

Planning Statement

Glebe Farm, Little Cheverell

Application to discharge a section 106 agreement reached on the 20th September 1990, as varied by deed of variation dated the 11th of April 2000



MASTER

LAND & PLANNING



Contents

1. Introduction	2
2. The relevant history and the details of the agreement.....	2
3. The planning policy position.....	5
4. The legal position	6
5. Assessment.....	6
6. Conclusion	7

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Prepared By: CP
Checked By: AS

Master Land & Planning Ltd
Postal Address – 46 Basepoint Business Centre, Rivermead Drive, Swindon, Wiltshire SN5 7EX
Registered Office - Unit 7 Oakridge Office Park, Whaddon, Salisbury, Wiltshire, SP5 3HT
✉ welcome@masterlp.co.uk
🌐 masterlp.co.uk



1. Introduction

- 1.1. Master Land & Planning Ltd are instructed by Mr S Keen ('the Applicant') to submit an application under section 106 A of the Town and Country Planning Act 1990 to Wiltshire Council seeking the discharge of a planning obligation at Glebe Farm, Little Cheverell ('the Site').
- 1.2. The purpose of this Statement is to provide an assessment of the proposal having regard to the relevant considerations.

2. The relevant history and the details of the agreement

- 2.1 The Legal Agreement in question reached between the applicant of the day and the former Kennet District Council in respect of outline planning permission granted in 1990 for 'Replacement of farm building with agricultural worker's dwelling' (Application Reference K/16134/O: 'the 1990 permission').
- 2.2 The Legal Agreement ('the Agreement') was reached on the 20th of September 2000 under section 106 of the Act. The effect of the Agreement is the following covenant, which provides that the owner:

... will not sell let or otherwise dispose of the red land and the blue land other than as one unit; and... the development shall only be occupied ancillary to the blue land.
- 2.3 The above provision refers to the land indicated in the image in Figure 1 overleaf.

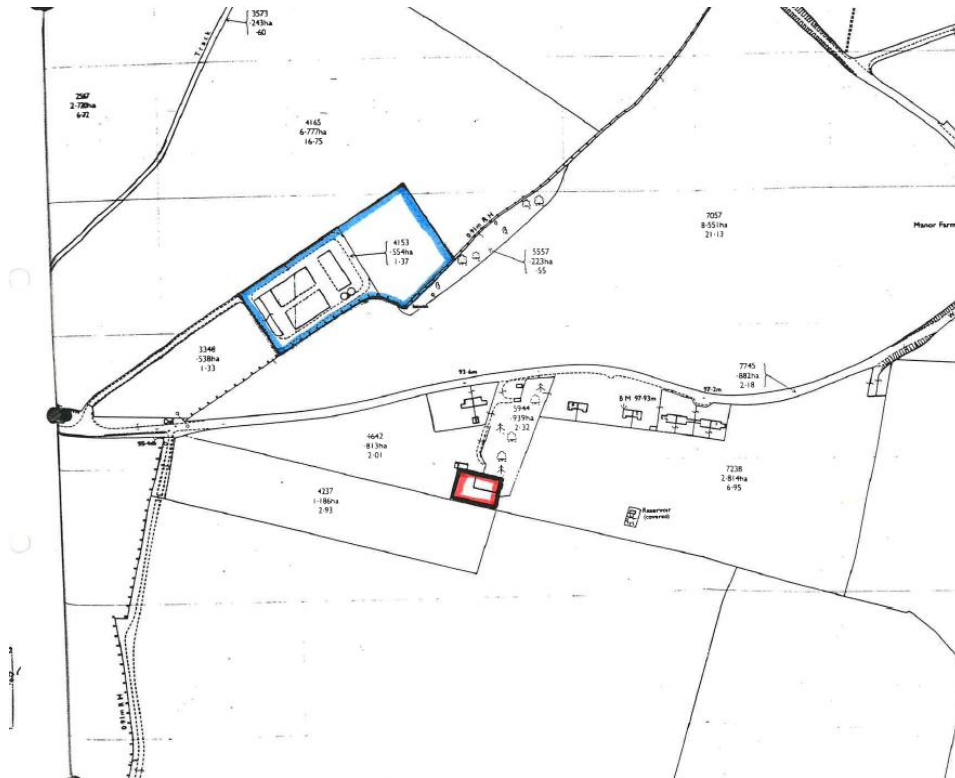


Figure 1: Cropped image showing the land indicated within the Agreement

- 2.4 When Rosegarth was approved, as well as being subject to the Agreement, planning permission was granted subject to a condition (condition 4 of the 1990 permission) ensuring that the occupation of that dwelling would be limited to agricultural and forestry workers, worded in a standard manner for the time.
- 2.5 In 2000, the Agreement was subsequently varied in the course of Planning Application Ref K/038572 ('the 2000 permission'). The 2000 permission, which approved equestrian development at the Rosegarth site replaced the 1990 version of the occupancy condition so far as it pertained to Rosegarth with a widened restriction to also allow occupancy by an equestrian worker in addition to agricultural or forestry workers.
- 2.6 The Deed of Variation completed in 2000 ('the DoV'), amended the Agreement by means of redefining the land to which the Agreement relates. The Deed of Variation (DoV) amended the original Agreement thus:

The following provisions shall be added at the end of Clause 1 of the Agreement as though it had been contained in the Agreement at the date of execution;

"And the green land or any part or parts thereof".

Clause 2 of the Agreement shall be deleted and substituted with the following provision as though it had been contained in the Agreement at the date of execution:

"The Owner hereby covenants with the Council that :-

(i) he will not sell, let or otherwise dispose of the blue land and the green land other than as one unit; and

(ii) the green land shall only be occupied ancillary to the blue land."

2.7 The land in question is that indicated in Figure 2 below.

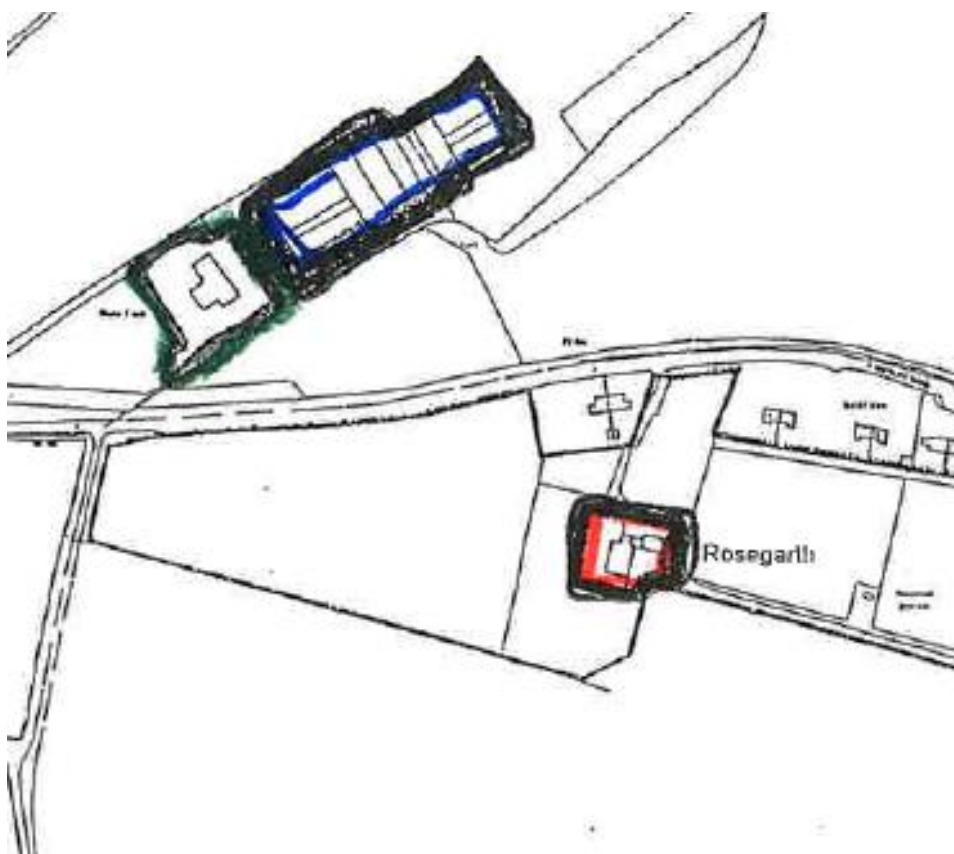


Figure 2: Cropped image of the land indicated in the DoV

2.8 The varied covenant thereby ties the dwelling of Glebe Farm to the adjacent land and set of buildings.



- 2.9 The above covenant was the sole undertaking made by the Applicant of the day in the original legal Agreement and the Agreement serves no other purpose than this provision. The DoV noted above did not add further provisions to the agreement. The effect of the DoV, however, is significant, in that the covenant no longer applied to the dwelling originally approved of Rosegarth, and from that point it applied only to the dwelling then known as Flintstones, earlier Glebe Bungalow and now Glebe Farm.
- 2.10 Glebe Farm was itself in 2002 the subject of a similar successful application (Ref K/043938, 'the 2002 permission') to the 2000 permission, expanding the restrictive occupancy condition from permitting occupation only by an agricultural or forestry worker in the locality to also include a person working in the training or breeding of horses in the locality. This condition remains operative. Glebe Farm is therefore understood to be subject to the provisions of the legal agreement as well as the restrictive occupancy condition which states:

"The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or in the training or breeding of horses, or a widow or widower of such a person, and to any resident dependants."

- 2.11 By contrast, following completion of the DoV, it is understood that Rosegarth, now known as The Beeches, remains subject to a relevant occupancy condition but is no longer subject to a section 106 agreement.

3. The planning policy position

- 3.1 The Wiltshire Core Strategy (WCS) forms the primary part of the development plan for the area. The site is located in the countryside, wherein Core Policy 2 of the WCS requires that development will not normally be permitted other than in accordance with relevant policy exceptions provided within the development plan. Paragraph 4.25 of the WCS clarifies that among these exceptions is Core Policy 48 of the WCS 'supporting rural life' which among other provisions lends policy support to dwellings to meet the employment needs of rural areas.



- 3.2 Since the Agreement was reached the Community Infrastructure Levy Regulations 2010 have been made, which, at Regulation 122, set out limitations on use of planning obligations. These now require, by law, that:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

- 3.3 In addition to the above, the National Planning Policy Framework has been adopted by the Government that sets out the national policy for the use of planning conditions and obligations at Paragraph 56. Importantly, this states that “*Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*”

4. The legal position

- 4.1 Section 106A (3) of the Town and Country Planning Act 1990 (as amended) provides that person against whom a planning obligation is enforceable may apply to the local planning authority for the obligation to be discharged. In this event, where the authority determines that the obligation no longer serves a useful purpose, the obligation shall be discharged.

5. Assessment

- 5.1 A restrictive occupancy condition, such as that to which Glebe Farm is subject by virtue of the 2002 permission, is an established and appropriate means by which to ensure that development meets the needs of employment essential to the countryside by means of ensuring that occupation of the dwelling is limited to a person fulfilling a rural employment need, such that development can be supported in line with the exception policy. The condition represents sufficient control over the dwelling to meet any need



for equestrian, agricultural or forestry related rural workers, and is justified in line with Core Policies 2 and 48 of the WCS.

- 5.2 The restrictive occupancy condition, in permitting occupancy for persons working “*in the locality*” appropriately seeks to meet the employment needs of the rural locality. In tying the dwelling to the land as it does, the Agreement effectively hampers the proper operation of the more up-to-date planning condition.
- 5.3 That there is no need for a land-tying covenant in addition to the occupancy condition to meet the requirements for the relevant policy exception is borne out by the removal of The Beeches/Rosegarth from the Agreement in the DoV, while remaining subject to the relevant restrictive occupancy condition.
- 5.4 Given these circumstances, the legal agreement tying the land to the property is essentially redundant. It fails the test of necessity and would not reasonably be imposed on a similar application today without specific justification. In the event of the Agreement’s discharge, the operation of the condition will continue to ensure that the dwelling serves a purpose providing for employment essential to the countryside.
- 5.5 As a result of this finding, it is submitted that the Agreement serves no useful purpose. It is therefore respectfully requested that the application be approved, and the Agreement discharged accordingly.

6. Conclusion

- 6.1 The starting point for determining the application, as set out at s106A of the Act, is whether the planning obligation continues to serve a useful purpose.
- 6.2 The dwelling in question is subject to a condition restricting its occupancy to those working or last working in the locality in equestrian, agricultural or forestry employment (and/or those dependent on such a person, etc). This condition is sufficient to perform the useful planning purpose of securing the dwelling in the countryside as an exceptionally justified dwelling to meet the employment needs of the countryside, in the locality. The planning obligation is therefore redundant.



6.3 Given this position, it is submitted that the Agreement, as varied by the DoV, no longer serves a useful purpose and should be discharged.