

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

**Town and Country Planning Act 1990 (as amended) Section 106A &
106BA**

**DELEGATED DECISION FOR APPLICATION FOR DISCHARGE OR
MODIFICATION OF SECTION 106 AGREEMENT**

Reference no. : 2024/54/90314/E

Site : Copley Springs Farm, Lower Lane, East Bierley,
BD4 6RN

Description : Removal of section 52

Case Officer : Kevin Walton

Decision Reference : Grant discharge of Section 52 (Section 106)
Obligation

**I hereby authorise the approval of this application for the reasons set
out in the officer's report and recommendation annexed below in
respect of the above matter.**

Kirsty Nicholls

AUTHORISED OFFICER

Date 13-Aug-2024

OFFICER REPORT

APPLICATION REFERENCE : 2024/90314

APPLICATION – DISCHARGE OF SECTION 52 TOWN AND COUNTRY PLANNING ACT 1971 (“section 52 agreement”)

LOCATION – COPLEY SPRINGS FARM, LOWER LANE, EAST BIERLEY, BD4 6RN

1. Summary

- 1.1 This application seeks to remove obligations set within the terms of a section 52 agreement dated 20 July 1976. The section 52 agreement restricted the occupation of Copley Springs Farm, Hunsworth Lane, East Bierley to persons either employed or last employed in agriculture.

2. Description

- 2.1 Copley Springs Farm is located off Lower Lane which is an unadopted road serving a small number of dwellinghouses and farmyard. Lower Lane is accessed from Hunsworth Lane. The dwellinghouse is a two storey stone built building with modest garden to the west of the rear elevation. The dwellinghouse is in close proximity to several agricultural and equestrian buildings including a modern steel profiled sheet clad building to the south and more traditional stone built barns and stores to the east. A menage has been formed to the southwest of the dwellinghouse. The dwellinghouse shares its access and parking with the cluster of adjacent buildings.
- 2.2 The cluster of buildings are set within wider open countryside consisting of open fields predominately agricultural in character.
- 2.3 The dwellinghouse was constructed pursuant to planning permission reference 76/61/00315/A1 granted 20 July 1976 for the erection of a detached dwelling at Copley Springs Farm, Hunsworth Lane, East Bierley. The permission was granted subject to the section 52 agreement which obligated the owner to the following:-

“In consideration of the grant of planning permission referred to in the Schedule hereto the Owner will not cause or permit the dwelling for which the said planning permission is granted to be occupied other than by a person employed or last employed locally in agriculture or forestry or by the widow or widower of such a person or by the dependant of such a person residing with him.

The Owner will not sell assign or lease the said dwelling except as one parcel with the existing buildings and the whole or a substantial part of the said land.”

- 2.4 The “said land” as defined in the section 52 agreement is edged in blue on an attached plan. The blue line includes the dwellinghouse, adjacent agricultural/equestrian buildings and menage to the south west currently held in Land Registry title reference YY168488. The blue line also includes

part of land to the south held in Land Registry title reference WKY368762 which consists of several equestrian buildings and second menage adjacent to Hunsworth Lane.

2.5 The applicant seeks to discharge and remove all the obligations and liability from the owner of the dwellinghouse.

3. Planning History

3.1 Historical planning applications:-

- **1976/00315** – Erection of a detached dwelling – granted 20 July 1976
- **1991/05464** – Conversion of outbuilding to Single Dwelling – Granted 10/04/1992
- **2002/94231** – Erection of Stables and Formation of Menage – Granted – 10/03/2003
- **2011/92892** – Installation of 21 PV Panels to Roof of Agricultural Building – Granted 08/12/2011

3.2 Enforcement history – none

4. The Law

4.1 Section 52 agreements were the Town and County Planning Act 1971 predecessor to what are now Section 106 agreements under the Town and Country Planning Act 1990. The enforcement/discharge/modification therefore of such Agreements are governed by general contract/planning law considerations which do not fall to be considered as planning applications. Whilst section 106A of the Town and Country Planning Act 1990 allows applicants to modify or discharge a legal agreement, those provisions do not extend in retrospect to section 52 agreements.

4.2 Planning case law indicates that as a matter of law a section 52 agreement can be discharged/modified by the parties that entered into that agreement (or the successor(s) in title to the original owner(s)) on a consensual basis. If there is no mutual agreement, then the matter by law needs to be referred to the Upper Lands Tribunal for a decision. In other words, unlike section 106 agreements, there is no provision for an appeal to the Planning Inspectorate where the local planning authority is not in agreement with the discharge/modification of the section 52 agreement. Whilst the strict provisions of section 106A do not apply, the relevant case law demonstrates that the tests that the Local Planning Authority must apply where an application is submitted to discharge/modify a section 52 Agreement are essentially the same. In this respect, it is necessary for the Local Planning Authority to consider whether the obligation continues to serve a useful purpose. In the event that it is concluded on an objective

basis that the obligation no longer serves a useful purpose then the obligation is required to be discharged. Alternatively, if it is considered by the Local Planning Authority that the obligation does continue to serve a useful purpose then the planning obligation should continue to remain in force with or without modification.

- 4.3 It should be noted that application to discharge section 106 agreements need to be determined as an “all or nothing” consideration¹ and that it is not open to the Local Planning Authority to accept an alternative. The simple question is therefore does the section 106 agreement, section 52 in this instance, in its entirety continue to serve a useful purpose.
- 4.4 “Useful purpose” is not defined in the Act although some guidance can be taken from several Court judgements. It is widely established that the purpose in question does not need to relate back to the original reasons for entering into the section 106 and neither does section 38(6) of the Planning Act 2004 apply in such applications². While the obligation was originally entered into in the interest of making the development acceptable on policy grounds and in this case to preserve the green belt, it cannot be said that the section 52 must still always serve a purpose if those or subsequent public green belt planning policies still exist. Planning matters are considered only relevant in so far as being in the public interest and the section 52 must, within its four corners, continue to serve a useful purpose if refusal is to be justified.
- 4.5 In the event a section 52 agreement is breached the Local Planning Authority can take enforcement action, in this case as a breach of contract. However, section 8 of the Limitations Act 1980 provides that “*An action upon a speciality shall not be brought after the expiration of twelve years from the date on which the cause of the action accrued.*” A “speciality” is a contract executed as a deed which in this case would include a section 52 agreement made under the provisions of the Town and Country Planning Act 1971 despite the agreement being signed before the enactment of the Limitation Act.

5. The Applicant’s Case

- 5.1 The applicant submits a brief history of the site prior to and from when the application to erect the property at Copley Spring Farm was implemented. The applicant clarifies that the dwelling was erected to house both himself and his family with the location enabling him to continue his employment as a farmhand on his parent’s adjacent dairy farm complex at Lower Park House Farm.
- 5.2 The applicant states that prior to the erection of the dwelling, he resided at 447 Hunsworth Lane which was owned by his parents. The reason for the

¹ (*R (Garden and Leisure Group Limited) v North Somerset Council [2004] 1 P&CR*)

² (*R.(Millgate Developments Limited) v Wokingham BC [2012] JPL 258*)

new dwelling was as a result of his growing family and the need to continue working at the farm.

- 5.3 In 1986 the applicant states the family farming business at Lower Park House Farm was sold and as a result of this the applicant sought agricultural employment elsewhere although in time his employment shifted to the manufacturing/repair of farm trailers. The applicant did, however, establish a DIY horse livery business utilising the land at Copley Spring Farm which currently continues to be available and provides the applicant with a supplemental income.
- 5.4 The applicant claims he has breached the terms of the section 52 agreement since 1986 when he ceased employment at Lower Park House Farm.
- 5.5 The applicant states the reason to apply to remove the section 52 agreement is to enable a close family member to occupy the dwelling and continue to operate the livery business. The applicant states that the section 52 agreement has served its purpose while he was employed in agriculture but is now obsolete given the advancing age of the applicant.

6. Policy

6.1 National Planning Policy Framework

- Chapter 5 – Delivering a sufficient supply of homes

6.2 Kirklees Local Plan

- LP55 – Agricultural and forestry workers dwellings

7. Assessment

- 7.1 In this case the applicant's case is relatively straight forward in so far as the original purpose and need for the agricultural workers dwelling in 1976 ceased to become necessary in 1986 when the applicant ceased employment in agriculture following the sale of the family farm. The applicant has since worked initially in manufacturing/repair of farm trailers and then established a livery business on land adjacent to the dwellinghouse. The applicant now seeks to remove the obligation restricting the occupation of the dwellinghouse for farm workers only to allow future occupiers of the dwellinghouse to continue to manage the livery business from the premises.
- 7.2 The initial reason for requiring the obligation to be entered into, the section 52 agreement makes it clear that the planning permission to erect the dwellinghouse would not have been approved because of the restrictions for residential development within the green belt. It is clear, therefore that the section 52 agreement was required to make the development acceptable in planning terms in so far as there was a need for an agricultural workers dwelling close the adjacent farmland.

- 7.3 The personal circumstances of the applicant inevitably changed over the years when the family farm was sold 10 years after the agreement was entered into thus negating the circumstance and reason for the need of the section 52 agreement. Nevertheless, the agreement remained valid and enforceable by reason of the allowance of persons occupying the dwellinghouse who last were employed in agriculture unless the terms of the agreement were breached and the breach subsisted for a period of 12 years.

Breach of the Section 52

- 7.4 With regard to the applicant's claim that the terms of the agreement have been breached, the statement sets out historical events once the family farm was sold in 1986 where the applicant found himself out of work albeit still occupying the property. This did not breach the terms of the agreement as the applicant would still have been last employed in agriculture. However, paragraph 23 states the applicant became self-employed doing various repairs and making/fabricating trailers and undertaking a milk round operating from 13 acres of land previously forming part of the former farmstead. However, it could still be said the applicant was last employed in agriculture while self-employed.
- 7.5 The subsequent history explained within the statement becomes unclear in terms of dates when a subsequent equine business was established on the land owned by the applicant although it appears clear at paragraph 29 that the equine business was operating in 2003. The equine business appears to have operated since and from 2003 at the latest to 2023.
- 7.6 In brief, the statement sets out that in 1986 the applicant was still last employed in agriculture albeit seeking alternative employment. Some years passed while the applicant was repairing trailers until sometime before 2003 when the applicant established an equine enterprise. Due to the change in employment from repair of trailers to horsiculture and notwithstanding the applicant employed himself there is force in the argument that the applicant would have been last employed in manufacturing of trailers once the equine enterprise commenced. If this is the case, a period of 12 years has clearly lapsed since the change in employment and thus the terms of the section 52 agreement have become immune from action.
- 7.7 With regard to the second obligation regarding the sale of the land edged blue, the application has offered no evidence to suggest this has been in breach and as such appears to remain in force.

Personal Circumstances

- 7.8 As set out above it is necessary for the applicant to demonstrate the agreement does not continue to serve a useful purpose for the Local

Planning Authority to agree to its discharge. The applicant argues the agriculture connected with the dwelling ceased in 1986 and despite attempts by the applicant to continue with a farming business and as set out above, he was forced to become employed in other activities to earn an income.

- 7.9 Paragraph 24 of the statement provides some evidence the applicant attempted to continue with agricultural employment through the rent of other land and the rearing of suckler cows. It appears this agricultural activity became unsustainable when the landowner was forced to sell the land and the applicant was unable to continue due to costs and location.
- 7.10 Paragraph 25 further sets out the applicant's attempts to continue with a agricultural connection through the mowing of neighbouring farmers grass although it appears the decline in agriculture generally rendered this unsustainable.
- 7.11 Since the attempts to remain in agriculture fell away due to financial reasons and a general decline in agriculture locally the applicant has since at least 2003 concentrated on developing the equine enterprise rather than make further attempts to re-employ himself in agricultural activities. It is those activities the applicant would wish to see continue now and within the future rather than be obliged to seek other agricultural enterprises or market the property for agricultural occupation.
- 7.12 From the evidence provided, it appears clear the applicant had over a number of years made a number of attempts to continue with agricultural connections but only to find opportunities locally have declined to the degree agricultural employment could not be sustainable and is unlikely to be in the future in light of the equine operations. It is considered weight can be given to the unlikelihood of the property being successfully marketed for agricultural workers by virtue of the decline in agricultural operations since 1976. It is also clear employment in local agriculture appears unlikely given the attempts to re-employ in the agricultural sector since 1986.
- 7.13 As put forward by the applicant, the section 52 agreement appears to have served a purpose from the late 1970's through to at least 2003 when the applicant was attempting to find employment. Coupled with the likelihood that this part of the agreement is beyond enforcement, there is significant force in the argument the agreement does not now serve a useful purpose.
- 7.14 It follows that the land edged blue is also unlikely to be put to agricultural purposes in light of the equine activities both operated by the applicant and other land adjacent to Hunsworth Lane which appears to be rented to another individual for equine purposes. Consequently there is little merit or benefit in the land edged blue being held in a single ownership whether leasehold or freehold, particularly as it could continue to be rented separately as appears to be the case currently.
- 7.15 However, should these arguments be outweighed by any public interest in retaining the agreement, the agreement may continue to serve a purpose.

As stated in paragraph 4.4 above, planning policies may be relevant if considered to be within the public interest. In this case, the purpose of the agreement was to ensure the property was occupied by a person employed in agriculture to ensure any harm to the green belt is justified through the need for an agricultural workers dwelling. To give any weight to a retention of this stance in the public interest, it would need to be demonstrated the release of the obligations would result in the erosion of the green belt if the property is not occupied by an agricultural worker. As set out above, the general decline in agriculture has led to a circumstance whereby it cannot be said there is an essential need for rural worker accommodation in the locality of Hunsworth Lane.

- 7.16 It therefore considered, on balance, that the removal of the obligations would not be detrimental to any wider public interest or would lead to a circumstance whereby the loss of the agreement would harmfully impact on any need for essential rural workers in the event the property becomes available on the open market.

Other matters

- 7.17 As stated above, the discharge of a section 52 agreement cannot be agreed under the provisions of Section 106A of the Town and Country Planning Act and as such it is considered the applicant will need to enter into a deed of discharge.

8. Recommendation

- 8.1 To release the owners of the land edged red and blue on the section 52 agreement from the obligations therein and to authorise instructions to Legal Services to, if necessary prepare and execute a deed of variation.