

REPORT TO THE NORTHERN AREA PLANNING COMMITTEE

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| Date of Meeting | 13th October 2010 | | |
| Application Number | 10/02960/S106 | | |
| Site Address | Land at Great Middle Green Farm, The Green, Dauntsey | | |
| Proposal | Modification of clause 3 of fifth schedule to legal agreement associated with planning permission 03/02654/OUT to allow: (i) occupation of all 19 dwellings before work starts on more than 2 of the employment units; (ii) to require work to commence on remaining employment units within 3 years of date of variation of agreement. | | |
| Applicant | Flower & Hayes Ltd | | |
| Town/Parish Council | Dauntsey | | |
| Electoral Division | Brinkworth | Unitary Member | Toby Sturgis |
| Grid Ref | 399773 182103 | | |
| Type of application | S106 | | |
| Case Officer | S T Smith | 01249 706 633 | Simon.smith@wiltshire.gov.uk |

Reason for the application being considered by Committee

This application seeks modification of a legal agreement under s106 of The Act associated with planning permission 03/02654/OUT. That planning permission was considered and granted by the Development Control Committee of the then North Wiltshire District Council. Since this application seeks to alter the terms of that planning permission, Officers consider it appropriate for the application to again be considered by the Development Control Committee.

1. Purpose of Report

To consider the above application to modify a legal agreement under s106 of The Act and to recommend that the existing legal agreement be modified to allow occupation of all 19 dwellings before any more of the permitted employment development is built and that to require that the remaining employment development be completed within 3 years of the date of the modified agreement.

The Dauntsey Parish Council have objected to the proposal. Their comments are reported below.

2. Main Issues

- Background to the application
- Relevance of the identified clause of the legal agreement
- Consequence of allowing modification

3. Site Description

The application relates to a development site accessed from the main road through Dauntsey. The development is split into two distinct sections: the housing site fronting The Green and the employment units site, positioned to its immediate rear. The former section is within the Settlement Framework Boundary and the latter outside.

Both sites are under construction. The housing site is substantially complete with almost total occupation. Conversely, the employment site to the rear remains uncompleted with only two of the permitted six units completed. Neither unit is occupied.

| 4. Relevant Planning History | | |
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| Application Number | Proposal | Decision |
| 03/02654/OUT | Residential development and new industrial premises | Granted 08/06/04 |
| 05/00962/REM | Residential development – reserved matters | Granted 34/01/05 |
| 05/00612/REM | Employment development – reserved matters | Granted 24/01/05 |
| 08/00294/FUL | Employment development of 4 office units, access road, attenuation pond and use of land as open space (revision to reserved matters 05/00612/REM resulting in total of six employment units) | Refused 29/09/08 Appeal upheld 19/05/09 |
| 09/01420/S106 | Variation of s106 agreement associated with planning permission 03/02654/OUT to remove requirement for the provision of public open space | Undetermined |

5. Proposal

The proposal relates entirely to a legal agreement associated with a 2003 outline planning permission for residential and employment development. That legal agreement, inter alia, links the construction and occupation of the residential development to the creation of employment floorspace in a phased manner. Specifically, the agreement requires:

- Not to allow occupation of any 5 of the dwellings until construction of the employment units has commenced
- Not to allow any 12 of the dwellings until 50% of the employment floorspace has reached completion to shell finish
- Not to allow occupation of any of the dwellings until 80% of the employment floorspace has reached completion to shell finish

It is understood that all of the dwellings have been completed and all but one (if not all) are now occupied. Clearly, this situation breaches the requirements of the clauses set out within the legal agreement.

The application now under consideration seeks to resolve this breach by modifying the relevant clauses within the legal agreement so as to allow occupation of the dwellings without construction of the remaining (4 no.) employment units. The application also proposes to modify the agreement to require work to commence on the remaining employment units within 3 years of the date of the agreement being modified.

6. Consultations

Dauntsey Parish Council

My Council Object to this application for the following reasons - The applicant seeks to modify a Clause of the Section 106 Legal Agreement relating to the Great Middle Green Farm development to his advantage because of perceived difficult market conditions. In seeking to modify a requirement of the Legal Agreement, the developer has acknowledged that the requirements of the document are legitimate. Consequently the document should be seen as a whole and be complied with or modified through the planning process.

Since purchasing the site the developer has contravened the requirements of both the Section 106 Legal Agreement and the various Planning Permissions associated with the site, in a number of instances.

In particular, relating to surface water drainage, where no development was to be commenced until written approval of drainage works had been granted by the Local Planning Authority. There has been continuing contravention of the outline planning permission, the approval of reserved matters and the more recent appeal decision in

this respect. This has left the present surface water drainage run off from the site un-attenuated and at total variance with the requirements of the Environment Agency and Wiltshire Council resulting in an increased high risk to local flooding upstream of Old Sodom Lane Bridge.

In addition the whole matter of landscaping of the site and the provision of the Public Open Space on the land set aside for public use remains outstanding, a great disappointment to the local community. If the requirements had been met, the Open Space would now be a mature part of the street scene, beneficial to both the community and the developer, as an aid to the marketing of what he himself acknowledges is a difficult commercial environment. The local concern remains that, at the end of the day, to solve the site infrastructure problem attempts will be made to use a major portion of the Public Open Space. This, could and should not have arisen if there had been compliance with the Section 106 Agreement.

Other contraventions include the construction and occupation of the dwellings themselves. The whole on-site development process has been haphazard and amateurish.

This Parish Council strongly objects to the proposed modification of the Legal Agreement and requests the Wiltshire Council to take immediate enforcement action to seek compliance with the requirements of the Legal Agreement.

The Parish Council trusts that their observations will be taken into consideration when the application is determined.

7. Publicity

The application was advertised by site notice, press advert and neighbour consultation.

3 letters of letters of objection received

Summary of key relevant points raised:

- Developers blatant disregard to the requirements of lawful development and planning
- Inadequate drainage of the site – development exacerbates existing drainage problems
- Development creates traffic problems
- Applicant has yet to fulfil requirements of earlier permissions – this further application simply delays the applicant's agreement that enabled them to begin the development in first place.

8. Planning Considerations

Background and parameters of the application

The original redevelopment site bisected the Settlement Framework Boundary of Dauntsey, with the 0.828ha residential element positioned inside of the policy boundary and the office development outside (reference 03/02654/OUT refers given planning permission by the Development Control Committee on 07/06/04).

Under the terms of the outline planning permission, a section 106 agreement was entered into, which, *inter alia*, required the phased creation of employment development as the residential development took place.

Two reserved matters applications, respectively for the residential and commercial elements of the overall development, were subsequently submitted by the then new owners Flower & Hayes Developments. The residential proposal comprised a total of 19 dwellings including 4 affordable units, with the employment element consisting of six detached B1 units and car parking, approximating 1200m² of floorspace in total.

It is notable that several planning conditions and several of the clauses within the associated legal agreement have been ignored by the applicant. Development has continued on site with all of the dwellings now being constructed and occupied unlawfully. This application seeks to rectify a very specific element of that unlawful situation.

In particular, this application is not a planning application for new development. Neither is it an application that has any bearing upon the drainage of the site or provision of the adjoining public open space. It solely seeks to modify the terms of the 5th Schedule of the legal agreement relating to the employment development (as outlined above).

Any reference to the development site as a whole in respect of drainage matters or the provision of public open space (which are indeed other enforcement matters) is simply not possible in the context of this application.

The application cannot be considered in the context of any suspected precursor for alternative development on the employment site (since that is not being proposed). The applicant is at liberty to submit a separate planning application for whatever development they chose to propose. Whatever the outcome of this current application, the Council will not be prejudiced in considering that future application for development, should it ever be submitted.

Relevance of the identified clause of the legal agreement

The appropriate test to apply in considering the proposal to remove the relevant obligation is to assess the relevance of the clause to present circumstances.

In this particular instance it is evident that there is no potential for even the existing two employment units to be occupied/used. The applicant has submitted information from their marketing agents which suggests that very little interests has been generated in those units. The marketing agents suggest that is due to the undesirable appearance of the units, the location of Dauntsey and the generally depressed market conditions.

There is no reason to disagree with the suggestions made, particularly as other new employment development within the district also remains vacant. In this context it is considered to be unreasonable to insist that the remaining employment units are built (as would be required by the present terms of the legal agreement), only for the likelihood that they also would remain empty, at least in the medium term.

Consequence of allowing modification

The proposed modification would allow the <continued> occupation of the dwellings without breach of the Fifth Schedule of the legal agreement, only. The applicants propose to modify the agreement to allow for a 3 year period (from the date of the new modified agreement) at the end of which the remaining employment units should be provided. Agreement to the suggested modification would therefore not automatically lead to a situation whereby the remaining employment units were never provided.

Since the application remains specific in its scope (as described above), the development would remain in breach of several other aspects of the planning permissions. Any agreement to modify the legal agreement in specific respect of Schedule 5, would not prejudice the Council in taking any possible future action in other respects.

As noted above, the application cannot be considered in the context of any suspected precursor for alternative development on the employment site. For that to occur, a new and separate planning permission for new development must be sought. In the event of the Committee agreeing to the modification of the legal agreement, as applied for, the Council will not be prejudiced in its consideration of any new and separate planning application for new development (should it ever be submitted).

9. Conclusion

There is considered to be no advantage to the success of the development or the wider village for the Council to insist that buildings are built, and in all likelihood, to remain empty. The future position of the Council with regard to new applications on the site, or any possible enforcement action will in no way be prejudiced by an agreement to the proposed modification.

10. Recommendation

That the decision be delegated to the Area Development Manager (North) to arrange for the legal agreement under s106 of The Act to be modified in accordance with that applied for.

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| Appendices: | None |
| Background Documents Used in the Preparation of this Report: | 1.20 2.02 4.02 4.03 |

Dauntsey

