

**3/11/1300/SV – Removal of agricultural occupancy restriction imposed by agreement dated 28<sup>th</sup> November 1990 (3/90/0890/FO) made pursuant to the provisions contained within Section 106 of the Town and Country Planning Act 1990 at 1 Rose Cottages, Wyddial, Buntingford and transferred by means of unilateral undertaking to The Bungalow, Stonebury Farm, Hare Street, Buntingford for Mr Ralph Scott.**

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**Date of Receipt:** 05.08.2011

**Type:** Section 106 Variation

**Parish:** WYDDIAL

**Ward:** BUNTINGFORD

### **RECOMMENDATION**

That, subject to the applicant entering into an agreement under S.106 of the Town and Country Planning Act to restrict the occupancy of The Bungalow, Stonebury Farm, Hare Street by the following clause:-

1. The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or a widow or widower of such a person, and to any resident dependants.

The removal of Clause 2(a) and (b) of the S.106 agreement pursuant to planning permission 3/90/0890/FO in relation to 1 Rose Cottages, Wyddial, Buntingford, be **GRANTED**.

### **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 the saved policies of the East Herts Local Plan Second Review April 2007), and in particular policies GBC3, GBC6 and Planning Policy Statement 7: Sustainable Development in Rural Areas. The balance of the considerations having regard to those policies and the limited harm associated with the proposed development is that permission should be granted.

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## **1.0 Background**

- 1.1 The application site (1 Rose Cottages) is located within the Rural Area Beyond the Green Belt within the settlement of Wyddial as shown on the attached OS extract. The application property is a two storey end-of-terrace

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agricultural workers dwelling which benefits from front and rear gardens which are laid-to-lawn with some vegetation along the front boundary of the site.

- 1.2 The current application seeks the removal of the agricultural occupancy restriction from 1 Rose Cottages and its transferral to an open market dwelling within the ownership of the applicant, known as The Bungalow, Stonebury Farm, Hare Street. It has been indicated within the 'Additional Information' submitted with the application that the applicant is the owner of No. 1 Rose Cottages, The Bungalow and Stonebury Farm, Hare Street which is a large agricultural holding extending to approximately 597 acres. The transfer of the agricultural occupancy condition to The Bungalow, which is situated adjacent to the entrance of Stonebury Farm, would enable the tenants currently residing in The Bungalow to move to No. 1 Rose Cottages without being in breach of the agricultural occupancy restriction whilst allowing a farm worker to be more appropriately located in The Bungalow.

### **2.0 Site History**

- 2.1 Planning permission was granted for the removal of the agricultural occupancy conditions from the properties formerly known as 1 and 2 Moles Lane, Wyddial (LPA Ref: 3/90/0890/FO). As part of the grant of permission, the agricultural occupancy restriction was transferred to Nos. 1 and 5 Rose Cottages, Wyddial as part of a Section 106 agreement which restricts the occupation of these dwellings to a person employed or last employed locally in agriculture or forestry, and the dependants of such persons. There is no other planning history at the application site or at the property known as The Bungalow, Stonebury Farm.

### **3.0 Consultation Responses**

- 3.1 No comments have been received at the time of writing this report.

### **4.0 Parish Council Representations**

- 4.1 Wyddial Parish Council were consulted on the application and no comments have been received at the time of writing this report.

### **5.0 Other Representations**

- 5.1 The application has been advertised by way of press notice, site notice and neighbour notification.
- 5.2 No letters of representation have been received.

## **6.0 Policy**

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

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

6.2 In addition, the following National policy guidance is relevant to the considerations of this application:-

Planning Policy Statement 7: Sustainable Development in Rural Areas

## **7.0 Considerations**

7.1 The key planning considerations in the determination of this application relate to the acceptability of the variation of the Section 106 agreement in line with Rural Area and Occupancy policies in the Local Plan.

7.2 No. 1 Rose Cottages is located within the Rural Area Beyond the Green Belt 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. The proposed removal of the agricultural occupancy restriction (which effectively would result in a new open market dwelling in the Rural Area) does not fall within any of the criteria as outlined in Policy GBC3, thereby forming a departure from the Local Plan.

7.3 Policy GBC6 outlines that the removal of an occupancy condition will only be permitted in exceptional circumstances. Whilst this policy refers specifically to 'conditions' and not the removal or variation of a Section 106 agreement, it is considered pertinent to assess this application against these policy considerations as the removal of the Section 106 agreement is in effect, the same as the removal of an occupancy condition. Policy GBC6 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 the need in the area as a whole, not just the particular holding and b) that a contribution to meeting local affordable housing need in the area could not be made by the dwelling.

7.4 However, this application proposes to remove the agricultural occupancy restriction from No. 1 Rose Cottages and transfer it to an existing open market dwelling, known as The Bungalow. Therefore whilst the proposed

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removal of the Section 106 agreement would result in the creation of an open market dwelling and the loss of a dwelling reserved for agriculture or forestry at 1 Rose Cottages, the transfer of this restriction to The Bungalow would in fact continue to meet the current provision of agricultural workers dwellings in the area. Likewise, it is considered that the proposed removal and transfer of the agricultural occupancy restriction would not result in a net increase in the provision of open market dwellings in the Rural Area.

- 7.5 It is noted that the Section 106 agreement pursuant to planning application 3/90/0890/FO restricts the occupation of the dwelling to those persons employed or last employed 'in the locality' in agriculture or forestry. It is considered that an agricultural worker does not have to live on or adjacent to their workplace but may be employed in agriculture at some distance, but not so far away as to invalidate one of the purposes of the restriction which is to preserve a stock of dwellings for the use of local population working in agriculture. Given the limited case law on the subject, the meaning of 'in the locality' is not clearly defined, it being considered a matter for the facts of individual cases. However, in the context of PPS7 the intention behind agricultural workers dwelling and associated occupancy conditions is to provide accommodation to enable farm, forestry or other workers to live at or near their place of work, in the area as a whole, not just on a particular holding. The Bungalow is situated 2.24 miles from the existing agricultural workers dwelling at No. 1 Rose Cottages and as such, it is considered that removing the agricultural occupancy condition from one property to another within a very limited distance would still comply with the spirit and letter of this restriction and as such, would continue to maintain the provision of agricultural workers dwellings in the local area.
- 7.6 Having regard therefore to the considerations outlined above, it is considered that the proposal would not result in a net gain of open market dwellings in the Rural Area and the current provision of agricultural workers dwellings would be maintained in the local area. As such, officers consider that special circumstances exist in this case that would outweigh the harm by reason of inappropriateness in the Rural Area.

### **8.0 Conclusion**

- 8.1 It is therefore considered that there are circumstances in this case to allow permission to be granted contrary to Policy GBC3 of the East Herts Local Plan. Accordingly, it is recommended that permission be granted subject to the signing of a Section 106 agreement.