

CHESHIRE EAST COUNCIL

Cabinet Member for Children and Family Services

Date of Meeting: 4th February 2013
Report of: Development Management and Building Control Manager
Subject/Title: Discharge of Section 52 Agreement at Springsett Farm,
Chelford Road, Prestbury
Portfolio Holder: Councillor Rachel Bailey

1.0 Report Summary

- 1.1 To seek the approval of the Portfolio Holder for discharge of the Section 52 Agreement which restricts occupancy of the existing dwelling at Springsett Farm, Chelford Road, Prestbury to an agricultural worker. The Section 52 Agreement also requires that the dwelling not be sold off separately. The applicants now wish to be released from the obligation following approval of application 11/1281m which was an application to remove the agricultural occupancy condition attached to permission 41000P.

2.0 Recommendation

- 2.1 To discharge the Section 52 Agreement which restricts the occupancy and re-sale of the dwelling constructed at Springsett Farm, Chelford Road, Prestbury.

3.0 Reasons for Recommendation

- 3.1 The discharge of the Section 52 Agreement would be acceptable in planning policy terms as the principle of the removal of the occupancy condition i.e. unfettered C1 use has been established by the removal of the occupancy condition. On this basis it is not considered reasonable or necessary to refuse to remove the Section 52 Agreement.

4.0 Wards Affected

- 4.1 Prestbury

5.0 Local Ward Members

- 5.1 Councillor Paul Findlow

6.0 Policy Implications (including carbon reduction and health)

6.1 None

7.0 Financial Implications (authorised by Director of Finance and Business Services)

7.1 Costs for staff time to vary the Agreement. However charges for the legal costs will be payable to the Council by the applicant.

8.0 Legal Implications (authorised by Borough Solicitor)

8.1 None. In substance, the principle of allowing Springsett Farm to be occupied and sold free of any agricultural occupancy restriction, was established by the grant of permission 11/1281 on 21st July 2011.

9.0 Risk Management Implications

9.1 None

10.0 Background and Options

10.1 Planning application 11/1281M related to the removal of an agricultural occupancy restriction at Springsett Farm, Chelford Road, Prestbury. Permission was granted in 1986 under application 41000P for an agricultural workers dwelling subject to conditions (including a condition restricting occupancy) and a Section 52 Agreement (also restricting occupancy and re-sale/let/sub-letting).

10.2 Permission was granted for the removal of the agricultural occupancy condition under application 11/1281M because the applicant had demonstrated that there was no longer a functional need for the dwelling as the farming business had become unviable, there was no demand locally for the property from someone who could comply with the occupancy condition and because the valuation of the property (even taking into consideration the occupancy restriction) would be prohibitive for an agricultural worker (hence why there was no demand for such a property locally). On that basis, it was considered that the condition was no longer necessary nor reasonable because there was no longer any continuing need for occupation of the dwelling to be restricted. Whilst the proposals did not accord with the second criteria within policy DC25 there were material considerations which justified an exception to this criteria within the policy and the proposals would still have accorded with the broad thrust of the policy and its justification. The proposals therefore accorded with policy DC25 Removal of Agricultural Occupancy Condition of the Borough of Macclesfield Local Plan 2004.

10.3 The applicant now wishes to be released from the Section 52 Agreement which he entered into on 18th February 1986 when planning permission was granted for the

construction of Springsett Farm as an agricultural worker's dwelling – specifically clauses 1, 2, 3 which restrict occupancy and sale/ let / sub-letting. It is inappropriate to retain such clauses which are similar to condition 4 attached to permission 41000P which was later removed resulting from the approval of application 11/1281M.

- 10.4 As the clauses within the Section 52 Agreement are no longer necessary, it would be unreasonable to retain them.
- 10.5 It is recommended that the Borough Solicitor discharge the 1986 Section 52 Agreement by Deed of Agreement with the current landowner (the same landowner who entered into the 1986 Agreement)
- 10.6 The Borough Solicitor has advised that this decision should be considered by Portfolio Holder because the discharge of s52 Agreements (which were entered into under the Town & Country Planning Act 1971- now revoked) is not one of the functions listed for decision by Council, committee or officer under the Local Government (Functions & Responsibilities) Regulations 2000. S13 Local Government Act 2000 provides that functions **NOT** listed in those Regulations should be taken by Executive Members and the Council's Constitution delegates Development Management decisions to the Portfolio Holder. Although s52 Town & Country Planning Act has long been repealed, the power to vary or discharge the Agreement with the original contracting party, can be undertaken under the express, general power of competence given to Council's under s1 Localism Act 2011.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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