

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Environment and Planning

TO: North Area Committee 7 January 2010

WARDS: West Chesterton

**Request for discharge of Section 106 obligation so that the guest house does not have to be operated by the original applicant or immediate family only,
61- 63 Milton Road, Cambridge**

1.0 INTRODUCTION

- 1.1 In 1996 planning permission was granted for the change of use of 63 Milton Road from a mixed bedsit and guest house to a 6 bedroom guesthouse with a ground floor living and dining room linked to and incorporating the ground floor living and dining room of the of 61. The Council was minded to grant permission, but considered that given the need to revoke an earlier permission (C/0397/87), and to safeguard policy HO7 of the Interim version of the Adopted Cambridge Local Plan (which was aimed at preventing the loss of residential accommodation) a section 106 obligation was required.
- 1.2 A copy of the full agreement will be available at the Committee meeting. A copy of the most immediately relevant paragraphs (1) to (6) on pages 5, 6 and 7, are attached as an Appendix to this report.
- 1.3 The site has a complicated history the material parts of which are set out below.
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Reference	Description	Outcome
C/86/1088	Change of use from residential unit & bedsitting accommodation to guesthouse with owners flat.	REF
C/90/0474	Change of use from residential unit (no 61) and 6 bed- sits (no 63, students/guest rooms) to 4 bedsits, 4 guest rooms and	REF

	owners accommodation.	
C/96/0553	Change of use of number 63 Milton Road to a guest house for 6 rooms multi shared lounge/sitting room/breakfast room	APC
C/98/0335	Extension to house (extension and roof conversion to residence at 61 Milton Road, extension and roof conversion to Guest House at 63 Milton Road).	APC
C/98/0988	Erection of single storey side extension for use as guesthouse office reception.	APC
05/0653/FUL	Single storey rear extension.	APC
09/0081/FUL	Change of use of part residential to 2 guest bedrooms (No. 61)	APC

2.0 RECOMMENDATIONS

- 2.1 That the Council agrees to discharge the obligation. If however any legal advice or guidance is necessary, it will be reported to the meeting.

3.0 BACKGROUND

- 3.1 The Planning Obligation has several requirements, which I will address in turn using the numbering in the attached, briefly explaining what the clause requires and then giving an officer response in italics.
- 3.2 (1) This requires revocation of all previous user rights and permissions relating to 63 Milton Road. Previous rights or planning permission(s) which authorise or permit use of that property for a mixed bed-sitting / guesthouse use shall be revoked without compensation, and 63 shall thereafter only be used for a 6 bedroom guest house or other use subsequently granted planning permission.

I am of the view that this obligation has in effect been achieved by the implementation of the permission, the continued operation of the guesthouse, and the grant of subsequent permissions.

- 3.3 (2) To give notice of implementation of the permission.

I understand that this was done at the time.

- 3.4 (3) This obligation precludes No.61 being used (except for parts of the ground floor specifically defined) other than as a single family residence (a class C3 residential use), occupied by the land owner, his spouse and/or his children.

This obligation was met for many years, but no longer is following the grant of permission earlier in the year to use two rooms in the top of 61 as additional guest bedrooms. The owner is now concerned about what will happen in the future, as the children referred to in the legal agreement do not have an interest in the business. I am furthermore, retrospectively, surprised at the requirement for the permission to be personal (let alone through more than one generation), which strikes me as rather onerous and possibly beyond the tests that a section 106 obligation should require.

- 3.5 (4) No rooms at 61 may be rented or let out for any purpose, and access by guests in 63 to any part of 61 (other than that agreed on the ground floor) is prohibited.

The applicant advises that guests have not (other than as agreed) had access to 61, prior to the grant of permission for use of 2 existing rooms in the roof space as guest rooms earlier this year.

- 3.6 (5) The owner shall not allow No.63 to be used other than as a 6 bedroom guesthouse.

It is my understanding that the applicant complied with this initially, but after the grant and implementation of the 98/0335 permission (which permitted two additional rooms in each property), the guest house(63) had 8 guest rooms, and the private house (61) 6 private bedrooms. In granting permission for the two extra guest rooms in 63 no variation was required or made to the section 106 agreement.

- 3.7 (6) In the event that the owner, spouse or children cease to occupy 61 or cease to have any interest in 63, the owner will re-instate 61 and 63 to single residential units, in particular replacing dividing walls, though that shall not preclude 63 from continuing to be used as a self-contained guesthouse.

The requirement of the section 106 appears to me to be unnecessary, unless the whole question of the use of this site for this purpose is itself unacceptable. I am of the view that if sought now, permission for use of the pair of what were semi-detached houses as

a guesthouse would probably be granted. Permission would be required in any circumstances for the reversion of the building to two separate planning units or for any other use. Given that I do not consider that this obligation is any longer one that it would be reasonable to insist is retained.

4.0. COMMENTARY

- 4.1 When considering the most recent application for use of rooms in the roof (09/0081), the following comments were made in the report:

The original change of use was subject to a very complicated section 106 agreement which limited the number of guest bedrooms in the building, comprising 61 and 63 Milton Road to six, and limited the people who could operate the business to the then (and current) applicant and his immediate family. The subsequent permission granting permission for the use of two further rooms in the attic of 63 as guest bedrooms did not consider the section 106, so the planning permissions granted and the section 106 agreements are already out of kilter. This permission will put them further out of line, but reading the documentation it appears that the original proposal to have a section 106 to control this matter was because of an emerging policy in what was to become the 1996 local plan regarding retention of domestic accommodation when residential properties were turned over to guest house use. As has been rehearsed above, the policy in the 2006 Local Plan is rather less onerous, but that notwithstanding, what the applicant wishes to retain in domestic use is in excess of that required even by the 1996 Local Plan; the retention can be properly required by a condition which is suggested with the recommendation. The section 106 needs to be addressed separately but I consider that the issue of number of guest bedrooms has already been seriously undermined and I am not certain that there is justification for restricting the persons who can operate the business.

- 4.2 This is a request to discharge the planning obligations. In my opinion it is no longer reasonable to require the return of even half the pair of buildings to residential accommodation upon cessation of the current occupancy. Policy 6/3 of the Cambridge Local Plan 2006 states that:

“Policy 6/3 Tourist Accommodation

Development which maintains strengthens and diversifies the range of short stay accommodation will be permitted.In the case of change from residential use, part of the accommodation must be retained as permanent residential accommodation.

Development will not be permitted which would result in the loss of existing short stay tourist accommodation unless the change is to permanent residential accommodation or community facilities for which there is a need in Cambridge”

In my view that policy dictates what can happen to the accommodation in any event, if the decision is made to cease the current guesthouse use, and precludes a casual use for some other purpose which would in any event need permission for change of use. In my opinion there is no good reason for this constraint also to be personal.

- 4.3 That the building retain a residential element has been safeguarded through the latest planning application and specifically the condition which states:

“All the accommodation on the first floor, and the 'owners living' room and 'owners dining' on the ground floor (plan LC.150.3A) of the south-western half of the property 61 and 63 Milton Road, shall be retained solely for the use of the family as domestic accommodation only, and not used by guests of the guest house.

Reason: To ensure that residential accommodation is retained within the guest house (Cambridge Local Plan 2006 policy 6/3.)”

Given that I do not see the continuing need for a 106 obligation limiting the use of some rooms to family accommodation only.

5.0 IMPLICATIONS

- (a) **Financial Implications**
No direct implications.
- (b) **Staffing Implications**
None.
- (c) **Equal Opportunities Implications**
None
- (d) **Environmental Implications**
None
- (e) **Community Safety**
None.

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

Section 106 agreement as signed on the 18th July 1997

Correspondence

Planning files:

C/96/0553

C/98/0335

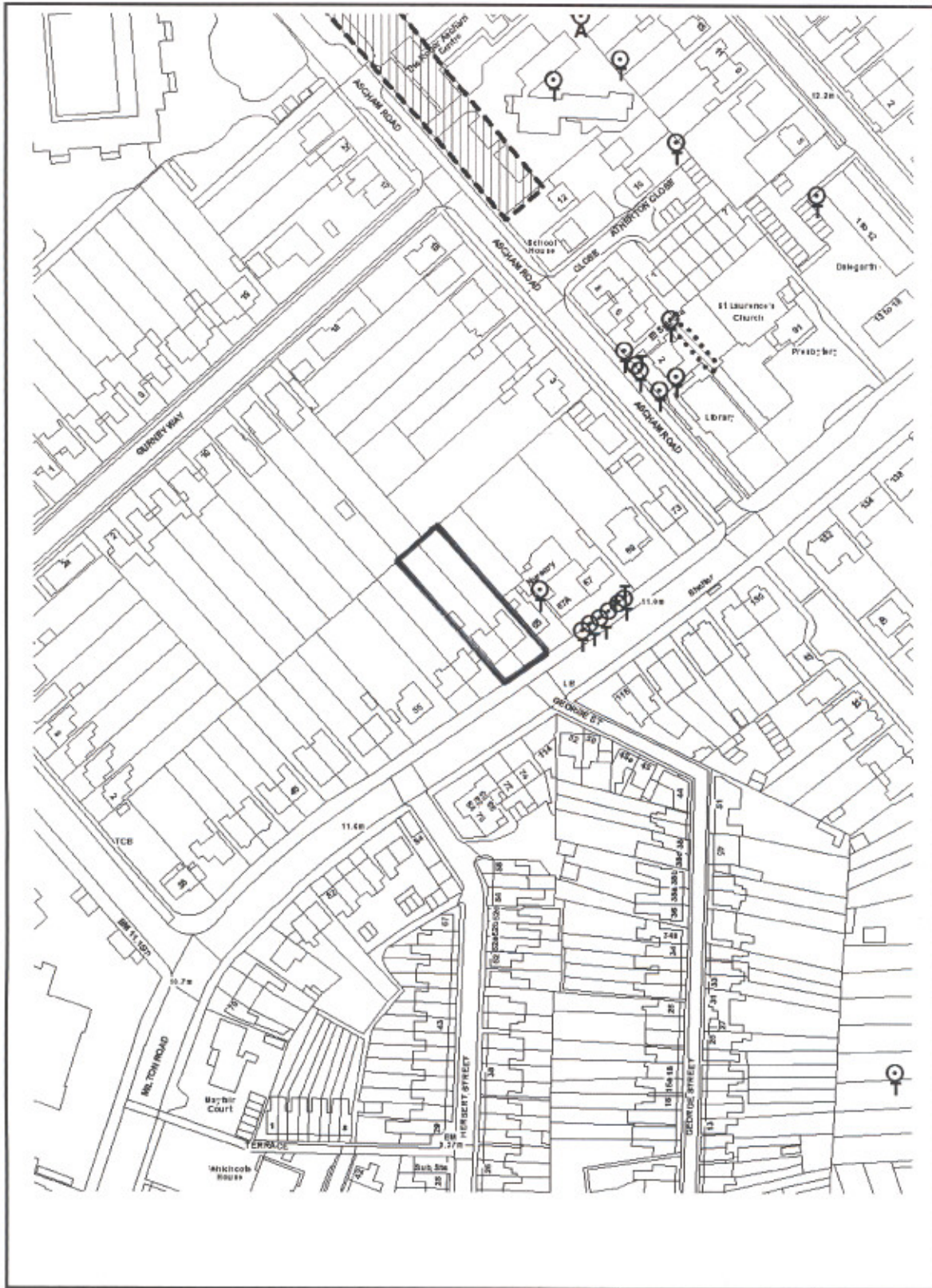
C/98/0988

05/0653/FUL

09/0081/FUL

To inspect these documents contact Peter Carter on extension 7155.

The author and contact officer for queries on the report is Peter Carter on 457155



**Request of discharge of S106 obligation
61 - 63 Milton Road Cambridge Cambridgeshire CB4 1XA**

thereof into whosoever hands the same may come with the intention that the covenants agreements conditions and stipulations contained in this clause and clause 3 of this Agreement shall at all times be observed and performed by the First Mortgagee and/or the Second Mortgagee and/or the Third Mortgagee (when acting as mortgagee in possession) and the Land Owner and their successors in title

(1) Forthwith on initiation of the Development to relinquish all existing user rights pursuant to the provisions of the 1990 Act and the benefit of any planning permissions relating to the Second Property insofar as such rights or permissions authorise or permit the use of the Second Property for a mixed bed sitting/guesthouse use purposes with the intent that

(a) all such existing user rights shall be permanently extinguished and all such planning permissions shall be revoked without in either case any payment of compensation therefor by the Council; and

(b) thereafter the Second Property shall only be used for 6 bedroom guesthouse or such other use or uses for which planning permission under the 1990 Act may from time to time after the date hereof be granted (whether or not on appeal)

(2) Forthwith on initiation of the Development to give written notice to the Council of the fact that this event has occurred including details of the date on which the said event occurred

ground

(3) Not to use or permit the First Property to be used (with the exception of the shared ground floor living and dining room shown hatched black on the plan number 2 annexed hereto) for any purpose other than as a single family residence occupied by the Land Owner and his spouse (Christine Gregory) and/or his children (namely (1) Andy Gregory (2) Greg Gregory and (3) George Gregory) in accordance with Class C3 of the Schedule to the 1987 Order AND FOR THE AVOIDANCE OF DOUBT no part of the First Property (with the exception of the aforementioned ground floor living and dining room) shall be used in association with the Second Property

(4) The Land Owner shall not let or permit any rooms at the First Property to be let or rented out for any purpose or allow access to the First Property (with the exception of the aforementioned ground floor living and dining room) by any guest staying at the Second Property

(5) The Land Owner shall not use or permit the Second Property to be used (including the ground floor living and dining room of the First Property) other than as a 6 bedroom guesthouse

(6) In the event of neither the Land Owner or his spouse or any of his children referred to in sub-clause 2(3) above continuing to occupy the First Property or of the Land Owner parting with any interest in the Second Property the Land Owner shall carry out works to reinstate the First Property and the Second Property to single separate units and in particular replace the dividing walls between the respective

ground floor dining and living rooms SUCH work to be carried out to the satisfaction of the Council SAVE THAT nothing in this Agreement shall thereafter prevent the Second Property from continuing being used as a self contained 6 bedroom guesthouse

3. IT IS HEREBY AGREED AND DECLARED as follows:

(1) This Agreement is connected with land (being the First Property and the Second Property) in which the First Mortgagee the Second Mortgagee the Third Mortgagee and the Land Owner have an interest and defines the land to which the covenants above relate (as being the First property and the Second Property) and that these covenants are (inter alia) covenants to which the Named Section applies and that the covenants above shall be enforceable as provided in the Named Section

(2) For the purpose of such parts of this Agreement as may be subject to the law against perpetuities the perpetuity period applicable thereto shall be a period of 80 years from the date hereof

(3) The following expressions shall where the context so admits be deemed to have the following meanings:

"the Council" shall only include any local authority successor to it;

"the First Mortgagee the Second Mortgagee and the Third Mortgagee" shall include their respective successors in title;

"the First Property" shall include any building structure erection or thing from time to time erected thereon or on