

PLANNING DEVELOPMENT CONTROL COMMITTEE

31 January 2008

APPLETREE COTTAGE CHILCOMB LANE CHILCOMB WINCHESTER HAMPSHIRE
SO21 1HT- APPLICATION FOR RELEASE FROM PLANNING AGREEMENT

REPORT OF HEAD OF LEGAL SERVICES

Contact Officer: Fiona Sutherland Tel No: 01962 848513848513

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report seeks authorisation for the variation of an Agreement, more particularly the discharge of an agricultural tie imposed upon Appletree Cottage, Chilcomb Lane, Chilcomb, Winchester SO21 1HT by virtue of a Planning Agreement dated 13 May 1991

RECOMMENDATIONS:

- 1 That the Head of Legal Services be authorised to enter into a Deed of Variation in respect of the discharge of the obligation concerning the restriction of occupation of Appletree Cottage to persons solely or who were last employed in agriculture as defined in Section 336 of the Town and Country Planning Act 1990.

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DETAIL:

1 Introduction

- 1.1 This report deals with Appletree Cottage, Chilcomb Lane, Chilcomb, Winchester SO21 1HT ("the Farm Cottage") and concerns an application by the freehold owner, Mr J Seale , for the release of the Farm Cottage from an agreement made pursuant to section 106 of the Town and Country Planning Act 1990 and dated 13 May 1991.
- 1.2 The report makes reference to the options available to the Council.
- 1.3 This report advises that the Agreement insofar as it relates to the Farm Cottage is now obsolete and that it is appropriate that the Agreement is now varied accordingly.

2 Background

- 2.1 The Farm Cottage was considered in the context of an application for planning permission (W04050/02) for the erection of a detached farmhouse with garage and access on the land edged green on the plan attached to the Agreement at Manor Farm, Chilcomb, Winchester, for which permission was duly issued on or after 13 May 1991.
- 2.2 The application for permission was approved subject to the terms of the Agreement. The Agreement required:
 - " 1.(iii) the Farm Cottage or such other dwellinghouse as the Covenantor notifies the Council in writing shall not be occupied by any person other than a person solely or who was last employed in agriculture as defined in Section 336 of the Town and Country Planning Act 1990 or in forestry and by the dependants or widow or widower of such person."
- 2.3 The Farm Cottage is shown edged blue on the plan attached to the Agreement, and at the time of the Agreement could have been either Enterprise Cottage or Appletree Cottage or another dwellinghouse on the farm. Subsequently, Appletree Cottage was confirmed as "the Farm Cottage".
- 2.4 The owner now submits that there can be no useful purpose served by the Agreement insofar as Appletree Cottage is concerned. The owner has produced a report of a firm of solicitors BCM dated 25 May 2007 which concludes:

“there is no longer a requirement for Appletree Cottage to be tied to the holding.

This report shows:

The farm business is well established, but that the labour requirement is for only one person, and can be served by Manor Farmhouse.

The farm is not of sufficient size to justify the needs for Appletree Cottage to remain part of the s106 agreement.

Tenants not employed in agriculture or forestry have continuously occupied Appletree Cottage for over ten years. As such the property would qualify for a Certificate of Lawfulness.

We can confirm that the farmhouse permitted under the planning permission will remain party to the s106 Agreement.”

- 2.5 In response to issues raised by Officers, the owner has produced evidence of a marketing exercise upon which the owner relies as proof of the absence of need for accommodation for agricultural workers in the district. The owner has previously instructed two agents to market the property during the period October 2002 to January 2003 and again during October 2003 to June 2004. Both agents reported that despite some interest, approaching 200 enquiries, there was no offer to purchase the Farm Cottage.

3 The Issue

- 3.1 The Agreement was completed before 25 October 1991 and consequently falls to be considered under the Law of Property Act 1925 section 84, rather than s106A of the Act. The Council might therefore enter into a Deed of Variation by agreement, but otherwise the issue, should the owner choose to pursue the matter, will be put before the Lands Tribunal.
- 3.2 The decision to enter a Deed of Variation turns upon whether the Agreement is now obsolete having regard to the original intention of the Agreement.

4. The Law

- 4.1 In order to discharge the Agreement in the absence of any agreement between the parties, the owner is required to invoke section 84 of Law of Property Act 1925 and to apply to the Lands Tribunal.
- 4.2 In order for the owner to succeed before the Lands Tribunal in discharging the Agreement it must be shown that the Agreement is “obsolete”. In short, the issue is”whether the original object of the restriction can still be achieved....” Nourse LJ Re Abbey Homesteads(Developments) Application [1986] JPL 683.

5 Advice

- 5.1 The Head of Planning Control has been consulted and advises that the terms of the Agreement are consistent with Winchester District Local Plan Review 2006 Policy CE.21 which resists the removal of conditions restricting the occupancy of dwellings to agricultural workers save where the Authority is satisfied that there is

no current or foreseeable requirement for such accommodation on the holding or in the surrounding area. This application is however not dictated by consideration of planning policy but by law.

5.2 The Head of Planning Control has had regard to the owner's submission as to the absence of any, or any foreseeable requirement, for such accommodation. In the event that the owner's evidence of such an absence of any requirement is accepted as correct, the original object then could not be achieved and the Agreement as it relates to the Farm Cottage would be obsolete.

5.3 The Head of Planning Control has commissioned the report of the County Land Agent to review the evidence and to consider particularly the issue of obsolescence. The County Land Agent in his letter of 18 October 2007 advised:

"Taking into account the nature and scale of agricultural enterprises carried out, and envisaged to be carried out for the foreseeable future, I do consider that sub-clause 1(iii) as it relates to Apple Tree Cottage has outlived its usefulness. There are no livestock enterprises carried out and have not been.....for at least 15 years. All arable agricultural operations are carried out by others under contract farming arrangements, and any limited agricultural need to live on the holdings that there may be is more than satisfied by the remaining dwellings....."

I consider that there is unlikely to be an existing or foreseeable demand for Apple Tree Cottage to remain available for occupation by the "wide farming community" including those retired from farmingI have also been provided with some evidence of marketing that has been carried out by two separate agents.....In summary on this particular point, whilst I consider that the marketing carried out may not have been extensive enough....I still remain of the opinion that there is very little or no scope for retaining Apple Tree Cottage as an agricultural worker's dwelling available for others not employed on the holding itself."

I consider that it is appropriate for the Agreement to be modified to this effect since the requirement of the Agreement at Clause 1(iii) has outlived its usefulness...."

5.4 Having regard to the analysis of the evidence undertaken by the Head of Planning Control and the County Land Agent, Officers advise that it is likely that the owner will succeed in establishing that the Agreement is now obsolete in law, since the original object behind the Agreement could not now be achieved. If the Council did not agree to this application to vary the Agreement, the owner could apply to the Lands Tribunal to have the covenant discharged. Officers believe that should this application be contested by the owner before the Lands Tribunal, there is a probability that the Agreement would be discharged and the Council would be required to pay the legal costs of such litigation.

5.2 Conclusion

In light of the conclusions of the County Land Agent and having regard to the legal principle, it is recommended that the Head of Legal Services be authorised to enter into a Deed of Variation to discharge sub-clause 1(iii) as it relates to Appletree Cottage and agricultural occupancy. The remainder of the Agreement which ties

the main farm house to 650 acres of Manor Farm to prevent the house being sold without that land will remain in force.

OTHER CONSIDERATIONS:

1 CORPORATE STRATEGY (RELEVANCE TO):

- 1.1 This report relates to the key service areas of Homes and Jobs particularly the fostering of a strong and diverse urban and rural economy and to the Winchester District Economic Action Plan.

2 RESOURCE IMPLICATIONS:

- 2.1 The proposed deed will require limited officer time which can be included within existing available resources.
- 2.2 In the event that the issue were to be litigated, legal costs could be incurred for which there is no provision within the current budget.

BACKGROUND DOCUMENTS:

Section 106 Agreement dated 13 May 1991

Correspondence of Graeme Willis, Hampshire County Council Land Agent

Correspondence with the owner's agent and solicitor