

Application to Mid Devon District Council: Removal of S106 Agreement

Site Location: Cottage Gardens Nursery, Morchard Bishop, Crediton EX17 6NG

Introduction:

This document has been prepared to support the request for the removal of the terms of the Section 106 (S106) agreement associated with the development at Cottage Gardens Nursery in Morchard Bishop, Crediton. The request for the removal of the S106 agreement is based on significant changes in circumstances that have impacted on the viability of the horticultural business and therefore the s106 agreement is no longer serving a useful purpose as the use of the approved agricultural dwelling is protected by condition.

Background

The development in question received full planning permission under application **13/01451/FULL** for the erection of one dwelling for key worker use in connection with the associated horticultural business. Additionally, there was a prior notification (**15/00535/PNCOU**) for the change of use of agricultural buildings to two dwellings under Class Q. These permissions were granted to support the growth of the horticultural business and are now complete.

Policy Framework:

Policy COR18 of the Mid Devon Core Strategy (LP1) generally restricts new residential development within the countryside, offering exceptions for essential agricultural or forestry workers' housing.

Paragraph 55 of the National Planning Policy Framework (NPPF) discourages isolated new homes in the countryside, barring special circumstances like the essential need for a rural worker to live near their workplace.

Policy DM10 of the LP3 Development Management Policies (DMP) allows for rural worker dwellings, given they meet specific criteria and are typically subjected to an occupancy condition.

Changes in Circumstances:

Several unforeseen changes in circumstances have affected the viability of the project and the horticultural business:

- a. Horticultural Market Decline during COVID: The global COVID-19 pandemic led to a substantial decline in the horticultural market, negatively impacting the project's ability to generate income.
- b. Inflation Impact on Construction Costs: Escalating construction costs due to inflation have made it economically unviable to proceed with the initial plan of constructing new buildings.

c. Financial Constraints and Lack of Mortgage Financing: The availability of mortgage financing options for the construction of the proposed house has diminished significantly following the banking crisis, creating a funding gap.

S106 Agreement Context:

S.106A of the Town and Country Planning Act 1990 guides the modification and discharge of planning obligations, focusing on the current usefulness of the S106 agreement.

Precedents from appeal decisions highlight that tying rural worker dwellings to the land via a S106 may not be necessary, and an occupancy condition can be adequate. This is already in place.

Section 106 Agreement:

The existing S106 agreement was put in place to ensure that the commercial use of the land is linked to the development of the house. It aimed to support the rural business and promote economic growth in the area. However, the current economic landscape and financing constraints have rendered the agreement impractical.

Permitted Development Rights

The introduction of permitted development rights offered an alternative route for site development, aligning with the government's goal of fostering economic growth in rural areas while diversifying operations.

Conditions warranting a S106 tie at Cottage Garden Nurseries, such as exceptional isolation or risk of inappropriate development, are not present due to the site's proximity to other dwellings and shared infrastructure.

The termination of the business activities that justified the S106 initially negates its purpose, advocating for the S106's discharge.

Relevant Legal Framework:

The relevant legal framework for amending or removing S106 agreements is outlined in The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992.

Proposed Changes

The proposed changes to the S106 agreement include its amendment or removal to accommodate the current economic realities.

Significant Changes in Circumstances:

Horticultural Market Decline during COVID: The global COVID-19 pandemic had an unprecedented impact on the horticultural market. With lockdowns and restrictions in place, the demand for horticultural products and services significantly decreased. This unforeseen downturn not only disrupted the nursery's revenue stream but also made it extremely challenging to sustain the business as initially envisioned.

Inflation Impact on Construction Costs: The prevailing inflationary pressures on construction raw materials have led to a substantial increase in construction costs. These escalated costs have made it economically unviable to proceed with the construction of new buildings, which was a key component of the original development plan. The current construction costs far exceed the financial projections made at the time of the S106 agreement.

Financial Constraints and Lack of Mortgage Financing: The aftermath of the banking crisis has dramatically reshaped the lending landscape. Mortgage financing options, which once may have been accessible for the construction of the proposed house, have become increasingly scarce. The available financial instruments and lending criteria no longer align with the project's requirements, resulting in a funding gap that cannot be bridged through conventional means.

Revisiting the Purpose of this Section 106 Agreement:

Original Intent vs. Current Reality: The original intent of the S106 agreement was to ensure a symbiotic relationship between the commercial use of the land and the concurrent development of the dwelling. This intent aimed to bolster the viability of this rural business, securing both its economic stability and growth potential. However, the shifting landscape necessitates a re-evaluation of the original vision. The current Section 106 Agreement stands as a barrier to the site's adaptability in response to changing market dynamics.

Conflict with Economic Viability: The continued enforcement of the S106 agreement no longer serves a useful purpose in respect of this land. The agreement, which was designed to support this rural business, whilst valid at the time, has become redundant in the the market climate of the last 5 years as this site has been unable to adapt to unforeseen challenges and economic constraints.

In summation, the removal of the existing Section 106 Agreement would be justified by the profound changes in circumstances, the need to revisit the original intent of the agreement, the availability of permitted development rights, and the consideration of available options. This decision aligns with planning policies and safeguards local employment and economic vitality in the region, making it a compelling and necessary course of action.

The S106 obligation for Cottage Garden Nurseries no longer serves a useful purpose in planning terms. Accordingly, it is proposed that the Council approves the discharge of this obligation, facilitating a practical approach to property management and aligning with local and national planning frameworks.