

# **Report to Area Plans Committee East**

**Date of meeting: 10 June 2009**



**Subject: Removal of s106 Obligation  
Re: Ashlings Farm, Blackmore Road, Stondon Massey**

**Responsible Officer: Barry Land**

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## **Recommendation:**

**That the s106 obligation be discharged.**

## **Report Detail:**

### **Background**

1. In 1985 planning permission was given for a second dwelling at this farm which is at the very eastern extreme of the district. The site was in use as an intensive pig-rearing unit and justified the provision of a second dwelling (to be known as Ashlings Farm Cottage) in addition to the original house (known as Ashlings Farmhouse). The permission was subject to a condition and a legal agreement under s52 of the then Town & Country Planning Act 1971 restricting its occupation to an agricultural worker and preventing the severance of the Cottage from the remainder of the holding.

2. In 1996, after the pig-rearing enterprise ceased, the farm was purchased jointly by a brother and sister fully intending to run an agricultural business and comply with the condition and obligation.

3. In 2005, the circumstances of the sister, the occupier of the Cottage, changed so that she wished to sell the Cottage and thus an application was made to delete the condition and discharge the obligation in respect of the Cottage, offering somewhat reluctantly to transfer the obligation onto the original Farmhouse which was unencumbered by any restrictions, since it was erected long before planning controls. Permission was granted on this basis, so that the Farmhouse is now restricted by obligations in a planning agreement under s106 of the Town & Country Planning Act 1990 (as amended). The owner has now requested that this agreement be discharged. The agreement was dated 10 November 2005 so that, whilst there is now provision in the Act to apply for an agreement to be discharged, that can only be done after 5 years after completion which has yet to pass. Consequently, this 'application' is in the form of a request only and there would be no appeal against the Council's decision.

### **The Current Position**

4. The extant agreement restricts the Farmhouse as follows:

- (a) the dwelling known as Ashlings Farm House, Blackmore Road, Ingatestone .... shall be limited to a person solely or mainly working or last working in the locality in agriculture or in forestry or a widow or widower of such person and to any resident dependants; and
- (b) Ashlings Farm House shall not be sold away or otherwise alienated from the remainder of the site (shown in blue on an accompanying plan).

5. The removal of an Agreement before 5 years has expired is entirely at the discretion of the Council but its decision must be reasonable in all respects. To this end it is suggested

that the Local Plan policy regarding the removal of agricultural occupancy conditions be applied since the agreement seeks controls that would normally be exercised by such a condition. That is policy GB17B that states that removal would not be permitted unless it is demonstrated that:

- (a) there is no longer a functional need for the dwelling on the holding;
- (b) there is no longer a need for this type of dwelling in the locality;
- (c) the dwelling has been marketed with its agricultural occupancy status made clear throughout for a minimum of 1 year. The marketing must include:
  - (i) 'for sale' signs visible from the road;
  - (ii) local newspaper advertising;
  - (iii) national and regional advertising in specialist publications
  - (iv) the asking price being 40% below its general housing market value;and
- (d) a survey of the agricultural community carried out to assess the need in the locality for the dwelling.

### **The Considerations**

6. With regard to criteria (a): it is clear from evidence submitted that the previous enterprises carried out on this unit have all failed due to contamination of the soil. The holding only extends to 4.1 hectares and survey results submitted indicate that the site is heavily contaminated by levels of lead and zinc thought to have originated from when the site was used for the burning of batteries soon after the Second World War. Whilst an intensive pig-rearing enterprise proved marginally profitable in the early 1980s utilising a large barn on the site, such an enterprise would not be profitable today and in addition the site could not be used for any arable or grazing enterprise. Consequently it has to be acknowledged that there is no longer a functional need for an agricultural dwelling on this holding.

7. In respect to criteria (b), this is largely demonstrated by the responses to criteria (c) and (d). Evidence has been submitted of the marketing of this dwelling for some considerable time – since February 2006 and continued through to 2008. Since the holding is located some 500m back from the road, roadside advertising was not considered appropriate but the property has been advertised locally and through national websites, both general and those serving the agricultural industry. The local survey was carried out by NFU Mutual and NFUonline.com. The property, that is the house, residential outbuildings, agricultural buildings and land was valued at £1.8m without the restriction, but was advertised at £1.1m – a discount of 39%. No responses were received that met the terms of the legal agreement (those valuations will have changed over the past 9 months).

8. This lack of response to marketing and the survey that both meet the terms of the policy must reasonably be taken to be an indication that there is no longer a need for this type of dwelling in the locality.

9. It must also be recognised that, whilst in 2005 the transfer of the restriction from the Cottage to the Farmhouse was considered to raise few issues, the restriction now relates to a large detached house of 5 bedrooms & 3 reception rooms that is understandably difficult to sell within the restricted agricultural housing market.

### **Conclusion**

10. It is accepted by the officers that there has been genuine attempts by the present owner over the past 15 years to comply with the restriction placed on these dwellings but the changing market and the contamination of the land has rendered this small agricultural holding unviable. It is therefore concluded that there is little justification for retaining this restriction upon this property and it is recommended that the s106 obligations be removed.