

S52 Agreement

Development Control Committee, item 7

Committee: Development Control

Agenda Item

Date: 5 April 2006

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Title: SECTION 52 AGREEMENT (Town & Country Planning Act 1971): Belmont, Hollow Road, Felsted

Author: Mr Ovenden

Item for decision

Summary

1. This report states that sufficient information has been provided to justify the removal of the legal agreement restricting the occupancy of a dwelling to persons employed in agriculture or forestry.

Background

2. Planning permission was granted in 1962 for the erection of a dwelling later known as Greyfriars on a site off Hollow Road in Felsted Parish, in a rural location near to the south eastern tip of the District. This was subject to an agricultural occupancy planning condition.
3. In 1981 an application (reference UTT/798/81) was made to remove this condition. At the time there were a number of other dwellings on the holding, one of which was a 1930's bungalow known as Belmont. Members agreed to remove the tie from Greyfriars and therefore an unconditional planning permission was granted. However that permission was subject to a Section 52 agreement (the contemporary equivalent to a S106 agreement today) which effectively transferred that tie to Belmont. In planning terms it was considered to be of no consequence whether the occupancy condition related to Belmont rather than Greyfriars. It is this S52 agreement that the current owner now wishes to remove.
4. The relevant clause in the S52 agreement requires the owner:
"Not to cause or permit the property to be occupied by persons other than persons wholly or mainly employed or last employed locally in agricultural as defined in Section 290(I) of the Town and Country Planning Act 1971 or in forestry".
5. The justification for removing the tie is that the dwelling has been occupied in breach of the tie for many years and therefore the S52 agreement is redundant. Officers have sought legal advice and have been advised that if the requirements of the S52 agreement have been breached for more than 12 years then it may be appropriate to rescind that agreement. The owner therefore needs to show this to be the case and has submitted various documents to support the claim.

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The evidence

6. The owner has submitted various documents to substantiate the claim that the dwelling has been occupied in breach of the S52 agreement since a former agricultural worker who occupied the dwelling died in 1986.
7. An affidavit has been provided by the son of the former agricultural worker stating that he moved into the dwelling with his father in 1982 and remained there after his father died in 1986 initially alone but later with his wife. The couple left the property in July 2002 since which time it has remained largely vacant. In a revised affidavit he confirms that when living in the dwelling neither he nor his wife qualified with the requirements of the tie and that no persons complying with the tie have lived in the property since 1986. A copy of the rent register from 1982, the tenancy agreement from 1990 and two letters seeking to end the tenancy have been submitted as an adjunct to the affidavit. Ownership of the property changed hands in the mid 1990's although this did not affect its occupiers.
8. The current owner has recently provided an affidavit which states that the dwelling has remained vacant since July 2002 except for a few days when it was occupied by her sister, who does not comply with the requirements of the tie. At the time of drafting this report the revised and additional affidavits were only in the form of unsigned drafts (final signed versions are expected to be received before the committee meeting). The final versions are expected to provide sufficient information to conclude that the dwelling was occupied in accordance with the tie between 1982 and 1986 but in breach of it thereafter until July 2002 when its full time occupation ceased. Under these circumstances the agreement is considered to be redundant and can be removed.

Recommendations

Based on the evidence submitted, subject to receipt of the final copies of revised Members agree to the removal of the S52 agreement.

Background Papers

Affidavit and accompanying documentation.

Impact

Communication/Consultation	No consultation has been carried out on the basis that this is not an application and the determining matters are matters of fact rather than planning merit. Legal advice has been received from legal services and is reflected in this report. The Parish Council has been contacted with a draft report for information.
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Community Safety	None
Equalities	None
Finance	There will be some costs involved in discharging the agreement. As a release of the agreement will bring significant benefits to the applicant which arise from a breach of its terms it would be reasonable to expect the applicant to meet the Council's legal costs. The applicant has agreed.
Human Rights	Article 1 First Protocol European Convention of Human Rights provides that everyone is entitled to peaceful enjoyment of their possessions. For the reason set out below the agreement would not now be enforceable and subject to payment of costs it could be argued that refusing to discharge the agreement breaches that right.
Legal implications	Where a breach of covenant contained in a deed occurs the breach becomes statute barred 12 years from the date of breach. As the applicant has demonstrated that the obligation to use the property in accordance with an agricultural tie had been breached for a continuous period exceeding 12 years enforcement of the obligation would not now be possible.
Ward-specific impacts	None
Workforce/Workplace	None

Situation

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Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
Members do not agree to the discharge of the agreement	Low	Medium. If the Council fail to discharge the agreement the applicant may	Members approve the recommendation.

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		take proceedings for a declaratory order to establish that the obligation is no longer enforceable. The overwhelming likelihood is that such an application would be successful and the Council would be ordered to pay the applicants legal costs	
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