DELEGATED REPORT

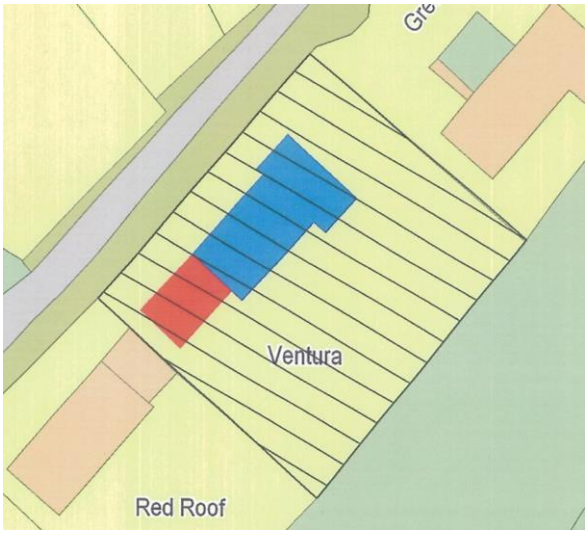
Application Reference:	PL/2023/07586
Application Type:	Modification of Planning Obligation

Site Address:	Ventura, Thickwood Lane, Colerne, Chippenham, SN14 8BN
Proposal:	Modification of a S106 associated with N/09/01575/FUL and N/11/02138/FUL to incorporate a self contained annexe into Ventura, Thickwood Lane, Colerne, Chippenham, SN14 8BN to create one dwelling.
Recommendation:	Permission be REFUSED

SITE DESCRIPTION

The single dwellinghouse of Ventura is located on the southern side of Thickwood Lane and falls relatively centrally within the row of detached dwellings which front that highway. It is bound to the east by the detached property of Greenacres, and to the south by the detached property of Red Roof; to the rear (south) is open countryside which drops away into the valley beyond.

The single dwellinghouse comprises the 'main' dwelling along with annexed accommodation, together forming single planning unit. The relationship of the annexed accommodation with the main dwelling is usefully captured in the Section 106 Agreement relating to the site (further details of which are set out below):



Extract from Section 106 Agreement: main dwelling is shown blue, annexed accommodation as red

The site is situated outside of any settlement boundary but does fall within the designated Cotswold National Landscape (formerly 'Area of Outstanding Natural Beauty'). The building is not listed or set within any conservation area and the site is not crossed by any Public Rights of Way.

PROPOSAL

The proposal seeks for the discharge of the Section 106 Agreement ('the S106 Agreement'), which was agreed and signed pursuant to planning permission N/09/01575/FUL (dated 11/03/2010), and which remained in force for the subsequent planning application N/11/02138/FUL (dated 23/08/2011). An informative on those permissions cross-reference to the legal agreement, which is dated 12/02/2010.

Although the Description of Development refers to a 'modification' of this s106 Agreement, the supporting information is considered to be clear and unambiguous in seeking to discharge this s106 Agreement and the application has been considered on this basis.

It is stated that this discharge of the s106 Agreement is sought in order that the Annexe accommodation can be used as an integral part of the main dwellinghouse. Further details of the binding requirements of the s106 Agreement are set out below.

POLICIES

Wiltshire Core Strategy (2015)
Core Policy 1 – Settlement Strategy
Core Policy 2 – Delivery Strategy
Core Policy 11 – Spatial Strategy for the Corsham Community Area
Core Policy 51 – Landscape
Core Policy 57 – Ensuring high quality design and place shaping
Core Policy 60 – Sustainable Transport
Core Policy 61 – Transport and Development

North Wiltshire Local Plan 2011 – Saved Policies (June 2006)
Policy H4: Residential Development in the Open Countryside

Colerne Neighbourhood Plan 2021-2036 (March 2022)
Policy BE1: Character and Design
Policy BE3: Housing policy
Policy NE1: Landscape and Natural Environment

National Planning Policy Framework ('NPPF', December 2023)
Section 9 – Promoting sustainable transport
Section 12 – Achieving well designed places
Section 15 – Conserving and enhancing the natural environment

ISSUES

The principal question being asked is whether or not the obligation continues to serve a useful purpose.

PLANNING HISTORY

- **N/11/02138/FUL:** Conversion of Garage to Granny Annexe and Pitched Roof to Replace Existing Flat Roof - Amendment to Application 09/01575/FUL to Include Single Store Front Extension Under Canopy – Approved – 23/08/2011
- **N/09/01575/FUL:** Conversion of Garage to Granny Annexe and Pitched Roof to Replace Existing Flat Roof – Approved – 23/09/2009

CONSULTATIONS

Colerne Parish Council – No response received

REPRESENTATIONS

The application was publicised by way of neighbour notification; no representations have been received.

ASSESSMENT

Relevant Legislation

The relevant legislation for the consideration of this application is The Town & Country Planning Act 1990, Section 106A. This states:

"106A Modification and discharge of planning obligations.
(1) A planning obligation may not be modified or discharged except—
(a) by agreement between the authority by whom the obligation is enforceable [the appropriate authority (see subsection (11)] and the person or persons against whom the obligation is enforceable; or
(b) in accordance with
(i) this section and section 106B, or
(ii) sections 106BA and 106BC

(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 the local planning authority by whom the obligation is enforceable [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 under this section 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 continue to last in perpetuity until such time as they are modified or discharged. Therefore, in accordance with (6) above, the key consideration in the assessment of this application is as to whether the obligation continues to serve a useful purpose.

Assessment of Useful Purpose

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the Framework (para. 2), applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The statutory development plan in respect of this application consists of the Wiltshire Core Strategy ('WCS', adopted January 2015), the 'saved' policies of the North Wiltshire Local Plan 2011 ('NWLP', adopted June 2006) and the Colerne Neighbourhood Plan (March 2022).

The Settlement Strategy for the County is set out in WCS Core Policies 1 (Settlement Strategy) and 2 (Delivery 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, in the open countryside in terms of planning policy. In this context the site is not considered to be in a sustainable location for new residential development.

In this instance, the annexe is laid out as a dwellinghouse under the 'Gravesham' test of a dwelling house (Gravesham BC v SSE (1984)). Whilst it is now generally accepted that it is not best practice to use a s106 Agreement for this purpose but controlled by way of planning condition instead, in this case there is no such planning condition and thus the only mechanism which prevents the use of the annex as a separate dwellinghouse is the s106 Agreement. Therefore, the only thing that prevents the annexe being lawfully used as a separate dwellinghouse to the main dwellinghouse is the s106 Agreement. If the s106 Agreement were to be discharged then the annexe would be a lawful separate dwellinghouse to the main dwellinghouse. As such, the s106 Agreement is considered to continue to serve a useful purpose in terms of restricting a separate dwellinghouse in an unsustainable location where the provision of such would be contrary to Core Policies 1, 2 and 11 of the WCS.

As a related aside, it is well established that there is no material change of use from two dwellinghouses to one dwellinghouse. In this instance, the obligations of the s106 Agreement are set out at clause no.2, which requires the following:

a) *"the Owner will not sell of lease for any term or otherwise dispose of the Annexe unless such sale or lease or other disposition shall include the House*
b) *the Owner will not sell of lease for any term or otherwise dispose of the House unless such sale or lease or other disposition shall include the Annexe*
c) *the Owner will not cause or permit the Annexe to be occupied except with the House as a single dwellinghouse by members of the same household*
d) *the Owner will not cause or permit any residential curtilage separate from that of the House to be formed anywhere on the land"*

As such, the s106 Agreement does not specifically prevent the annexe reverting to being an integral part of the main dwellinghouse in any case.

CONCLUSION

As the Section 106 Agreement continues to serve a useful purpose, in terms of restricting the introduction of a separate dwelling in the open countryside – which would be contrary to Core Policies 1, 2 and 11 (WCS) and Saved Policy H4 (NWLP) in particular, its discharge is not supported in principle. Without any material considerations to the contrary, the application is thus recommended for refusal.

RECOMMENDATION: That Planning Permission be REFUSED for the following reasons:

1. The Section 106 Agreement continues to serve a useful purpose in terms of preventing the annexe being used as a separate dwellinghouse. The Section 106 Agreement is the only

mechanism preventing such a use. Use of the annexe as a separate dwellinghouse would be contrary to Core Policies 1, 2, 11, 60 and 61 of the Wiltshire Core Strategy, Saved Local Plan Policy H4 and paragraphs 2, 8, 11, 12 and 47 of the NPPF in that it would result in the creation of a separate dwellinghouse in an unsustainable location outside of any defined settlement boundary.