring that Caradoc Court was saved and restored. An earlier scheme, which the Sub-Committee was minded to approve, for apartments with enabling development much closer to the Court was in comparison considered to cause more damage. In order to ensure that the Court was re-built prior to the enabling development being undertaken a Section 106 Agreement was made between the applicant/developer and the Council. The Section 106 Agreement requires the full restoration of the house with initial emphasis on securing the long-term future of the building. With the exception of the West Wing this has been achieved.

6.2 The developer has undertaken the restoration works himself and lives in the property. As noted by the Conservation Manager a considerable proportion of the full restoration (interior as well as structure) has been completed, the exception being the West Wing. The current application is to vary the Agreement so that the enabling development can go ahead. The applicant claims that this would release funds to enable completion of this project. The application is not to vary the enabling development (6 houses) as such and changes of this part of the permission are not proposed.

6.3 As pointed out above the basic test for such applications is whether the Section 106 agreement continues to serve a useful [planning] purpose. With regard to modifications this can be refined to whether the proposed modification would serve that purpose equally well. Clause I is the key section of the Agreement which ensures that the main intention of the Council in granting permission for 6 houses, viz to enable rebuilding of the Court, is achieved. Removing this section could, so objectors argue, allow building of 5 houses without ensuring that the West Wing is roofed and glazed. However in terms of the whole project this is a relatively small part and the key aim of securing the structure remaining after the fire and hence the long-term future of the building has been achieved. The applicant's decision to undertake the work himself and the much greater time taken may be a factor here but these have also contributed to the quality of the restoration/rebuilding works, which the Conservation Manager has noted appreciatively. The Agreement on this basis is therefore as currently worded, an impediment to the Council's aim and the proposed modification, I consider, would be more likely to ensure this was achieved.

RECOMMENDATION

That the County Secretary and Solicitor be authorised to complete the variation of Planning Obligation no. 1 of the Agreement so that building works be completed before occupation of the sixth of the dwellings.

INFORMATIVES:

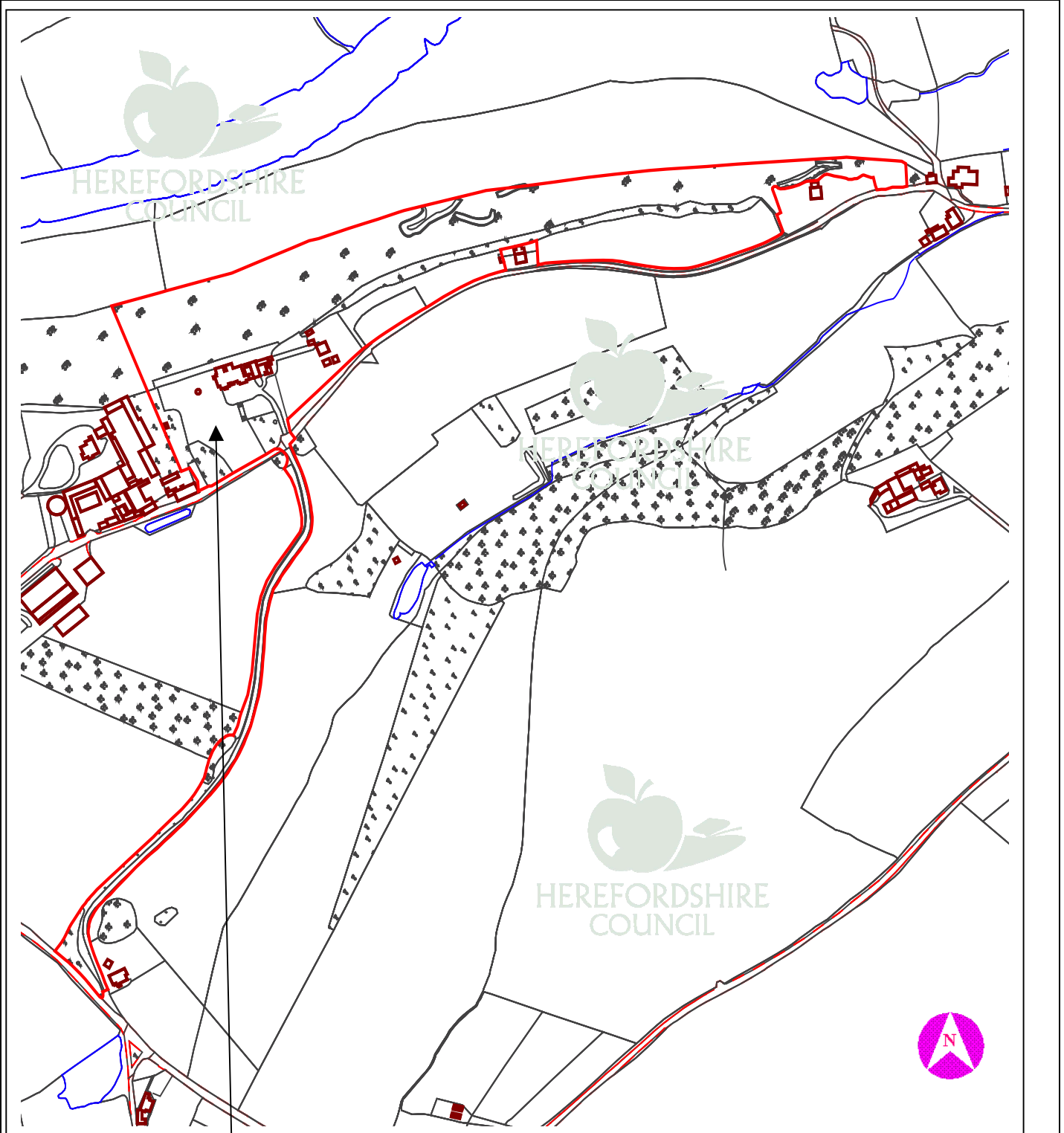
1 N15 - Reason(s) for the Grant of Planning Permission.

Decision:

Notes:

Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCSE2007/1771/G

SCALE : 1 : 5100

SITE ADDRESS : Land adjacent to Caradoc, Sellack, Ross-on-Wye, Herefordshire, HR9 6LS

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A P P E N D I X

DRAFT VARIATION OF PLANNING OBLIGATIONS

1. Prior to occupation of the sixth of the dwellings the restoration of Caradoc Court must be completed to the extent required in the schedule of works attached to this Agreement.
2. The remainder of the building works approved under the Council's Code SH940997PF shall be carried out prior to occupation of the sixth dwelling to be built.
3. The dwellings shall where appropriate be constructed with local natural stone exteriors or be of traditional timber-frame construction to the Council's reasonable satisfaction.
4. No further dwelling shall be erected nor any mobile home intended for permanent occupation sited upon the remaining area of land owned by the Company and shown on the plan attached and hatched green,