

MID SUSSEX DISTRICT COUNCIL

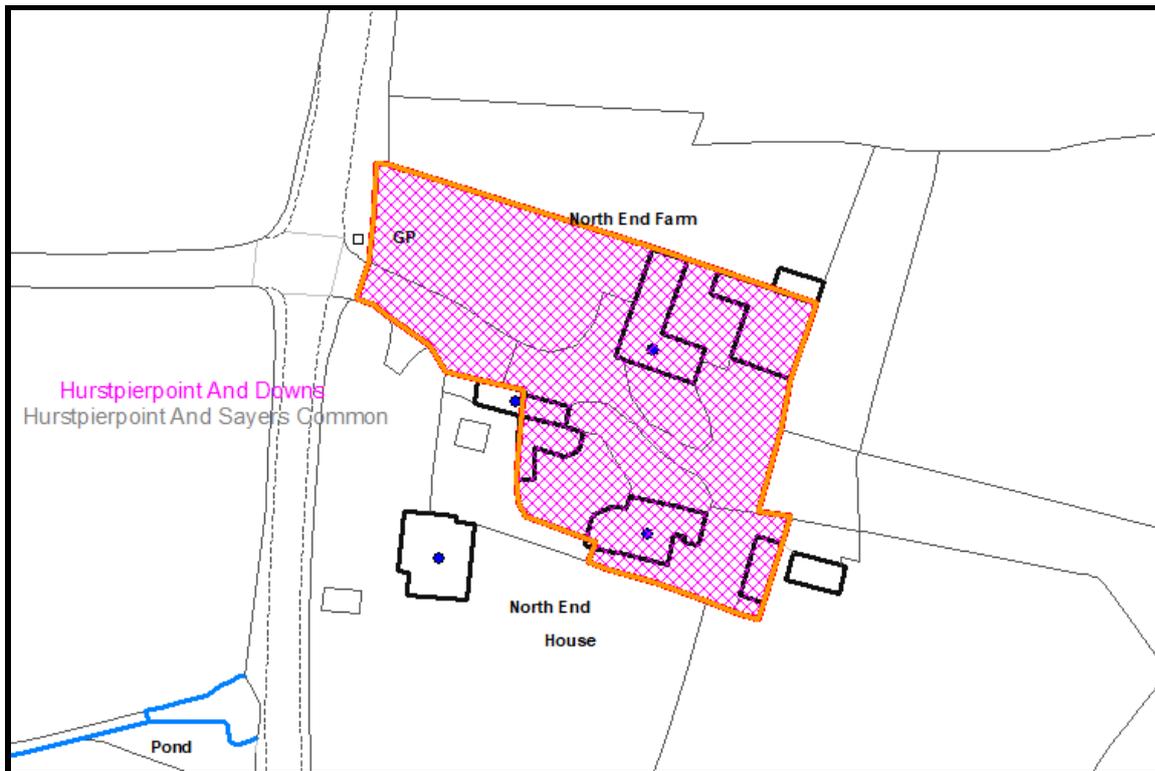
Planning Committee

11 NOV 2021

OTHER MATTERS

Hurstpierpoint And Sayers Common

DM/18/0988



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**NORTH END FARM CUCKFIELD ROAD HURSTPIERPOINT HASSOCKS
DISCHARGE OF THE PLANNING OBLIGATIONS FORM S.106
AGREEMENT RELATING TO PLANNING REFERENCE HP/00/1426/FUL
AND DATED 2ND APRIL 2004.
MR AND MRS GANDER**

ODPM CODE: Mod/Discharge of Planning Obligation

WARD MEMBERS: Cllr Colin Trumble / Cllr Alison Bennett / Cllr Rodney Jackson /

CASE OFFICER: Andrew Clarke

PURPOSE OF REPORT

To consider the recommendation of the Divisional Leader, Planning and Economy on the application for planning permission as detailed above.

EXECUTIVE SUMMARY

This application seeks to discharge the requirements of a s.106 agreement from 2004 which sought to restrict the use and ownership of three units of accommodation. The application seeks to consider whether the s.106 now serves any useful purpose and that the requirements can be discharged as a period of five years since the agreement have now passed.

Whilst the isolated rural location of the site is noted and that new residential development in this location may not normally be supported, the separate lawful residential use of all three units has now been confirmed through the issue of planning permissions and certificates of lawful use and therefore the restrictions of the s.106 in respect of independent occupation no longer has any purpose and could not realistically be successfully enforced. The final restriction relates to the ownership of the three units and the retention of the units in one ownership would not affect their actual use and therefore has no benefit or purpose in planning terms.

Therefore in accordance with the contents of the NPPF and NPPG, the s.106 serves no useful purpose and can be discharged in its entirety. The application is therefore recommended for approval.

RECOMMENDATION

It is recommended that requirements of a s.106 agreement entered into in association with the grant of planning permission HP/00/01426/FUL are discharged.

Parish Council Observations

Permission is granted.

INTRODUCTION

The application seeks to discharge the requirement of a s.106 agreement entered into in association with the grant of planning permission HP/00/01426/FUL.

The application is being reported to committee as the matter relates to a complete discharge of the requirements of a s.106 agreement and that the matter, and principle of the s.106, were originally considered by members in the year 2000. It was not until 2004 that the s.106 was agreed and signed and the planning permission granted.

RELEVANT PLANNING HISTORY

Planning permission was granted under reference HP/00/01426/FUL for the "*Conversion of buildings to form ancillary accommodation, relocation and extension to stable building*" on 2nd April 2004. The permission HP/00/01426/FUL gave permission for three units of accommodation which included a main dwelling, an annexe and a building known as the Granary. As each building could be capable of independent occupation the permission was accompanied by a s.106 legal agreement which related to the stables as an Annexe and which stated within the Schedule that:

1. *"The Owner covenants with the Council that neither the Main Dwelling the Granary nor the Annexe shall be sold or otherwise disposed of separately from each other...."*
2. *"The Granary and the Annexe shall be used solely as ancillary living accommodation to the private residential use of the Main Dwelling"*
3. *"For the avoidance of doubt neither the Granary nor the Annexe shall be used as a separate dwelling house."*

No further applications were made or considered until a s.191 Certificate of Lawful Use for the use of the Annexe as a single dwellinghouse was issued in December 2019 under reference DM/18/0664 whilst another s.191 Certificate of Lawful Use for the use of the Granary as a single dwellinghouse was issued in September 2018. Thereafter a s.73a planning application under reference DM/19/1280 approved the change of use of the Annex building from ancillary to a separate residential dwelling in December 2020.

Planning permissions and certificates of lawfulness therefore exist for the use of the three buildings as separate residential dwellings.

SITE AND SURROUNDINGS

The buildings subject to the permission and s.106 are a group of former agricultural building formed around a courtyard. The main dwelling is a large Grade II listed two storey building, with the Annexe a single storey former stables building which lies on the southern edge of the site. The Annexe also benefits from two separate storage buildings to the east and a detached pool / changing room building to the west.

The Granary is smaller one bed unit set above a store close to the entrance of the site. All three residential units benefit from their own curtilages, outdoor space and parking provision.

The site lies within a rural area to between Hurstpierpoint to the south and Goddards Green to the north. The surrounding land is agricultural in use with public footpath 48Hu running through the centre of the site past the application site.

APPLICATION DETAILS

The application seeks to discharge the requirements of the s.106 agreement dated 2nd April 2004 as planning permission and certificates have already been granted and issued for the developments to which it relates.

The planning obligation requires:

1. *"The Owner covenants with the Council that neither the Main Dwelling the Granary nor the Annexe shall be sold or otherwise disposed of separately from each other...."*
2. *"The Granary and the Annexe shall be used solely as ancillary living accommodation to the private residential use of the Main Dwelling"*
3. *"For the avoidance of doubt neither the Granary nor the Annexe shall be used as a separate dwelling house."*

Should the requirements of the s.106 agreement be discharged the associated residential dwellinghouses may be lawfully used and sold as sperate residential dwellinghouses without further restriction.

LEGAL FRAMEWORK AND LIST OF POLICIES

The application has been submitted under s.106a of the Town and Country Planning Act 1990 ("TCPA1990"), which provides that an application may be made to the Local Planning Authority to discharge the s.106 obligation where it is over 5 years old.

In the case of this application to discharge the requirements of the obligation, the LPA may determine that:

- (a) that the planning obligation shall continue to have effect without modification; or
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged.

There is a right of appeal under s.106b should the LPA decide that the planning obligation shall continue to have effect without modification (or being discharged).

The s.106 agreement was entered into in order to require compliance with the planning policies in effect at the time. Therefore although not a planning application, it should be considered as such and that normal planning considerations should apply.

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

'In dealing with such an application the authority shall have regard to:

- a) The provisions of the development plan, so far as material to application,*
- b) And local finance considerations, so far as material to the application, and*
- c) Any other material considerations.'*

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

The requirement to determine applications "in accordance with the plan" does not mean applications must comply with each and every policy, but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan and the Hurstpierpoint and Sayers Common Neighbourhood Plan.

National policy (which is contained in the National Planning Policy Framework and National Planning Policy Guidance) does not form part of the development plan, but is an important material consideration.

Mid Sussex District Plan

The District Plan was adopted at Full Council on 28th March 2018.

Relevant policies:

DP4: Housing

DP6: Settlement Hierarchy

DP12: Protection and Enhancement of Countryside

DP15: New Homes in the Countryside

DP17: Ashdown Forest Special Protection Area (SPA) & Special Area of Conservation (SAC)

DP21: Transport

DP26: Character and Design

DP27: Dwelling Space Standards

DP34: Listed Buildings

Hurstpierpoint and Sayers Common Neighbourhood Plan

The Hurstpierpoint and Sayers Common Neighbourhood Plan has been made and is a material planning consideration with full weight attached. The following policies are considered relevant.

C1: Conserving and enhancing character

C3: Local Gaps and Preventing Coalescence

H1: Hurstpierpoint and Sayers Common new housing development

H8: Small Dwellings

Mid Sussex Design Guide Supplementary Planning Document (SPD)

The Council has adopted a 'Mid Sussex Design Guide' SPD that aims to help deliver high quality development across the district that responds appropriately to its context and is inclusive and sustainable. The Design Guide was adopted by Council on 4th November 2020 as an SPD for use in the consideration and determination of planning applications. The SPD is a material consideration in the determination of planning applications.

National Policy

National Planning Policy Framework (NPPF - July 2021)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development.

With specific reference to decision-taking paragraph 47 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

Paragraphs 55 and 57 of the NPPF refer to planning conditions and obligations, and states:

'55. 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.'

57. 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.'*

And Paragraph: 020 Reference ID: 23b-020-20190315 of the National Planning Practice Guidance (NPPG) states that:

'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 (see section 106A of the Town and Country Planning Act 1990).'

ASSESSMENT

The sole consideration relates to whether the s.106 and its requirements retain a useful planning purpose. In considering this the history of the site, the lawfulness of the buildings and development and the planning merits of the development are relevant.

The planning history of the site is outlined at the top of this report with the s.106 to be discharged requiring the following:

1. *"The Owner covenants with the Council that neither the Main Dwelling the Granary nor the Annexe shall be sold or otherwise disposed of separately from each other...."*
2. *"The Granary and the Annexe shall be used solely as ancillary living accommodation to the private residential use of the Main Dwelling"*
3. *"For the avoidance of doubt neither the Granary nor the Annexe shall be used as a separate dwelling house."*

The s.106 was requested by members of the Mid Sussex District Council Development and Transport Area Plans sub-Committee South who considered the matter on 12th October 2000. The intention of the agreement was to prevent the creation of separate residential units contrary to the policies of the development in effect at the time (the Local Plan and Deposit Draft Local Plan 2004). The agreement was thereafter completed and the planning permission granted on 2nd April 2004.

It is noted that should the requirements of the s.106 be discharged it would result in the final regularisation of three residential units in a rural location which could be considered contrary to policies DP12, DP15 and DP21 of the District Plan relating to new development within the countryside.

Should the requirements of the s.106 not be kept to a breach of planning control would take place which could be enforced through an injunction requiring the breach to cease or prevent it occurring in the first place. The Council was not made aware of any breach of planning control taking place until 2018 when we were approached by the current owners and the current situation and arrangement was investigated. This established that three separate residential units were present upon the site, in

contravention of requirements 2 and 3 of the s.106 agreement, although they were retained in the same ownership.

The investigations resulted on the submission and grant of certificates of lawful use for the use of the Granary and the Annexe as separate residential units. The presence of the s.106 agreement could not have had any bearing on the determination of the above applications

The grant of the certificate of lawful use for the Annexe was thereafter considered a material consideration with significant weight so as to outweigh the policies of the development plan and the presence of the s.106 and as such full planning permission has now been granted for the use of the Annexe as a separate residential dwelling.

Therefore the developments is immune from enforcement action by virtue of now being lawful. The three separate independent residential uses are therefore lawful.

As such the requirements of the s.106 in respect of items 2) and 3) relating to the use of the buildings could no longer be successfully enforced as the developments to which they relate are either lawful, have planning permission, or both.

It therefore falls to consider whether the final requirement, requirement 1), serves a useful planning purpose. Requirement 1) relates to the land ownership and that units shall not be sold off separately. Whilst this might prevent the site being separated by virtue of ownership, it does not prevent the use of the buildings as separate dwellings. Who owns the land has no bearing upon the use to which it is put and the enforcement of this requirement would not prevent the separate residential use to which the s.106 originally sought to restrict.

Requirement 1) could therefore also be considered to serve no useful purpose and it does not prevent the use of the buildings as separate residential dwellings as the use of the dwellings has already been established to be lawful and one has obtained planning permission.

Planning Balance and Conclusions

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the application to be assessed against the policies in the development plan and then to take account of other material planning considerations including the NPPF.

The proposal could be considered contrary to Policy DP15 of the Mid Sussex District Plan, given that new dwellings would be regularised in the countryside where the site is not contiguous with the built up area and there are no special circumstances. Occupiers would be likely to be heavily reliant on the private car and as such is considered to be unsustainably located and contrary to policy DP12 of the District Plan.

The re-use of the buildings as a separate residential dwelling would provide optimum use of the buildings so as to outweigh the less than substantial harm caused to the neighbouring Listed Building by virtue of the change of use and intensity of the site and would therefore not contravene policies in relation to the preservation of heritage assets and there will be a neutral impact in respect of the impact on nitrogen deposition on the Ashdown Forest.

The development otherwise complies with all other policies of the development plan and the primary consideration of the application is the principle of the development of new dwellinghouses in a rural location vs the legal position regarding the enforcement and usefulness of the s.106.

Even if the development were to be considered contrary to the policies of the development plan and that the overarching aim of the s.106 may still seek to support the aims of the development plan, the three units of accommodation already have lawful use as separate residential dwellings either through the grant of planning permission or the issue of certificates of lawfulness; and in one case both and therefore are immune from enforcement action. Therefore any attempt to pursue a breach of requirements 2 and 3 of the s.106 is unlikely to be successful.

A contravention of requirement 1 could still be pursued, relating to ownership of the land, however this would have no bearing on the use or occupation of the dwellinghouses and therefore serves no purpose in addressing the aims of any planning policies.

Therefore whilst the policies of the development plan are noted, the planning history and legal position in relation to the lawfulness of the dwellinghouses are significant material considerations which prevent successful enforcement of the requirements of the s.106 and outweigh any planning purpose it may serve.

Conclusion

It is recommended that the requirements of the s.106 agreement be discharged as they serve no useful purpose as either they cannot be enforced because the development they seek to restrict is lawful or the restriction does not address any planning harm and relates solely to land and building ownership, not its use. The s.106 legal agreement and its contents cannot be successfully enforced and serves no planning purpose.

It is therefore recommended that the s.106 agreement related to planning permission HP/00/01426/FUL no longer serves a useful purpose and it should therefore be discharged in its entirety.