TOWN AND COUNTRY PLANNING DEVELOPMENT CONSULTANTS

TOWN & COUNTRY PLANNING ACT 1990

APPEAL STATEMENT OF CASE

APPEAL BY MR & MRS PALMER PURSUANT TO SECTION 106B OF THE TOWN AND COUNTRY PLANNING ACT 1990

AGAINST THE DECISION OF WILTSHIRE COUNCIL TO REFUSE AN APPLICATION TO DISCHARGE A PLANNING OBLIGATION ASSOCIATED WITH PLANNING PERMISSION REFERENCE N/05/03043/COU, THUS PREVENTING THE 'GROOMS ACCOMMODATION' FROM BEING LEASED AND OCCUPIED SEPARATELY FROM FIELD FARM HOUSE, EASTCOURT, MALMESBURY, WILTSHIRE, SN16 9HP

LPA REF: PL/2023/09361

Prepared by

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Our Reference: SWLC.LPC.3935

FEBRUARY 2024

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Appendix D: Sales and Lettings Brochure

Appendix E: Planning Obligation (dated 07 December 2006)

Appendix F: Planning Permission 05/03043/COU

1.0 INTRODUCTION

1.1 LPC (Trull) Ltd have been instructed by Mr and Mrs Palmer (the Appellants) to present their planning case at appeal against the decision of Wiltshire Council (the Council) to refuse to discharge the planning obligation associated with planning permission reference N/05/03043/COU.

1.2 The planning permission is for the 'change of use of existing equestrian use to part commercial & conversion of redundant adjacent building to Groom's Accommodation' and was granted on the 11 December 2006. The associated planning obligation, dated 07 December 2006, prevents the sale, lease or disposal of the permitted Groom's Accommodation separate from the main dwellinghouse at Field Farm House.

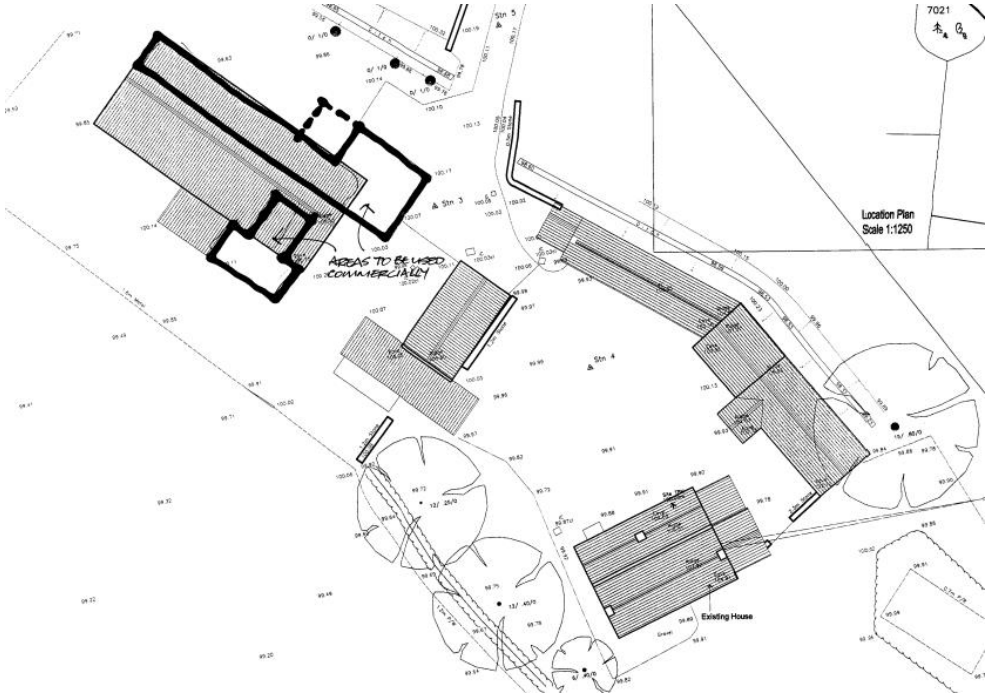
1.3 The Appellants applied under Section 106A of the Town and Country Planning Act 1990 to discharge the planning obligation because it no longer serves a useful purpose. However, the Council refused the application (reference PL/2023/09361) on the 11 January 2024 stating that removing the obligation would regularise an unsustainable form of development that is contrary to the adopted Development Plan.

1.4. This appeal statement will provide an overview of the site and its planning history, describe the proposed development, identify the planning policy context, and outline the grounds of appeal which will demonstrate why the planning obligation no longer serves a useful purpose and should be discharged.

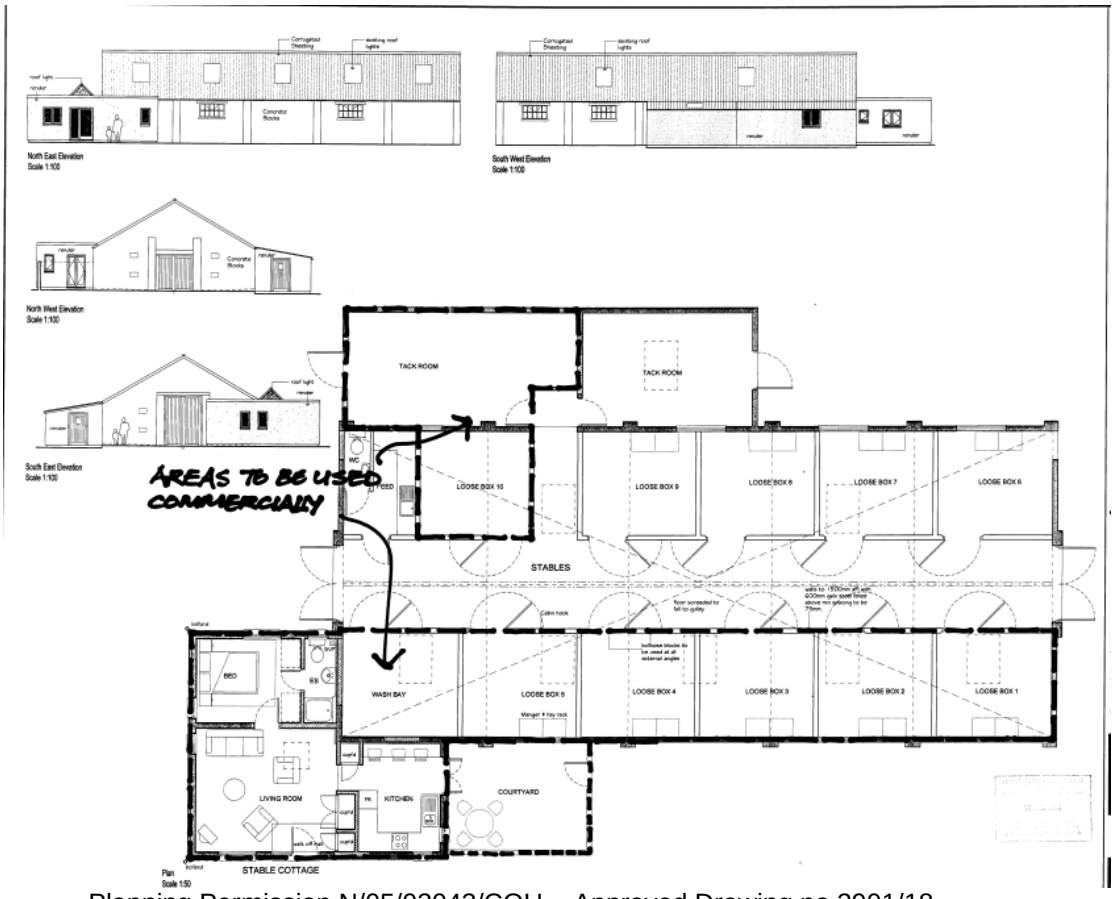
2.0 THE SITE & PLANNING HISTORY

2.1 The appeal property is Field Farm House, Eastcourt, Malmesbury Wiltshire, SN16 6HP. On the 11 December 2006 planning permission reference N/05/03043/COU (which can be seen at Appendix F) was granted to change the use of some of the existing private stables at the property to part commercial use (6 out of 10 stables) and the conversion

of a redundant adjacent building to Groom's accommodation, as shown on the approved plans below.



Planning Permission N/05/03043/COU – Approved Drawing no.2901/19

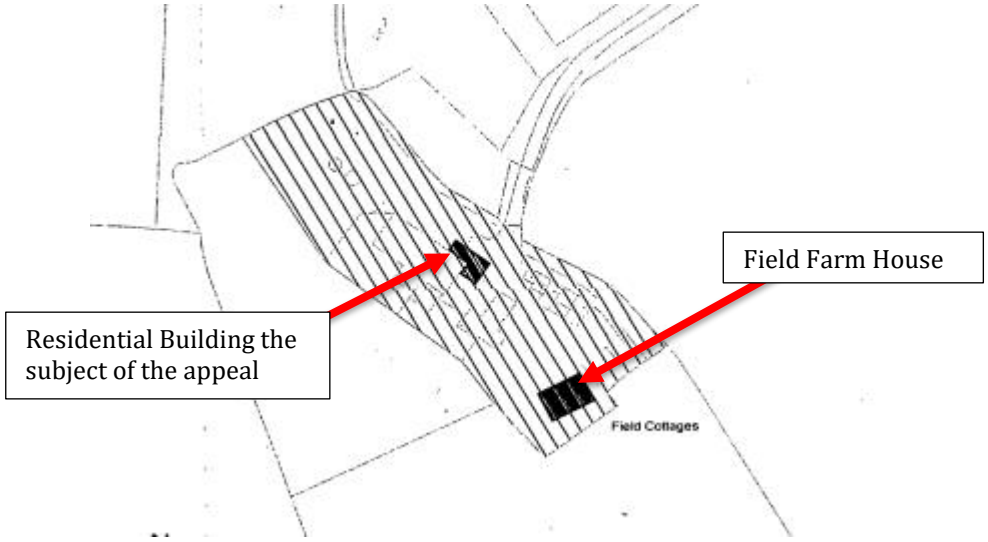


Planning Permission N/05/03043/COU – Approved Drawing no.2901/18

2.2 A planning obligation (which can be seen art Appendix E), under Section 106 of the Town and Country Planning Act 1990 ('the Act'), was made between CE Palmer and SA Palmer (the Appellants), Wiltshire District Council and Clydesdale Bank PLC, and is linked to permission reference N/05/03043/COU. The purpose of the obligation is to tie the Groom's Accommodation to the main dwellinghouse. The key clause of the planning obligation is as follows:-

a) the Owner will not sell or lease for any term or otherwise dispose of the Groom's Accommodation unless such sale or lease or other disposition shall include the House

b) the Owner will not sell or lease for any term or otherwise dispose of the House unless such sale or lease or other disposition shall include the Groom's Accommodation



Planning Obligation Plan (dated 07 December 2006)

2.3 The Appellants sought to discharge the planning obligation via application reference PL/2023/09361, which was made pursuant to Section 106A of the Act, because it no longer serves a useful purpose. The Council however refused the application on the 11 January 2024 on the following grounds:

1. *Removing the Section 106 obligation would reguralise a development that is contrary to the adopted Development Plan housing delivery strategy in that it involves a location that is in the designated countryside; and is outside, and some distance, from the defined settlement boundary for the Market Town of Malmesbury. It is also considered that the proposals do not represent sustainable development. The principle of housing development on this site, in terms of its location, is therefore considered to be contrary to the provisions of the National Planning Policy Framework; Wiltshire Core Strategy policies CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP13 (Malmesbury Community Area), CP48 (Supporting Rural Life), CP51 (Landscape), CP57 (Ensuring High Quality Design & Place Shaping), CP60 (Sustainable Transport) and CP61 (Transport & Development).*

2.4 The supporting statement, dated 25 October 2023, submitted in support of application PL/2023/09361, which can be seen in Appendix C, provides details of other historic planning applications at the property which are material to the assessment of the current application to discharge the planning obligations. These relate to planning permission N/05/01055/COU which was for the conversion of other stables at the property to two holiday lets, and a later application for a Certificate of Lawfulness, reference 16/07504/CLE, in 2016 for the continued independent residential use of the buildings (now known as Swallow Barn Cottage and Jade Cottage).

3.0 THE PROPOSAL

3.1 The appeal is against the decision of the Council to refuse the application (reference PL/2023/09361), made under Section 106A of the Town and Country Planning Act 1990, to discharge the planning obligation dated 07 December 2006.

3.2 The original supporting statement provides the background and justification for the request to discharge the planning obligation and should be read alongside this appeal statement. The key area of focus however is whether the obligation continues to serve a useful purpose.

3.3 The minutes of the Council's Development Control Committee meeting on the 11th January 2006 records the resolution to grant planning permission for application N/05/01055/COU "subject to a legal agreement tying the grooms accommodation to the use of the principal dwelling and conditions (to include removal of pd rights)". The reason for the resolution to grant was because the development would accord with the advice within the former PPS7 'Sustainable Development in Rural Area'.

3.4 The planning permission allowed the creation of a residential self-contained unit of accommodation. It is acknowledged that the original justification was based on the need for staff accommodation at the property, which was linked to the equestrian operations, however the planning permission was not subject to an occupancy condition which restricted the occupation of the dwelling for persons employed at the property or as part of a local rural enterprise. Moreover, the development comprised the reuse of an existing rural building, being an exceptional form of development acceptable in and of itself. It could be openly leased albeit somehow not separately from Field Farm House as set out within the planning obligation.

3.5 The dwelling, which is now known as Poplar Cottae, has however been occupied as a self-contained residential unit separate from the main dwellinghouse since 2007, and without any involvement with the keeping of horses. It has been leased to various occupiers separate from the use of the stables and independent from the use of the main dwellinghouse. The Sales and Lettings Brochure from James Pye & Co, a Local Estate Agent, which can be seen in Appendix D, provides details of the dwelling.

3.6 The Council was provided with evidence to demonstrate that the dwelling has been leased and occupied separate from the main dwellinghouse since 2007 during the assessment of the planning application. That evidence is not reproduced here because the Council acknowledges and confirms within its Case Officer's Report for the application, which can be seen in Appendix B, that, "the Groomsman's accommodation has been let via separate assured shorthold tenancy agreements since its completion in 2007 technically breaching the terms of the S106". Had the matter been conditionally controlled the effluxion of time would have meant the arrangement was lawful, having not raised any planning concerns in the intervening period.

3.7 The planning obligation does not necessarily prevent the lease of the dwelling in practice albeit it should not be separate from Field Farm House. There has therefore been a technical breach as identified above, albeit this has not resulted in any planning harm as outlined within Section 5 below. Poplar Cottage has been occupied as a self-contained independent unit of accommodation for a significant period of time, without any adverse social, economic or environmental impacts, and therefore the planning obligation no longer serves a useful purpose. It is therefore requested that the planning obligation be discharged.

4.0 PLANNING LEGISLATION AND POLICY

4.1 Section 106A of the Town and Country Planning Act 1990 makes provision for existing planning obligations to be modified or discharged by agreement between the authority and the person or persons by whom the obligation is enforceable.

4.2 The NPPF, and associated Planning Practice Guidance, sets out the Government's planning policies for England and how these are expected to be applied. The NPPF is a material consideration in planning decisions. The policies within the following chapters of the NPPF are considered relevant to the principle of the proposed development which is the focus of this appeal:-

- Chapter 2 – Achieving Sustainable Development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a Sufficient Supply of Homes
- Chapter 11 – Making Effective Use of Land
- Chapter 12 – Achieving Well-designed Places

4.3 The development plan relevant to this appeal comprises of the Wiltshire Core Strategy (WCS) (adopted January 2015) and the Crudwell Neighbourhood Plan (made May 2021). The development plan must be read as a whole but the following policies are the ones identified by the Council within the reasons for refusal:-

- Core Policy 1: Settlement Strategy
- Core Policy 2: Delivery Strategy
- Core Policy 13: Spatial Strategy for Malmesbury Community Area
- Core Policy 48: Supporting Rural Life
- Core Policy 51: Landscape
- Core Policy 57: Ensuring High Quality Design & Place Shaping
- Core Policy 60: Sustainable Transport
- Core Policy 61: Transport & Development

5.0 PLANNING CONSIDERATIONS

5.1 The Council does not dispute that Poplar Cottage has been leased and occupied independently from Field Farm House since 2007. However, it advises that the planning obligation continues to be enforceable and allowing its discharge would in effect grant permission for a single dwelling in the countryside thus leading to planning harm due to the conflicting with the development plan and national policies in regard to climate change and sustainable development.

5.2 The Decision Notice, which can be seen in Appendix A, states that discharging the planning obligation would regularise a development that is contrary to the adopted Development Plan housing delivery strategy due to the position of the site within the ‘countryside’, and would not

amount to a sustainable form of development. The Case Officer's Report outlines that if the original proposal was considered afresh today it would be assessed under Core Policy 48 'Supporting Rural Life' of the WCS albeit no further assessment is made.

5.3 The WCS includes a Spatial Strategy which sets the foundations for how 'sustainable development' is defined and applied within Wiltshire. The settlement and delivery strategies define where development will be the most sustainable across Wiltshire's settlements. Core Policy 1 'Settlement Strategy' and Core Policy 2 'Delivery Strategy' of the WCS outline that there is a presumption in favour of sustainable development within the Principal Settlements, Market Towns, Local Service Centres and Large Villages and development should be restricted to within the limits of development other than in exceptional circumstances as set out within the relevant core policies contained within the plan, i.e. the 'exception policies'.

5.4 The WCS 'exception policies' that permit new development within the countryside, in line with the delivery strategy outlined in Core Policy 2, are listed within paragraph 4.25 and includes Core Policy 48 'Supporting Rural Life'. The policy permits new build rural enterprise dwellings within the countryside or the creation of new dwellings through the conversion of existing buildings, subject to a set criterion being met.

5.5 The development permitted under planning application N/05/03043/COU would therefore continue to be acceptable in principle both due to the support provided for rural workers dwellings, and mor specifically for the unrestricted residential reuse of rural buildings within Core Policy 48. It is material that the same policy provides support for the conversion and re-use of rural buildings for alternative uses, (including residential), which again highlights the broad policy support for residential development at the appeal property. However, notwithstanding the policy support, the circumstances of the Appellants in terms of the lack of a need for rural workers staff accommodation, the

ongoing separate lease of the unit, and in particular the scope and terms of the original planning permission, must also be considered.

5.6 The planning permission allowed the creation of a unit of accommodation that could be occupied by any person provided it was not separate from Field Farm House. The permission allowed the creation of a new dwelling although to all intents and purposes the planning obligation was intended to ensure a new planning unit was not created, ignoring the substantial physical separation. These points are confirmed within the Case Officer's Report which says:-

"The groomsman's accommodation was granted via a Change of Use planning application (05/03043/COU) but was not restricted to the use of just a groom or grooms".

"planning permission was granted via a change of use application in 2006 and a planning obligation (S106) was agreed upon to tie the main house, Field Farm House, and the Groomsman's Accommodation together to be as one planning unit".

5.7 It is therefore clear that the planning permission allowed the creation of a new self-contained dwelling within the established planning unit. The planning permission was lawfully implemented, and the operational development completed, however the circumstances of the Appellants later changed, and the dwelling was rented to people not associated with Field Farm House, or the adjacent stables. The occupation and use of Poplar Cottage for nearly two decades has not resulted in any planning harm. The occupation of the dwelling, in association or separate from Field Farm House, does not result in any different impacts on the local environment and the sustainability of the uses would not therefore differ.

5.8 The approved layout and amount of accommodation has not been altered, and the occupation of the dwelling would not result in any material difference in the number of vehicular movements to and from the property whether it was occupied in association with or separate from

Field Farm House. In fact, the independent use of Swallow Barn Cottage and Jade Cottage established over time means proportionally, the independent externalities of use of the appeal dwelling have decreased. The proposal to discharge the planning obligation would not therefore have any landscape or visual impacts and negligible transportation impacts. There would be no conflict with Core Policies 51, 57, 60 and 61 of the WCS.

5.9 The principle of a self-contained unit of accommodation has been established by the original planning permission and the principle of the use continues to benefit from support from national planning policy, which seeks to significantly boost the supply of home, and the settlement strategy and exception policies of the local development plan; Core Policies 1, 2, 13 and 48. The occupation of the Poplar Cottage separate from Field Farm House would not result in any material impacts that would differ from the occupation of the unit under the terms of the original planning permission. As such, it is considered the planning obligation does not serve a useful planning purpose, as evidenced by the absence of any planning harm, it is considered that it should be discharged.

6.0 CONCLUSIONS

6.1 The appeal is against the decision of the Council to refuse an application (reference PL/2023/09361) seeking to discharge a planning obligation, which ties the residential unit of accommodation permitted under planning permission reference N/05/03043/COU to the main dwellinghouse (Field Farm House) at the property.

6.2 The permitted dwelling, now known as Poplar Cottage, has been occupied and leased separately from Field Farm House since 2007. This is not disputed by the Council and its occupation as a self-contained unit of accommodation separate from Field Farm House has not resulted in any planning harm. Indeed it has not been discernibly different over many years.

6.3 The continued occupation of Poplar Cottage, separate from Field Farm House would not result in any material impacts that would differ from the occupation of the dwelling under the terms of the original planning permission and associated planning obligation. Furthermore, the current Local Development Plan, via Core Policy 48, provides support for the conversion of rural buildings for unrestricted residential use. As such, it is considered the planning obligation does not serve a useful planning purpose, and due to the absence of any planning harm, it is respectfully requested that the appeal be allowed, and the planning obligation be discharged in full.

Wiltshire Council

Town and Country Planning Act 1990
The Town and Country (Modification and Discharge of Planning Obligations) Regulations 1992.
REFUSAL OF APPLICATION TO MODIFY/DISCHARGE A PLANNING OBLIGATION

Application Reference Number: PL/2023/09361

Decision Date: 11 January 2024

Applicant:	Mr & Mrs C H & S L Palmer FIELD FARM HOUSE, EASTCOURT, MALMESBURY, SN16 9HP
Particulars of Development:	Removal of Section 106 Agreement in relation to N/05/03043/COU
At:	Field Farm House, Eastcourt, Malmesbury, Wilts, SN16 9HP

In pursuance of their powers under the above Act, the Council hereby REFUSE TO MODIFY/DISCHARGE A PLANNING OBLIGATION for the development referred to in the above application and plans submitted by you, for the following reason(s):

Refusal Reason(s): (1)

1 Removing the Section 106 obligation would reguralise a development that is contrary to the adopted Development Plan housing delivery strategy in that it involves a location that is in the designated countryside; and is outside, and some distance, from the defined settlement boundary for the Market Town of Malmesbury. It is also considered that the proposals do not represent sustainable development. The principle of housing development on this site, in terms of its location, is therefore considered to be contrary to the provisions of the National Planning Policy Framework; Wiltshire Core Strategy policies CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP13 (Malmesbury Community Area), CP48 (Supporting Rural Life), CP51 (Landscape), CP57 (Ensuring High Quality Design & Place Shaping), CP60 (Sustainable Transport) and CP61 (Transport & Development).

Parvis Khansari - **Corporate Director, Place**

NOTES

1. Appeals. If the applicant is aggrieved by the decision of the local planning authority to refuse permission, they may appeal to the Secretary of State for the Environment in accordance with Section 78(1) of the Town and Country Planning Act 1990 within six months of the date of this decision. (Information and forms relating to the appeals process can be found at the Planning Portal- http://www.planningportal.gov.uk/planning/appeals).

CASE OFFICER'S REPORT

Application Reference:	PL/2023/09361
Application Type:	Modification of Planning Obligation
Site Inspection:	4th January 2024
Consultation ends:	7th December 2023
Case officer:	James Repper

Site Address:	Field Farm House, Eastcourt, Malmesbury, Wilts, SN16 9HP
Proposal:	Removal of Section 106 Agreement in relation to N/05/03043/COU
Recommendation:	Refuse

SITE DESCRIPTION:

The application site is a small holding currently made up of three established C3 dwellings and the groomsman's quarters at the heart of this application. The site is located outside of any settlement boundary, as defined by Wiltshire Core Strategy (WCS) core policies 1 (Settlement Strategy), 2 (Delivery Strategy) and 13 (Spatial Strategy for the Malmesbury Community Area). The groomsman's accommodation was granted via a Change of Use planning application (05/03043/COU) but was not restricted to the use of just a groom or grooms. The building was however controlled via a section 106 agreement preventing the sale, lease or otherwise disposal of the accommodation separately to the main house known as Field Farmhouse and vice versa.

PROPOSAL:

The current application seeks the removal of the planning obligation (S106) allowing the Groomsman's accommodation and Field Farmhouse to be separated from each other. The specific section of the S106 to be removed is

a) the Owner will not sell or lease for any term or otherwise dispose of the Groom's Accommodation unless such sale or lease or other disposition shall include the House

b) the Owner will not sell or lease for any term or otherwise dispose of the House unless such sale or lease or other disposition shall include the Groom's Accommodation

RELEVANT PLANNING HISTORY:

N/05/03043/COU – Change of Use of Existing Equestrian Use to Part Commercial & Conversion of Redundant Adjacent Building to Grooms Accommodation (Revised Application) – Approved subject to conditions December 2006

N/05/01055/COU - Conversion of Existing Stables and Stores to Two Holiday Lets – Approved subject to conditions June 2005

16/07504/CLE - Certificate of Lawfulness of existing use for continued independent residential use – Approved December 2016

POLICIES:

National Planning Policy Framework (NPPF)
Section 5 (Delivering a sufficient supply of homes)
Para 82 (Rural Housing)
Section 9 (Promoting sustainable transport)

National Planning Practice Guidance (NPPG)
National Design Guidance (Planning practice guidance for beautiful, enduring and successful places) 2019

Wiltshire Core Strategy:
CP1 (Settlement Strategy)
CP2 (Delivery Strategy)
CP13 (Spatial Strategy for the Malmesbury Community Area)
CP48 (Supporting Rural Life)
CP51 (Landscape)
CP57 (Ensuring High Quality Design & Space Shaping)
CP60 (Sustainable Transport)
CP61 (Transport & Development)
CP62 (Development Impacts on the Transport Network)
CP64 (Demand Management)

Supplementary Planning Documents:
Crudwell Neighbourhood Plan made May 2021

REPRESENTATIONS:

Crudwell Parish Council – No Comment

Letters – None Received

ISSUES:
The principle question being asked is if the obligation no longer serves a useful purpose, then it shall be discharged.

PLANNING ASSESSMENT:

Principle:
"106A Modification and discharge of planning obligations.*E+W*
(1)A planning obligation may not be modified or discharged except—
*(a)by agreement between [**F2**the authority by whom the obligation is enforceable][**F2**the appropriate authority (see subsection (11))] and the person or persons against whom the obligation is enforceable; or*
(b)in accordance with this section and section 106B.

(2)An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.

*(3)A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [**F3**the local planning authority by whom the obligation is enforceable][**F3**the appropriate authority] for the obligation—*
(a)to have effect subject to such modifications as may be specified in the application; or
(b)to be discharged.
(4) In subsection (3) " the relevant period " means—
(a)such period as may be prescribed; or
(b)if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.

(5)An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.

(6)Where an application is made to an authority under subsection (3), the authority may determine—

(a)that the planning obligation shall continue to have effect without modification;
(b)if the obligation no longer serves a useful purpose, that it shall be discharged; or
(c)if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(7)The authority shall give notice of their determination to the applicant within such period as may be prescribed.

(8)Where an authority determine that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(9)Regulations may make provision with respect to—
(a)the form and content of applications under subsection (3);
(b)the publication of notices of such applications;
(c)the procedures for considering any representations made with respect to such applications; and
(d)the notices to be given to applicants of determinations under subsection (6)".

106 agreements are not subject to timescale limitations and last in perpetuity until such time as they are modified or discharged. Therefore, to assess whether the obligation serves a useful purpose the proposal shall be assessed against national and local policies.

The WCS sets out Settlement and Delivery Strategies for the sustainable delivery of new development within the County. Applying the normal principle that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise; proposed new development which does not comply with the Settlement and Delivery Strategies will be unsustainable, and so unacceptable as a matter of principle in this overarching context. The WCS for the area was adopted by Wiltshire Council in January 2015.

The Settlement Strategy for the County is set out in WCS CP1 (Settlement Strategy). The Strategy identifies four tiers of settlement – Principal Settlements, Market Towns, Local Service Centres, and Large and Small Villages. The site is not located within any of these defined settlements and is, therefore, not considered to be in a sustainable location for new residential development.

The nearest defined settlement to the site is the Market Town of Malmesbury, located 5.6 Km, as the crow flies, to the Southwest. CP2 (Delivery Strategy) states, "Other than in circumstances as permitted by other policies within this plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map. The limits of development may only be altered through the identification of sites for development through subsequent Site Allocations Development Plan Documents and neighbourhood plans."

Assessment:
Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it "no longer serves a useful purpose" or would continue to serve a useful purpose in a modified way.

In this instance, planning permission was granted via a change of use application in 2006 and a planning obligation (S106) was agreed upon to tie the main house, Field Farm House, and the Groomsman's Accommodation together to be as one planning unit. This agreement precluded the separate tenancy of the Groomsman's accommodation. However, the Groomsman's accommodation has been let via separate

assured shorthold tenancy agreements since its completion in 2007 technically breaching the terms of the S106. As this breach has continued since 2007 and no enforcement action has been taken the applicants conclude no planning harm can have been caused by this breach. It should also be noted that since the agreement was made and the breach started the formerly approved holiday lets on the site located between the main house and the groomsman's accommodation have been converted via a certificate of lawfulness into independent C3 dwellings with no restrictions over their disposal.

Whilst there are no notes on the original file as to why the planning officer at the time felt it necessary and reasonable to tie the buildings together via an S106 agreement in granting the consent it was clearly felt justifiable at the time, however, it has to be accepted that circumstances change.

However, were the application being submitted today it is considered that the section 106 agreement tieing the groomsman's quarters use to the main dwelling and its associated business would trigger CP48 which states" dwellings required to meet the employment needs of rural areas outside the defined limits of development of the Principal Settlements, Market Towns, Local Service Centres and Large Villages, and outside the existing built areas of Small Villages, proposals for residential development will be supported where these meet the accommodation needs required to enable workers to live at or in the immediate vicinity of their place of work in the interests of agriculture or forestry or other employment essential to the countryside." The fact that the applicants have stated within their application to remove the obligation that they have been in flagrant breach of the obligation is not itself a defence. Unlike planning conditions which have time limitations should no breach be enforced, section one agreements are legally binding contracts entered into freely by both parties and have no end point. It is therefore perfectly enforceable at this point. Should the 106 obligation be removed the local planning authority would in effect be granting planning permission for a single dwelling located in a position contrary to the development plan and national policies in regard to climate change and sustainable development.

CONCLUSION:
It is considered that overall despite the breach of the Section 106 agreement since its inception, the agreement is still enforceable and as such can prevent a considered planning harm that its removal would create. The use of the Groomsman's quarters either for groomsman associated with the business or as an annexe associated with the host dwelling to which it is tied would still be considered acceptable in policy terms whereas the granting of a single dwelling in open countryside would not and therefore would cause planning harm.

RECOMMENDATION:
Refusal of the application and that the planning obligation shall continue to have effect without modification.

Refusal Reason(s): (1)

1 Removing the Section 106 obligation would reguralise a development that is contrary to the adopted Development Plan housing delivery strategy in that it involves a location that is in the designated countryside; and is outside, and some distance, from the defined settlement boundary for the Market Town of Malmesbury. It is also considered that the proposals do not represent sustainable development. The principle of housing development on this site, in terms of its location, is therefore considered to be contrary to the provisions of the National Planning Policy Framework; Wiltshire Core Strategy policies CP1 (Settlement Strategy), CP2 (Delivery Strategy), CP13 (Malmesbury Community

Area), CP48 (Supporting Rural Life), CP51 (Landscape), CP57 (Ensuring High Quality Design & Place Shaping), CP60 (Sustainable Transport) and CP61 (Transport & Development).

25th October 2023

Our Ref: SWLC.LPC3935

Development Services – North
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Dear Sir/Madam

Town and Country Planning Act 1990
Section 106A application – Field Farm House and the Groom's Accommodation (known as Poplar Cottage), Eastcourt, Malmesbury, Wiltshire, SN16 9HP

As your records will confirm, planning permission was granted by application 05/03043/COU in 2006 at the above site, and as described below.

> 'Change of Use of Existing Equestrian Use to Part Commercial & Conversion of Redundant Adjacent Building to Groom's Accommodate (Revised Application).'

I have enclosed a copy of the decision dated 11th December 2006 and further to which (specifically regarding the principles arising from the case of *I'm Your Man Ltd vs Secretary of State for the Environment [1999] 77 P & CR251*] you will see the approved accommodation was not restricted for use by a Groom etc.

In association with the above decision though my client signed a legal agreement as required at the time. A copy of that Section 106 Agreement is also enclosed. In simple terms the Agreement sought to prevent the sale or lease for any terms or otherwise to dispose of the 'Groom's Accommodation', unless that includes the main house – Field Farm House, and vice versa.

It is a matter of fact that the new property created by application 05/03043/COU has been tenanted and thus 'leased' since it was created in about 2007 This appears to have been a technical breach of the Agreement and which has caused no recorded planning harm. Its occupation has been separate from the stables too.

My clients are now examining, as they get older, how to sub-divide their estate between their family and the stables and adjacent (Poplar Cottage) do not logically relate to their main house.

The Council's planning files are silent regarding what was the perceived need to prevent the sale or lease of the new dwelling in question from the main house. Indeed, it is worth noting that a Certificate of Lawfulness was granted in 2016 (LPA Reference 16/07504CLE) that confirmed the continued unrestricted and

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independent residential use (falling within Class C3 to the Schedule to the Use Classes Order) of the two properties adjacent to Field Farm House, known as Swallow Barn Cottage and Jade Cottage. These properties were originally approved as holiday let units but had been rented out in the same manner as Poplar Cottage, and despite being immediately adjacent to Field Farm House have no restrictions on their disposal.

The annotated aerial photograph extract inserted below shows these two properties as well as Poplar Cottage as they relate to Field Farm House. All four properties are occupied entirely independent of one another as self-contained C3 planning units.



The Section 106 tie has not curtailed the lease of the property in practice and serves no meaningful planning purpose, if it ever did. It is therefore proposed to discharge the Agreement in full.

As you will be aware Section 106A of the above Act concerns the modification and discharge of planning obligations. The 'relevant period' for the Agreement's discharge has expired and the case made reflects Section 106A (6) (b), as the obligation is believed to no longer serve a useful purpose and should be discharged.

Overall, there has been sufficient change in circumstances since the Agreement was signed in 2006, including its actual on-going independent use and the establishment of two unrestricted dwellings closer to Field Farm House, to indicate that it fails to now serve a useful purpose.

The test under S106A (6) (b) is whether the obligation 'no longer serves a useful purpose'. This has been held to be a 'useful planning purpose'. Thus, if the obligation's only purpose is to meet some non-planning purpose it will generally be

reasonable to discharge it. In this case the only actual restriction prevents my client from leasing or selling the self-contained residence separate from his main house. There are no planning reasons to justify that restriction.

In order to explore this matter further, it is my experience that it is no longer considered good practice to seek to tie land or buildings to other operations where there is no express need. The nature of the residential use approved in 2006 was not restricted or expressly linked to the associated stables. If there were any relationship such should be conditionally controlled, reflecting Government advice discouraging the use of planning obligations where conditions are sufficient. The occupation of Poplar Cottage has no bearing on conjoined ownership with Field Farm House.

It is the applicant's case therefore, and particularly given the established nature of the multiple residences that have evolved that the planning obligation no longer serves a useful or valid planning purpose, indeed I can't ascertain what its purpose was.

As said the modification and discharge of planning obligations is governed by section 106A of the above Act. In that regard it is understood that this gives rise to the following key questions.

1. When can a developer apply to modify or discharge a planning obligation?

2. What is the procedure to be followed?

3. What principles should be applied in considering whether a planning obligation, 'no longer serves a useful purpose' or 'continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications specified in the application?

Timing

An application to discharge or modify a planning obligation under S106A may only be made after the 'relevant period' (S106A (3)). The 'relevant period' is defined by S106A (4) as either; (i) such period as may be prescribed in regulations, or (ii) in the absence of such regulations, five years beginning with the date on which the obligation was entered into.

No regulations have been passed to provide for a period other than the default of five years. Accordingly, as the obligation was made more than five years ago the right to invoke the S106A procedure applies in this instance.

Procedure

The relevant key elements of the procedure are;

1. The application must be submitted on a form provided by the local planning authority requiring the information specified by the Town and Country

Planning (Modification and Discharge of Planning Obligations) Regulations 1992, including a statement of the applicant's reasons for applying for the modification or discharge. The application must be accompanied by a plan identifying the land to which the obligation relates.

2. The applicant is required to give notice of the application to any other person against whom, on the day 21 days before the date of application, the planning obligation in question is enforceable.

3. The application must be determined within 8 weeks from the date on which the application is received.

For the avoidance of doubt, I would wish to make it clear that the enclosed application, in satisfying the applicant's requirements and desire to be allowed to lease or sell his property separately from the main house seeks to remove the obligation and not to modify it. The duly completed forms and related plan required are enclosed, together with a copy of the relevant obligation. It is assumed too that by considering the lack for justification for the restriction as time has moved on that there is sufficient information to justify the discharge of the agreement.

The principles to be applied

The test under S106A (6) (b) is whether the obligation 'no longer serves a useful purpose'. This has been held to be a 'useful planning purpose'. Thus, if the obligation's only purpose is to meet some non-planning purpose it will generally be reasonably to discharge it, as in this case the only actual restriction arising is the prevention of the applicant's from selling or leasing Poplar Cottage separately from Field Farm House. There are now no planning reasons to justify that restriction.

In light of the above commentary and enclosed information I trust you will agree that you have sufficient information to favourably determine this application, however, please do not hesitate to contact me if you need to explore any matter in more detail.

Yours faithfully

[redacted]

Simon Chambers
Director

Enc.

Cc: Mr & Mrs H Palmer







Poplar Cottage, Eastcourt, Malmesbury, SN16 9HP

£650 pcm

Poplar Cottage is a lovely one bedroom property, situated in the rural village of Eastcourt. Conveniently situated for Kemble, Cirencester and Malmesbury.

01666 840 886 jamespyle.co.uk interested@jamespyle.co.uk
4 The Old School, High Street, Sherston SN16 0LH
James Pyle Ltd trading as James Pyle & Co. Registered in England & Wales No: 08184953
VAT Reg No: 142054549

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The Property

DESCRIPTION Poplar Cottage was an old dairy that has been converted in a farmyard setting with rural views. The property is a lovely one bedroom self-contained cottage. Poplar Cottage has been fitted out to an excellent standard. Sitting room, with dining area. Good sized double bedroom that offers a fitted shower room. It has a small enclosed garden and private parking area.

The Sitting/Dining Room has laminate flooring, and attractive pine doors. Storage cupboard, with plumbing for washing machine and space for fridge/freezer.

The kitchen is fitted with a modern range of kitchen units, that comprise a stainless steel sink, with cupboard space for dishwasher and a range of cupboards, and attractive tiled splash back. Also offers an electric hob with extractor fan with a range of cupboards, electric oven and grill. The double bedroom offers fitted cupboard, electric radiator. The shower room has a tiled shower cubicle, with folding doors and electric shower and towel rail and fan heater.

The outside of Poplar Cottage has a pedestrian gate leading to a paved sitting area, beyond which is laid to lawn.

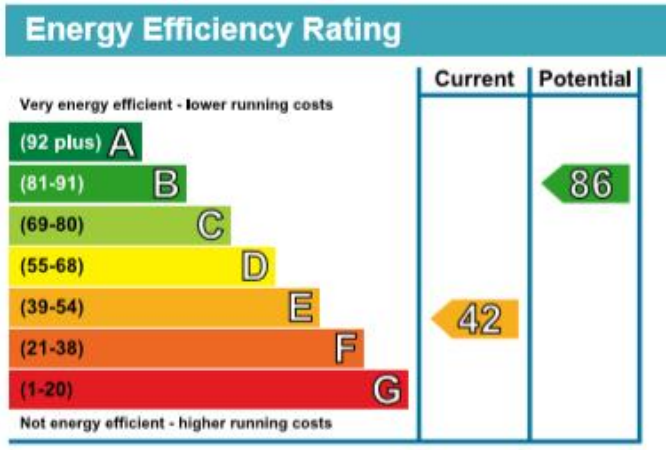
SITUATION The village of Eastcourt is found in a delightful rural location about 2 miles west of Crudwell and about 3 minutes from Oaksey where there is a village pub and post office. The village is located amongst unspoilt countryside on the edge of the Wiltshire/Gloucestershire border and is conveniently located for access to Kemble station (8 minutes), Cirencester (15 minutes) and Malmesbury (10 minutes).

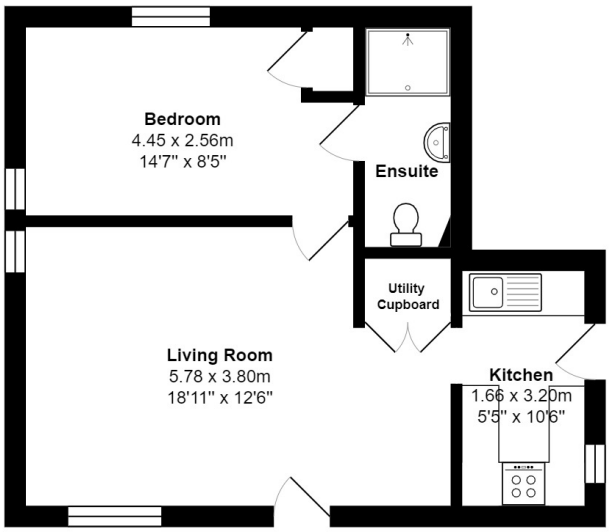
Directions

In Crudwell, turn right by the Potting Shed pub, follow the road for 2 miles into the village of Eastcourt. Continue straight over the cross roads, following the sign for Minety and the entrance is the first drive on the right hand side 1/4 mile from the crossroads. It is signed at the top of the tarmac drive leading down to the property.

Local Authority

Wiltshire County Council
Band A £1,400 pa





Ground Floor

Total Area: 43.5 m² ... 468 ft²

All measurements are approximate and for display purposes only

PROPERTY MISDESCRIPTIONS ACT
ownership of the sellers, therefore the Buyer must satisfy themselves as to the condition of the property, fit for their purpose, or within the property or the validity of any guarantee.
A buyer must assume the information is incorrect, until verified by their own Solicitors. The sale particulars may change in the course of time and any interested party is advised to make a final inspection of the property to exchange of contracts.

THIS AGREEMENT is made the 7th day of December Two thousand and six BETWEEN NORTH WILTSHIRE DISTRICT COUNCIL of Monkton Park Chippenham Wiltshire ("the Council") of the first part CECIL HOWARD PALMER and SARA LOUISE PALMER both of Field Farm House Eastcourt Malmesbury Wiltshire SN16 9HP (together "the Owner") of the second part and CLYDESDALE BANK PLC whose registered office address is at 30 St Vincent Place G1 2HL ("the Mortgagee") of the third part

WHEREAS

(1) The Council is local planning authority within the meaning of the Town and Country Planning Act 1990 for the area within which the relevant land is situate

(2) The Owner is registered proprietor with title absolute under Title Number WT233594 of part of the land at Field Cottage Eastcourt Malmesbury Wiltshire shown hatched on the plan herein ("the Land")

(3) The Owner is seised in fee simple with full title guarantee of that part of the land title to which is not registered ("the Unregistered Land")

(4) The Mortgagee is mortgagee of the Land and the Unregistered Land by First Charge dated 7th December 2006

(5) The Owner has made an application numbered 05.03043.COU for planning permission to develop the Land by the change of use of existing equestrian use to part commercial and the proposed conversion of a redundant adjacent building situate on the Land in the position shown for the purposes of identification coloured red on the plan herein to groom's accommodation ("the Groom's Accommodation") as more particularly described in the said application and plans deposited therewith

(6) The Council has indicated its willingness to approve the said application and to grant planning permission in respect thereof provided that the Groom's Accommodation and the dwellinghouse situate on the Unregistered Land and shown for the purposes of identification coloured blue on the plan herein ("the House") shall remain in the same ownership and pursuant to the covenants herein

NOW THIS DEED WITNESSES as follows

1 THIS Agreement is made in pursuance of section 106 of the Town and Country Planning Act 1990 and of all other enabling powers and the covenants herein are a planning obligation for the purposes of the said section 106 which is enforceable by the Council as local planning authority

2 CONDITIONAL upon the grant of planning permission upon the terms attached to this Agreement in pursuance of the said application the Owner hereby covenants with the Council to the intent that this Agreement shall be enforceable against the Owner and the Owner's successors in title lessees and assigns of the Land and the Unregistered Land or any part thereof howsoever arising as follows

a) the Owner will not sell or lease for any term or otherwise dispose of the Groom's Accommodation unless such sale or lease or other disposition shall include the House

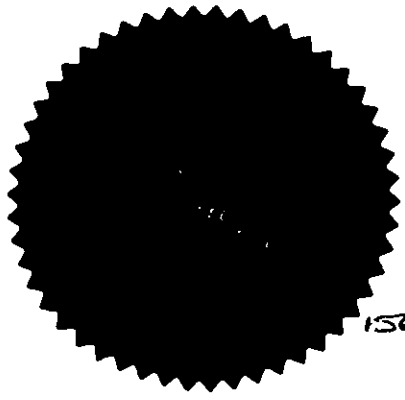
b) the Owner will not sell or lease for any term or otherwise dispose of the House unless such sale or lease or other disposition shall include the Groom's Accommodation

3 WHERE the expression "the Owner" as used in this Agreement includes two or more persons a reference to the Owner shall be deemed to be a reference to each and every such person both jointly and severally

4 THE Mortgagee has consented to the Owner entering into this Agreement and hereby acknowledges that the Land and the Unregistered Land shall henceforth be bound by the covenants herein

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed the Owner has signed this Agreement as a deed and the Mortgagee has executed this Agreement as a deed in the manner hereinafter appearing the day and year first before written

THE COMMON SEAL of the NORTH WILTSHIRE DISTRICT COUNCIL was hereunto affixed in the presence of)



156404

AUTHORISED OFFICER

SIGNED as a deed by the said)

CECIL HOWARD PALMER)

in the presence of)

[redacted]

10 SYCAMORES MEAD

TETBURY

GLOS GL8 8RB

SIGNED as a deed by the said)

SARA LOUISE PALMER)

in the presence of)

[redacted]

10 SYCAMORES MEAD

TETBURY

GLOS GL8 8RB

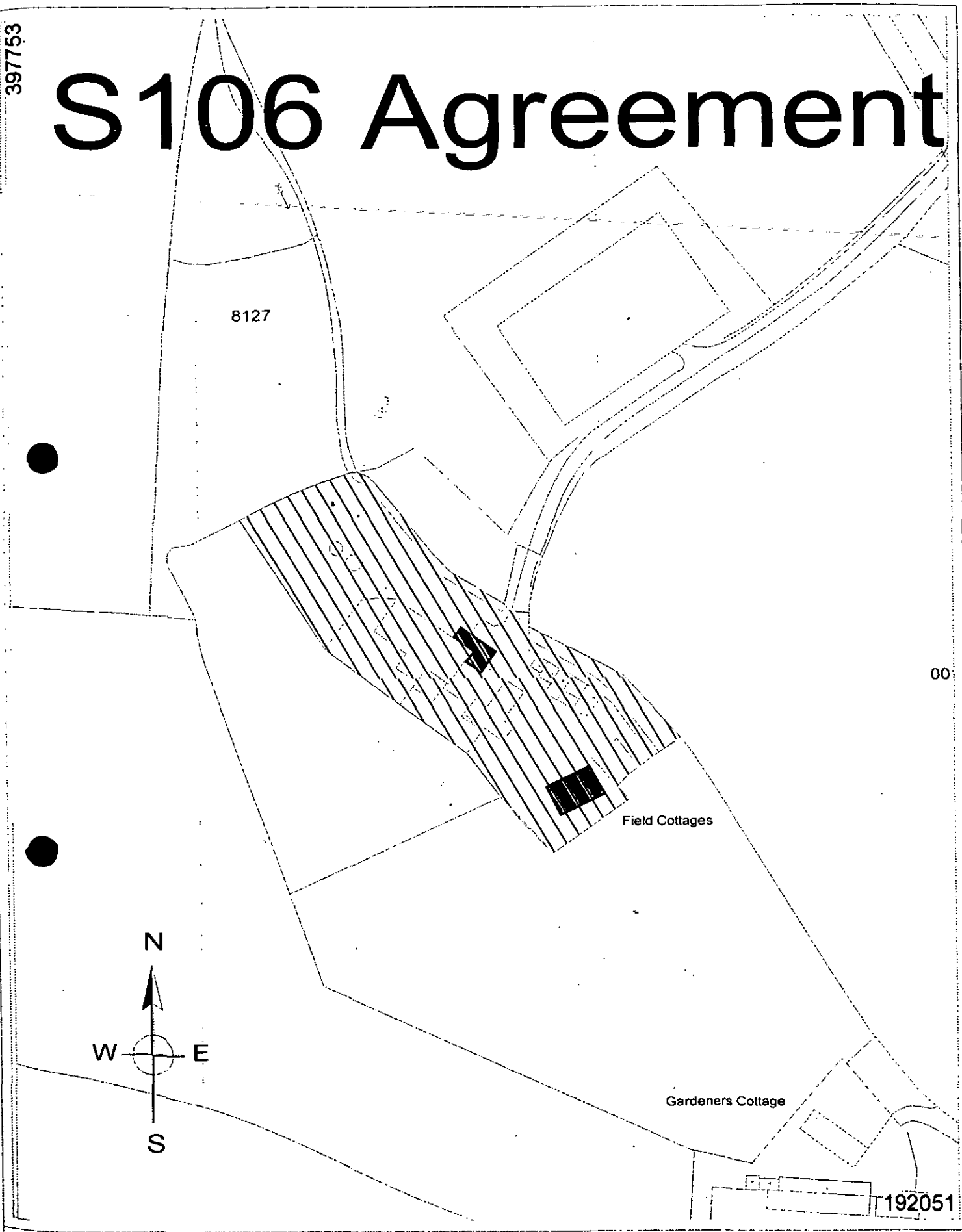
SUPERVISOR – PART A ATTORNEY
GROUP HOME LOAN CENTRE
IN TERMS OF POWER OF ATTORNEY

WITNESS

I hereby declare that I have not received any notice or information of the revocation of the Power of Attorney dated 30 January 2004 by which I was appointed as Attorney and to the best of my knowledge and belief the lender has not done or executed any act or deed whereby the said Power of Attorney has been revoked.

397753

S106 Agreement



North Wiltshire District Council

Field Cottage, Eastcourt, Malmesbury, Wilts SN16 9HP

SCALE: 1:1250

Grid Ref: ST9888 9215 05.03043.COU

S106.483 Planning Services 16/1/2006

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NORTH WILTSHIRE DISTRICT COUNCIL- 100017933 2006

APPLICATION REFERENCE NO: 05/03043/COU

Decision

THE SCHEDULE

Name of Local Planning Authority: NORTH WILTSHIRE DISTRICT COUNCIL
Monkton Park, Chippenham, Wiltshire, SN15 1ER

NAME & ADDRESS OF AGENT:

Robin Clark Associates
The Old Library
44 High Street
Malmesbury
Wiltshire
SN16 9AT

BRIEF DETAILS OF APPLICATION IN THE PARISH OF Crudwell:

Change of Use of Existing Equestrian Use to Part Commercial & Conversion of Redundant Adjacent Building to Grooms Accommodation (Revised Application)

NAME & ADDRESS OF APPLICANT:

Mr. & Mrs. H. Palmer
Field Cottage
Eastcourt
Malmesbury
Wiltshire
SN16 9HP

LOCATION:

Field Cottage
Eastcourt
Malmesbury
Wiltshire
SN16 9HP

Application Dated: 30.11.2005 Application Registered: 30.11.2005
Permission Granted: 11.12.2006

PERMISSION GRANTED FOR THE FOLLOWING REASON:

The proposal accords with the advice given in PPS7 'Sustainable Development in Rural Areas'.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

   Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out strictly in accordance with the approved plans subject to such minor amendments to the development as may be approved in writing under this condition by the local planning authority.

   Reason: To ensure that the development is implemented in accordance with this decision in the interests of public amenity, but also to allow for the approval of minor variations which do not materially affect the permission.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) there shall be no extension or external alteration to any building forming part of the development hereby permitted.

   Reason: In order to safeguard the amenity of the area by enabling the local planning authority to consider individually whether planning permission should be granted for extensions and external alterations.

4. Prior to the commencement of works upon the site, the following information shall be submitted to, and approved in writing by, the local planning authority:

a) Facilities for the storage of manure
b) Arrangements for the removal of manure
c) Details of surface water drainage from the site

The development shall be implemented in accordance with the approved details and retained for so long as the development remains on the site.

Reason: in the interests of amenity and environmental protection.

5. No burning of manure or other material derived from the keeping of horses shall take place within the site.

Reason: In the interests of amenity.

INFORMATIVES:

1. This decision relates to documents/plans submitted with the application, listed below. No variation from the approved documents should be made without the prior approval of this Council. Amendments may require the submission of a further application. Failure to comply with this advice may lead to enforcement action which may require alterations and/or demolition of any unauthorised buildings or structures and may also lead to prosecution.

Drawing numbers 2901/18 and 2901/19 date stamped 30th November 2005.

2. Attention is drawn to the Legal Agreement relating to this development or land which has been made pursuant to Section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or other enabling powers.

C. H. Pond

Implementation Team Leader
Development Control, Listed Buildings & Landscaping

Date: 11th December 2006