

BRIDGWATER AND TAUNTON COLLEGE

Variation to Section 106 agreement to vary Part 3 of Appendix 3 of the S106 relating to application 42/95/0038 which restricts occupancy to certain user groups at Canonsgrove Halls of Residence, Honiton Road, Trull

Location: CANONSGROVE HALLS OF RESIDENCE, HONITON ROAD,
STAPLEHAY TRULL, TAUNTON

Grid Reference: 321104.121264 Variation of S52/S106 Condition

Recommendation

Recommended decision: Approval

Recommended Conditions (if applicable)

- 1. That the application be approved and that, from the date of the decision notice, the S106 Agreement dated 14th March 1996 and made between Taunton Deane Borough Council (1) and Summerfield Developments (SW) Limited (2) shall have effect subject to the modifications specified in the application.**

Notes to Applicant

Proposal

As a result of the Government's response to COVID-19, Somerset West and Taunton Council Housing Department, in partnership with the YMCA Dulverton Group (YMCADG) approached Bridgwater and Taunton College in the spring of 2020 to seek agreement to use part of the Canonsgrove site – the 66 bed Quantock Halls – for the accommodation of homeless people and rough sleepers from the Taunton area.

The College have granted a lease to the YMCADG and the site has been providing accommodation for homeless people and rough sleepers since the start of April 2020.

However, there is a Section 106 Agreement connected to planning permission 42/95/0038 which limits the categories of people permitted to reside at the premises. This proposal seeks to modify the S106 Agreement to, amongst other things, allow

for the continued accommodation of homeless people and rough sleepers on the site for a temporary period ending 31st March 2023.

Site Description

Canonsgrove Halls of Residence is located on the Honiton Road on the southern edge of Taunton. The Halls of Residence is set within large grounds and consists of several buildings and recreational facilities.

Relevant Planning History

The Halls of Residence at Canonsgrove were constructed following the grant of full planning permission in 1996.

42/95/0038 Demolition of three houses and garage block and erection of two residential blocks and refurbishment of existing study bedrooms to form an additional 142 study bedrooms and two staff flats and formation of car parking at Canonsgrove House, Staplehay, Taunton as amended by agents letter and plan received 9th November 1995 - amended description (142 study bedrooms) – Conditional Approval.

The Planning Permission was accompanied by a S106 Agreement, completed on 14th March 1996. The relevant section for the purposes of this application reads:

“(3) The owner hereby covenants with the Council that the accommodation existing on the land and the new accommodation to be provided as part of the development proposal shall at all time be occupied by:

- (a) Those engaged in full-time vocation or educational courses*
- (b) Those attending residential vocational education or recreational courses*
- (c) Student nurses and midwives*
- (d) Persons engaged in the management of the accommodation and the land*

Consultation Responses

TRULL PARISH COUNCIL –To support on the basis that the details are updated to reflect the date to be up to 31st March 2023 (as stated on YMCA/SWT communications) as opposed to it being two years from when the deed is signed.

Cllr D Johnson -opposes this application for the following reasons;

- No legal lease
- End date to variation contradiction
- Impact of placement of homeless people on Trull
- No minibus
- Antisocial incidents occurring
- Continuous footpath linking to Trull required.
- Application should be decided at committee due to level of objection.

SCC - TRANSPORT DEVELOPMENT GROUP – No observations to make.

Habitats Regulations Assessment

Not required.

Representations Received

12 letters of objection were received which raised planning concerns regarding:

- Request to be referred to Secretary of State
- Maximum number of residents to be conditioned
- Timeframe unclear
- Too far from Town Centre
- Public transport
- Need for minibus
- Footpath not fit for purpose
- Antisocial behaviour
- Crime
- Noise and disturbance
- Detrimental impact to residents and local community
- Lack of site notice
- Management arrangements

An objection was also received from the Trull Residents Group which raised concerns regarding:

- Lack of site notice
- Poor neighbour consultation
- Disagreement with Management Protocols and Liaison Group
- Departure from Development Plan and NPPF.
- Description of development
- Timescales

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below.

CP8 - Environment

CP5 - Inclusive communities

CP4 - Housing

Local finance considerations

Community Infrastructure Levy

Not required.

Determining issues and considerations

When determining an application for modification or discharge of a planning permission under S106A of the Town and Country Planning Act 1990, the local planning authority may determine it by:

- refusing it;
- discharging it; or
- modifying it.

The Courts have held that, when determining an application for modification, four essential questions need to be considered:

- (i) What is the current obligation?
- (ii) What purpose does it fulfil?
- (iii) Is it a useful purpose?
- (iv) If so, would the obligation serve that purpose equally well if it was subject to the proposed modifications?

The phrase 'useful purpose' is not defined but the Courts have held that it is not limited a useful planning purpose. The critical question was whether the obligation served some useful function.

There is a right of appeal to the Secretary of State if the local planning authority refuses or fails to determine the application.

The occupation of the premises by the homeless and rough sleepers is consistent with the C2 planning use of the site. However, homeless and rough sleepers are not listed under the terms of the existing S106 Agreement relating to planning permission reference 42/95/0038.

It is proposed to amend Clause 3 of the S106 Agreement to add further permitted occupation of rooms on the site as follows:

- “(a) those engaged in **full-time** vocational or educational courses;*
(b) those attending residential vocational educational or recreational courses;
(c) ~~student nurses and midwives~~ health and care professionals;
(d) persons engaged in the management of the accommodation and the land;
and
***(e) the homeless and rough sleepers, with a connection to the Somerset West and Taunton locality, who can occupy bedrooms in Quantock House and the warden flats, as well as those persons engaged in the care and support of persons occupying Quantock House and the warden flats, for a limited period until the 31st of March 2023.**”*

As well as the addition of Clause 3(e) as detailed above, Clause (a) is proposed to be amended to allow non-full time students to occupy the development; Clause (b) remains as originally worded; Clause (c) has been amended to align more broadly with modern education relating to healthcare; and Clause (d) remains as originally

worded.

The proposed modifications to Clause 3(a) and 3(c) are intended to modernise the Section 106 in line with current education practices in order to make the site more useable.

It should be emphasised that the applicant is not seeking permanent occupation of the site by the homeless and the justification required for the proposals to be considered acceptable needs to be proportionate to the temporary nature of the proposals and the fact that they are responding to a global emergency.

The original Section 106 was required in order to control the type of students and people (typically in education) using the residence. It was not imposed to ensure specifically that homeless people did not reside at the premises. From a review of historic letters sent between Brigadier Bloxham and the Planning Officer, Mr Noall, there were no clear planning reasons as to why the accommodation was limited to full time students. It was simply the requirement at that point in time.

The NPPF supports the proposed modification of the S106 Agreement at Canonsgrove. Paragraph 8, Sustainable Development is defined as:

“a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being”.

Paragraph 118 deals with the use of land and states that:

“Planning policies and decisions should:

... (d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)”.

In terms of Development Plan Policy, Strategic Objective 4 (Housing) of the Core Strategy (2011-2028) seeks to provide a sufficient supply of high quality housing accommodation to meet the needs of all sections of the community and strategic housing requirements.

Strategic Objective 5 relates to Inclusive Communities and seeks to reduce inequalities and deliver more prosperous, cohesive communities.

Policy CP5, Inclusive Communities states:

“Development proposals will promote sustainable development that creates social cohesive and inclusive communities; reduce inequalities, promote personal well-being and address accessibility to health, inclusive housing, training, education, places of worship, leisure and other community facilities ensuring a better quality of life for everyone both now and for future generations”.

It is clear from the above that the proposal to modify the Section 106 is consistent with the aims and objectives of National and Local Planning Policy. As such the modification is acceptable in principle. The next section of this report will consider other planning matters and the planning concerns raised by residents. It should be emphasised that the accommodation, as it stands, is suitable for full occupation by students/nurses and management associated with this and as such is considered suitable for temporary occupation by the homeless in responding to the ongoing global Covid-19 emergency.

In regard to accessibility, the footpath to the front of the premises is in a good condition and provides a safe walking route into Trull. There is also a pavement provision to Taunton which is a 45 minutes walk from Canonsgrove. Whilst it is acknowledged that this is not an ideal walking distance, it is an existing route and is proposed for use by the homeless for a temporary time whilst the pandemic is resolved and alternative accommodation across the District is sought. There is also a bus, the No. 97, which goes hourly into the Town Centre and takes 17 to 24 minutes depending on the time of day.

The LPA has been informed that a minibus will be not provided as part of the proposed amendments to the S106 Agreement. Historic provision of minibus services has related to specific activities carried out by the college and its students. Provision of a minibus service to and from the centre of Trull is not a current requirement for lawful operation of the site as a college campus and, whilst there would be some potential benefits to residents of Canonsgrove of providing such a service, it is considered that there are significant logistical issues with requiring such a service as part of the amendments to the S106 Agreement, including and not limited to the need to maintain safe social distancing practices. If the modification of the S106 is granted, the provision of a minibus could not be a conditional obligation. The applicant would have to amend the application to include this as an additional obligation.

Journeys associated with the use are already established and the proposals seek to temporarily alter the users in order to respond to the emergency caused by the COVID-19 pandemic. As such it is not considered necessary for the provision of a minibus service in order to make the proposals acceptable.

However, it is acknowledged that it would be more difficult for a homeless person to gain access to the town centre in terms of affordability and that is why this modification should be time limited to 31st March 2023. By this time, the homeless residents should be rehoused elsewhere, where local amenities are more accessible.

In regard to whether there can be a maximum number of residents conditioned, there are approximately 50 to 55 homeless people residing at the premises. The intention is to decrease this number in the run up to the 31st March 2023. It is not considered necessary to request an amendment to impose a cap on occupation levels, as this is defined in any event by the number of rooms available for occupation. It would not be possible to impose this via of condition to the amendment of the S106.

In terms of crime, whilst it is acknowledged that incidents have arisen since the change in occupancy at the site to the homeless, Local Policy D8 within the Site Allocations and Development Management Plan refers to safety which relates to new developments. It seeks to ensure that the design of new developments shall incorporate measures to reduce the likelihood of crime which are compatible with the need to create an attractive and sustainable layout. The Site Allocations and Development Management Plan was not adopted at the time the original planning permission was granted, however considerations in respect of crime and safety would have been taken into consideration during the original application for the Halls of Residence. If the homeless residents are causing crime, then this needs to be reported to and taken care of by the Police.

In regard to the site notice, a site notice was posted and dated. A photograph has been displayed alongside the other documents on the planning webpage. Consultation was carried out in accordance with the relevant legislation.

A management protocol is in place at the site. Every incident is dealt with appropriately in line with the provisions of the Equalities Act 2010 and other relevant legislation. The Police and YMCA Dulverton Group also have regular joint meetings to ensure their approach to and management of incidents and cases are effective.

It is understood that further discussion is taking place between the applicant and the Parish Council regarding their position as a Liaison Group. This is not, however, included as a necessary outcome of this application and is considered a separate exercise to be undertaken in good faith.

In light of the above assessment, it is the view of the LPA that refusal of the application is not justified because the current building is permitted for use by students, nurses etc and so the category of people using it for residency does not give rise to sufficient concerns which would lead to a recommendation for refusal. The use class of the premises ultimately remains the same and there are no sufficient planning grounds for refusal.

The modification of the Section 106 Agreement would be consistent with the aims and objectives of National and local planning policy and would not be harmful to the site or the surrounding area or have a detrimental impact on the planning amenities of local residents. In addition, the proposals represent a significant benefit in the response to the global emergency and the need to house homeless people for its duration, as required by national Government.

As such, it is considered that if the obligation in Clause 3 of the S106 Agreement is modified as specified in the application, the obligation would still continue to serve its purpose equally well.

Accordingly, it is recommended that the application be approved and that, from the date of the decision notice, the S106 Agreement shall have effect subject to the modifications specified in the application.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998 and Equalities Act 2010.

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