

**WEST OXFORDSHIRE DISTRICT COUNCIL**  
**UPLANDS AREA PLANNING SUB-COMMITTEE**  
**MONDAY 6<sup>TH</sup> AUGUST 2018**  
**DISCHARGE OF LEGAL AGREEMENT - THE GABLES,**  
**CHADLINGTON**  
**REPORT OF THE HEAD OF PLANNING AND STRATEGIC**  
**HOUSING/HEAD OF PAID SERVICE**  
**(Contact: Phil Shaw, Tel: (01993) 861687)**

**I. PURPOSE**

To seek authority to discharge the terms of an extant Section 52 (now 106) Agreement.

**2. RECOMMENDATION**

That the Sub-Committee agrees to the discharge of the Section 52 Agreement.

**3. BACKGROUND**

- 3.1. Planning permission was sought in 1981 for the erection of seven houses with integral garages, a separate garage block and new access on Land at West End, Chadlington (WODC ref: W.1203/80U). Planning permission was granted following the completion of a legal agreement, made under S.52 of the Town and Country Planning Act 1971 on 8th October 1981 between West Oxfordshire District Council and, which committed the first owner (Robert Slatter) to only develop the land edged red on the plan annexed to the agreement and the second owner (Francis Slatter) to only use the land edged green on the plan for agricultural purposes and not to erect any buildings on that land.
- 3.2. National Planning Practice Guidance is clear that planning obligations may be renegotiated and where an obligation is more than 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose.
- 3.3. In March 2017, an outline planning application was submitted to West Oxfordshire District Council for the construction of three dwellings to include access with all remaining matters reserved on land adjacent to The Gables, West End, Chadlington. The application was presented to the Council’s Uplands Area Planning Sub-Committee on the 3rd July 2017 and was subsequently refused by Members but the subsequent appeal (APP/D3125/W/17/3187916) against the Council’s decision to refuse planning permission was allowed by the Inspector’s decision letter dated 21 June 2018.
- 3.4. Within her reasoning, the Inspector considered that the main issues in the appeal concerned the effect of the development on the character and setting of the western end of the village, and whether the development would protect and conserve the landscape and scenic beauty of the Cotswolds AONB. In reaching her decision, the Inspector concluded that:

“The appeal site is a wedge shaped area of largely unmanaged vacant land on the western side of Chipping Norton Road (paragraph 10). The adopted development plan does not specifically designate the appeal site as important open space. Whilst it is acknowledged that the vacant nature of the appeal site does make some contribution to the setting of the settlement, I do not find that it could be described as one which makes an important contribution as required by saved Policy BE4 of the WOLP (paragraph 11). The appeal site is read in the context of predominantly linear development on the western side of Chipping Norton Road (paragraph 14). In my judgement, the appeal site’s character and setting is affected by adjacent development to the north and south such that the site is perceived as being within the settlement and in the context of surrounding development (paragraph 15). Consequently, I do not regard it as an essential or intrinsic component of the wider open countryside. The site has no public access, no public rights of way and does not perform a formal recreational function. Therefore it is not an open area which provides a key facility for residents or makes an important contribution to the distinctive character and appearance of the village of Chadlington (paragraph 16).

- 3.5. In conclusion, in terms of character and setting, I find that the infill nature of the appeal proposal would have a relatively localised impact on the character of the area. It would have a limited effect on the wider landscape and the setting of Chadlington as it would be read in the context of existing built development (paragraph 19).
- 3.6. The proposed development is small in scale and located on land within the existing built footprint of the village. The western boundary of the site would not extend beyond the natural line of the existing built footprint. Consequently, development on the appeal site would be read in context of the existing built development (paragraph 21). Accordingly, the small scale nature of the proposed development would protect and conserve the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (paragraph 22).
- 3.7. I understand from the Council that the appeal site is subject to a Section 52 agreement which accompanied the planning permission for Sarsden Close in 1981. The purpose is indicated as being a mechanism to ensure the land remained undeveloped in the interests of the visual amenity of the area. I have already reached my own conclusions in relation to the appeal proposal and therefore the presence of the agreement does not change my view. Should the appellant wish to discharge the agreement it would need to be undertaken separately outside of this appeal process (paragraph 29). Having regard to all matters raised, it is concluded that the proposal would deliver sustainable development as defined by the Framework. The appeal should succeed and planning permission should be granted subject to conditions.

#### **4. ASSESSMENT**

- 4.1. Planning permission has recently been granted at appeal for the construction of three dwellings on land which the agreement sought to restrict and regulate any future development. In granting planning permission, the appeal inspector found the proposal would accord with the saved policies of the development plan and would deliver a sustainable development as defined by the National Planning Policy. In addition the applicants consider that such an agreement would not be entered into were the original proposal to be submitted today and that it fails the tests for imposing a legal agreement on an application. They therefore seek that the extant obligation be discharged.
- 4.2. There is no delegation in place to enable this discharge of an extant obligation to be agreed and thus the matter is for members to decide. However it appears fairly clear on its planning merits that the case put forward by the owner following on from the decision of the inspector is sound on its planning merits.
- 4.3. Officers have additionally sought advice as to whether, notwithstanding the planning case for discharge of the obligation, the Council would be entitled to seek to ransom the removal of the obligation to allow the appeal decision to be implemented. However the advice received is that *'As to whether the Council can reasonably refuse to discharge the Agreement I doubt it could as there are strong legal arguments for it to be discharged as set out in the letter the Council has received. I don't think the Council would be justified in requesting a fee to discharge the Agreement.'*
- 4.4. In light of the above it appears that there is little choice but to accede to the request. It is however recommended that this not be enacted until such time as any potential JR of the appeal decision by a third party has expired, to account for the unlikely event that the appeal decision upon which this recommendation is based, is overturned

#### **5. ALTERNATIVES/OPTIONS**

There are no alternatives.

#### **6. FINANCIAL IMPLICATIONS**

There are no financial implications.

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Date: July 2018