

CHESHIRE EAST COUNCIL

Cabinet Member for Children and Family Services

Date of Meeting:	22 April 2013
Report of:	Development Management and Building Control Manager
Subject/Title:	Discharge of Section 106 Agreement to 62561P
Portfolio Holder:	Councillor Rachel Bailey

1.0 Purpose of Report

- 1.1 To seek the approval of the Portfolio Holder for the discharge of a Section 106 Agreement, which restricts occupancy of the existing dwelling at Springbank Farm Fanshawe Lane, Henbury to an agricultural worker. The Section 106 Agreement also restricts the dwelling to be sold off separately from the land associated with the agricultural unit. The applicants now seek to release Springbank Farm from the obligation following approval of application, 12/2775M, which was an application to remove the agricultural occupancy condition attached to permission 62561P.

2.0 Decision Required

- 2.1 To discharge the Section 106 Agreement which restricts the occupancy and re-sale of the dwelling constructed at Springbank Farm, Fanshawe Lane, Henbury.

3.0 Reasons for Recommendation

- 3.1 The discharge of the Section 106 Agreement would be acceptable in planning policy terms as the principle of the removal of the occupancy condition i.e. unfettered dwelling (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 106 Agreement.

4.0 Ward Affected

- 4.1 Gawsworth

5.0 Local Ward Members

- 5.1 Councillor Lesley Smetham

6.0 Financial Implications for the Council

- 6.1 Costs for staff time to discharge the Agreement. However charges for the legal costs will be payable to the Council by the applicant.

7.0 Legal Implications for the Council

- 7.1 As outlined in the report. In substance, the principle of allowing Springbank Farm to be occupied and sold free of any agricultural occupancy restriction, was established by the grant of permission 12/2775M.

8.0 Risk Assessment

- 8.1 None.

9.0 Background and Report

- 9.1 Planning Permission was granted on the 4th April 1991 for outline consent (Planning reference 62567P) and Reserved matters application 64058P for an agricultural workers dwelling subject to planning condition and a Section 106 agreement. The covenants set out within the section 106 Agreement placed the following restrictions upon the dwelling;

i. That the said dwelling erected in pursuance of a consent issued to applications numbered 62561 and 64058 shall not (without the written consent of the Council) be sold leased sublet assigned or otherwise disposed of separately from the rest of the said land and the whole of the said land with the said new dwelling thereon shall at all times hereafter be and remain one piece or parcel of land or hereditament in the ownership of one and the same person.

ii. That the said new dwelling shall only be occupied by a person solely or mainly or last employed within the area of the Macclesfield Local Plan as shown on the plan marked "C" attached hereto in agriculture as defined in Section 336 of the Town and Country Planning Act 1990 or in forestry (including any dependants of such a person normally residing with him) or a widow or widower of such a person.

iii. If any time hereafter the occupant of the said new dwelling shall not be solely or mainly or lastly employed in the agriculture within the area of the Macclesfield Local Plan (as hereinbefore defined) then and in such event the owner shall forthwith undertake all such steps processes of law and proceedings as may be necessary to ensure (so far as he is able) that the occupant vacates and gives up possession of the said new dwelling and the onus of proof that all such steps processes of law proceeding as aforesaid shall have been undertaken lie upon the Owner but subject as aforesaid if and so long as the said new dwelling is subject to a protected occupancy or statutory tenancy within the meaning of the Rent (Agriculture) Act 1976 or is let on or subject to a tenancy to which Section 33(3) of the said Act applies then Clause 2(ii) hereof shall be suspended.

- 9.2 The restriction placed upon the occupancy of the agricultural dwelling at Springbank Farm specified within classes 2 and 3 above were also replicated within planning condition number 4 attached to planning application 62567P. The removal of this condition was however, granted by delegated powers on the 13th September 2012 under planning application 12/2775M.
- 9.3 Planning permission was granted for the removal of the occupancy condition because the applicant was able to demonstrate that there was no longer a functional need for the dwelling. The dwelling house was required to support the applicants growing agricultural business. The applicant has however, no successor to his business and he retired in 2003, selling the dairy herd. The remaining holding at Springbank Farm equates to approx 3.08 hectares (7.6 acres) in total including the dwelling and associated farm buildings. The applicant advises that following the surrender of all rented land, the bare land available is now only 2.26 hectares (5.5 acres). It is therefore advised that the remaining land makes the farm unviable for a farming business.
- 9.4 This view is also supported by a Planning Inspector who in a recent appeal decision (APP/C0630/A/06/2027233) at Oakfield Manor Farm, Chelford Lane, Over Peover stated that only 9 hectares of land would be a limiting factor for the viability of a farm business.
- 9.5 Clause 1 set out within the agreement requires that the land shall not be sold, leased, sublet or assigned separately from the rest of the land. Such restrictions are common in agreements of this nature and are imposed in order to prevent the establishment of a new agricultural workers dwellings in environmentally sensitive location such as the Green Belt. The land which remains within the agricultural unit at Springbank Farm is considered to be limited and the restrictive clause imposed to prevent the sale of the separate dwelling is therefore considered to be cumbersome and unnecessary.
- 9.6 The evidence submitted within application 12/2775M demonstrated that there was no demand locally for the property from someone who could comply with the occupancy condition. The view was taken that due to the high valuation of the property (even taking into consideration the occupancy restriction) the cost of the dwelling 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.
- 9.7 Although the delegated report for application 12/2775M advised that the proposal would not comply with the relevant planning policy in its entirety (Policy DC25 criteria 2 of the Macclesfield Borough Local Plan), it was considered there were material planning considerations, which justified an exception to these criteria within the policy and the proposal still accorded with the broad thrust of the policy and its justification. The proposals therefore

complied with Policy DC25 (Removal of Agricultural Occupancy Condition) of the Borough of Macclesfield Local Plan 2004.

- 9.8 Clauses 2 and 3 imposed within the Section 106 agreement restrict the occupancy of the dwelling in a similar way to condition 4. This has now been removed under planning application 12/2775M and the prospect of a new agricultural workers dwelling being established in association with this limited amount of land at Springbank Farm is unlikely. The Section 106 agreement in association with application 62561P is therefore no longer considered to be necessary or appropriate and it would therefore be unreasonable to retain.
- 9.9 It is recommended that the Interim Monitoring Officer discharge the section 106 Agreement by Deed of Agreement with the current landowner (the same landowner who entered into the 1991 Agreement).
- 9.10 Legal advice indicates that this decision can be considered by the Portfolio Holder.

10.0 Access to Information

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

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