

Planning Committee

Variation of obligation which restricts the use of the accommodation ancillary to Buzzard Farm House, Chapel Lane, Little Bourton

24 February 2011

Report of Strategic Director, Planning, Housing and Economy

PURPOSE OF REPORT

To seek the variation by agreement of S106 planning obligations relating to Buzzard Farm House, Chapel Lane, Little Bourton.

This report is public

Recommendations

The Planning Committee is recommended:

- (1) To allow the variation of S106 planning obligations by agreement as set out

Executive Summary

Introduction

- 1.1 The self contained unit which is the subject of this report is situated to the side of Buzzard Farm House on Chapel Lane, Little Bourton.
- 1.2 The unit was converted from a garage and workshop to a “single self-contained unit with ancillary parking and amenity area” under application ref CHN.438/91, granted in March 1992.
- 1.3 That planning permission was granted subject to a condition restricting the development to being used as ancillary accommodation to the existing dwelling house, not to be separately sold, leased or otherwise used as an independent dwelling.
- 1.4 That condition was supplemented by a legal agreement between the Council and the Applicant which included, among others, the following obligations:
 - (a) not to use or occupy the self-contained unit for any purpose other than residential use by the owners’ family or household ancillary to the existing dwelling known as Buzzard Farmhouse;
 - (b) not to sell let or occupy the self-contained unit independently of Buzzard

Farmhouse

- 1.5 In 2010, planning permission was sought, and granted, to vary the condition attached to the original permission, to allow the self contained unit to be used for rental purposes (Application reference 10/01036/F). This permission was granted subject to a condition requiring that the unit not be sold separately from Buzzard Farm House.

Proposals

- 2.1 As can be seen from the planning history, it was originally considered necessary for the Council to reinforce the restrictions set out in the conditions attached to the planning approval with a legal agreement. It is no longer considered reasonable or necessary to reinforce planning conditions of this type with a matching legal agreement.
- 2.2 The applicant for planning permission 10/01036/F has approached the Council requesting its agreement to vary the legal agreement to achieve consistency with 10/01036/F. This will require deleting the obligation referred to at paragraph 1.4(a) above and amending the obligation at paragraph 1.4(b) so that the only restriction will be on selling the self-contained unit independently of Buzzard Farmhouse.
- 2.3 Application 10/01036/F was considered acceptable on its planning merits and would not unduly impact on the neighbouring properties, public, private or any other amenity, the appearance of the street scene or highway safety. As such, the variation of the legal agreement to achieve consistency with 10/01036/F is considered acceptable.

Conclusion

- 3.1 It is considered that in the circumstances, the obligations in the S106 agreement which limit the use of the ancillary unit should be varied by agreement to match the updated planning permission (that is, to allow the unit to be independently let, but not separately sold).

Background Information

- 4.1 S106A of Town and Country Planning Act 1990 as substituted by S12 Planning and Compensation Act 1991
- 4.3 Circular 05/2005: Planning Obligations

Key Issues for Consideration/Reasons for Decision and Options

None

Consultations

Implications

- Financial:** The cost of varying the legal agreement will be borne by the applicants. There are no direct financial implications from varying the legal agreement.
Comments checked by Emma Warburton, Management Support Officer, 01295 227936.
- Legal:** Section 106A (1) gives the Local Planning Authority the power to discharge or modify a planning obligation by agreement with the person against whom the obligation is enforceable ,
Comments checked by Ross Chambers, Solicitor, 01295 221690
- Risk Management:** If the Council refuses to agree to vary the S106, the applicant could make a formal application which if refused 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

Cropredy

Document Information

Appendix No	Title
Appendix 1	Site location plan
Background Papers	
Application number CHN.438/91 Application number 10/01036/F	
Report Author	Simon Dean
Contact Information	01295 221814 simon.dean@cherwell-dc.gov.uk