

Planning Committee

Variation of obligation which limits internal area of the property to 950 square feet and removes permitted development rights at 5 Fiveacres, Murcott

2 December 2010

Report of Strategic Director Planning, Housing and Economy

PURPOSE OF REPORT

To seek the discharge of S106 planning obligations relating to 5 Fiveacres, Murcott so that the internal area of the property is not restricted and the property benefits from permitted development rights.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To allow the discharge of S106 planning obligations as set out.

Executive Summary

Introduction

- 1.1 5 Fiveacres is a detached dwelling situated in the village of Murcott within the Oxford Green Belt.
- 1.2 Fiveacres is a small residential cul de sac granted planning permission in 1990. The planning history is as follows:
- 1.3 CHS.710/90 (Permitted) Demolition of all intensive rearing housing and development of village housing with 11 dwelling units. Creation of new access (Outline and Reserved Matters) (Attached S106 legal agreement)

CHS.565/93 (Permitted) Erection of 3 detached dwellings – plots 1, 2 and 3 variation on design of dwellings approved on permission number RM.CHS.710/92(2)

Specifically relating to 5 Fiveacres:

97/00120/F (Refused) First floor side extension to form bedroom and enlarge bedroom.

Proposals

- 1.4 As can be seen from the planning history, permission was granted in 1990 for the development of this site for 11 dwelling units. As part of the approval, 3 affordable units were included (on plots 1, 2 and 3) (discount market houses). To retain these as more affordable units, an obligation was included within the S106 agreement to limit the internal area of these three particular dwellings to 950 Square Feet and to remove their permitted development rights (Schedule 2, Part 1, Classes A, B, C and D of the Town and Country Planning (General Permitted Development) Order). The dwellings were originally approved as a terrace of three properties.
- 1.5 Further to the original approval for the site, an application was approved (CHS.565/93), to vary the design of the dwellings on plots 1, 2 and 3 and in particular that they would be detached dwellings rather than a terrace of three.
- 1.6 It should also be noted that an application was submitted under application 97/00120/F to extend number 5 Fiveacres, which was refused for two reasons, one of which being:
 1. When permission was granted for the development which embraces the application property, a formal legal agreement was entered into with the Council. This included, inter alia, a covenant to restrict the internal floorspace of the dwelling on the application site to 950 sq ft (88 square metres). The purpose of the covenant was to ensure that some of the houses on the Five Acres development were affordable specifically with the local community in mind. The extension negates the long term intention to maintain a supply of lower cost housing and is, therefore, unacceptable.
- 1.7 As can be seen from the planning history, it was originally important to try to keep these three dwellings as more affordable and that permission to extend the dwelling in 1997 was refused for this reason. Legal and Democratic Services have advised that case law has established that there are four essential questions which should be considered in considering an application under S106A: What is the current obligation? What purpose does it fulfil? Is it a useful purpose? And if so, would the obligation serve that purpose equally well if it had effect subject to the modifications?
- 1.8 S106A (6) provides that an authority which receives an application for modification or discharge of a planning obligation may determine it by refusing it (the planning obligation shall continue to have effect without modification); or, if the obligation no longer serves any useful purpose, by discharging it; or, if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to modifications specified in the application by consenting to the modifications sought. The Secretary of State considers that the expression "no longer serves any useful purpose" should be understood in land use planning terms.

- 1.9 The current obligations in the S106 Agreement and the purpose they were intended to fulfil have been set out in paragraph 1.4. It is accepted that at the time the agreement was entered into, the included clause served a useful purpose. However at the current time, the applicant believes their property to be worth in the value of between £360,000 to £370,000. This is not considered to be realistically 'affordable' and therefore due to the rise in house values over the years it is unlikely these dwellings could be classified as affordable any longer.
- 1.10 It is therefore considered that this clause of the S106 agreement no longer serves a useful purpose as even with the clause; the three dwellings are not particularly affordable. It is therefore considered reasonable in the circumstances to allow the planning obligations which limit the internal area and restrict permitted development rights to be discharged.
- 1.11 The removal of these elements of the agreement would allow the property to benefit from permitted development rights, which would allow the usual minor extension and alteration of the property allowed under The Town and Country Planning (General Permitted Development) Order (amendment, 2008) Schedule 2, Part 1. However planning permission would still be required for any development which does not constitute permitted development.

Conclusion

- 1.12 It is considered that in the circumstances, those obligations in the S106 agreement which limit the internal area of 5 Fiveacres and restrict permitted development rights should be discharged. It is considered that these obligations no longer serve a useful purpose as they do not ensure that the property is affordable.

Background Information

- 2.1 S106A of Town and Country Planning Act 1990 as substituted by S12 Planning and Compensation Act 1991
- 2.2 Sections 46 and 47 of the Planning and Compulsory Purchase Act 2004
- 2.3 Circular 05/2005: Planning Obligations
- 2.4 SI 1992 no.2832 The Town and Country Planning (Modifications and Discharge of Planning Obligations) Regulations 1992

Key Issues for Consideration/Reasons for Decision and Options

None

Consultations

The application has been advertised by way of a site notice, press notice and neighbour notification. The Parish Council and Local Ward Member have also been consulted. The last date for comment is 26/11/2010. No third party comments have been received to date, however any comments received will be verbally reported at committee.

Implications

Financial: The cost of varying the legal agreement will be borne by the applicants. There are no direct financial implications from discharging the legal agreement.

Comments checked by Emma Warburton, Management Support Officer, 01295 227936.

Legal: This is an application to modify or discharge a planning obligation pursuant to Section 106A Town and Country Planning Act 1990. Section 106A (6) gives the Local Planning Authority the power to determine this application,

Comments checked by Ross Chambers, Solicitor, 01295 221690

Risk Management: If the Council refuses to agree to vary or discharge the S106, the matter could be subject to an appeal and if it is considered that the Council have behaved unreasonably by refusing to agree to this variation or discharging, costs could be made against it.

Comments checked by Rosemary Watts, Risk Management & Insurance Officer 01295 221566.

Wards Affected

Otmoor

Document Information

Appendix No	Title
Appendix 1	Site location plans
Background Papers	
Application number CHS.710/90	
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