

**3/06/1688/SV – Modify the Section 52 Agreement attached to planning permission ref: 3/89/0123/FP by removal of the Clause that requires occupation of Foxearth by any person/ persons employed or last employed in agriculture on Home Farm, Little Hadham. For Mr and Mrs Stigwood.**

**Date of Receipt:** 25<sup>th</sup> August 2006      **Type:** Full

**Parish:** LITTLE HADHAM

**Ward:** LITTLE HADHAM

## **RECOMMENDATION**

That subsection 2 e) of the Section 52 Agreement for planning permission reference 3/89/0123/FP, requiring that the dwelling only be occupied by any person employed or last employed in agriculture on Home Farm, Little Hadham, be removed.

\_\_\_\_\_ (168806SV.SD)

### **1.0 Background**

- 1.1 The application site is shown on the attached OS extract.
- 1.2 The site comprises part of a farm holding to the south of the A120 in Little Hadham. The building is a brick built detached bungalow that was originally constructed for use by workers in association with Home Farm.

### **2.0 Site History**

- 2.1 The bungalow was granted planning permission under LPA Ref: 3/0123-89/FP, as it was considered within that application that the dwelling was necessary to house workers for Home Farm. The dwelling is subject to the standard agricultural occupancy restriction, in recognition of the fact that the development fulfilled an agricultural need, and that the LPA does not generally grant permission for new build residential development in the Rural Area
- 2.2 In addition to the occupancy restriction, a Section 52 Agreement was agreed between East Herts District Council, the owner and mortgagee. Part 2 e) of the Agreement stated that the owner would covenant with the Council 'not to cause or permit the dwelling to be erected on the application site to be occupied by any person or persons other than a person or persons employed or last employed in agriculture on Home Farm, Little Hadham in the County of Hertfordshire'.

### **3/06/1688/SV**

2.3 The property has remained empty since 2004, when the original applicant for the agricultural dwelling passed away. The present applicant is now the only worker required to run the arable holding at Home Farm, and he resides within Home Farm dwelling.

2.4 The applicant has since been marketing the dwelling on the open market via Mullucks Wells Estate Agents.

### **3.0 Consultation Responses**

3.1 The Council's Legal Department have stated that the planning condition by itself is adequate, with the Section 52 appearing too restrictive.

### **4.0 Other Representations**

4.1 The application has been advertised by way of press notice. No representations have been received as a result.

### **5.0 Considerations**

5.1 The applicant seeks to discharge the clause due to the repetition of its aims in the occupancy condition attached to the planning permission, and due to the clause failing to comply with Circular 11/95 'The Use of Conditions in Planning Permissions'. The applicant's planning consultant claims that the clause is unnecessary, imprecise and unreasonable, contrary to the guidance issued to Local Authorities within the Circular.

5.2 The approach that the applicant's consultant has taken is incorrect however. Circular 11/95 sets out six tests for planning conditions, not for legal agreements such as a Section 52's or their successor Section 106's. To apply the condition tests of Circular 11/95 to anything other than planning conditions is therefore mistaken.

5.3 The consultant also states that the clause is onerously restrictive, in that it requires the person employed or last employed in agriculture to have been so upon Home Farm only.

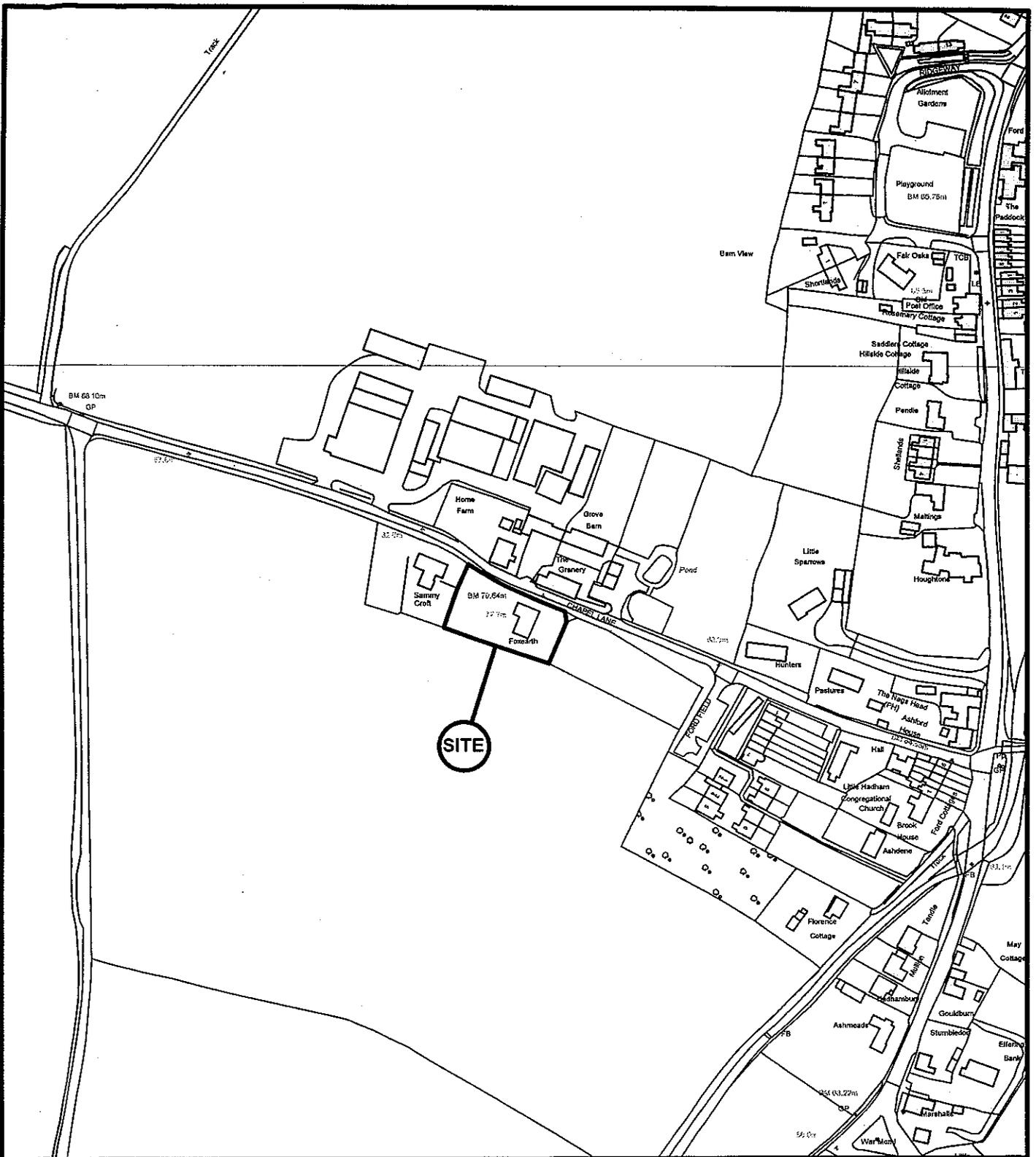
5.4 In my opinion the Section 52 Agreement was not onerous at the time of the original grant of planning permission however. It was demonstrated within the 1989 application that the dwelling was necessary for the needs of Home Farm, and permission was granted solely on this basis. I therefore consider that the Section 52 Agreement was wholly reasonable in its wording and aims at that time.

### **3/06/1688/SV**

- 5.5 However, it is evident that Home Farm now requires only one worker to fulfil the needs of the enterprise, and accommodation for this person can be provided in Home Farm House.
- 5.6 The fact that Foxearth has been vacant for two years is a material consideration in favour of this proposal. The Section 52 clause, whilst being necessary at the time of the application, is now a hindrance in that it is depriving other agricultural workers of potential accommodation within the district. It is in my opinion onerous to tie the dwelling to Home Farm now that the need at Home Farm does not exist.
- 5.7 As a testimony to this fact, the Council has received a number of expressions of interest in the purchasing of Foxearth by agricultural workers though they would not have been able to satisfy the Clause.

### **6.0 Conclusion**

- 6.1 PPS7 'Sustainable Development in Rural Areas' states that '*where the need to provide accommodation to enable farm, forestry or other workers to live at or near their place of work has been accepted as providing the special justification required for new, isolated residential development in the countryside, it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists*'.
- 6.2 As the standard occupancy condition will remain imposed on Foxearth, and thus reserve the property for agricultural workers in the locality, I consider that the proposal accords with the aims of the above, set out within PPS7. Furthermore, Clause 2 b) of the Agreement further requires the applicant to adhere to all of the conditions imposed on the planning permission, including the agricultural occupancy.
- 6.3 I therefore recommend that Clause 2 e) of the Section 52 Agreement attached to planning permission 3/89/0123/FP, be removed.



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