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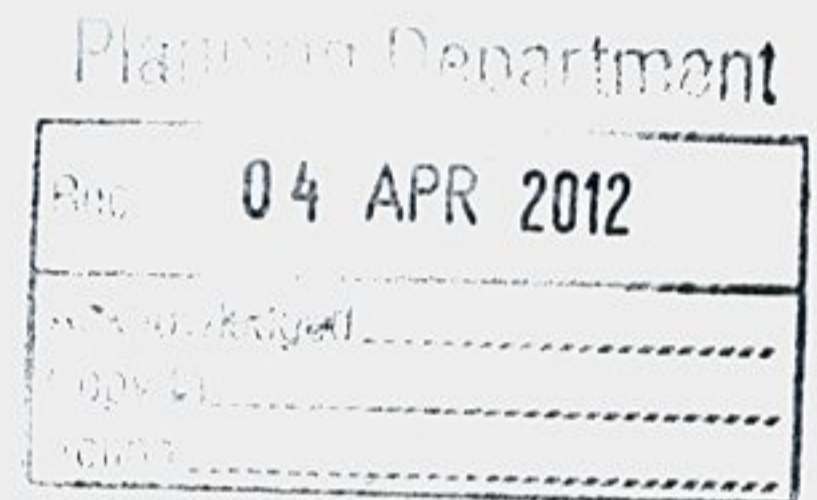
S/12/0552

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Director: **Mark Flood**  
BA (Hons) DipTP MRTPI

3 April 2012

Dear Mr Guest



**Land at Bishopdown, Salisbury  
Hampton Park II  
Discharge of 1993 Planning Obligations**

I am writing in relation to the above, and on behalf of Mr G W B Todd and Mr W A Jeffries, the owners of the land.

Land at Bishopdown Farm was made the subject of two planning obligations dated 22 December 1993, one of which related to land west of Green Lane (referred to as the "Green land") and one of which related to land east of Green Lane (referred to as the "Orange land"). I refer to them as Obligations A and B respectively.

Obligation A relates to a grant of planning permission for a golf course reference S/91/1666/TP. Obligation B, although entered into concurrently, does not specify that it relates to the planning permission, although clearly it was prompted by it.

I enclose a formal application for discharge of these obligations insofar as they relate to the land edged in red on attached site location plan L034. The application comprises the following:-

- Completed 1APP form
- Location plan L034
- Copy of Obligation A
- Copy of Obligation B

Section 106A of the Town and Country Planning Act 1990 provides for application for the discharge of planning obligations, and subsection (6)(b) states that *where an obligation no longer serves a useful purpose*, it shall be discharged.

Section 122 of the Community Infrastructure Levy Regulations 2010 (CIL) provides that planning obligations must meet three tests, namely that they are:-



**RTPI**

mediation of space · making of place



- 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.

An obligation that does not meet these three tests is to be regarded as unlawful.

There are three key reasons why it is appropriate to discharge the 1993 obligations insofar as they relate to the red land. These reasons provide a proper basis for discharge either individually or jointly.

#### **Reason for Discharge 1**

The red land is the subject of an allocation for development of 500 houses and a country park within the Adopted South Wiltshire Core Strategy. The period for legal challenge to the adoption of the Core Strategy has now passed, and it carries the full weight of s38(6) of the Planning and Compulsory Purchase Act 2004. The Council's formal position is therefore that the development of this land for purposes other than those specified in the 1993 obligations is acceptable.

In light of this, and bearing in mind the presumption in favour of development that accords with an up-to-date development plan set out in the National Planning Policy Framework, the 1993 obligations serve no useful purpose.

#### **Reason for Discharge 2**

As you know, the decision of the Secretary of State last year to grant full planning permission for the erection of 500 houses plus country park is subject to an extant challenge. The permission is subject to a completed s106 obligation which states the following at paragraph 4.13:-

“On Commencement of Development all previous obligations entered into pursuant to section 106 of the 1990 Act in respect of the Land (which for the avoidance of doubt comprise two agreements entered into by Salisbury District Council David John Pearce and Lloyds Bank plc both on 22 December 1993) shall be deemed to be discharged insofar as they relate to the Land and shall not be enforced by the Council against the Owner (and such Commencement of Development and/or carrying out of any Excluded Operations shall not be taken to be a breach of any such section 106 obligation).”

In effect, this is a ‘tidying up’ provision that sets aside the 1993 obligations in light of the permitted development. The Council has already in effect confirmed that it is content with release from those obligations by signing a s106 that includes the paragraph I have quoted above. Although the Secretary of State’s decision to grant planning permission is subject to challenge, and of course the s106 only takes effect if that challenge fails, the Council has nonetheless affirmed a position that the 1993 obligations serve no useful purpose.

#### **Reason for Discharge 3**

Obligation A is in any event unnecessary. It seeks to prevent unspecified development from taking place. However, any operational development or material change of use would require planning permission in any event, and it was not necessary for the obligation to be made to address this. Whilst permitted development rights are restricted by the obligation, such restriction should properly have been made the subject of a planning condition. In CIL terms, the obligation was not



necessary, directly related to the development or in scale and kind with it. It served no useful purpose then and it does not do so now.

Obligation B deals with management of the water meadows. This application seeks partial discharge of that obligation only insofar as it relates to the land allocated for development within the adopted Core Strategy.

I trust that this provides you with sufficient justification for the discharge as sought. I understand that the application is likely to be determined under delegated powers, and I therefore look forward to hearing from you with a positive determination as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Flood', with a stylized flourish underneath.

Mark Flood MRTPI

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