

**3/09/0940/SV – Variation to Section 52 to remove the restriction of the occupation of the flat and dwelling to a person solely or mainly employed or last employed in agriculture, forestry or in the business of racehorse training at Silkmead Farm, Hare Street, Buntingford, for Mrs S Lally**

**Date of Receipt:** 03.08.09

**Type:** Full

**Parish:** ANSTEY

**Ward:** BRAUGHING

**RECOMMENDATION**

That permission for the variation of the Section 52 agreement be **REFUSED** for the following reason:

The Section 52 agreement states that the flat and outbuilding should be occupied by a person solely or mainly employed or last employed in the locality in the business of racehorse training or in agriculture or forestry. The Council considers that removal of this Section 52 agreement will result in the loss of an agricultural dwelling. A proposal to remove an occupancy condition will only be granted in exceptional circumstances, and no evidence has been submitted to prove that there is no agricultural, forestry or other rural based occupational need or that the dwellings are capable of being used to meet an affordable housing need. The proposal will therefore be contrary to Policies GBC3 and GBC6 of the East Herts Local Plan Second Review April 2007.

\_\_\_\_\_ (094009SV.MP)

**1.0 Background**

- 1.1 The application site is located within a rural location and to the south of an industrial estate known as Silkmead Industrial Estate. The dwelling itself, Silkmead Farm House, is a 2 storey detached dwelling with various outbuildings within the curtilage. The appeal site is shown on the attached OS extract.
- 1.2 Silkmead Farmhouse benefits from planning permission within LPA reference 3/0823-86, albeit with a S52 (S106) agreement restricting the occupation of the flat and dwelling to a person solely or mainly employed or last employed in the locality in the business of racehorse training or in agriculture or forestry...and no other person whatsoever. That S52 agreement also restricts the use of the land around the dwellinghouse and amenity space (outlined in red) to racing stables and agriculture.

### **3/09/0940/SV**

- 1.3 This application seeks the removal of these elements of the legal agreement.
- 1.4 The application is accompanied by a brief covering letter from the current owner of the property. That letter outlines that as only part of the property for which that S52 agreement relates is currently in their ownership, it is not compatible with the terms of the agreement. The letter confirms that the current owners have never complied with the terms of the agreement and have no intention of doing so. The letter outlines that there are not the facilities within the property to enable the current occupiers to fully comply with the agreement.

## **2.0 Site History**

- 2.1 The planning history for this site is complex and is compounded somewhat by the changes in ownership and associated changes in land and planning units. Nevertheless, the pertinent history to this application is as follows:-
  - The previous use of the site was as a poultry farm. In 1981, planning permission was granted for stables (3/506-81).
  - In 1984, two applications were made:-
    - 3/1619-84FR – Retention of flat in connection with racing stables (a retrospective application – the flat was built without the benefit of planning permission and was constructed in order that the applicant could attend to the safety and care of the horses) and;
    - 3/1874-84FR – Retention and continued use as racing stables;
  - Planning applications 3/1874—84FR and 3/1619-84FR were heard by the Development Control committee in March 1985 where it was resolved to grant permission subject to a S52 agreement to ensure that within 3 months of the cessation of the use of the stables as racing stables the flat be demolished and the site restored to its former condition.
  - However, that S52 agreement was never signed and a later application, (LPA reference 3/0823-86FP) was submitted for the erection of a detached 2 storey dwelling. The dwelling proposed within that application was justified on the basis that the owner at the time required additional accommodation in order to entertain owners of the race horses as a way of further expanding and diversifying the stable business. Within the Officers committee report it was identified that the

### **3/09/0940/SV**

race horse stable use was not an agricultural use, however such a use was considered to have an affinity to agriculture- in terms that the use has to be within the countryside.

- Members resolved to grant LPA reference 3/0823-86, subject to a S52 agreement restricting the use of the dwelling and demolition of the flat (within 28 days of the occupation of the approved dwelling house). The S52 agreement was signed on the 17 December 1986.
- As outlined above, the applicant wishes to remove the following section of that agreement:-

*“1.(a) restrict the occupation of the flat and dwelling to a person (hereinafter called “the occupier”) solely or mainly employed or last employed in the locality in the business of racehorse training or in agriculture or forestry (as defined in Section 290(1) and 30A(19) of the Town and Country Planning Act 1971) such occupation to include occupiers in succession (as defined in Section 3 of the Rent (Agriculture) Act 1976 as amended) and no other persons whatsoever”*

### **3.0 Consultation Responses**

3.1 No comments have been received from consultees.

### **4.0 Parish Council Representations**

4.1 Anstey Parish Council were consulted on the application however no response has been received.

### **5.0 Other Representations**

5.1 No comments have been received from neighbouring properties.

### **6.0 Policy**

6.1 Policies relevant to this application include:

- GBC3 Appropriate Development in the Rural Area Beyond the Green Belt
- GBC6 Occupancy Conditions

## **7.0 Considerations**

- 7.1 The main planning considerations of this application relate to the acceptability of the variation of the S52 agreement in Rural Area and Occupancy Policies terms.
- 7.2 The property is sited within the Rural Area wherein there is a presumption against inappropriate development, unless very special circumstances can be demonstrated that clearly outweigh the harm resulting from the development by reason of inappropriateness or any other harm. Policy GBC3 outlines some exceptions to this, which relate to mineral extraction, agriculture, small scale facilities for participatory sport and recreation or other uses appropriate to a rural area.
- 7.3 Also included within the exceptions in policy GBC3 is the provision for agriculture, forestry and other Occupation dwellings in accordance with Policy GBC5. However, the provision for an open market dwelling (which is what in effect the removal of the S52 as outlined in paragraph 2.1 will create) is not included within those policies. The proposed removal of the S52 agreement therefore conflicts with policy GBC3 and in principle would constitute an inappropriate form of development.
- 7.4 Where planning permission is granted for a new dwelling in the countryside on the basis of a particular need – such as agriculture, forestry or other rural based enterprise (such as a race stables), policy GBC6 outlines that removal of an occupancy condition will only be permitted in exceptional circumstances. Whilst this Policy refers specifically to ‘conditions’ (not removal or variation of a S52 or S106 agreement) it is considered to be a salient policy against which to assess this application, as the removal of the S52 is in effect, the same as the removal of an occupancy condition.
- 7.5 The applicant suggests, within a letter attached with the application, that the current owners only occupy part of the land referred to in the S52 and do not have the facilities within the property to comply with the terms of the agreement.
- 7.6 Whilst there is very limited information included within the application to justify such a position (which is, to a degree pertinent to the considerations of the application), Officers consider that the relevant ‘tests’ in terms of the removal of the occupancy restrictions to be outlined within Policy GBC6 (III).
- 7.7 That policy outlines that evidence will need to be submitted which proves that a) there is no agricultural, forestry or other rural based occupational need for the dwelling, having regard to need in the area as a whole, not just

the particular holding and b) that a contribution to meeting local affordable housing needs in the area could not be made by the dwelling.

- 7.8 The removal of the S52 relating to agriculture, forestry and race horses would result in the loss of such a dwelling reserved for agricultural, forestry or other rural based enterprise need. In terms of a) outlined in paragraph 7.7, no evidence has been submitted to prove that there is no longer an agricultural, forestry or other rural enterprise need. Officers consider that the loss of an agricultural dwelling is contrary to Policy and potentially harmful to the provision of such level of accommodation within the locality.
- 7.9 In terms of b) outlined in paragraph 7.7, the Housing Needs Survey 2004 outlines that in the Ward of Braughing there is a need for five 3 bed affordable houses (of which Silkmead Farmhouse is a 3 bed house). There would therefore appear to be a need for affordable housing for which the dwelling could potentially be used. The removal of the S52 would thus be contrary to GBC6 (III)(b) also.
- 7.10 In terms of the variation of the S52 agreement relating to the use of the land, Officers consider that this is a similar consideration as outlined within paragraph 7.2. The use of this land as a result of the variation of the S52 agreement would, in effect become residential amenity land used in association with the residential use of the dwelling. For the reasons outlined above, such a use would be contrary to the aims and requirements of Policy GBC3, and would therefore represent inappropriate development within the Rural Area.
- 7.11 The above considerations focus on an assessment of the removal of the S52 agreement with regards to the Development Plan. The applicant has however outlined some factors which may be considered as 'material considerations' in the determination of this application. However, the only information relating to this is a consideration that the applicant only owns part of the land referred to in the S52 agreement and are not therefore capable of complying with the terms of the agreement. There is little amplification of this consideration within the application and, in any event, Officers do not consider that such a consideration would outweigh the Development Plan and the harm outlined above, in this case.
- 7.12 Planning Policy Statement 7 (PPS7) advises that where there is a need to provide accommodation to enable farm, forestry or other workers to live at or near their place it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists. For this purpose, PPS7 advises that planning permission should be made subject to appropriate occupancy conditions. To this extent, the S52 restricting the use of the premises is considered to be unusual. However, Officers consider

the Section 52 agreement to be salient in this case, as it restricts the use of the building and flat and follows Rural Area and Occupancy policies for dwellings occupied by those working in agriculture, forestry or other rural based enterprise. The removal of the S52 agreement would thus allow the dwelling and flat to be utilised as open market dwellings, contrary to Rural Area Policy which, for the reasons outlined above, would impact on the openness and character of the Rural Area.

## **8.0 Conclusion**

- 8.1 In this case therefore, no exceptional circumstances exist to outweigh Rural Area and Occupancy Policies and no other material considerations have been presented to outweigh the requirements of the Development Plan. Accordingly, the relevant Policy criteria for Members to consider the proposal against, relates to Policy GBC3 and GBC6. The proposed variation of the Section 52 would not, for the reasons outlined above, be in accordance with those Policies which, in Officers opinion would result in the loss of a dwelling with the potential to be used for agriculture, forestry or other rural based enterprise and affordable housing provision. The proposal for an open market dwelling has the potential to impact significantly on the openness and appearance of the Rural Area. For these reasons it is therefore recommend that permission to vary the section 52 agreement is refused.
- 8.2 If members agree with this recommendation, the applicant does have a right of appeal to the Lands Tribunal under s.84 of the Law of Property Act 1925. That would have to be made on one of the following grounds:
- that because of changes in the character of the neighbourhood, the covenant is obsolete;
  - the continued existence thereof would impede some reasonable user of the land;
  - those with the benefit of the covenant have agreed to it either through their actions or omissions;
  - there will be no injury to those entitled to the benefit of the restriction.
- 8.3 Officers, in consultation with the Council's Solicitor, are satisfied that a decision to refuse to vary the agreement in this case could be justified in any such appeal.