

5c 3/12/1584/SV – Discharge of Section 106 obligation relating to Burrowfield, Lower Hatfield Road, Bayford, Hertford, Herts, SG13 8LA for Mrs D Cook

Date of Receipt: 17.09.2012

Type: Variation of S106 – Major

Parish: BAYFORD, HERTFORD

Ward: HERFORD CASTLE; HERTFORD RURAL NORTH

RECOMMENDATION:

That authorisation be **GRANTED** for the S106 agreement to be discharged.

_____(158412SV.TH)

1.0 Background:

- 1.1 The application site is shown on the attached Ordnance Survey plan. The dwelling, Burrowfield, lies south west of Hertford on the Lower Hatfield Road within a rural setting, adjacent to the River Lea and within the Metropolitan Green Belt.
- 1.2 In 1978 planning permission was granted under reference 3/78/1095/FP for the use of the land to the west of the current application site as a garden centre. The application site itself, however, was only used for horticultural purposes and not for any retail or garden centre use.
- 1.3 The dwelling, the subject of this application, was originally approved in 1985 to meet the needs of the nursery land and the adjacent garden centre, formerly known as the Kingfisher Nursery. It was granted planning permission under ref: 3/84/0886/OP subject to a legal agreement which provided that the dwelling should only be occupied in association with the nursery land and garden centre site and not as a separate unit.
- 1.4 However, in the mid 1990's the applicant found that she was no longer able to continue running the garden centre business, although she wished to continue the cultivation of nursery plants for sale either through the garden centre or by mail order. The garden centre part of the site was therefore sold off separately from the dwelling and nursery land and became known as the Riverside Garden Centre. The legal agreement under ref 3/84/0886/OP was varied accordingly, in 1997, to allow the severance of the dwelling and nursery land from the garden centre land to the west. This was subject to a new clause preventing the sale of goods from the nursery land directly to visiting members of the

public.

- 1.5 The dwelling therefore no longer has any connection with the adjoining garden centre use and, in addition, the application site is no longer used for horticultural purposes.
- 1.6 The current application therefore proposes that the S106 agreement at the site, varied in 1997, now be discharged in its entirety.

2.0 Site History:

- 2.1 The relevant planning history for this site and the adjacent garden centre, now in separate ownership and use, is as follows:
- 3/78/1095 - Garden Centre. Approved 27-Dec-1978.
 - 3/84/0886/OP - Dwelling (Burrowfield). Approved subject to S52 legal agreement on 17th April 1985.
 - 3/85/0546/RP - Detached house and garage. Approval of details. 18th Sept 1985.
 - 3/87/0384/FP - Replacement farm shop. Approved 12 May 1987.
 - 3/96/1641/FO - Variation of condition to allow sale of produce not originating from Kingfisher Garden Centre, Lower Hatfield Road. Approved 15-Jan-1997.
- 2.2 3/09/0939/FP. Replacement garden centre, retail and restaurant building and new sewage treatment plant. Approved with conditions. 23 September 2009.

3.0 Consultation Responses:

- 3.1 No statutory consultations were necessary in this case.

4.0 Hertford Town Council Representations:

- 4.1 Hertford Town Council have commented that the application was not clear enough for the Committee to reach a decision.

5.0 Other Representations:

- 5.1 The application has been advertised by way of press notice, site notice

and neighbour notification.

- 5.2 Hertford Civic Society has written to express concerns about the removal of an obligation restricting retail use in the Green Belt. If the s.106 has suppressed the retail use, which may have become established across the wider site (i.e. Burrowfield and the Garden centre) then this could be revived.
- 5.3 They acknowledge the alternative view that there are 2 separate planning units but then ask the question that if the discharge makes no practical difference then why is the application being made?
- 5.4 The Civic Society are concerned that if the Riverside Garden Centre becomes predominantly a restaurant use then a garden centre at the Burrowfield site could become a viable proposition resulting in further urbanisation at a major entrance to the town. In responding to this application they advise that the Council should do nothing to facilitate such an outcome.
- 5.5 The owner of Riverside Garden Centre strongly objects to the application, firstly that the variation of the S106 in 1997 was a clear error of judgement and secondly that the restriction on retail sales was to address the impact that trade from the land might have on the existing Garden Centre business. These factors have not changed.

6.0 Policy:

- 6.1 The relevant 'saved' Local Plan policies in this application include the following:

GBC1 Appropriate Development in the Green Belt
STC10 Garden Centre and Nurseries

- 6.2 The provisions of the National Planning Policy Framework (NPPF) March 2012 are also relevant; in particular the section on Decision Taking at paragraphs 203 to 206 which advise on the tests for planning conditions and obligations.

7.0 Considerations:

- 7.1 The main issue to consider in the determination of this application is whether the s.106 legal agreement, as varied in 1997, has any further planning purpose and whether it continues to meet the tests of national guidance as set out in the NPPF.

- 7.2 The NPPF advises, at paragraph 203, that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
- 7.3 Paragraph 214 of the Framework goes on to advise that obligations should only be sought where they meet all of the following tests:
- necessary to make the development acceptable in planning terms;
 - directly related to the development;
 - fairly and reasonably related in scale and kind to the development.
- 7.4 The development in this case is a dwelling permitted in 1985 originally tied to the use of a garden centre, but no longer. The original Section 52 agreement, dated 18th March 1985, covered provisions to ensure that the new dwelling could not be occupied separately from the land (which included the garden centre); not occupied otherwise than in association with the use of the land as a nursery; and not to permit the erection of any other dwelling. The last provision would not satisfy current tests of planning guidance on legal obligations.
- 7.5 When it was subsequently agreed that the dwelling need not be tied to the garden centre, the legal agreement was varied, dated 15th Jan 1997, to ensure that no sales of agricultural or horticultural produce direct to the public could take place on the remaining land within Burrowfields. This variation was apparently sought to address a potential concern that the garden centre use could have been established across the wider area of the site.
- 7.6 Hertford Civic Society has expressed concern that this s.106 agreement may have a role in limiting future retail use of the Burrowfield site and the owner of Riverside Garden Centre expresses a similar concern. However, whilst Officers note these concerns, it is felt that they are misplaced. Officers consider that this legal agreement is not necessary in order to restrict retail sales from the site as planning permission would be required, in any event, for a retail use and the Council therefore retains adequate control over the use of the land.
- 7.7 In this respect, it is important to note that the original planning permission for the retail garden centre (3/78/1095/FP) and the subsequent farm shop application (3/87/0384/FP) did not include the current application site. There has never been any permission for retail sales at the application site itself and, as far as the Council is aware, no retail sales have taken place from the site. Planning permission would therefore be required for any retail use of the site in any event, or

indeed, for any use other than residential and horticulture/agriculture. As such, the agreement is not necessary and does not meet the tests in the NPPF. Speculation about the future use of the Burrowfields site as anything other than a dwelling and horticulture/agriculture is not a reason to require the legal obligation to remain in place.

- 7.8 There is therefore no planning reason to seek some extra level of regulation when that is already subject of planning control. It should be noted that Metropolitan Green Belt policy GBC1 does not consider buildings for retail use to be appropriate within the Green Belt so there is no reason for undue concern on this point.
- 7.9 The history of development at the site over the years is not a planning reason to continue a s.106 agreement that has in Officers view ceased to have any proper planning purpose and does not meet the tests of national guidance.

8.0 Conclusion:

- 8.1 The S106 restriction on retail sales from the Burrowfield's site has, in Officers' view, become essentially obsolete. Moreover, the obligation is not necessary in planning terms to make the use of the site, as a single dwelling, acceptable. Retail sales from the site would remain subject of usual planning controls.
- 8.2 Officers therefore recommend that the legal agreement in this case be discharged.