

**PLANNING
COMMITTEE**

13th February 2025

Application **24/01242/S106A**

Removal of Section 106 Agreement dated 29.03.2005 and attached to Planning Permission 2004/066/FUL

2 Grove Street, Redditch, B98 8DX

Applicant: **Mr Paul McCloughlin, Suma Developments Ltd**
Ward: **Central Ward**

The case officer of this application is Steven Edden, Principal Planning Officer (DM), who can be contacted on Tel: 01527 548474 Email: steve.edden@bromsgroveandredditch.gov.uk for more information.

Site Description

The site, which measures 3866sqm (0.387 ha) in area is located at the corner of Alcester Street and Grove Street within Redditch Town Centre. To the west of the site are the Redditch Borough Council Offices and immediately opposite, to the north is the Palace Theatre. The building is currently vacant having previously been occupied by Hughes electrical retailers.

Proposal Description

The proposal is to remove the Section 106 (S106) Agreement attached to planning permission 2004/066/FUL which is dated 01.04.2005.

The S106 agreement is dated 29.03.2005

Policy Considerations

National Planning Policy Framework, December 2024

Relevant Planning History

2004/066/FUL	A1 retail building	Granted	01.04.2005
2007/222/FUL	Erection Of Mezzanine Storage Floor	Granted	20.06.2007
2013/164/CPL	Unrestricted A1 retail sales (following previous planning consent ref 2004/066/FUL)	Granted	14.08.2013

PLANNING COMMITTEE

13th February 2025

Public Consultation Responses

No responses received

Background

The building present on the site together with its associated car park was granted permission under planning reference 2004/066/FUL for retail use in April 2005. The grant of consent was subject to planning conditions and a Section 106 legal agreement which was signed and dated 29th March 2005. Works to erect the building commenced soon after the consent with the works having been completed in late 2005.

An application submitted by the original occupier, Apollo 2000 Ltd sought to erect a Mezzanine storage floor which was granted permission in June 2007.

An application for a Certificate of Lawful use submitted under reference 2013/164/CPL sought to establish that the future use of the site for unrestricted Class A1 retail sales would be lawful. The Certificate was granted in August 2013.

It should be noted that the Town and Country Planning (Use Classes) Order 1987 was amended in September 2020 re-classifying many use classes. Shops, for the display or retail sale of goods, other than hot food, principally to visiting members of the public which formerly fell within use Class A1, became re-classified as a Class E use. Class E includes a wide range of other uses (which previously did not fall within Class A1) which include, amongst others, cafes, restaurants and gymnasiums.

It is understood that the current site has been vacant since February 2023.

Assessment of Proposal

Members should note that this is not a planning application. This is an application to remove the S106 agreement attached to the original consent 2004/066/FUL and as such the acceptability or not of the proposal should not be assessed having regards to the policies of the development plan (the Borough of Redditch Local Plan No.4).

The S106 in question includes the following obligations:

- The provision of pedestrian footway / pavement improvements
- Pedestrian linkage improvement including contributions to enhance the (adjacent) subway and its approaches. A figure of (£9,500) was required for these purposes.
- The free use of the car park including the use of disabled spaces (within the red line area) for the parking of private motor vehicles on a first come first served basis by users and staff of the Palace Theatre between the hours of 6pm and 12 midnight on every Saturday and Sunday

Your officers can confirm to members that the first two obligations as set out above (pavement and subway improvements) have been met.

PLANNING COMMITTEE

13th February 2025

Financial records show that the (£9,500) contribution was received by the Council with monies subsequently having been spent, as evidenced by the images contained within the presentation pack (subway improvements carried out in May 2007).

The obligations placed on the development in relation to the provision of car parking for staff and users of the Palace Theatre have also been complied with and remains an obligation or limitation on the site to this day.

The applicants agent states that:

Our client purchased the land and has sought to continue to meet with the parking obligations over the last 10 years. However, it has become apparent in recent years that this arrangement is unduly onerous and requires the Owner to provide unrestricted access to his private car park outside of the operating hours of the retail unit. This is creating operational concerns as parking provision intended for the unit itself is being used as a general car park for people visiting other places rather than the store it is for...our client seeks to have the section 106 attached to consent reference 2004/066/FUL removed, in circumstances where the other obligations and contributions have been met in full, and this outstanding obligation regarding car parking is simply no longer fit for purpose.

The National Planning Policy Framework, December 2024, at Paragraph 58 comments that Planning obligations must only be sought where they meet all of the following tests (set out in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010):

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

It is the view of the applicant that the parking obligations which currently allow staff and patrons of the Palace Theatre to use the sites car park do not meet the necessary tests set out above and that it is not for this particular car park to provide spaces for another property to make this development acceptable in planning terms.

There are a number of alternative 24-hour car parks available within the town centre many of which are within walking distance of the Palace Theatre. Furthermore, there are other car parks available in the wider local area including lawful on-street car parking, all of which are considered to negate the need to protect the 6 vehicle spaces associated with consent reference 2004/066/FUL from being limited to staff and visitors of the Palace Theatre.

Given the highly sustainable central Town Centre location of the site, there are also opportunities to access other modes of travel to the Theatre, including local bus services with stops within walking distance of the Theatre, and the train station which is around a 9 to 10 minute walk from the Palace Theatre.

**PLANNING
COMMITTEE**

13th February 2025

The applicant makes reference to the Councils declared climate emergency, and that in their view, the Council can actively encourage users and staff at the Theatre to access the facility on foot and by alternative modes of travel, and in that regard the loss of the currently designated 6 parking spaces can be further justified.

In relation to disabled access provision, the applicant comments that the Palace Theatre itself has a car parking area and drop off space to the rear of their site, which could now be used to either deliver disabled parking spaces, or provide an area for disabled users to be dropped off and to assist in their access to the site.

In conclusion, the first two obligations as set out above, with respect to the provision of pedestrian footway / pavement improvements and pedestrian linkage improvements have been met. The site owner no longer considers that the current parking arrangements are workable and given the number of alternative access options and car parks available within close proximity of the Palace Theatre, there is no longer a requirement or justification to maintain the requirement that a fixed number of car parking spaces at the site be reserved for use by staff and patrons of the Theatre.

The site itself is significant in size (0.387 ha) and occupies a part of the Town Centre (off Alcester Street) which has been identified as being in particular need of revitalisation. Your officers consider that the removal of the restrictions placed on the current or future owner of the site may mean that the property, which has been vacant for approximately 2 years would be more attractive to potential occupiers. Bringing the building back into viable re-use would clearly enhance the vitality and viability of this important part of the town centre.

In light of the above, your officers consider it entirely reasonable for the S106 agreement dated 29.03.2005 to be removed in full from planning permission 2004/066/FUL having regard to the particular circumstances of this case.

RECOMMENDATION:

The request for the removal of the Section 106 agreement attached to 2004/066/FUL be granted

Procedural matters

This application is being reported to the Planning Committee because the application requires a removal of a S106 Agreement. The application falls outside the scheme of delegation to Officers.