

**REPORT FOR WESTERN AREA PLANNING COMMITTEE****Report No 1.**

<b>Date of Meeting</b>	20 <sup>th</sup> May 2015
<b>Site Address</b>	Lewington Close/Longford Road, Melksham
<b>Proposal</b>	Discharge of Section 52 legal agreement under Town and Country Planning Act 1971
<b>Applicant</b>	Selwood Housing Association
<b>Town/Parish Council</b>	MELKSHAM
<b>Ward</b>	MELKSHAM SOUTH
<b>Case Officer</b>	Matthew Perks

Members will recall the item on the 26 November 2014 Western Area Planning Committee where planning permission was granted subject to the prior completion of a Section 106 legal Agreement at Land off of Lewington Close and Longford Road in Melksham (*Application 14/04399/FUL: Demolition of the existing bungalow and construction of four x 3 bed houses and seven x 2 bed houses and one x 1 bed house with associated roads and parking. Also the provision of a play area off Lewington Close*). The S106 purpose was to secure the play area element for transfer to Melksham Town Council.

During the processing of the Section 106 Agreement it emerged that an old Agreement completed in 1976 under Section 52 of The Town and Country Planning Act 1971 was in existence on the land that restricted the use of the land to the erection of one dwelling. The old West Wiltshire District Council was a signatory. A copy of the agreement is appended at the end of this report.

Section 52 agreements were the predecessor to what are now Section 106 agreements under the Town and Country Planning Act 1990. Such Agreements are a matter of treaty which do not fall to be considered as Planning Applications.

However, whilst Section 106A of the Town and Country Planning Act 1990 allows applicants to modify or a discharge a legal agreement these powers do not extend to Section 52 Agreements. Planning case law indicates that as a matter of law a Section 52 Agreement can be discharged by the parties that entered into that agreement (or their successor in title to the original owner who is now liable to comply with the obligations) on a consensual basis. If there is no mutual agreement, then the matter has to be referred to the Lands Tribunal for a decision. In other words, unlike Section 106 agreements, there is no provision for an appeal to the Planning Inspectorate where consent is refused by a local planning authority.

The land owner has submitted a request to discharge the agreement. In this instance, Cllr Jon Hubbard is the Local Member and was involved in securing the proposed play area that is the

subject of the proposed Section 106 agreement. Officers approached Cllr Hubbard for a view on the S52 discharge. Cllr Hubbard advised that he does not support the lifting of the covenant where the issue of retaining the site undeveloped was a material consideration in the planning application.

Whilst S106A does not apply, the tests that the Local Planning Authority must apply where an application is submitted to discharge a Section 52 Agreement are essentially the same. In this respect, it is necessary for the Local Planning Authority to consider whether the obligation continues to serve a useful purpose. In the event that it is concluded that the obligation no longer serves a useful purpose then the obligation should be discharged, but if it is considered by the Local Planning Authority that the obligation does continue to serve a useful purpose then the planning obligation should continue to remain in force without modification.

When considering if a useful purpose is being served by the obligation, case law indicates 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 NPPF in turn states in Para. 205: *“Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled.”* As a result, the applicant’s request to discharge the Section 52 Agreement should be considered against the tests referred to above, fundamentally whether the obligation(s) continue to serve a useful purpose.

In this instance the Agreement was entered into in 1976. The Agreement itself does not contain an indication of why it was required in the first place, but research into the old microfiche indicates that at the time the Melksham Parish supported a view that the land should not be developed beyond one unit and be kept open.

Subsequent to the 1976 agreement and under the old West Wiltshire District Council the site was included within the development limits for Melksham under two Development Plans, being the 1996 District Wide Local Plan and the West Wiltshire District Plan, 1<sup>st</sup> Alteration 2004. These development limits are carried through to the now adopted Core Strategy. The only constraint ever placed to development under the West Wilts plans was a Policy aimed at protecting the old route of the Wilts & Berks Canal through Melksham, with a possible view to re-instating it. This was in turn captured in the old west Wiltshire Leisure and Recreation DPD.

The Core Strategy has now abandoned the concept of re-instating the old route of the canal under Core Policy 53, where the supporting text states that *“The historic alignment of the Wilts and Berks canal through Melksham is no longer suitable for reinstatement as a canal, and an alternative route has been identified (see Core Policy 16: Melksham Link Project).”* The canal route thus no longer comprises a reason to limit development on the site.

The site has been within Melksham development limits, i.e. by definition in a sustainable locality in terms of Local Policy since at least 1996 and in particular in terms of the NPPF. It is considered that a development was negotiated so to be reasonable and feasible on the site

without unacceptable harm to neighbouring properties, and Melksham Town Council supported the application, albeit recording neighbour concerns. Retaining the S52 Agreement would effectively stall development of the site (where no Planning Policy is in place to that effect) in perpetuity, or until it was agreed to discharge it.

In terms of Local Development plan policy the site has long been within development limits and no policy was ever adopted to reflect the constraints inherent to the S52 restrictions on the site. It is therefore considered that the S52 Agreement no longer serves a useful purpose

## **RECOMMENDATION**

**That the obligation, that is the subject of this application, no longer serves a useful purpose and therefore that no objection be raised to the Discharge of the Section 52 Agreement.**

## **Appendices**

A Copy of Section 52 Agreement

Appendix A : Copy of Section 52 Agreement

1975 DC  
27/5/75  
THIS AGREEMENT is made the *twenty second* day of *June*  
One thousand nine hundred and seventy-six BETWEEN THE WEST WILTSHIRE  
DISTRICT COUNCIL (hereinafter called "the Council") of Bradley Road  
Trowbridge in the County of Wilts of the one part and ARTHUR HAWKINS  
AND VIOLET JOAN HAWKINS  
(hereinafter called "the Owner") of 11 Longford Road Melksham in the  
said County of Wilts of the other part



WHEREAS:-

- (1) The Council is empowered by Section 52 of the Town and Country Planning Act 1971 to enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land
- (2) The Owner is seized in unincumbered fee simple in possession of an area of land (hereinafter called "the said land") 0.30 hectares in extent situate adjoining No. 11 Longford Road Melksham in the District of West Wiltshire in the County of Wilts the said land being shown for the purposes of identification only edged blue on the plan annexed hereto
- (3) On the tenth day of November One thousand nine hundred and seventy-five the Owner submitted to the Council an application (hereinafter called "the said application") under the Council's Reference W75 1031 for planning permission for the erection of a dwelling on the said land
- (4) The Council have resolved to grant planning permission (hereinafter called "the said permission") to the Owner (subject to conditions) in pursuance of the said application subject to the Owner by this Agreement agreeing to restrict the development of the said land permanently to one dwelling
- (5) The Council and the Owner have agreed to enter into this Agreement

for the purposes of Section 52 of the Town and Country Planning Act 1971 for the purpose of restricting and regulating the development use of the said land

NOW THIS DEED WITNESSETH as follows:

1. The Owner for the purposes of Section 52 of the Town and Country Planning Act 1971 and with the intention of binding himself and all persons deriving title under him to the said land or any part thereof hereby agrees with the Council that he the Owner will restrict the development of the said land permanently to one dwelling
2. The Owner shall on effecting any sale of the said land impose the necessary restrictive covenant which shall be duly registered as a Land Charge entry having done so the Owner shall not be personally liable for any breach of the provisions of this Agreement after he shall have parted with the legal estate in the said land
3. The expression "the Council" and "the Owner" shall include their respective successors in title and assigns

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner has set his hand and seal the day and year first before written

THE COMMON SEAL of the COUNCIL was )  
  ) )  
hereunto affixed in the presence of: - )



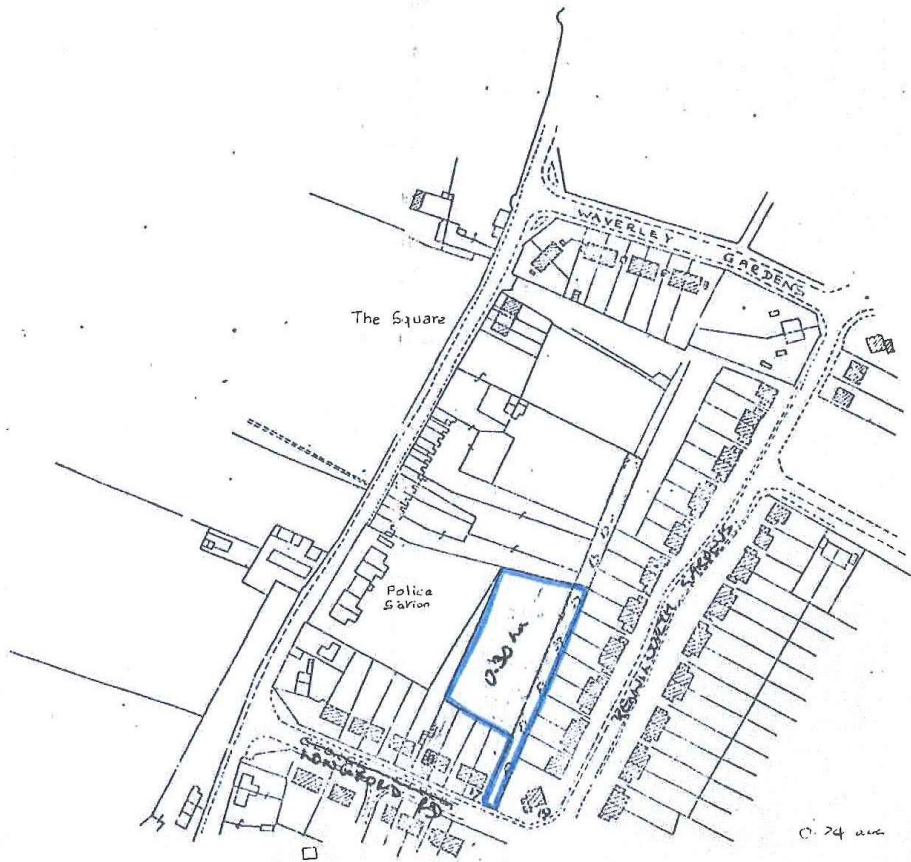
*Douglas Wogan*  
Member

*Alan C. Coffey*  
Director of Administrative Services

05208

W/1031

Plan referred to



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Scale 1/2500

WEST WILTSHIRE  
DISTRICT COUNCIL  
DEVELOPMENT  
SERVICES

SIGNED SEALED AND DELIVERED by the )  
OWNER in the presence of:- )

Witness name:

Arthur Hawkins

Address

W. Bannell  
10 West End  
Melksham  
Wilts

Occupation:

Retired Town Clerk

V. J. Hawkins

Witness name:

W. Bannell

Address:

10 West End  
Melksham  
Wilts

Occupation:

Retired Town Clerk

MEMORANDUM

BY CONVEYANCE dated the 4th day of March 1980 and made between Arthur Stanley Hawkins and Violet Joan Hawkins of the one part and Leslie Clark and Carol Anne Clark of the other part a piece or parcel of land forming the larger part of the piece or parcel of land referred to as delineated and coloured pink in the plan drawn on the Conveyance of 28th November 1947 referred to in the within deed and being situate at the rear of Number 11 (formerly 28) Longford Road Melksham in the County of Wilts was conveyed to the said Leslie Clark and Carol Anne Clark for an estate in fee simple and inter alia their right to production and delivery of copies of the within deed was thereby acknowledged and the said Leslie Clark and Carol Anne Clark duly entered into a restrictive covenant limiting development of the said piece or parcel of land to one dwellinghouse.

DATED

22nd. June

1976

WEST WILTSHIRE DISTRICT COUNCIL

and

ARTHUR HAWKINS

A G R E E M E N T

under S.52, Town and Country  
Planning Act 1971

A.D.Sawyer,  
Chief Legal Officer,  
West Wiltshire District Council,  
Bradley Road,  
Trowbridge, Wilts.