

Committee: DEVELOPMENT CONTROL

Date: 22 September 2003

Agenda Item No: 5

Title: UTT/0147/03/FUL s.106 AGREEMENT WOODLANDS PARK
GREAT DUNMOW

Author: Michael Perry (01799) 510416

Summary

- 1 This report is to advise Members of the position regarding the s.106 agreement for the above mentioned development and to recommend an amendment to the resolution of the Committee on 7 July 2003
- 2 This matter was previously before the Committee on 26 August 2003 when Members deferred consideration for a further report

Background

- 3 On 7 July 2003 Members resolved to grant detailed planning permission for 156 affordable dwellings at Woodlands Park subject to conditions and a section 106 agreement securing the affordable housing in perpetuity.
- 4 Members will be familiar with the right of secure council tenants to purchase their council property subject to certain conditions. The Housing Act 1996 extended this right with effect from 1 April 1997 to tenants of registered social landlords where the dwelling was provided with public money (which is defined to include the social housing grant).
- 5 The Secretary of State has power to designate rural areas in which the right to acquire does not arise. Designation is by a statutory instrument. Further research since the meeting on 24 August has revealed that most of the District of Uttlesford is excluded by the Housing (Right to Acquire or Enfranchise) (Designated Rural Areas in the East) Order 1997. Unfortunately however the area of Great Dunmow is not covered by this or by any other designation.
- 6 It is understood that Members have been previously informed that rural communities of less than 3000 inhabitants are outside of the scope of the right to acquire legislation. This is not the case. Exclusion is only by designation by the Secretary of State by statutory instrument. Whilst a population of 3000 may be a guide as to the settlements which may be designated there is nothing to require settlements of smaller populations to be designated or indeed to prevent larger settlements from being designated. Further, it is the

designation of an area which is important, not the population. Once designated the right to acquire cannot be exercised even if the population exceeds 3000 unless a further statutory instrument is made revoking the previous designation.

- 7 It is unlawful to try to remove individuals statutory rights by an agreement. Consequently a section 106 agreement which purports to exclude the right to acquire would be unenforceable.
- 8 Members concerns that the affordable housing to be provided on site may ultimately be lost to the private sector is understandable. However the Government's policy to promote home ownership appears to override the long term provision of affordable housing except in designated rural areas. Ultimately therefore affordable housing within Dunmow will become affordable housing to purchase (by the tenants) under the right to acquire scheme. Given the provisions of the legislation however this is something the Council is powerless to prevent.
- 9 It is to be noted however that the Government is currently relaxing its attitude with regard to restrictions being imposed on the right to buy. The Council's Housing Department are currently working on a submission to Government for certain areas within the District to be designated to enable covenants to be imposed on right to buy sales which impose restrictions on resale. In the light of this policy shift Members may wish to lobby Government to designate Woodlands Park as a rural area. If the Secretary of State were to make a designation order this would have the effect of removing the right to acquire from tenants of the Registered Social Landlord with effect from the date the order took effect.

RECOMMENDED that Members resolve to suspend Council Procedure Rule 12 and resolve that the s.106 agreement be amended to reflect the statutory rights of the tenants.

Background Papers: None

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Agenda Item No: 8

Title: Enforcement of Planning Control
Sansimian, Brick Kiln Lane, Rickling

Interests in land: Rickling Hall Farms Ltd

Author: Clive Theobald on (01799) 510463 and Hilary Lock on (01799) 510486

Introduction

- 1 This report concerns the use of a former agricultural workers' bungalow without compliance with an agricultural condition. It recommends that enforcement action and, if necessary, legal proceedings, be taken to require the cessation of the present unlawful residential use of the property.

Notation

- 2 ADP: outside Development Limits/Area of Special Landscape Value
DLP: outside Settlement Boundary

Planning History

- 3 Planning permission granted in 1961 for pair of semi-detached agricultural workers bungalows (SWR/126/61). Application for variation of agricultural workers occupancy condition imposed under SWR/126/61 withdrawn in 2002 (UTT/1090/02/FUL).

Background

- 4 The dwelling known as Sansimian is a semi-detached bungalow northwest of Rickling Green on the road to Clavering. It is located within a small cluster of dwellings.
- 5 Planning permission was granted for the erection of Sansimian and Rosella (the attached property) in 1961 subject to a condition that they may only be occupied by "bona-fide agricultural workers employed on Rickling Hall Farm". This was because the site lies in the countryside where new dwellings are not normally permitted and permission was only granted to provide essentially required accommodation for farm employees. Neither Sansimian nor Rosella are being occupied by agricultural workers. However, Rosella is immune from enforcement action as a Certificate of Lawfulness was issued in 2000, accepting that the breach of occupancy condition had occurred for more than ten years.

- 6 Correspondence has established that Sansimian was last occupied by an agricultural worker in 1997. Rickling Hall is still an agricultural business and employs farm workers who live locally. The building is currently occupied by tenants unconnected with agriculture at the farm or elsewhere.
- 7 The applicant has been advised that the current tenancy should cease and invited to submit a planning application to vary the condition. No application has been received. The wording of the occupancy condition, whilst appropriate at the time permission was granted, would fail modern tests of reasonableness now, in that it restricts occupancy of the dwelling to workers of a particular holding. The applicant has therefore been advised that support would be given to an application to replace this unduly restrictive condition, to allow occupation by any agricultural worker. Alternatively, if the dwelling is now surplus to requirements, the necessary advertising exercise should be undertaken in accordance with the Council's policies, and if the case can be demonstrated an application be made to remove the condition.
- 8 In July 2002 an application was submitted to vary the condition to allow occupation by the current tenants, or any other person in the future should it not be possible to find an agricultural tenant. The proposed variation was considered unacceptable by officers as it would be tantamount to the removal of the condition but without the necessary evidence required by ADP Policy C9 having been provided. The applicant was advised to withdraw the application pending the necessary advertising of the property to ascertain whether it is genuinely surplus to requirements. The application was withdrawn in October 2002, but there have been no apparent efforts since to market the property with a view to either seeking an agricultural tenant or obtaining the evidence for the removal of the condition. In the circumstances, it is now considered expedient to pursue action, and avoid further delay which could lead to immunity being obtained via a Certificate of Lawfulness.

Planning considerations & Conclusion

- 9 The original dwelling was granted exceptionally in an area where development would not normally be permitted, due to it being required to house essential agricultural workers. Occupation in breach of this condition would deprive the agricultural housing market of a dwelling for workers, and increase pressure for new and affordable housing in the countryside. Government guidance advises that agricultural dwellings should not be kept vacant simply by virtue of conditions which have outlived their usefulness, but equally that such conditions should not be removed without rigorous testing of evidence of need. Due to the lack of any submitted evidence, it has not been demonstrated that this dwelling is genuinely surplus to requirements in the locality, and its occupation is therefore contrary to ADP Policy C8.

RECOMMENDED that enforcement action and, if necessary, legal proceedings, be taken to secure compliance with the condition imposed by planning reference SWR/126/61.

Committee: DEVELOPMENT CONTROL
Date: 22 September 2003
Agenda Item No: 9
Title: APPEALS
Author: John Grayson (01799) 510455

The following appeal decisions have been received since the last meeting:

**1 APPEAL BY MR & MRS G STONEMAN
2 OAKROYD AVENUE, GREAT DUNMOW
APPLICATION NO: UTT/1797/02/FUL**

Appeal against the refusal of planning permission for extensions and alterations

Appeal decision: ALLOWED

Date of decision: 15 August 2003

Date of original decision: 25 February 2003

Summary of decision: The Inspector concluded that the extensions would not result in increased overshadowing, a loss of outlook or a reduction in privacy that would seriously harm the living conditions of the neighbour due to the tree screen and oblique views.

Comments on decision: Current dismissal rate on this type of appeal (i.e. householder) since 1984/5: 67 % (46 cases).

**2 APPEAL BY MR M TAYLOR
266 BIRCHANGER LANE, BIRCHANGER
APPLICATION NO: UTT/1135/02/FUL**

Appeal against the refusal of planning permission for a new first floor with mansard roof

Appeal decision: DISMISSED

Date of decision: 4 August 2003

Date of original decision:

15 November 2002

Summary of decision: The Inspector concluded that the mansard roof would be a bulky feature, increasing the height of the dwelling considerably. The side elevations with the tiled roof slopes would, in conjunction with the rear extension, have a stark and dominating appearance that would be incongruous in the street scene. Overall, the proposal would represent a considerable increase in the size of the existing dwelling, greatly changing its character, having a significant adverse effect on the appearance of the area.

Comments on decision: Current dismissal rate on this type of appeal (i.e. householder) since 1984/5: 68 % (47 cases).

**3 APPEAL BY MR & MRS R TOWNROW
PEACHEYS FARMHOUSE, WILLOWS GREEN, FELSTED, ESSEX
APPLICATION NOS: UTT/1489/02/FUL & UTT/1490/02/LB**

Appeals against the refusals of planning permission and Listed Building consent for a single-storey extension, erection of single and two-storey extension, new/replacement joinery, minor internal and external associated alterations.

Appeal decisions:

DISMISSED

Date of decisions:

4 August 2003

Date of original decisions:

9 December 2002

Summary of decision: The Inspector concluded that these extensions would together result in a large and bulky addition which would obscure the original form and dominate part of the of the listed building.

Comments on decision: Current dismissal rate on this type of appeal (i.e. affecting Listed Buildings) since 1984/5: 86 % (145 cases).

**4 APPEAL BY C E FUNSTON TRACTOR SALES LTD
FUNSTON TRACTOR SALES LTD, ARKESDEN ROAD, CLAVERING
APPLICATION NO: UTT/0241/02/FUL**

Appeal against the refusal of planning permission for change of use and new building to form 11 no. light industrial and office units

Appeal decision:

ALLOWED

Date of decision:

12 August 2003

Date of original decision:

7 February 2002

(Some Members may recall visiting this site and refusing permission for reasons of overdevelopment, access and parking problems and loss of amenity contrary to Officers' recommendation).

Summary of decision: The Inspector concluded that the proposed benefits, particularly the removal of the Class B2 (general industrial) use from most of the site and the visual improvements, would outweigh any harm of noise and disturbance that might arise from the few parking spaces close to the boundary with the dwelling to the north. He considered that car parking provision and goods vehicle manoeuvring would be acceptable.

Comments on decision: Current dismissal rate on this type of appeal (i.e. industrial & storage) since 1984/5: 54 % (32 cases).

**5 APPEAL BY MR & MRS G MACADAM
INVERGLOY, CHURCH ROAD, CHRISHALL
APPLICATION NO: UTT/1269/02/OP**

Appeal against the refusal of planning permission for erection of a dwelling and garage.

Appeal decision: DISMISSED

Date of decision: 15 August 2003

Date of original decision: 8 November 2002

Summary of decision: The Inspector concluded that the proposed dwelling, even in single-storey form, would destroy the openness which the site presently contributes to the locality and would give the area a much more built-up character and appearance.

Comments on decision: Current dismissal rate on this type of appeal (i.e. "infilling" on village edges) since 1984/5: 86 % (168 cases).

**6 APPEALS BY J CURTIS ESQ
LAND AT MOOR END COTTAGES, GREAT SAMPFORD
APPLICATION NOS: 1) UTT/0778/02/FUL and 2) UTT/1355/02/OP**

Appeals against :

- 1) the grant of planning permission for the demolition of existing cottages and the erection of a replacement dwelling subject to a condition requiring the new dwelling to be relocated at least 8m to the east and
- 2) the grant of planning permission for the demolition of existing cottages and the erection of a replacement dwelling subject to a condition superseding the previous permission.

Appeal decisions: ALLOWED
Date of decisions: 14 August 2003
Date of original decisions: 17 May & 22 July 2002

Summary of decision: The Inspector concluded that there would be no intrusion into the countryside, since the openness and attractive landscape quality would be preserved, and that the character and appearance of the hamlet would not be harmed by siting the replacement dwelling 14m away from the existing. She also decided that the second appeal condition was unnecessary.

The Inspector dismissed a claim against the Council for a partial award of costs in relation to the first appeal, but allowed the claim for partial costs in relation to the second appeal on the grounds that the condition was unnecessarily imposed and the Appellant was only aware of the Council's decision not to contest this appeal when Proofs of Evidence were exchanged. She found that this amounted to unreasonable behaviour resulting in unnecessary expense.

Comments on decision: Current dismissal rate on this type of appeal (i.e. replacement dwellings) since 1984/5: 77% (34 cases).

**7 APPEAL BY MR & MRS HEATH
1 WALNUT TREE COTTAGE, EVELYN ROAD, WILLOWS GREEN,
FELSTED
APPLICATION NO: UTT/1580/02/FUL**

Appeal against the refusal of planning permission for construction of a three-bedroom chalet bungalow to the side garden

Appeal decision: DISMISSED
Date of decision: 22 August 2003
Date of original decision: 17 December 2002

Summary of decision: The Inspector concluded that the dwelling would not represent the infilling of a small gap within a group of houses as it would partly adjoin an open field. It would constitute a minor extension of the housing group, consolidate residential development and harm the character and appearance of the countryside.

Comments on decision: Current dismissal rate on this type of appeal (i.e. "infilling" on village edges) since 1984/5: 86 % (169 cases).

**8 APPEAL BY MR GARY RICHARD
MACDELL, EVELYN ROAD, WILLOWS GREEN, FELSTED
APPLICATION NO: UTT/1083/02/OP**

Appeal against the refusal of planning permission to demolish and remove 3 bed accommodation and garage and build new dwelling

Appeal decision: DISMISSED
Date of decision: 3 September 2003
Date of original decision: 26 November 2002

Summary of decision: The Inspector concluded that the existing accommodation which comprises a mobile home with extensions does not constitute a permanent structure and therefore that the proposal was for a new dwelling in the countryside. He considered that, although the new dwelling would be screened by trees and could be designed to be of a similar size to the existing structure, it would consolidate residential development, constitute an extension of the permanent built development into the open countryside and adversely affect the character and appearance of the rural setting.

Comments on decision: Current dismissal rate on this type of appeal (i.e. rural area policy since 1984/5: 96 % (136 cases).

**9 APPEAL BY MR & MRS RING
LINGFIELD, CHELMSFORD ROAD, HATFIELD HEATH APPLICATION NO:
UTT/1692/02/OP**

Appeal against the refusal of planning permission for a 1 ½ storey dwelling

Appeal decision: ALLOWED
Date of decision: 26 August 2003
Date of original decision: 7 February 2003

Summary of decision: The Inspector concluded that, although the location of the dwelling would be contrary to the general pattern of housing development (i.e. backland), I believe it would be unobtrusive because of the considerable screening effect of boundary trees, shrubs and fencing which partly enclose the site. He considered that the new dwelling would have no significant adverse effect on the character and appearance of the area. He also felt that the extra traffic would not cause significant harm to the neighbours.

Comments on decision: This is a strange decision from the same Inspector who dealt with cases 7 & 8. It is inconsistent with how he treats the benefits

of screening and may create a precedent for similar backland developments along this stretch of road. A similar appeal on the opposite side of the road was dismissed in April.

Current dismissal rate on this type of appeal (i.e. backland) since 1984/5: 57 % (41 cases).

**10 APPEAL BY HASTOE HOUSING ASSOCIATION LTD
LAND TO REAR OF 7 & 8 CARNATION DRIVE, SAFFRON WALDEN
APPLICATION NO: UTT/0671/02/FUL**

Appeal against the refusal of planning permission for the removal of eighteen lock-up garages and the erection of six affordable flats.

<u>Appeal decision:</u>	DISMISSED
<u>Date of decision:</u>	2 September 2003
<u>Date of original decision:</u>	8 November 2002

(Some Members may recall visiting this site before refusing permission for reasons of loss of garaging facilities and overdevelopment contrary to Officers' recommendation.)

Summary of decision: The Inspector concluded that the garages were generally in use as originally approved over 40 years ago. Consequently, the site did not fall within the definition in PPG3 as the under –utilisation of land. He considered that the result would be additional kerb-side parking in the area, undermining the residential amenities of the neighbourhood. The Inspector went on to say that the proposed building would have some overbearing effect on neighbours to the south, but those to the north would not be unduly affected if the existing tree screen was retained. On the issue of scale and massing he concluded that the development would be acceptable. He also decided that the proposed block would not give rise to unacceptable overlooking of surrounding dwellings and gardens.

Comments on decision: The sole reason for dismissing the appeal was the loss of off-street parking facilities.

Current dismissal rate on this type of appeal (i.e. overdevelopment and loss of amenity) since 1984/5: 67 % (175 cases).

11 APPEAL BY MR I JACK
LAND ADJACENT TO THORNCROFT, TAKELEY STREET, TAKELEY
APPLICATION NO: UTT/1762/02/DFO

Appeal against the refusal of planning permission for 2 two-storey dwellings with double garages (reserved matter for outline planning permission No UTT/0871/99/OP)

Appeal decision: ALLOWED

Date of decision: 5 September 2003

Date of original decision: 3 February 2003

Summary of decision: The Inspector concluded that the erection of two large dwellings on this site would not represent overdevelopment because the scheme showed sufficient space around them to prevent the development appearing cramped or lose any trees. He considered that the proposed density would be consistent with that of existing residential development on either side of the site.

Comments on decision:

Current dismissal rate on this type of appeal (i.e. overdevelopment and loss of amenity) since 1984/5:67 % (176 cases)

