

**APPLICATION FOR DISCHARGE OF SECTION 106 AGREEMENT RE.  
DWELLING AT PART FIELD 7145, COMMONSIDE, DISTINGTON**

**Lead Officer:** Development Services Manager

**To consider an application for discharge of a Section 106 Agreement in respect of a dwelling at part field 7145, Commonside, Distington.**

**Recommendation:** That the Section 106 Agreement be discharged.

**Resource Implications:** Nil.

**1.0 SUPPORTING INFORMATION**

1.1 Outline planning permission to construct a bungalow on a plot of land to the rear of frontage development at Commonside, Distington was granted in March 1994 (4/93/0914/0 refers). The site lies immediately beyond the settlement boundaries for this part of the village but permission was granted on the basis of the local need of the applicants at that time and subject to them entering into an agreement with the Council under Section 106 of the Town and Country Planning Act 1990 to restrict occupancy of the new dwelling to the applicants for a period of 5 years following its completion.

1.2 Following the approval of reserved matters the bungalow was completed, according to Building Regulation records, on 7 January 2002. The Section 106 agreement would, therefore, have effect until 7 January 2007.

1.3 An application has now been received from the applicant's solicitor seeking early discharge of the agreement. In support of their application they point out that para. 5 of the agreement states:-

"the expressions "The Council" and "the Owners" shall include their respective successors in title and assigns".

1.4 The Third 'Schedule of the agreement states:-

"That the dwelling to be erected on the said property shall be occupied by the Owners and their immediate family for a period of at least five years following completion".

1.5 The inclusion of the words "respective successors in title and assigns" effectively defeats the objective of the restriction and, accordingly, there are no lawful grounds for refusing this application. The Section 106 agreement should, therefore, be discharged by deed.

**Contact Officer:** Tony Pomfret, Development Services Manager

**Others Consulted:** Martin Jepson, Head of Legal & Democratic Services

**Background Papers:** Planning application file 4/93/0914/0