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4. **3/09/1190/SV - Variation to Section 52 to reduce the extent of the land referred to in the agreement at Brookfield Farm, West End Road, Wormley West End, Herts EN10 7QN for John and Linda Smith**
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Date of Receipt: 29.07.09

Type: Section 52 variation

Parish: BRICKENDON LIBERTY

Ward: HERTFORD HEATH

RECOMMENDATION

That the Director of Neighbourhood Services be authorised to **GRANT** the variation of the Section 52 agreement dated 8th April 1983, to substitute a revised plan in place of that originally agreed delineating the land which is the subject of the agreement.

Summary of Reasons for Decision

The proposal has been considered with regard to the policies of the Development Plan (East of England Plan May 2008, Hertfordshire County Structure Plan, Minerals Local Plan, Waste Local Plan and East Herts Local Plan Second Review April 2007), and in particular GBC1, ENV1 and GBC6. The balance of the considerations having regard to those policies is that the variation sought should be permitted.

_____ (119009SV.SD)

1.0 Background

- 1.1 The application site is located in a rural location within the Green Belt on the southern side of Wormley West End. It comprises a large area of land of some 7 acres. Permission was granted in 1983 for a dwelling subject to an agricultural occupancy restriction. The legal agreement which related to this permission also prevents the division of the dwelling from the land that was subject to the application – and as set out in a plan attached to the legal agreement. That land is referred to here as the agreement land. The dwelling is located to the front (north) of the site and is a detached bungalow. Various outbuildings are located within the agreement land. The site is shown on the attached OS extract. The permission was justified at the time on the basis of a cattle rearing and livestock business.
- 1.2 To the west of the existing bungalow is a detached weatherboard

building referred to as barn two by the applicants. This building has the benefit of a Certificate of Lawful Use, granted for residential occupancy, under reference 3/97/0223/CL. This was granted in March 1997. The use of this residential unit is not restricted to an agricultural workers occupation.

- 1.3 The application now being considered seeks to reduce the extent of the agreement land by excluding that part on which barn two is located, and a reasonable residential curtilage associated with it. The extent of this land is the hatched area on the OS plan. The applicant states that the building on the hatched land (barn two) is not subject to an agricultural occupancy restriction and therefore it is not reasonable to require that it remain associated with the dwelling which is restricted and the land that was originally associated with that. The application initially sought that a larger area of land be excluded from the agreement land (about one third of it). The area to which the application relates has now been reduced in size, to about one twelfth of the agreement land.

2.0 Site History

- 2.1 The planning history for the site is lengthy, with a change of ownership in 1988. The pertinent history for the purposes of this application is as follows:

- The original use of the application site land of 7 acres and another two adjoining parcels of land equalling 34 acres was used for calf rearing and livestock in 1971.
- An application (3/1289-78) for the extension to barn two to form temporary overnight accommodation comprising one room was approved in January 1979.
- An application (3/1271-79) for an agricultural building was refused in January 1980.
- In June 1981 an outline application for an agricultural workers dwelling was refused (3/0196-81).
- However an application for a calf rearing shed was approved in October 1981(3/1044-81) on the basis of the expansion of the farm from 12 calves a month to have a minimum of 50 calves in holding at any one time.

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- A subsequent application for the retention of the temporary residential accommodation in barn two comprising two rooms was approved in December 1981 (3/1387-81)
- An outline application for an agricultural workers bungalow attached to an area of land of 3.84 hectares was approved subject to a Section 52 legal agreement at Committee April 1983 (3/1179-82). It was considered the farming enterprise had expanded and the county land agent was satisfied that the farm was a commercially viable unit.
- A separate application for the erection of a bungalow on the site (without an agricultural tie) was withdrawn in March 1983 (3/0232-83).
- The reserved matters application subject of the outline permission (3/1179/82) to address siting, design, means of access, external appearance and landscaping for an agricultural workers bungalow was approved at Committee June 1983 (3/0622-83) subject to an occupancy condition as per the Section 52 agreement.
- In 1988, the farm changed to the present ownership and reduced in scale.
- In 1989 an application (3/89/0812/FO) was submitted to remove the agricultural occupancy condition on the bungalow. This was withdrawn by the applicant in July 1990.
- A further application (3/91/0900/FO) to remove an onerous condition (5) subject of outline approval 3/82/1179/OP relating to occupancy by an agricultural worker restriction was refused at committee November 1991 and dismissed on appeal October 1992.
- A Certificate of Lawful Use application (3/97/0223/CL) was submitted for the residential use of part of barn two as a dwelling unit for a period in excess of 4 years and approved March 1997.
- An application (3/04/0770/FP) for the proposed demolition of the existing residential unit/ barn two approved under 3/97/0223/CL with other outbuildings/workshops in proximity and the erection of a replacement dwelling was withdrawn by the applicant in June 2004.
- A retrospective application (3/05/0087/FP) for the conversion of the

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single dwelling (barn two) to four separate units was refused March 2005.

- The most recent application 3/07/2168/FP for the demolition of the existing dwelling (Barn 2) and further mixed use buildings and the construction of a replacement single detached dwelling was also refused in January 2008.

2.2 The terms of the Section 52 legal agreement would still apply to the agriculturally tied bungalow and to the agreement land, but the land would be reduced in extent and exclude the land enclosing the residential dwelling (barn two).

3.0 Consultation Responses

3.1 Comments have been received from the Archaeology Section at HCC commenting that the proposal is unlikely to have an impact upon significant archaeological deposits, structures or features.

4.0 Parish Council Representations

4.1 Brickendon Liberty Parish Council was consulted on the application and comment that they object to the application, removing the agricultural tie would create a brownfield site which would open up the potential for further development.

5.0 Other Representations

5.1 The applications have been advertised by way of press notice, site notice and neighbour notification.

5.2 One letter of representation had been received from an adjoining property which can be summarised as follows:

- Neighbours are totally opposed to the modification of the Section 52 agreement.
- The applicant seeks to erect three further dwellings at the farm.
- The application should be refused as there are several other dwellings on the site.
- This is a rural area that should remain so.

6.0 Policy

6.1 Policies relevant to this application include:

- GBC1 Appropriate Development in the Green Belt
- GBC6 Occupancy Conditions

7.0 Considerations

- 7.1 The main planning and legal considerations of this application relate to the acceptability of the variation of the Section 52 agreement to reduce the extent of the agreement land in relation to the intended purpose of the legal agreement and the location in the Green Belt.
- 7.2 In the Green Belt 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 its inappropriateness or any other harm. Members will know that, one of the exceptions to the normal restrictive Green Belt policy is to allow dwellings for agricultural purposes. That was the reasoning behind the 1983 permission which initially enabled the development of the bungalow in this location subject to the agricultural occupancy restriction.
- 7.3 The policy (GBC6) refers specifically, when considering agriculturally justified dwelling, to 'conditions' which will ensure that a property remains in use for that purpose. Where there is no continuing need, the policy then seeks to ensure that such properties can be put toward affordable housing needs. In this case however, the removal of the restriction in relation to the occupancy of the originally permitted property is not being sought.
- 7.4 Also, in this case, subsequent to the initial permission, a further dwelling exists on the agreement land (barn two) which has the benefit of the Lawful Development Certificate for residential use without agricultural tie. It is considered then that, as barn two can be lawfully occupied by any party without reference to the original legal agreement, there is a clear conflict with it. Also taken into account is the approach of the Council now that, when agricultural occupancy dwellings are proposed and justified, the Council would not seek to tie the occupation with any particular tract of land. This ensures that these properties can be made available to meet a wider need for them if the original need is lost. As a result, it is suggested that the agreement can be amended as sought.

8.0 Conclusion

- 8.1 In this case therefore, it is considered that there are exceptional circumstances that exist to outweigh what would be a decision normally at odds with the Councils established Green Belt policies. A lawful development certificate exists for the occupation of barn two as a residential unit. That represents a conflict with the terms of the original agreement relating to the site. Finally, as the purpose of the original agreement would not be lost, that is the agricultural occupation, it is suggested that the agreement can be modified as requested.