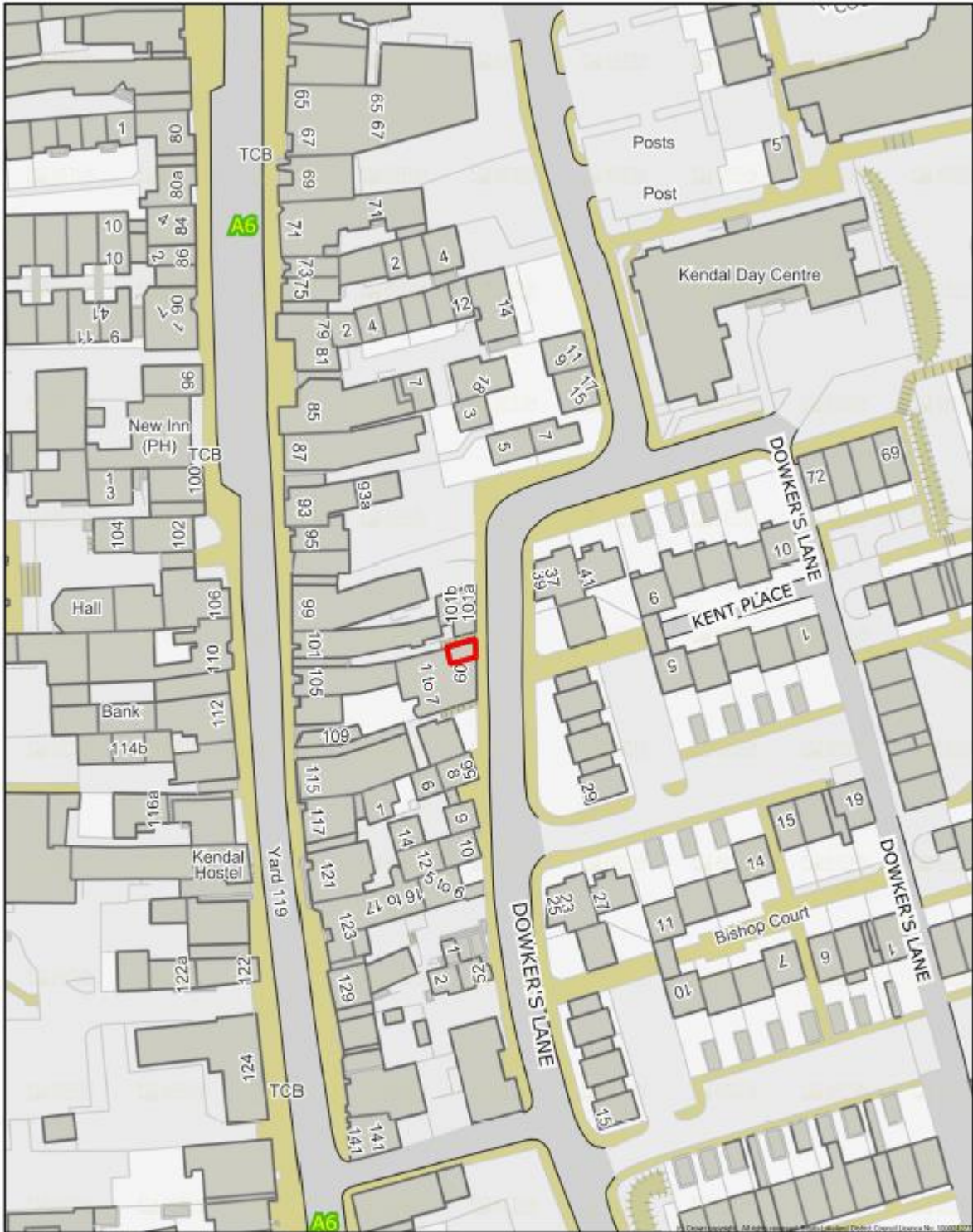

Planning Application No. SL/2022/0612
60 Dowkers Lane, Kendal, LA9 4DN

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SL/2022/0612

60 Dowkers Lane, KENDAL, LA9 4DN



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Summary

SL/2022/0612

PARISH: Kendal

SITE ADDRESS: 60 Dowkers Lane, Kendal, LA9 4DN

PROPOSAL: Removal of S.106 requirement to comply with local occupancy condition attached to planning permission reference SL/2006/0194.

APPLICANT: Mrs Gillian Parker

COMMITTEE DATE: 27th October 2022

CASE OFFICER: Charlotte Pinch

The proposal is for the removal of S.106 requirement to comply with local occupancy condition attached to planning permission reference SL/2006/0194 (Change of use from shop to dwelling).

The site comprises a single ground floor studio flat at 60 Dowkers Lane, Kendal which is located within Kendal Town Centre, Kendal Development Boundary and the Kendal Conservation Area.

The application requires assessment of the proposal against current relevant adopted planning policy, including South Lakeland Core Strategy (2010) and more recently the Development Management Policies DPD (2019). As opposed to previous superseded planning policy, used when the local occupancy condition was applied in 2006.

The current application has been referred to committee at the request of the Chairman.

Recommendation

The recommendation is to approve the application and the deed of variation of the S106 agreement resulting in the dwelling no longer having an attached local occupancy condition.

1.0 Description and proposal

Site Description

- 1.1. The site comprises a single ground floor studio flat at 60 Dowkers Lane, Kendal which is located within Kendal Town Centre, Kendal Development Boundary and the Kendal Conservation Area.
- 1.2. The dwelling has been constructed and is occupied. It was originally given permission in 1989 as part of a larger building comprising of 7 flats and 1 ground

floor shop unit. In 2006, permission was granted for change of use of the shop unit to a residential dwelling, which is the subject of this application.

Proposal

- 1.3. The description of development is for the removal of S.106 requirement to comply with local occupancy condition attached to planning permission reference SL/2006/0194. However, as mentioned above the proposal should be for a Deed of Variation (DOV) as the proposal is in effect removing the applicable clauses relating to local occupancy from the S106. It is considered that officers cannot discharge the obligation/S106, as the applicant have not satisfied the criteria. The applicants consider the obligation is no longer applicable and therefore a DOV would remove this obligation going forward.

2.0 Planning History

5890498 – Erection of seven flats and one shop unit and provision of parking area.

Approved with Conditions. 1989.

SL/2006/0194 – Change of use from shop to dwelling.

Approved with Conditions. 2006.

3.0 Consultations

- 3.1 None received.

Neighbours/Third Parties

- 3.2 None received.

4.0 Relevant planning policies

South Lakeland Core Strategy

4.1. The following Core Strategy policies are considered relevant to the proposal:

- CS1.1: Sustainable Development Principles
- CS1.2: The Development Strategy
- CS2: Kendal Strategy

South Lakeland Development Management Policies Development Plan Document (DMDPD)

4.2. The following DMDPD policies are considered relevant to the proposal:

- DM1: General Requirements for all development.
- DM24: Kendal Town Centre and Kendal Canal Head Area

Other material considerations

National Planning Policy Framework (2021)

4.3. The following sections are considered relevant to this application.

2. Achieving sustainable development
4. Decision-making

5.0 Assessment

Site and Planning History

- 5.1. This proposal is to remove a local occupancy condition on an existing ground floor studio flat in residential use. The flat is part of a larger building on Dowkers Lane, which originally received permission in 1989 (Planning Ref. 5890498) for the erection of seven flats, one shop unit and parking. This permission did not include any local occupancy restrictions on the residential units.
- 5.2. In 2006 planning permission was granted (Planning Ref. SL/2006/0194) for the change of use of the shop unit to a dwelling. This created the residential unit at 60 Dowkers Lane subject of this application. This permission was granted for two reasons, one of which was on the basis that:
 - 5.3. *‘The development would accord with Policy H4 of the South Lakeland Local Plan, Regional Planning Strategy, the Cumbria & Lake District Joint Structure Plan and subject to the Associated Section 106 Agreement would accord with the adopted housing policies of South Lakeland District Council.’*
- 5.4. As such, a S106 agreement was secured against the property making it subject to a local occupancy restriction, which read as follows:
 - 5.5. *‘The dwelling to be formed on the Land shall be occupied as the sole or main residence by an Approved Person.’*
 - 5.6. *“Approved Person” shall mean a person who has immediately prior to such approval;*

- *Been continuously resident in the District of South Lakeland for two years; or*
 - *Been permanently employed or has a firm permanent job offer in the District.*
- 5.7. *In the event that the Owner is unable to effect a sale or disposal to an Approved Person within six months of the dwelling being first advertised for sale (provided that the dwelling has been continually advertised for sale within that period and the Owner has made reasonable endeavours to effect a sale) the Owner may sell or dispose of the dwelling to a person who is not an approved person but the provisions of this Agreement will continue to apply to future sales or disposals of the dwelling.'*
- 5.8. The previous owners of the application site were party to this S106 agreement, as they struggled to secure commercial tenants for the premises and at the time there was greater demand for residential accommodation.
- 5.9. The policies referred to as part of this decision included H4 of the South Lakeland Local Plan (2006) which dealt with small-scale residential development in Kendal and Ulverston. It stated that residential development will be permitted on suitable small sites within the development boundary, provided it does not result in the loss of important open space. Planning permission would be subject to suitable density, siting, layout, landscaping and access details.
- 5.10. However, all of the policy documents referred to have since been superseded and none of the policies remain as saved policies. Therefore, the current proposal must be assessed against the current replacement South Lakeland Core Strategy (2010) and more recently the Development Management Policies DPD (2019).

Officer's Assessment

- 5.11. The starting point for the assessment of this application are the current, relevant, policies in the South Lakeland Core Strategy. Policy CS1.1 and CS1.2 refer to overall sustainable development principles and the districts development strategy. Of relevance to this proposal, CS1.1 requires that new development should be directed to existing service centres where there is existing infrastructure capacity. A sequential approach should be followed, whereby existing buildings within settlements should be utilised first. On the application site, there is an existing built unit, within the development boundary of an existing service centre, Kendal. The site is also within the Kendal Town Centre and as such in close proximity of services and transport facilities.
- 5.12. Furthermore, Policy CS1.2 seeks to concentrate development in the towns of Kendal and Ulverston, defined as Principal Service Centres, with the largest proportion being in Kendal. It further states that priority will be given to the reuse of existing buildings and previously developed land for all new housing development. In this case, the proposal is for the re-use of an existing building within the Principal

Service Centre of Kendal, for residential use. As such its use, with no occupancy restrictions, would comply with Policies CS1.1 and CS1.2.

- 5.13. Moreover, Policies DM1 and DM24 of the Development Management Policies DPD are of relevance too. Policy DM1 deals with general requirements for all development and states that development will be acceptable provided it meets certain criteria. Of relevance to this proposal, this includes acceptable levels of amenity, privacy and overshadowing for existing, neighbouring and future users, responds appropriately to the sites locational context and settlement character and provides adequate and safe movement for pedestrians, cyclists and motor vehicles. The application site is within a block of existing residential units, which have been in occupation for a number of years. Opposite the application site are newer residential units, which have been implemented and occupied in more recent times. The overwhelming character of the immediate area surrounding the application site is residential, with good access to the town centre by foot or bike. As such, the use of the unit as unrestricted residential purposes would comply with Policy DM1.
- 5.14. In addition, Policy DM24 deals with Kendal Town Centre. The Policy seeks to encourage residential development outside of the primary shopping area, provided it does not undermine viability and vitality of the town centre and result in main town centre uses no longer predominating. Whilst the application site is located within the Kendal Town Centre, it does not form part of the primary or secondary shopping frontage. Dowkers Lane is now predominantly residential in character, with scarce retail or commercial elements. As such, the use of the application site for unrestricted residential purposes would not undermine the viability or vitality of the town centre.
- 5.15. The proposal therefore complies with the criteria set out in current adopted policies of the South Lakeland Core Strategy CS1.1 and CS1.2, in addition to Policies DM1 and DM24 of the Development Management Policies DPD. Therefore, if a planning application was submitted for a dwelling now, the Council would approve such a dwelling with no occupancy restriction.
- 5.16. Turning to the conditions attached to the 2006 consent, these included a three year commencement of development time limit and restricting no external alterations to the premises. As the premises is now within residential use and as such the development has been commenced, the condition required would relate to no external alterations to the premises to protect the character of the Kendal Conservation Area.

6.0 Recommendation

- 6.1. The application is recommended for approval subject to the completion of a deed of variation of the original S106 removing the local occupancy condition and the following condition:

Condition (1) This permission does not authorise any external alterations to the premises.

Reason: To preserve the character of this part of the Kendal Conservation Area in the absence of any detailed plans of such alterations.