

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 52 Agreement at Stumps, Farm Lane, Lower Withington, SK11 9DU
Portfolio Holder:	Councillor Rachel Bailey

1.0 Purpose of Report

- 1.1 To seek the approval of the Portfolio Holder for discharge of the Section 52 Agreement which restricts occupancy of the existing dwelling known as Stumps at Four Oaks Nursery to somebody employed in agriculture or forestry. The Section 52 Agreement also requires that the dwelling not be sold, leased or sublet separate to the rest of the land.

2.0 Decision Required

- 2.1 To discharge the Section 52 Agreement which contains 6 clauses as outlined in section 9.2 below.

3.0 Reasons for Recommendation

- 3.1 The discharge of the Section 52 Agreement should be granted given it repeats the provisions of Condition 4 of the planning permission which the applicant would still be bound by. Additionally a second dwelling at the site has been released from its Section 52 Agreement in similar circumstances which has set a precedent at this site. The caravan has been removed from the site. On this basis it is not considered reasonable or necessary to refuse to remove the Section 52 Agreement.

4.0 Wards Affected

- 4.1 Gawsworth

5.1 Local Ward Member

- 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 The legal implications are dealt with elsewhere in this report.

8.0 Risk Assessment

- 8.1 None.

9.0 Background and Report

- 9.1 Permission was granted in 1976 under application referenced 5/04428 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).
- 9.2 The applicant is seeking to be released from the Section 52 Agreement. Clause 1 of the agreement restricts the sale/lease/subletting of the dwelling separately from the rest of the land; Clause 2 restricts the occupancy of the dwelling to a person solely or mainly employed in agriculture or forestry. Clauses 3, 4 and 5 relate to the removal of a caravan from the land. Clause 6 requires the payment of £1 to the Council being the stamp duty payable on the deed.
- 9.3 There is a condition attached to the decision notice that is similar to Clause 2 above restricting the occupancy of the dwelling to a person solely or mainly employed in agriculture or forestry. This condition is still in force. Ordinarily the applicant would apply to remove the condition before applying for a release from the Section 52 Legal Agreement. In those cases the planning merits of removing the condition will have been fully considered, whereas with this application this has not been the case.
- 9.4 The dwelling was originally occupied by a Mr JS Coutts, one of two partners in Four Oaks Nurseries. Mr Coutts retired in 1995, in 2002 the Four Oaks Group went into administrative receivership. Subsequently the site was bought by a Mr Richard Harding, and a new company Four Oaks Horticulture Ltd was formed. Mr Harding lives in Spain and therefore has no requirement for the dwelling himself however historically it has been occupied by nursery staff in compliance with the clauses. However the dwelling is now vacant and the staff of the nursery no longer require the dwelling.

- 9.5 A second agricultural workers dwelling (known as Briarfield) was allowed on the site in 1980 which was occupied by the other partner. A deed of release was made for this property in 2004 rescinding the Section 52 Agreement and releasing the owners from all obligations and covenants. This was similarly done where the applicant had not first removed the planning condition. Considering the Council has allowed a deed of release at that dwelling it has set a precedent on this site and it would be unreasonable to take a different view on this dwelling. Furthermore the Section 52 Agreement repeats the provisions of the condition and therefore duplicates the requirements. The applicant would still be bound by that condition and would be required to submit a planning application to remove that condition, when the planning merits would be considered.
- 9.6 Clause 3 relates to the removal of a caravan from the site which was granted permission as a temporary agricultural workers dwelling prior to the permanent agricultural workers dwelling being granted permission whilst the business established itself. The caravan is not present on the site so it is considered this clause has been met. Clause 4 relates to disputes in relation to Clause 3 and Clause 5 relates to the Council being at liberty to the remove caravan on failure to comply with Clause 3. Given it is accepted that Clause 3 has been complied with Clauses 4 and 5 are redundant.
- 9.7 Clause 6 requires the payment of one pound stamp duty payable on the deed. It is not clear whether this sum was ever paid as the agreement dates back to 1976 but given all other clauses are considered acceptable to discharge and the nature of and payment amount required by the clause it would be unreasonable to refuse to allow the release from the Section 52 Agreement on this Clause alone.
- 9.8 It is recommended that the Interim Monitoring Officer discharge the 1976 Section 52 Agreement by Deed of Agreement with the current landowner.
- 9.9 Legal advice indicates that this decision can be considered by the Portfolio Holder.

10.0 Access to Information

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

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