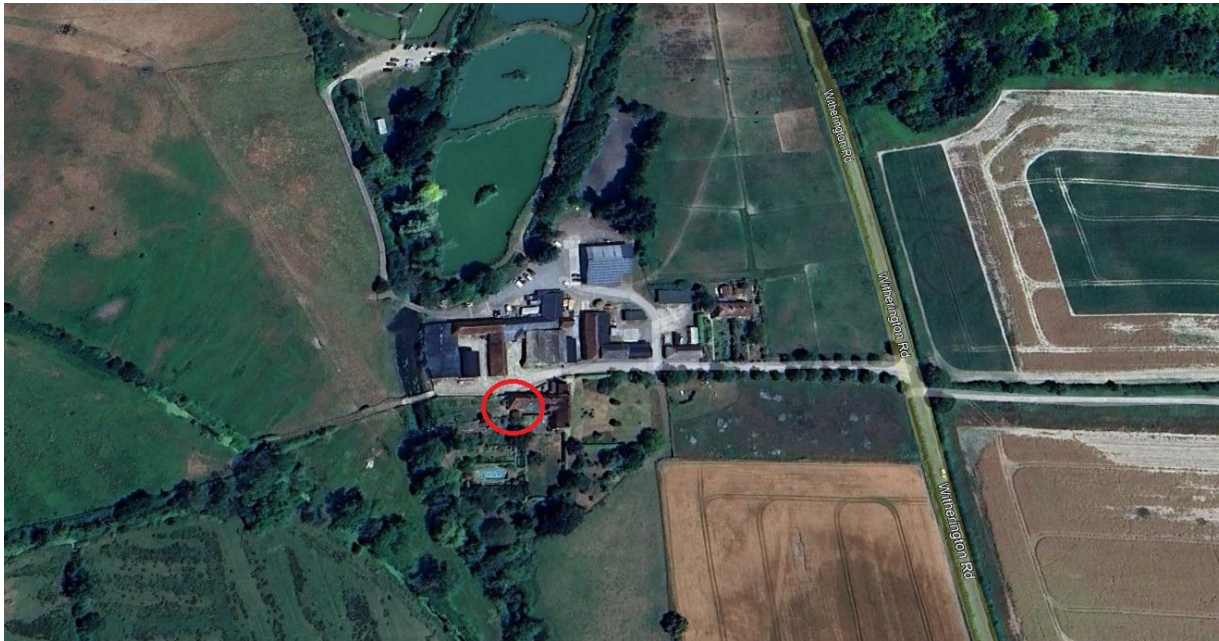


Planning Statement

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION UNDER s106A TO DISCHARGE PLANNING OBLIGATION ATTACHED TO PLANNING PERMISSION S/92/1025 AND DATED 11/04/1994 IN RELATION TO A DWELLING KNOWN AS THE ANNEXE, WITHERINGTON FARM, DOWNTON, SALISBURY SP5 3QX

1



APPLICANTS: George Brown and Charlotte Rice

March 2026

Prepared by Jerry Davies



Chartered Town Planner
Royal Town Planning Institute



Jerry Davies Planning Consultancy
Principal: Jerry Davies BA DipTP MRTPI

1.0 Introduction & Background

- 1.1 This statement accompanies an application to discharge an existing planning obligation (the 'Obligation') under the provisions of s106A of the 1990 Act. The Obligation in question was a bilateral agreement made between the then Salisbury District Council and four other parties, one of which was a mortgagee (Appendix 1).
- 1.2 The building to which the Obligation relates is located at Witherington Farm, Downton. The overall accommodation on the farm comprises the main farmhouse itself; a separate dwelling adjoined to it known as Dairyman's Cottage; and a further building attached to the latter (The Annexe) which is the building that is the subject of the current application. There are also two further dwellings known and Nos. 1 and 2 New Cottages, which are part of the wider holding. Whilst there is an extensive planning history to Witherington Farm very little of it bears directly upon the current proposal. None of the dwellings are subject to any form of agricultural (or other) occupancy-based planning condition.
- 1.3 The directly relevant planning history is that planning permission was granted in 1994 under reference S/92/1025 for the conversion of the existing building into a dwelling. This was accompanied by a planning obligation that restricts how the dwelling can be occupied, sold or let. The basis of the present application is that the Obligation dated 11th April 1994, which relates the dwelling known (for the purposes of this exercise) as The Annexe, no longer serves a useful planning purpose and should be discharged altogether. The Obligation contains two limbs, these being firstly a requirement not to sell the unit separately from "the Land" and secondly not to let or permit its occupation separately from "the Land" – which is itself defined on the Obligation plan as the buildings and land that comprise what might be called the farmyard but which does not include any of the wider agricultural land (Appendix 1).
- 1.4 At the time that the Obligation was made, it is understood that the then applicants were a multiple generational family, all living at Witherington Farm. The current applicants, who acquired the farm recently, are a couple with one small child and even if the family grows there is no requirement for any accommodation beyond the existing, generous farmhouse itself. Furthermore, a significant part of the agricultural land that was part of Witherington Farm at the time that the Obligation was entered into was retained by the previous owners, reducing the overall acreage to less than 300. This is not large enough to functionally require or justify any additional accommodation over and above the main farmhouse itself and even if it were then Dairyman's Cottage, despite being unencumbered in terms of occupancy restriction, would be available for that purpose.
- 1.5 It is important to emphasise that the lawful use of the building in question is as a dwelling and not, despite its name, as some form of annexe that is dependent upon the farmhouse or any other dwelling in any way. This is clear from the both the planning permission itself, which describes the development as 'change of use of workshop to provide single dwelling' and from the Obligation which describes the development as 'conversion of a workshop to a dwelling'.
- 1.6 As explained above, the planning permission contains no conditions that seek to restrict how the dwelling is used, such as for agricultural occupancy only or by members of the same family as the farmhouse. The only restrictions on use are contained in the Obligation

itself. The relevant test for assessing whether to discharge a planning obligation is whether it continues to serve a useful purpose (s106A(6)).



The dwelling known as The Annexe, to the right.



Dairyman's Cottage, to which the Annexe is attached.

2.0 Whether the Obligation still serves a useful purpose

- 2.1 Case law has established that in the context of a s106A application to discharge a planning obligation, the term 'useful purpose' (as used in s106A itself) should be taken to mean 'useful planning purpose' (*Batchelor Enterprises Ltd v North Dorset DC [2003] EWHC and Millgate Development Limited v Wokingham Borough Council [2011] EWCA*). To consider this, it is first necessary to identify what it was that the LPA was trying to achieve when it granted planning permission subject to the Obligation in the first place. The planning application made in 1994 (S/92/1025) was to change the use of the then workshop to a dwelling. The only information available relevant to the application, at least publicly, is the decision notice and a plan illustrating the proposed internal layout and the proposed external alterations – along with the Obligation itself. There appears to be no surviving report on the application or any other supporting information.
- 2.2 It can safely be assumed, from the existence of the Obligation, that the then LPA (Salisbury District Council) wished to prevent the creation of an entirely unfettered dwelling, but its reasons for doing so are not obvious and remain unknown, as is the reason it chose to achieve this via a planning obligation and not via the more usual route of a planning condition.
- 2.3 Even at that time, which was before the issue of circular 11/95 and 01/97, government advice was that LPAs should seek to impose any restrictions that were deemed to be required via planning conditions rather than via legal agreements. In 1994, the relevant advice was still to be found in circular 1/85, which stated at paragraph 10: *It may be possible to solve a problem posed by a development proposal equally well by imposing a condition on the planning permission or by concluding an agreement under section 52 of the Act or under other powers. The Secretaries of State consider that in such cases the local planning authority should impose a condition rather than seek to deal with the matter by the making of an agreement, since the imposition of restrictions by means of an agreement deprives the developer of the opportunity of seeking to have the restrictions varied or removed by an application or appeal under Part 111 of the Act if they subsequently become inappropriate or too onerous.*

- 2.4 By 1992 (i.e. before the planning permission was granted in this case) the position had changed, through the introduction of s106A and 106B of the 1990 Act (from December 1992) so that thereafter an application could be made to modify or discharge a planning obligation after the expiry of 5 years, with an associated right of appeal (s106B). But the fact remains that the advice at the time was to use a planning condition in preference to a planning obligation where the aim could be achieved by either and this remains the case today as a matter of national planning policy (see below)
- 2.5 The question to be asked, then, is what was the LPA trying to achieve in 1994 through the Obligation? It cannot have been to retain the dwelling for an agricultural worker, for example, because no mention of agriculture appears anywhere in either the planning permission or the Obligation. Neither can it have been to restrict the use of the dwelling to an annexe or a form of ancillary accommodation that was part of the main farmhouse (or Dairyman's cottage, to which it is adjoined) – again the Obligation makes no reference to the use of the building as ancillary residential accommodation associated with any other dwelling. On the contrary, both the Obligation and the planning permission describe the development as a 'dwelling' which is clear and distinct use in planning terms.
- 2.6 The planning policies in force at the time may have sought, for example, to limit or prevent the creation of new dwellings in the countryside, even through the conversion of existing buildings, but that cannot have been the LPA's aim because this was precisely what was granted anyway, albeit with the proviso that occupation be linked to "the Land".
- 2.7 But even if this was the LPA's aim there is nothing to stop, for example, the main farmhouse and Dairyman's Cottage (or indeed Nos.1 and 2 New Cottages) from being occupied by entirely independent parties and given the range of accommodation available, and absent another multi-generational or extended family group, that is always likely to be the case.
- 2.8 There is also nothing to prevent any of the existing dwellings other than the Annexe from being sold separately from each other. Neither does there appear to be anything to prevent the wider farm land being sold off separately nor, indeed, does there appear to be anything to prevent "the Land" itself from being sold off without the Annexe – it is only the sale of the Annexe (the Development) separately from "the Land" that is restricted, not vice versa. So, if the overall aim was to ensure single ownership of "the Land" then this has not been achieved.
- 2.9 It is also unclear, in this scenario, what would constitute *separate* occupation of the Annexe – would this be separate to the occupation of the farmhouse or separate to the occupation of Dairyman's Cottage (both of which can lawfully be occupied independently of each other)? The point is that unless "the Land" is occupied entirely as single unit, and there is no requirement for this to be the case, then it is unclear how the provisions of the Obligation could practicably be enforced. If it cannot be practicably enforced then, for that reason alone, it cannot be said to serve a useful purpose.

3.0 Planning Policy

3.1 In terms of current planning policy, the Obligation also fails to serve a useful purpose. It does not, as explained above, maintain a supply of agriculturally-restricted properties and nor does it prevent the creation of a dwelling. The Development Plan is currently the Wiltshire Core Strategy, which was adopted in 2015. The Wiltshire Local Plan Review had reached examination stage but, following concerns expressed by the Inspectors, the remaining Hearings have been postponed pending further work to be completed.

3.2 In the circumstances, there is no development plan policy that directly bears upon the current proposal. Core policy 48 of the Core Strategy deals with the conversion and reuse of rural buildings. It states: *Proposals to convert and re-use rural buildings for employment, tourism, cultural and community uses will be supported where they satisfy the following criteria: i. The building(s) is/are structurally sound and capable of conversion without major rebuilding, and with only necessary extension or modification which preserves the character of the original building. ii. The use would not detract from the character or appearance of the landscape or settlement and would not be detrimental to the amenities of residential areas. iii. The building can be served by adequate access and infrastructure. iv. The site has reasonable access to local services. v. The conversion or re-use of a heritage asset would lead to its viable long term safeguarding.*

Where there is clear evidence that the above uses are not practical propositions, residential development may be appropriate where it meets the above criteria. In isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances, in line with national policy.

3.3 Firstly, it is important to note that this policy was conceived under the original 2012 version of the NPPF. It is clear that national planning policy has changed over time, with the current version of the NPPF (2024) itself set for further change following the closure of the recent consultation in early March 2026.

3.4 More important, however, is the fact that the building in question is already a dwelling. The current proposal is not to change the use, for example, of a redundant agricultural building into a dwelling – that was already granted permission and carried out in 1994. Policy 48 does not therefore fit the circumstances of this case because it is intended to address a form of development that has, in this case, already been approved and implemented.

3.5 But even if Policy 48 was considered to be relevant despite this, the use of the building as a dwelling would be acceptable under its terms. The policy applies a two-stage test. Firstly, it has to be considered whether any alternative uses for employment or community related purposes are practical propositions. In this case, the Annexe is attached to Dairyman's Cottage which is itself attached to the Farmhouse. The introduction of an employment or community use here would make no sense, in the circumstances, and would in any case likely lead to conflict with these residential uses. It is also clear that there would be no genuine demand in this location for an office use. Where such uses are not practicable then the policy permits residential use (which is, of course, already the current lawful use of the building).

- 3.6 It is also relevant to note the current housing land supply position within Wiltshire. This provides context to the situation because, with a supply currently standing at less than 2.5 years against a 5 year requirement, the shortfall is significant. Whilst it is acknowledged that, as an existing dwelling, the Annexe will not factor directly into any land availability assessment it is nonetheless important that all available opportunities to increase supply in a practical sense are taken. There is, after all, little point in seeking to provide more homes whilst existing ones are kept empty for no apparent reason.
- 3.7 Furthermore, being attached to a listed building, the Annexe is itself listed. Keeping it empty for no genuine reason is also preventing the optimal use of the building to ensure that it is maintained to a high standard. Paragraph 3 of the Historic England Advice Note 2 (published in December 2025) states: *The best way to conserve a building is to keep it in use, or to find it an appropriate new use if it has passed out of use, either that for which it was designed or an appropriate new use which would see to its long-term conservation. Even recently restored buildings that are vacant will soon start to deteriorate. An unreasonable, inflexible approach will prevent action that could give a building new life; indeed it can eliminate that use. A reasonable and proportionate approach to owners' needs is therefore essential.*
- 3.8 Even if it were not accepted that the use of the building as an unfettered dwelling complied with any relevant development plan policy, the NPPF makes it clear at paragraph 221 that...*Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.*
- 3.9 As explained above, there is no development plan policy that directly addresses the current situation. National policy and advice, however, make it clear that every effort should be made to make the best use of available resources and keeping a dwelling empty that could otherwise be occupied runs entirely contrary to the overall national aim.
- 3.10 The National Planning Policy Framework (NPPF) also sets out the tests that should apply to the use of planning conditions and planning obligations. It states, at paragraph 56...*Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.*
- 3.11 Paragraph 57 deals solely with conditions but paragraph 58 continues...*Planning obligations must only be sought where they meet all of the following tests: 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.* If the Obligation were to be proposed today it would fail the applicable tests. It is not possible to conclude that it is necessary to make the development acceptable in planning terms. Not only would a condition have achieved the same thing but there is no apparent reason why the development was not acceptable on its own merits without any such restrictions.
- 3.12 The Obligation would not be directly related to the development being proposed – it would, indeed it does, inhibit the reasonable use of the building for the purposes for which

planning permission has been granted. The final test, that of being fair and reasonably related in scale and kind to the development is generally only applied to financial contributions and would not apply here. Overall, then, the Obligation does not meet the current tests.

- 3.13 The NPPF states at paragraph 84 (emphasis added): *Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply: a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside; b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; c) the development would re-use redundant or disused buildings and enhance its immediate setting;*
- 3.14 Again, it must be recognised that the dwelling already exists and is not being proposed as such. But in this case, and despite being located some distance from the nearest settlement, the dwelling in question is not 'isolated'. The case law on this (*Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610*) confirms that this is a physical and not a functional test, and with four or five other dwellings plus farm buildings in its immediate vicinity the Annexe cannot be considered to be isolated. But again, even if it were, then its use would comply with the underlined criteria above.
- 3.15 Finally, it is clear that along with national policy changes since the Obligation was made there have been fundamental changes to the development management regime as a whole. Most notable, perhaps, are the changes to the permitted development regime with Part 3, Class Q of the GPDO 2015 now, in effect, granting planning permission for the change of use of agricultural buildings to (unfettered) C3 residential use subject to certain criteria being satisfied. In other words, if the building was still in agricultural use today then its use as an unfettered dwelling would be permissible either via the planning application or the prior approval process.

4.0 Whether the Obligation could be modified

- 4.1 The applicants have also given consideration to whether the Obligation could be modified instead of being discharged entirely. They do not wish to sell the Annexe and hence the first limb of the Obligation, which currently prevents this, causes them no immediate problem because they simply want to let it.
- 4.2 However, it is clear that the prohibition on selling the Annexe could only ever have served a useful purpose if it achieved a clearly defined aim. In general, the planning system is not intended to be used to interfere unnecessarily with property rights. This is clear from the annexe to circular 11/95 (which remains extant advice) where it states, at paragraph 97...*Conditions should not normally be used to control matters such as tenure, price or ownership.* An obligation is not a planning condition, of course, but the principle remains the same because the planning system is primarily concerned with how land is used and not who owns it.

- 4.3 Thus, preventing 'separate' occupation would likely have been enough to achieve whatever the original aim of the Obligation was and it is difficult to see how dictating ownership of the Annexe could have added anything useful beyond this. Moreover, and as explained above, there is nothing preventing any of the other dwellings or the wider agricultural land from being sold off separately from "the Land" and so the aim of single ownership/occupation of "the Land", if indeed that was what the Obligation had originally aimed to achieve, has not been secured.
- 4.4 There is no purpose to be served, then, by preventing this one particular dwelling from being sold independently because all of the other dwellings can lawfully be sold on this basis. The Obligation should therefore be discharged in its entirety.

5.0 The outcome if the Obligation is discharged

- 5.1 Discharging the Obligation will cause no material harm. There is no objective reason to conclude that it would increase traffic or activity at the site over and above that which was created when it was previously fully occupied by a multiple generational family. Moreover any traffic or activity needs to be seen in the context of the diversified enterprise that includes established fishing lakes and associated facilities.
- 5.2 There are no physical works required to the building because it is already a dwelling that contains all of the facilities required for day to day living, including kitchen and bathroom, hence there can be no harm caused through this route. Neither is there any conflict with any relevant local or national planning policy arising from the discharge of the Obligation. The Obligation no longer serves any useful, identifiable purpose, be that a planning purpose or any other kind.
- 5.2 Discharging the Obligation, on the other hand, would serve more than one useful purpose. It would allow the occupation of a dwelling that would otherwise have to remain empty for no good reason and it would thereby provide somebody with a home. In addition, that occupation would in turn ensure that the building, which is part of a designated heritage asset, would be maintained to a suitable standard and would provide for its optimum viable use in doing so.

6.0 Conclusion

- 6.1 The reason for the creation of the Obligation in 1994 remains unclear. It seems likely that independent use was seen by the then LPA as being potentially contrary to prevailing planning policy but planning permission was granted, nonetheless, for use of the building as a dwelling. It was not granted as ancillary accommodation that was parasitic upon any other dwelling and its occupation was not limited for agricultural purposes. On the face of it, then, there appears to be no justification for the restrictions that were imposed, even in 1994, because they do not appear to have addressed any recognised concern.
- 6.2 But even if the Obligation was legitimately imposed in the first place, it no longer serves a useful purpose, planning or otherwise, for the reasons outlined above. All it is doing is preventing the occupation of a perfectly good dwelling that is beyond the needs of the

applicants and their family. Furthermore, discharging the Obligation will not prevent a larger family from occupying “the Land” in the future if, at some point, it changes hands again and so nothing is being ‘lost’, in a practical sense, by removing the current restrictions.

- 6.3 Procedurally, there is no requirement for a new or amended Obligation to be prepared. Whilst that would be the case with a proposed modification of the Obligation, the discharge process simply requires a written decision that the Obligation is discharged.
- 6.4 It is therefore submitted that the Obligation can be discharged in its entirety.

Appendix 1 – The 1994 Obligation

SALISBURY DISTRICT COUNCIL
LAND CHARGES SECTION
20 APR 1994

DOWNTON
46

SALISBURY DISTRICT MEMO

To: Land Charges

From: Assistant Solicitor

Date: 15.4.94

Our Ref: NEM/NJW

Your Ref:

Extension: 233

WITHERINGTON FARM, DOWNTON
S/92/1025

I confirm completion of the Planning Obligation relating to the above on 11th April. I attach a copy for your records.

Regards.

.....
Nicola Mathiason

typleg/memos/lc.withfm

DATED

11 April

1997

SALISBURY DISTRICT COUNCIL (1)

M S LING (2)

A W FERGIE-WOODS & C W BEENEY (3)

LLOYDS BANK PLC (4)

PLANNING OBLIGATION

under Section 106 of the Town and

Country Planning Act 1990

as amended

relating to land at Witherington

Farm Downton Salisbury Wiltshire

S J Tovey

Solicitor to the Council

Salisbury District Council

THIS PLANNING OBLIGATION is made the 11th day
of April One thousand nine hundred
and ninety-four B E T W E E N SALISBURY DISTRICT
COUNCIL of Bourne Hill Salisbury Wiltshire
(hereinafter called "the Council") of the first part
MICHELA SUSAN LING of Witherington Farm Downton
Salisbury SP5 3TQ (hereinafter called "the First
Owner") of the second part ANNETTE WYNTER
FERGIE-WOODS and CAROLINE WYNTER BEENY of the same
address of the third part (with the First Owner
together known as "the Owners") and LLOYDS BANK PLC
whose address for service is its branch at 38 Blue
Boar Row Salisbury Wiltshire (hereinafter called
"the Mortgagee") of the fourth part

I N T E R P R E T A T I O N

In this Planning Obligation the following words and
expressions shall unless the context otherwise
requires have the following meanings:-

WORDS AND EXPRESSIONS

MEANINGS

"the 1990 Act"

the Town and Country
Planning Act 1990 as
amended by the Planning
and Compensation Act 1991

"the Application"

the application no
S/92/1025 for planning
permission made to the
Council by the First Owner
on the 21st day of July

1992

"the Land"

all that land together
with the buildings erected
thereon situate at and
known as Witherington Farm
Downton Salisbury shown
for the purposes of
identification only edged
red on the plan annexed to
this Planning Obligation

"the Proposed Development" the development of the
Land by the conversion of
a workshop to a dwelling

RECITALS

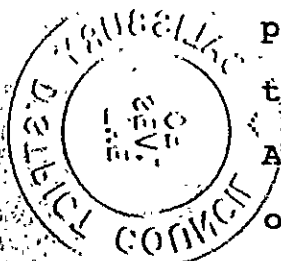
- (1) The Council is the Local Planning Authority for the purposes of the 1990 Act for the area within which the Land is situated and for the purposes of enforcing this Planning Obligation
- (2) By a Conveyance made the 4th July 1985 between Hester Pamela Gibbon (1) and the Owners (2) the Owners are seised in fee simple absolute in possession of the Land subject only as therein provided but otherwise free from incumbrances
- (3) The Mortgagee is the mortgagee of the Land under a legal charge dated the 24th January 1992 and made between the Owners (1) and the Mortgagee (2)
- (4) The First Owner has made the Application to develop the Land by carrying out the Proposed Development

(5) The Council has resolved to grant planning permission in accordance with the Application subject to the making of this Planning Obligation without which planning permission for the Proposed Development would not have been granted.

(6) The Council and the Owners are desirous of entering into this Planning Obligation upon the terms hereinafter appearing

NOW THIS DEED is made in pursuance of Section 106 of the 1990 Act and is a planning obligation for the purposes of that section and WITNESSES as follows:-

1. AS from the date of this Planning Obligation the Land shall be permanently subject to the restrictions and requirements hereof
2. THE Owners covenant with the Council to comply with the restrictions and requirements set out in the Schedule
3. THE Mortgagee hereby consents to the execution of this Planning Obligation and acknowledges that the Land shall be bound by it
4. NOTHING contained or implied in this Planning Obligation shall prejudice or affect the right powers duties and obligations of the Council in the exercise of its functions as Local Planning Authority and its rights powers duties and obligations under all or any public or private statutes byelaws and regulations may be as fully



and effectually exercised as if the Council were not a party to this Planning Obligation

5. THE Owners covenant to pay to the Council upon completion of this Planning Obligation its expenses as certified by the Solicitor to the Council for the time being in connection with the registration preparation and completion of this Planning Obligation and of any transaction arising therefrom

6. IN the event that any part of this Planning Obligation may be subject to challenge review deletion or otherwise rendered null void or avoidable the balance of this Planning Obligation shall remain in full force and effect

I N W I T N E S S whereof this Planning Obligation has been duly executed as a Deed by the parties hereto the day and year first before written

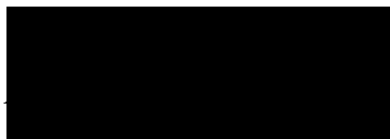
SCHEDULE

1. Not to sell the Proposed Development separately from the Land
2. Not to let or to permit occupation of the Proposed Development separately from the Land

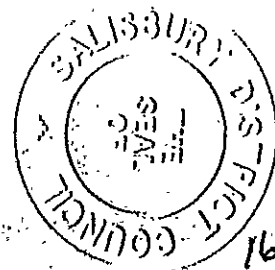
THE COMMON SEAL of SALISBURY)

DISTRICT COUNCIL was hereunto)

affixed in the presence of:-)



Solicitor to the Council
Management Offices



SIGNED AS A DEED by the said

MICHELA SUSAN LING in the

presence of:-

AJ GOODE
2 Meadow Road
Sausbury
SP2 7BN

SIGNED AS A DEED by the said

ANNETTE WYNTER FERGIE-WOODS in

the presence of:-

3 Church Street
West Grimstead
Sausbury
Wilt

SIGNED AS A DEED by the said

CAROLINE WYNTER BEENEY in

the presence of:-

A.A. VAUGHAN

MIRA

HALE

Fordingbridge, Hants

SIGNED as a DEED AND DELIVERED

BY TERENCE ALFRED YARROW

an attorney for LLOYDS BANK PLC

in the presence of:-

Lloyds Bank Plc

P.O. Box 1362

101 High Street

Poole BH15 1YF



SALISBURY DISTRICT
Planning Department

Date: 2.9.92
Drawn By: D.K.W.
Scale: 1/25,000 & 1/12,500 (SU-1824)
Drawing No: P1095

Section 106.
Town and Country Planning Act. 1990.
Section 106.

To ensure that the property is not sold or let separate from the farm,
at Witherington Farm, Downton Nr. Salisbury SP5 3QT.

16906