

**DCCE2003/3285/G - MODIFICATION OF PLANNING OBLIGATIONS UNDER S.106A DATED 17/01/92 AND 28/08/96. OBLIGATIONS:- TO NOT CAUSE OR PERMIT ANY PERSON OTHER THAN AN ELDERLY PERSON OR CHRONICALLY SICK OR DISABLED PERSON TO RESIDE WITHIN ANY PART OF PROPERTY OR ANY EXTENSION THERETO AT LAND TO SOUTH-WEST SIDE OF LUGWARDINE COURT ORCHARD AT LUGWARDINE COURT, LUGWARDINE, HEREFORDSHIRE, HR1 4AE**

**For: Trustees of Lugwardine Education Centre per Flint & Cook, 4 King Street, Hereford, HR4 9BW**

**Date Received: 30th October 2003      Ward: Hagley      Grid Ref: 54732, 40907**

**Expiry Date: 25th December 2003**

Local Member:      Councillor R.M. Wilson

This application was presented to the Central Area Planning Sub-Committee on 14th January 2004 as an item for information only. A previous identical application was approved by the Central Area Planning Sub-Committee on 11th June 2003 (together with an associated planning application). However, after the decision was made, a flaw was found in the application process (namely the applicant's failure to serve notice on all parties against which the obligations are enforceable) which has the affect of invalidating the decision. The current application amounts to a resubmission of the earlier application. It is presented to the Planning Committee to enable unencumbered consideration of the proposal.

## **1. Site Description and Proposal**

- 1.1 The application site comprises a 0.2 ha paddock situated on raised land to the south-east of the A438 at Lugwardine. To its north-east is Lugwardine Court Orchard - a development of 15 sheltered houses. To the east and south-east is Lugwardine Court - a private educational facility associated, at least in part, with St. Mary's School (and in the ownership of the applicant). To the south is a small courtyard of traditional agricultural buildings (also in the ownership of the applicant) and a walled garden (in separate ownership). On the opposite side of the A438 (to the west) are further residential properties. Ground level falls away generally from Lugwardine Court Orchard towards the walled garden and barns, and also steeply at the edge of the site with the A438.
- 1.2 The application seeks permission to modify two Section 106 Agreements made in 1992 and 1996 which apply to the site and Lugwardine Court Orchard. These agreements require elderly persons (55 years +) or chronically sick or disabled persons to reside within Lugwardine Court Orchard or any extension thereto only. The proposal is to modify this clause in the agreements so that it does not apply to the application site.

- 1.3 A similar application together with an outline planning application for three units was considered by the Sub-Committee on 11th June 2003 and approved. This current application has been made in view of procedural failing in the earlier application which has the effect of invalidating the decision. The resolution to approve planning permission for the three units is not affected by this although at this stage the decision notice has not been issued.

## 2. Policies

### 2.1 South Herefordshire District Local Plan:

Policy GD1	-	General Development Criteria
Policy C2	-	Settlement Boundaries
Policy C20	-	Protection of Historic Heritage
Policy C29	-	Setting of a Listed Building
Policy SH6	-	Housing Development in Larger Villages
Policy SH8	-	New Housing Development Criteria in Larger Villages
Policy T3	-	Highway Safety Requirements

### 2.2 Hereford and Worcester County Structure Plan:

Policy H18	-	Housing in Rural Areas outside the Green Belt
Policy H16A	-	Housing in Rural Areas

### 2.3 Herefordshire Unitary Development Plan (Deposit Draft):

Policy DR2	-	Land Use and Activity
Policy H14	-	Main Villages: Settlement Boundaries
Policy S2	-	Development Requirements
Policy DR5	-	Planning Obligations

## 3. Planning History

- 3.1 SH891493PO Sheltered housing development. Refused 20th September, 1989.
- 3.2 SH901106PO Sheltered housing development. Refused 24th October, 1990; appeal allowed 9th July, 1991.
- 3.3 SH920267PM Sheltered housing development. Approved 22nd April, 1993.
- 3.4 SH960270PF Erection of 8 single storey dwellings (second phase of development of 15 dwellings originally approved). Approved 10th October, 1996.
- 3.5 CE2002/0323/F Change of use from residential home to educational, with ancillary residential accommodation, office and kitchen facilities, together with meeting rooms and offices for community use. Approved 29th May, 2002.
- 3.6 CE2002/3749/O Erection of 3 no. detached dwellings with garages. Approved subject to S106 Agreement being modified 11th June, 2003.
- 3.7 CE2003/0991/G Removal of two Section 106 Agreements (not to cause or permit any other than an elderly person or chronically sick or disabled person to reside within any part of the property or any extension thereto). Approved 11th June, 2003 but invalid.

#### 4. Consultation Summary

##### Internal Council Advice

- 4.1 Head of Engineering and Transportation: no objection.

#### 5. Representations

- 5.1 Lugwardine Parish Council: continue to vigorously oppose this application as it will adversely affect the residents of Lugwardine Court Orchard. Any development on this site should be subject to the existing S106 Agreements.

- 5.2 Eleven objection letters have been received from Nos. 3, 4, 8, 9, 10, 11, 12, 14, 15 and 16 Lugwardine Court Orchard, and Lower Lodge, Lugwardine summarised as follows:

- granting approval would enable landlord to infringe terms of leases of existing Lugwardine Court Orchard properties;
- Lugwardine Court Orchard originally allowed exceptionally as sheltered housing in view of proximity to nursing home and limited traffic generation - removal now would go against South Herefordshire District Council's original reasoning for agreements;
- changed circumstances not sufficient reason to allow removal;
- new development should respect character of Lugwardine Court Orchard and ensure rights of existing tenants to peaceful enjoyment of their environment;
- general residential development would lead to noise and disturbance to residents of Lugwardine Court Orchard;
- precedent for further residential development;
- shortage of sheltered housing in County would be met by residential development of site in accordance with terms of Section 106 Agreement.

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

#### 6. Officers Appraisal

- 6.1 The main issue in this case having regard to Section 106A is whether or not the Obligations as they relate to the application site continue to serve a useful purpose. In assessing this there are a number of material changes in circumstances since the Obligations were entered into which are relevant relating to the planning history, the Development Plan designation and the use of surrounding land.

- 6.2 Regarding the planning history, prior to adoption of the South Herefordshire District Local Plan the site and the adjacent land now forming Lugwardine Court Orchard were located in the countryside. In 1991 an appeal was allowed to erect a 'sheltered housing development' on the site and adjacent land. In reaching his decision the Inspector considered it questionable as to whether the site lay outside the boundary of the village having regard to the functional link between the nearby school and Lugwardine Court buildings to the rest of the village.

- 6.3 At the time of the appeal decision the then Council began proceedings towards a high court challenge of the Inspector's decision in view of the lack of control imposed over the occupation of the 'sheltered housing development'. However, before these proceedings were heard the then applicant entered into a Section 106 Agreement with the Council to limit occupancy of any development on the land to elderly or chronically

sick or disabled persons and their spouses/companions only. The then applicant also owned the adjacent Lugwardine Court which at that time was in use as a nursing home. As a consequence of this Obligation the Council withdrew the high court challenge, excepting the development under these terms as an exception to the usual presumption against new residential development in the countryside.

- 6.4 Subsequently, detailed planning permission was given in 1992 to erect seven sheltered units on the land to the north of the current application site (now Lugwardine Court Orchard), with a further eight approved in 1996 (and subject to the second Section 106 Agreement). The application site itself has not been the subject of a detailed application and consequently has remained undeveloped notwithstanding its outline planning permission for sheltered housing.
- 6.5 With the adoption of the South Herefordshire District Local Plan in 1999 and as a consequence of the earlier appeal decision, the boundary of Lugwardine Village was revised to include Lugwardine Court Orchard and the current application site. The application site, therefore, now lies inside the village boundary and not within the countryside.
- 6.6 In June of last year the Central Area Planning Sub-Committee resolved to approve applications to modify the Section 106 Agreements as they apply to the application site to remove the restriction on occupancy to elderly or chronically sick or disabled persons and erect three dwellings. The Sub-Committee made its decision having regard to the changed circumstances since the site was originally given permission – in particular, the changes to the village boundary to include the application site (thus allowing new residential development to take place as a matter of principle rather than as an exception) and the change of use of Lugwardine Court to an educational/community facility – and the acceptability of the proposal for the three dwellings on its planning merits (that is, low density housing appropriately distanced from Lugwardine Court Orchard to ensure no adverse impact on residential amenity). Notwithstanding the positive resolutions, the approvals have not been issued in view of the procedural failing in the Section 106A application which would have the effect of invalidating this particular decision.
- 6.7 The purpose of this current application is to, therefore, correct the procedural failing in the earlier application. As there have been no changes in circumstances since the earlier resolution of the Sub-Committee, the application is considered to be acceptable for the reasons given before and set out again in this report. A modification is, therefore, recommended on the basis that the Obligations as they relate to the application site no longer serve a useful purpose.

## RECOMMENDATION

- 1. That the Obligations be modified so that the restriction on occupancy of the land does not apply to the application site; and**
- 2. That the Sub-Committee resolution to grant planning approval subject to conditions for three detached dwellings under reference CE2003/3749/O be confirmed.**

Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.