

COMMITTEE REPORT

APPLICATION NO.	23/01964/S106
LOCATION	Middle Of The World Farm Vicarage Lane Hound Green Hook Hampshire RG27 8TE
PROPOSAL	Discharge of Section 106 Agreement
APPLICANT	Mrs J A Burfield
CONSULTATIONS EXPIRY	Not Applicable
APPLICATION EXPIRY	27 October 2023
WARD	Hartley Wintney
RECOMMENDATION	Approve



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BACKGROUND

The application has been submitted under Section 106A of the Town and Country Planning Act 1990 (as amended) for the discharge of a Section 106 agreement/planning obligation.

The application is brought to Planning Committee for determination because, in accordance with the Council's Constitution, this is an application that has not been delegated to Officer's.

DESCRIPTION OF SITE

The application refers to a 'L' shaped site positioned to the northwest of, and accessed from, Vicarage Lane. A private track leads to the main dwelling which comprises a two-storey residential property with parking forward of the front elevation and surrounded by private amenity space. An array of buildings and hard standings are located to the west.

PROPOSAL

This application is a request to discharge a legal agreement relating to the planning application, referenced 03/00812/FUL granted planning permission on 22 December 2003. The planning permission granted the erection of a dwelling to replace a mobile home on the site, and the decision was subject to a legal agreement which restricted the occupation of the building to a person solely or mainly employed, or last employed, in agriculture.

The discharge of the legal agreement would result in a dwelling which is unrestricted in its occupation and regularises the position on site following the grant of a Lawful Development Certificate confirming that the property has been occupied in breach of the S106 agreement for a period in excess of ten years and therefore is immune from enforcement action.

PLANNING HISTORY

60/00625/H1 - Erection of house and outbuildings for pony and beef raising. Approved 14.09.1960.

96/00677/FUL - Stationing of mobile home for agricultural worker & erection of ancillary farm building. Approved 27.05.1997.

98/00878/AMCON - To vary condition No2 on Planning Permission 96/00677/FUL (regarding the removal of the mobile home on or before the expiry of the period of three years.) Refused 26.10.1998.

01/01550/FUL - Erection of agricultural workers dwelling. Refused 01.02.2002.

01/01579/TEMP - Retention of mobile home. Refused 01.02.2002.

02/00287/FUL - Erection of agricultural workers dwelling. Refused 15.08.2002.

02/00296/FUL - Retention of mobile home. Approved 05.11.2002.

03/00812/FUL - Demolition of mobile home and erection of replacement agricultural worker's dwelling. Approved 22.12.2003.

03/00963/RETEMP - Continued stationing of agricultural worker's mobile home for a period of 9 months - renewal of 02/00296/FUL. Approved 22.12.2003.

22/02583/S106 - Discharge of Section 106. Refused 19.05.2023.

23/01363/LDC - Occupation of the property in breach of the agricultural occupancy condition. Certificate Issued 16.08.2023.

PROCEDURE

This request addresses the legal agreement completed in association with planning permission 03/00812/FUL and has regard to the Planning Practice Guidance which sets out the circumstances where legal agreements can be re-negotiated. These comprise:

[1] Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so.

[2] Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it 'no longer serves a useful purpose' or would continue to serve a useful purpose in a modified way (see Section 106A of the Town and Country Planning Act 1990).

[3] In addition, Section 106BA of the 1990 Act (inserted by the Growth and Infrastructure Act 2013) allows applications to be made to modify the affordable housing requirements of any Section 106 agreement regardless of when it was signed. This review must be based on economic viability and cannot take into account other aspects of the planning consent. It addresses affordable housing requirements only.

This request is made to remove the Section 106 which restricts the occupation of the property to an employee of Whitehall House, having regard to clause 2 above following the grant of the aforementioned Lawful Development Certificate.

ASSESSMENT

The dwelling, which is subject to this application, was granted planning permission under application reference 03/00812/FUL, which was granted on 22 December 2003. A legal agreement was attached to that permission, which restricted that the building only be occupied by a person solely or mainly employed, or last employed, in agriculture.

In May 2023 an application was made to the Local Planning Authority seeking to discharge the legal agreement which was refused on the grounds that there was a lack of information submitted, as no justification had been provided for the removal of the agricultural occupancy S106 clause.

In June 2023 an application was made to the Local Planning Authority seeking a Certificate of Lawfulness for the continued occupation of dwelling by non-agricultural

worker (in excess of 10 years) in breach of Condition 2 of planning permission 03/00812/FUL. Based on the evidence provided, this was granted on 15 August 2023.

Planning considerations

Planning permission was granted for the erection of an agricultural workers dwelling in 2003 which itself was to replace a mobile home. At the time of submission of the application, supporting documentation stated that the accommodation was required to support the applicant's rabbit rearing enterprise that was established in 1997. Although planning policies since the determination of the original permission have changed, at the time of determination, it was acknowledged that by virtue of its countryside location, planning policies would not have normally allowed for residential development at this location. However, due to the proven need in planning terms for accommodation at the site serving Middle Of The World Farm, the application was approved. The occupancy of the property was nevertheless restricted through a planning condition as well as by legal agreement.

Since the grant of planning permission, the applicant has demonstrated through the submission of evidence that the property had not been occupied in accordance with the terms of the planning condition, with the occupants not currently employed or last employed in agriculture, nor retired from agriculture. The evidence presented was deemed to be sufficiently precise and unambiguous to demonstrate that this breach of the condition had occurred for a continuous period in excess of ten years.

The Local Planning Authority therefore issued a Certificate of Lawfulness under Section 191 of the Town and Country Planning Act 1990 accepting that the breach of condition was immune from enforcement action and the property was lawful for planning purposes. With the planning permission securing occupation of the property by both condition and legal agreement, there is now an inconsistency arising where it would be unreasonable to retain the legal agreement. The removal of the legal agreement would however result in a dwelling which is fully unrestricted in its occupation.

The site is located outside any Settlement Policy Boundary (SPB) and is within part of the district which is designated as countryside as per Policy SS1 (Spatial Strategy and Distribution of Growth) of the Hart Local Plan. Policy SS1 is explicit in its aims to focus development within defined settlements, on previously developed land in sustainable locations and on allocated sites. Within the countryside, Policy NBE1 (Development in the Countryside) is clear on the instances that would allow it (subject to meeting other policies), these are:

- housing for a rural worker where there is a proven essential need;
- affordable housing (subject to the requirements of adopted policy H3);
- specialist housing (subject to the requirements of adopted policy H4);
- replacement dwellings.
- housing of exceptionally or truly innovative in design which significantly enhances its immediate setting and is sensitive to the local character.

The dwelling, as an unrestricted market property, does not fall within any of the exceptions of Policy NBE1. Therefore, the provision of a market dwelling in this location does not accord with the Local Plan. Were this submission for a planning permission, this would be afforded weight in the determination process.

Notwithstanding the above, the occupation of the property without compliance with this restriction is lawful as confirmed through the grant of a Lawful Development Certificate (23/01363/LDC).

CONCLUSION

The application requests the removal of a S106 agreement which restricted the occupancy of the property to a person solely or mainly employed, or last employed, in agriculture (or a widow or widower of such person). As set out above, the occupation of the property without compliance with this restriction is lawful as confirmed through 23/01363/LDC. It is therefore considered that this agreement no longer serves a useful purpose.

RECOMMENDATION

It is recommended that the request to remove the s106 agreement is approved.