Planning Statement

Proposal: Discharge of legal agreement under Section 106 of the Town & Country Planning Act 1990
Site: Meadow Stile Farm, Tower Hill Road, Brown Lees, Staffordshire, ST8 6PA.
Our Reference: PS_2204

1.0 Introduction

1.1 Land Development and Planning Consultants Ltd., have been instructed by Mrs Patricia Mitchell to prepare an application requesting discharge of a planning obligation relating to conversion of an agricultural building to a dwelling, approved under reference 02/00551/FUL by Staffordshire Moorlands District Council.

1.2 Land Development and Planning Consultants Ltd., is a Rural Planning Practice based in Corsham, Wiltshire. The Practice was established in 1989 to provide advice and representation on the range of town and country planning issues relating primarily to the countryside, villages and the market towns of Wessex. Clients include individuals, developers, legal and land agencies, commercial and residential developers, local authorities and amenity groups.

2.0 Context

2.1 Planning permission was granted under reference 02/00551/FUL for *'alteration and conversion of agricultural building to dwelling'*. The consent notice is reproduced as Appendix 1 of this statement. The permission was implemented soon after the approval.

2.2 The consent was granted subject to an agreement under Section 106 of the Town & Country planning Act 1990 including Covenant (b) preventing the disposal of the accommodation '*to persons who do not satisfy the definition of local qualification in at least one of the categories set out in the Schedule hereto'*; reproduced below;

2.2.1 The Schedule ("the Obligations")

2.2.2 The ownership and occupation of the dwelling shall be restricted to persons who immediately prior to commencing occupation of the dwelling satisfy the definition of local qualification by falling within one or more of the following categories;

2.2.3 A person who has a minimum period of five years continuous residence in the District;

2.2.4 A person who has a strong local connection with the District by birth or through upbringing or by a previous period of residence in the District and who is needed to help support members of their family or are themselves in need of such support;

2.2.5 A person who is currently living in accommodation within the District which is overcrowded and otherwise unsatisfactory; or

2.2.6 A person who employed within the District and needs to live close to their work.

2.3 A copy of the s106 agreement is reproduced as Appendix 2 of this statement.

2.4 S106A of the Town & Country Planning Act 1990 provides the mechanism for modification and discharging of planning obligations, made under s106.

2.5 In particular s106A(6) states '*where an application is made to an authority under subsection (3), the authority may determine – b) if the obligation no longer serves a useful purpose, that it shall be discharged'.*

2.6 An application to modify or discharge a condition can only be made after 'the relevant period'; in this case 5 years from the date of the obligation.

3.0 Planning Assessment

3.1 At the time that consent 02/00551/FUL was granted, Circular 11/95 provided national guidance on the approach to the use of conditions and planning obligations. Paragraph 12. of Circular 11/95 states;

'It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Act. The Secretary of State considers that in such cases the local planning authority should impose a condition rather than seek to deal with the matter by means of a planning obligation'.

3.2 In this case, a planning permission has been granted for creation of a dwelling without conditions specifying limitations on the approved use; instead the LPA have used a planning obligation to restrict occupation of the dwelling to persons that meet *'local qualifications'*.

3.3 If the relevant test whether an obligation may be discharged is that it *'no longer serves a useful purpose'*, then it is necessary to understand the original planning purpose for the obligation and, accepting that the 'useful purpose' may change with time, what the present purpose may be.

3.4 Planning Policy Context

3.5 The original planning purpose of the obligation is not clear, as there is no planning justification or reasoning such as would support a planning condition. However, a Delegated Decision Form dated 17th October 2003 notes, *'it had been agreed that to allow the Applicant to undertake and provide evidence of the marketing initiatives* [pursuant to policy B21 of the Adopted Local Plan]. *This period coincided with the Council's initiative to promote 'local need' options for such buildings. The Applicant was suitably qualified'*.

3.6 Housing for Local People & Affordable Housing SPG (2005)

3.7 At the time of the planning application the local need initiative was not planning policy within the adopted Development Plan.

3.8 In February 2005 Housing for Local People & Affordable Housing Supplementary Planning Guidance (SPG) was issued to supplement Policies H14, H15 and H16 of the adopted Local Plan 1998. At the time the Authority had an oversupply of housing and

the SPG proposed a blanket restriction on all new housing approvals to only meet the needs of local people who met the criteria of para.3.6 of the SPG and that all new residential permission would be subject to a s.106 agreement to restrict successive occupiers of each dwelling to those satisfying the local need criteria.

3.9 Core Strategy Development Plan Document (2014)

3.10 In 2014 Policy H2 'Affordable Housing and Local Needs Housing of the Adopted Core Strategy replaced Policies H14, H15 & H16 of the Local Plan 1998. Policy H2 did not bring forward the occupation criteria of the SPG or require s.106 agreements on new residential development.

3.11 Policy R2 'Rural Housing' of the Core Strategy supports housing development outside of settlement boundaries in a variety of circumstances including the conversion of non-residential rural buildings to residential uses. While conversions will be required to demonstrate that alternative commercial or agricultural uses are not viable, the policy does not set criteria limiting the occupation of such dwellings to persons meeting a local need qualification.

3.12 Local Plan (submission version) (2018)

3.13 In June 2018 the new Local Plan was submitted to the Secretary of State for examination; upon adoption Policy H2 and R2 of the Core Strategy will be replaced by Policy H3 of the Local Plan; the proposed policy does not replicate the local need qualifications of SPG 2005, or require that planning obligations are entered into to restrict new housing development for local housing need.

3.14 Present purpose of the s.106

3.15 The s.106 agreement was entered into to secure planning permission for the conversion of an agricultural building to form a dwelling; the Authority appear to have considered that the application did not produce marketing evidence necessary to demonstrate that alternative uses of the building were not viable and the Applicant

was compliant with emerging policy guidance on local need which was proposed in light of housing oversupply and rising house prices.

3.16 A planning permission requested today for conversion of the building to a dwelling would not be subject to a local needs qualification because; A) the local authority are not entering into such agreements; B) the prevailing local and national planning policies do not require such occupancy restrictions on conversions; and C) in the absence of a 5 year housing land supply such limitations are considered to be an unnecessary barrier to the delivery of housing.

4.0 Concluding notes

4.1 The local needs qualifications set out in the schedule to the s.106 originate at a time when the local planning authority had an oversupply of housing and sought to limit any additional new housing to meet local needs; a fact confirmed in response to a Freedom of Information request made to the Council, and reproduced as Appendix 3 of this statement.

4.2 The qualifying criteria of local need have never been formally adopted as policy. Indeed, in the absence of a 5 year housing land supply such limitation on new housing development add an extra barrier to new residential development to meet the wider need of the authority area.

4.3 Section 106A(6) serves to enable review of planning obligations that have been superseded by changing circumstances; the evidence clearly demonstrates that the original circumstances in which the criteria were proposed have passed; that successive policy updates have not led to adoption of the criteria; that the local planning authority are not implementing the guidance contained within their SPG; and that the current, emerging local policy accords with national planning policy to support re-use of rural buildings without a restriction on occupancy.

4.4 In this case, it is submitted that the s.106 agreement no longer meets a useful planning purpose, nor is it aligned with local or national planning policy, and therefore should now be discharged.

Appendix 1

Planning consent 02/00551/FUL

See separate Document

Appendix 2

S106 Agreement

See separate Document

Appendix 3

Freedom of Information Response

See separate Document