

Wiltshire Council

Southern Area Planning Committee

21 June 2012

**Subject: Land At Hampton Park/Bishopdown Farm, Salisbury - S106a
Application S/2012/552**

Local members: Cllr Ian McLennan, and Cllr Bill Moss

REASON FOR REPORT TO MEMBERS

Cllr McLennan has requested that this matter be considered by Area Committee due to the public interest in the Hampton Park 2 development and the site allocation within the South Wiltshire Core Strategy, and to enable Council Members to consider issues imposed by Committee previously. The Director of Development Services has also indicated that he wishes the matter to be considered by Area Committee.

1. Purpose of report

The applicant has submitted a S106A application to discharge two planning obligations in so far as they relate to a defined area of land. Please see attached:

- a) letter from the applicant justifying his request,
- b) the attached site plan showing the area affected
- c) Copies of both legal agreements

The area of land in question is that corresponding to the red line surrounding the strategic allocation of Hampton Park 2 in the south Wiltshire core strategy, (and that submitted as part of the Hampton Park 2 planning application ref S/2009/1942). The reason the applicants wish to discharge these two agreements is that they restrict the use of the land (see elsewhere in the report), and relate to areas of land which are now the subject of a specific allocation in the adopted South Wiltshire Core Strategy, (and subject of planning permission S/2009/1943 relating to the development of 500 dwellings and a country park, known as Hampton Park 2).

Copies of both agreements subject of this application are attached as appendices to this report. The relevant clauses of the agreements are considered to be respectively, section 3.1.2, which limit the development of the land and retain its open character, and section 3.2, which relates to the protection of the area of water meadow forming part of the relevant site.

2. Background

Planning permission S/1991/1666 relates to the creation of a golf course and associated clubhouse and works on land to the north of what is now the existing Bishopdown farm

housing estate. The permission also related to the improvement of the road system in this area, including the A30 London Road roundabout, and the construction of part of what was then intended to be a northern link bypass road between London Road and the A345 Amesbury road. Whilst the golf course element of the permission was never implemented, the roadworks were indeed implemented, resulting in the current road configuration we see today, including the Pearce Way road, which runs to the north of (and serves as an access to) the Bishopdown Farm housing area.

The historic planning records show that the Local Planning Authority was also dealing with two other planning applications at or around the same time as S/1991/1666, namely application no. S/1991/1664, which related to the provision of a “motor trade park” on land in the immediate area, (which was not built out and which subsequently is now known as the Salisbury retail park site on which there is an extant planning permission to construct a bulky goods retail park and car park), and secondly, application no. S/1992/907 which relates to the development of housing in the immediate area (which subsequently became part of the Bishopdown Farm estate).

These two applications are relevant in so far as the applications appear to have been considered concurrently by the Council in the early 1990’s, and hence, a total of five legal agreements were apparently completed together, with two of the five legal agreements being subject of this report.

One of the obligations relates and refers directly to planning permission S/1991/1666, and deals with an area of land labelled “green” land (this being the golf course land). The other legal agreement does not explicitly refer to a planning application, but relates to the protection of land adjacent and to the east of the golf course land. This area is labelled the “orange” land.

3. Main legislative considerations for the Council

Section 106A of the Town and Country Planning Act (the Act) allows applicants to apply to modify a previous legal agreement. The Act also sets out the test that the Local Planning Authority needs to apply to any such application.

In accordance with Section 106A of the Act, where such an application is made the LPA shall consider whether the obligation continues to serve a “*useful purpose*”. If the obligation no longer serves a useful purpose the Act requires that the obligation shall be discharged. If it is considered by the LPA that the obligation does continue to serve a “useful purpose” the planning obligation shall continue to have effect without modification.

When considering if a useful purpose is being served by the obligation, case law states that issues to be taken into account include current planning policies and whether the overall planning circumstances of an area have changed since the obligations were first imposed.

The National Planning Policy Framework (NPPF) states that where obligations are being revised, local planning authorities should take account of changes in market conditions over time and, where appropriate, be sufficiently flexible to prevent planned development being stalled.

As a result, the applicants request to discharge the aforementioned obligations must be tested against the statutory provisions of Section 106A of the Act and guidance within the NPPF.

4. Third Party comments

Laverstock and Ford Parish Council – Raised objections to the discharging of the agreements. Recommend that the Clauses remain until after the ongoing high court challenge has been resolved.

Salisbury City Council – No objections subject to the proposals being in accordance with the objectives of the core strategy

Bishopdown Farm Residents Association – 1993 obligations were put in place for a valid reason. The land should be preserved as open land to ensure that the Salisbury Landscape is preserved from further urban sprawl. No decision should be taken until the outcome of the legal challenge is known.

Resident – The 1993 obligations provide much needed protection to the Salisbury landscape and the inadequate infrastructure in this area. This application should not be approved until the legal challenge to HP2 is resolved.

5. Considerations

5.1 What do the legal agreements restrict ?

The legal agreement related to the “green” land (the golf course area) stipulates that the identified area of land shall not be used; “..except for one or more of the following purposes or any combination thereof or any purpose ancillary thereto namely:

- 1) *Agriculture as defined in the Act*
- 2) *Public or other open space*
- 3) *Leisure sport or recreation for which planning permission shall have been granted*
- 4) *Purposes authorised by Planning Permission reference S/91/1666/TP issued by the District Council or other golf related developments for which planning permission shall have been granted*
- 5) *The construction and use of footpaths and roadways with planning permission (where required by law)”*

The second legal agreement relates to the “orange” land stipulates that:

“3.2 the Owner shall provide reasonable safeguards for the protection of the water meadows within the boundaries of the Land and for the avoidance of doubt...3.2.1 nothing whatsoever in connection with any development on the land ...shall encroach on the Land”

The agreement then goes on to list a variety of works which are not permitted:

3.2.2 no traffic in connection with such development shall use the Land

3.2.3 no work huts or compounds in connection therewith shall be situated on the Land

3.2.4 no tipping shall take place thereon in connection therewith

3.2.5 no disturbance shall be caused thereto

Save that the Owner shall be entitled to encroach onto the Land with or without construction traffic for the purposes of carrying out works to or in connection with the construction of the proposed Salisbury northern link road and/or the roundabout at the junction of that road with the A30 road or any part thereof.....”

5.2 Why were the clauses imposed ?

At the time of the creation of the legal agreements (1991-1993) subject of this report, it appears that the land on which the existing Bishopdown Farm housing area now sits was open farmland at the edge of Salisbury, which had just been subject of a housing allocation in the draft Local Plan. A series of planning applications had also been submitted for the development of the area (as listed elsewhere in this report).

The suggested developments clearly represented a set of major development proposals at the time, and it appears from a perusal of the historic application file S/1991/1666 that the imposition of a legal agreement on this and the related applications was a significant issue at the time. There is some evidence on the file which indicates that the determination of the application at that time was deferred to allow prolonged consideration and negotiation with the applicant and with council members. Hence the apparent joint consideration of several applications together.

It appears from the information remaining on the historical planning files that the Council may have been concerned at the time that the various developments being permitted as part of the three applications may result in the land area subject of the golf course application being used for the storage of plant, machinery and other associated paraphernalia associated with not only the golf course works, but also that associated with the housing, roadworks, and the motor park schemes. Elsewhere, the officers report to the relevant area committee indicates that a legal agreement was required “..which safeguards the land should the golf course fail, meaning it would revert to open use”.

A surviving extract of the minutes of the relevant Council meeting (on the planning file) which approved application S/1991/1666 simply indicates that any S106 agreement should contain a clause “..that the area comprising the golf course will remain open in nature and free of built development “, and a clause for the “...provision of safeguards for the retention of the water meadows..”.

Hence, it appears from the existing evidence that the Council considered it necessary at the time to impose restrictions on the use of the land, in order to limit the impact of any development works on the water meadows, and/or to ensure that should the golf course use cease operation, then the land would be return to an “open state” of some kind.

5.3 Are the clauses and restrictions still required ?

The actual wording of the completed legal agreements do not limit the various restrictions on the use of the land to a finite time period, but appear to be open ended, in that the restriction appears to remain in force today, long after the various housing and roadworks developments have been completed.

However, the areas adjacent to the land to which both agreements relate have changed significantly since 1993. The Bishopdown Farm estate was completed some years ago, as was the relevant section of the link road, now called Pearce Way. Whilst the land to which the “green” land S106 relates remains open agricultural land, this land is now subject of both a formal housing allocation in the SWCS and subject of a planning approval for 500 dwellings and a country park. The “orange” land also remains largely undeveloped apart from its south eastern section, on which now exists the hotel and restaurant complex.

As a result, officers advise that the original intention of the S106 clauses has now been superceded by events. The clauses related to the “green” land sought to ensure that should the golf course proposal cease to operate, the land would either revert to agricultural use, and be used for other recreational or leisure purposes. Following the housing and country park allocations and recent planning permission on the land, officers advise that it would now be difficult to retain the existing clauses as the restrictive purpose they were intended for has been superceded by the Council’s own wish to see development of the land.

Likewise, in respect of the “orange” land S106. It is also noted that whilst only this second agreement referred to the protection of the water meadows, the permitted housing and country park planning permission (and the allocation development template itself) contain measures to protect the river system.

As a result, it is officers advice that, given that the principle of the development of the land has now been accepted subject to suitable mitigation measures, the restrictive clauses contained within either agreement would not serve a useful purposes or be necessary if or when the approved development of the land is commenced.

5.4. Hampton Park 2 Legal agreement

Notwithstanding the above, the advice of the Council legal department is that paragraph 4.13 of the legal agreement associated with the Hampton Park 2 scheme subject of S/2009/1943 already provides for the discharge of the two agreements subject of upon commencement of the Hampton Park housing development.

6. What if the planned housing development does not commence ?

Whilst the land is indeed subject of a large allocation of housing and country park area in the adopted South Wiltshire Core Strategy, development has yet to commence on site, and the approved planning application is subject of a high court challenge at the time of writing. As a result, there remains a possibility that the development of the land may not occur as currently permitted by application S/2009/1943.

If this were to be the case, the landowners and any developers cannot simply use land in the way they see fit, but are either controlled through limited “permitted development rights”, restricted to temporary usage of land, or need to apply for formal planning permission to more permanently affect or otherwise develop land. Any unauthorised development may

also be subject of the enforcement process, and therefore controlled. Likewise, any harm or damage to the water meadows area could be the subject of enforcement by the Local Planning Authority and/or the Environment Agency/Natural England.

It is therefore officer's opinion that even without the restrictive clauses within the Agreements, the kinds of development suggested by the clauses (ie to keep the land open and to protect the water meadows) would not be able to be undertaken without some form of permission being granted. In this context, the clauses within the agreements are no longer appear to serve a "useful purpose".

7. Options and Conclusion

Members could find the obligations do serve a useful purpose and choose not to discharge the agreements. However, this results in two further options. Either leave the agreements in place, or consider modifying the agreements in some way. However, if the agreements are left in place, it appears that the obligations will be superceded once development commences on the approved housing scheme. If Members wish to modify the obligations in some manner, it is considered that the matter should be deferred to allow further discussion with the applicant about what form any modifications should take.

However, Officers advise that the planning obligations subject of this current S106A application no longer serve a useful purpose. As a result, in such circumstance, the law dictates that the obligations must be discharged.

8. Recommendation: That the legal agreements subject of this application no longer serve a useful purpose, and can be DISCHARGED.

9. Appendices

- a) Applicant request letter outlining case
- b) Plan of area land affected
- c) Legal agreements related to land subject of application

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