

## DEVELOPMENT MANAGEMENT COMMITTEE – 24 FEBRUARY 2016

<b>Application Number</b>	3/15/2462/SV
<b>Proposal</b>	Removal of Section 106 planning obligation relating to planning permission 3/95/0461/FP
<b>Location</b>	Blackfield Farm, Mangrove Lane, Hertford, SG13 8QH
<b>Applicant</b>	Mr D Whitlow
<b>Parish</b>	Brickendon Liberty
<b>Ward</b>	Hertford Heath

<b>Date of Registration of Application</b>	8 December 2015
<b>Target Determination Date</b>	2 February 2016
<b>Reason for Committee Report</b>	Removal of a Legal Agreement
<b>Case Officer</b>	Susie Defoe

### **RECOMMENDATION:**

That the removal of the Section 106 Legal Agreement associated with planning permission 3/95/0461/FP (dated 25 January 1996) be **AGREED**.

#### **1.0 Summary**

- 1.1 The proposal seeks to remove a Section 106 agreement associated with planning permission ref: 3/95/0461/FP (dated 25 January 1996) which granted permission for the change of use of an existing games room at the property to a granny annexe. The agreement required that the building be used as ancillary residential accommodation to Blackfield Farm, and not as a separate dwelling.
- 1.2 Notwithstanding the agreement, however, it appears that the building became used as a separate dwelling and in July 2015 a Certificate of Lawfulness (LPA 3/15/1020/CLE) was granted for this separate residential use, as sufficient evidence was provided to show, on the balance of probabilities that the granny annex had been used as an independent residential dwelling for a continuous period in excess of 10 years. The legal provision within the Section 106 agreement therefore no longer has any relevance and its removal is appropriate.

#### **2.0 Site Description**

- 2.1 The application site is shown on the attached OS extract and comprises an isolated parcel of land, of approximately 4 acres in area, situated on the southern side of Mangrove Lane, within the Metropolitan Green Belt.

2.2 The site comprises a two storey dwelling with a single storey outbuilding, and the granny annex building located to the north west of the house.

### 3.0 **Background to Proposal**

3.1 Planning permission was originally granted in 1990, (ref: 3/90/0699/FP) for the demolition of an existing outbuilding at the site and the erection of a single storey building to create a games room.

3.2 Under application (ref: 3/95/0461/FP), the change of use of the existing games room to a granny annex was approved in January 1996 subject to a legal agreement requiring the building to be occupied solely for accommodation ancillary to the main use of the house.

3.3 More recently, however, the current owners applied for a Certificate of Lawful Development (Existing) for the use of the granny annex as an independent residential unit. The Certificate of Lawful Development application was supported by sufficiently clear and unambiguous evidence, including Council Tax records, to conclude on the balance of probabilities that the change of use to an independent residential dwelling had occurred in excess of 10 years previously and that the unauthorised use was therefore immune from enforcement action. The Certificate of Lawfulness was granted on 13 July 2015.

3.4 The current proposal therefore seeks to regularise matters formally by the removal of the associated Section 106 planning obligation restricting the use of the building to an ancillary granny annex.

### 4.0 **Key Policy Issues**

4.1 This application seeks permission for the removal of a legal agreement which is no longer enforceable in relation to the lawful use of the property. It has been established, through the grant of a Certificate of Lawfulness, that the use of the building as a separate residential dwelling is immune from enforcement action and lawful in planning terms. It is not therefore necessary or appropriate to consider the planning merits of the case or to consider any key policy issues within the Development Plan.

4.2 Paragraphs 204 to 206 of the NPPF are of some relevance, however, and these set out the tests necessary for a Section 106 obligation to meet. The national planning policy document also indicates that, where

obligations are sought to be revised, local planning authorities should take account of changes in market conditions over time.

<b>Key Issue</b>	<b>NPPF</b>
Planning obligations	Paragraphs 204 to 206

## 5.0 Summary of Consultee Responses

5.1 No statutory consultations were necessary in this case, and no other consultee responses were received.

## 6.0 Parish Council Representations

6.1 Brickendon Liberty Parish Council has made no comment in relation to the application.

## 7.0 Summary of Other Representations

7.1 The application has been advertised by way of a press notice and site notice. No letters of representation have been received.

## 8.0 Planning History

Ref	Proposal	Decision	Date
3/90/0699/FP	Demolition of existing single storey outbuilding and construction of a single storey building to create a games rooms	Granted	June 1990
3/93/1471/FP	(Retrospective)Application for change of use of games room to office accommodation. Extension of office building	Withdrawn	January 1994
3/94/0083/FL	Retrospective application for change of use of games room for office accommodation for a limited period of 5 years	Withdrawn	March 1994
3/94/0083/EN	Unauthorised use of games room as office accommodation	Appeal withdrawn	July 1994

3/95/04621/FP	Change of use of games room to granny annex	Approved with Section 106 Agreement	January 1996
3/15/1020/CLE	Use of granny annexe as an independent residential dwelling for a continuous period in excess of 10 years	Granted	July 2015

## **9.0 Consideration of Relevant Issues**

- 9.1 The main consideration in the determination of this application relates to whether the legal agreement, entered into in 1996, now serves any useful planning purpose.
- 9.2 Members will be aware that in the Green Belt there is a presumption against inappropriate development, unless material planning considerations exist which clearly outweigh the harm of its inappropriateness or any other harm, such that very special circumstances exist to justify the development. When the original planning application for the use of the building as a granny annexe was considered, it was concluded that, whilst the use of the building for ancillary accommodation was appropriate in the Green Belt, the creation of a separate dwelling was not, and would thereby result in harm to the Green Belt. It was for this reason that the legal agreement was originally attached to the planning permission.
- 9.3 However, despite the legal obligation, it is now apparent that the building became used as a separate dwelling for a period in excess of 10 years and its lawful planning use has now been formally established through the grant of the Certificate of Lawful Development in July 2015 (ref: 3/15/1020/CLE). It would no longer be possible to enforce the original agreement in these circumstances.

## **10.0 Conclusion**

- 10.1 As the building can now be lawfully occupied as a residential dwelling, the legal agreement restricting that use is effectively redundant and no longer enforceable. It is appropriate and acceptable therefore for it to be removed.
- 10.2 It is recommended that the application to remove the Section 106 agreement, in its entirety, should therefore be agreed.