

<b>Subject:</b>	Stanmer House, Stanmer Park, Brighton Request to vary S106 Agreement signed in connection with planning permission <b>BH2004/03712/FP</b> for change of use of ground floor from office use to art gallery, public exhibition, conference and reception rooms for public and private functions. First and second floor to retain existing office use.		
<b>Date of Meeting:</b>	14 January 2010		
<b>Report of:</b>	Director of Environment		
<b>Contact Officer:</b>	Name: Jonathan Puplett	Tel: 292525	
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<b>Wards Affected:</b>	Hollingdean and Stanmer		

### 1. PURPOSE OF THE REPORT:

- 1.1 To consider a request for a variation to the Section 106 Agreement dated 12 July 2006 in connection with planning permission BH2004/03712/FP, in order to remove the requirement to provide a 3 metre wide route open to the public across the lawns to the south west of Stanmer House, required under clause 3.4 of the Section 106 Agreement.

### 2. RECOMMENDATION:

- 2.1 That the proposed variation be agreed subject to requirements that an alternative access route be formed and available for use and all associated landscaping be carried out prior to the access across the lawn being closed. Furthermore the temporary fencing currently in situ bisecting the lawn would be required to be removed within 28 days of the alternative access route being made available for use.

### 3. BACKGROUND INFORMATION:

- 3.1 Planning permission was granted in January 2007 (ref. BH2004/03712/FP) for the change of use of ground floor of Stanmer House from office use to art gallery, public exhibition, conference and reception rooms for public and private functions. The first and second floors were to remain in office use.
- 3.2 Approval was subject to a Section 106 Obligation, Clause 3.4 of which is worded as follows:

*'The developer shall ensure that the part of the Property shown for identification purposes coloured purple on the attached plan marked "C" (having a width of 3 metres) shall*

*remain open to the public at all times from dawn until dusk for the purpose of access to the adjacent land edged in part yellow on the said plan marked "C" subject to those using that means of access not causing any nuisance disturbance or annoyance to the developer, provided always that nothing in this sub clause 3.4 will permit the Developer to terminate the right of way but shall entitle the Developer to seek injunctions and/or damages against any member of the public causing such nuisance, disturbance or annoyance.'*

- 3.3 The Agreement is dated 12<sup>th</sup> July 2006 and planning permission was granted in January 2007.
- 3.4 The three metre wide route across the lawns which Clause 3.4 requires to be open to the public leads from the front (eastern) side of Stanmer House to an area known as the 'Cedar Lawns'.
- 3.5 In recent years fencing / railings have been erected around the northern end of the lawns including temporary fencing bisecting the lawn located alongside the public access secured by legal agreement. These railings provide an enclosed area which is used in conjunction with private events such as weddings held at Stanmer House. Consent for the railings in situ to the eastern side of the lawns was granted under application BH2006/00063 in June 2009. Consent for the railings in situ to the western side of the lawns is sought under application BH2010/02000, the replacement of low walls and railings to either side of a pair of 'Italian' gates to the western side of the lawns is also proposed under this application. Consent is sought to erect fencing around the southern end of the lawns under application BH2007/01206, including a gated access to the western end of the public access over the lawns. The formation of an alternative access route to the Cedar Lawns running around the southern end of the gardens is also proposed under this application.

#### **4. PROPOSAL:**

- 4.1 As part of a comprehensive scheme to create a secure enclosure around the entire lawn area associated with Stanmer House, the developer has written to the Council to request that Clause 3.4 of the legal agreement associated with planning permission BH2004/03712/FP be removed. This would remove the requirement for a route across the lawns to be open to the public during daylight hours. A Deed of Variation of the agreement has been drafted in an agreed format. This variation requires an ordered schedule of works to be carried out which includes the formation of an alternative access route (proposed under application BH2007/01206) and landscaping (proposed under applications BH2007/01206 and BH2010/02000) to be completed prior to the Clause being made null and void. Within 28 days of the completion of works being confirmed, the temporary fence currently in situ which bisects the lawn area would have to be removed.

## **5. COMMENT:**

- 5.1 The proposed comprehensive scheme of works, if completed in its entirety would provide an enlarged secure outdoor area to be used in association with private functions at Stanmer House. This would improve the future financial viability of the House as a business and consequently would help to ensure the future preservation of the listed building. An alternative public route from the eastern side of the house to the 'Cedar Lawns' would also be formed, running around the southern end of the lawn area associated with Stanmer House. As detailed in the reports relating to applications BH2007/01206 and BH2010/02000 the works proposed to enclose the lawns and create an alternative access route are on balance considered acceptable.
- 5.2 The draft variation if approved would ensure that the alternative access route proposed under application BH2007/01206 is completed along with all associated landscaping works, prior to the Clause which requires public access over the lawns being made null and void. Within 28 days of the completion of works being confirmed, the temporary fence currently in situ which bisects the lawn area would have to be removed.
- 5.3 Whilst it is regrettable that a route to the Cedar Lawns would be closed to the public, this concern must be balanced with the need to secure the ongoing maintenance of Stanmer House which is reliant on the property remaining a viable business concern. It appears reasonable that the lawns which form part of the Stanmer House leasehold be enclosed in some manner to enable their use for private functions. Furthermore, the alternative access route proposed across public land is considered to be acceptable, and the comprehensive scheme of works proposed enables the removal of the temporary railings in place which bisect the lawn, and cause significant harm to the setting of the listed building.

## **6. FINANCIAL & OTHER IMPLICATIONS:**

### **6.1 Financial Implications:**

There are no direct financial implications associated with the proposed variation to the Section 106 Agreement.

*Finance Officer Consulted: Karen Brookshaw*

*Date: 22/12/2010*

### **6.2 Legal Implications:**

S.106A of the Town and Country Planning Act 1990 provides that a s.106 obligation may be modified by agreement between the authority by whom the obligation is enforceable and the persons against whom the obligation is enforceable. This mechanism enables the Agreement to be modified. The modification gives rise to no human rights implications.

6.3 Equalities Implications:

The works proposed under application BH2007/01206 include the formation of an alternative access route to the 'Cedar Lawns', this route is of a reduced gradient in comparison to the existing, and does not involve any steps. The variation proposed requires that the works associated with the formation of the new route be completed prior to the clause which secures access across the lawns being made null and void. A usable public route to the Cedar Gardens would therefore be in place at all times should the variation be approved.

6.4 Sustainability Implications:

None identified.

6.5 Crime & Disorder Implications:

The proposed comprehensive scheme of works is intended to improve security and reduce crime.

6.6 Risk and Opportunity Management Implications:

None identified.

6.7 Corporate / Citywide Implications:

None identified.