

23 August 2011

FROM:

Planning Solicitor
Resources Department
Tel Ext

TO:

P Cleveland
Planning

CONSULTATION ON DISCHARGE OF S52 AGREEMENT DATED 7 JUNE 1983
ADDRESS LANDSDOWNE NURSERY LANDSDOWNE WAY ANGMERING
REF A/117/11/PO

GENERAL

Thank you for your recent consultation memo now returned together with the file on which alone this advice is based.

I refer you to Counsels Advice dated 11 October 2006 and my summary of that dated 16 October 2006 by way of general background.

In this case I advise that you can grant the application for reasons that follow.

COPY DEED

You have enclosed a copy of the deed which shows it is dated 7 June 1983 which means that the pre 1992 rules apply .

PLANNING OBLIGATION/S52 AGREEMENT MADE PRE 9 NOVEMBER 1992 AND S84 LPA 1925

Due to date of the deed this applies.

Procedure

You have these alternatives :-

- (1) grant the application via a deed per EPL Vol 2 para 106.70 which would be the orthodox way of proceeding
- (2) grant via S106A and rely on estoppel to effectively ensure we do not enforce it in future which would be practical and effective in my view
- (3) refuse and see if they appeal and under which procedure. Strictly an appeal should be under S84 LPA 1925 to Lands Tribunal so we can defend as invalid any appeal to PINS.

Criteria

Strictly the tests are those identified in S84 LPA 1984 as S106A and “useful purpose” does not apply to cases pre 9/11/1992 but for practical purposes I think you can use “useful purpose”.

In short S84 allows a discharge in case of the covenant being obsolete, some reasonable use is impeded, that qualified persons have expressly or impliedly agreed to a discharge or a discharge will cause no injury ---all which equate to absence of useful purpose –see Counsels Advice para 4.0 para 1 page 10 useful purpose can be widely interpreted .]

The Determination in this Case.

You can grant this application to discharge the Deed made 7 June 1983 which is an agricultural occupancy restriction because :-

1. ADC have already discharged a similar deed dated 9 November 1982 –see clause 12 of a Deed dated 13 February 2006 This acts as a precedent to discharge in this case too.
2. the Planning Permission ref A/114/04 also copied suggests that the land is now occupied or to be occupied by a residential estate of 15 dwellings so the covenant is obsolete owing to changed circumstances, and there is an agreement to discharge

In this case that there are no useful purpose(s) identified namely so you can grant the application .

METHOD OF DISCHARGE

Because this is a pre 1992 Deed strictly speaking a Discharge should be via a Deed of Discharge -copy attached which I can draft.

Appeals in cases of pre 1992 Deeds should be to the Lands Tribunal in case you decide to refuse or this should be included in the notes attached to the Decision Notice .

FURTHER EVIDENCE

I rely on you to show me any new or further evidence which may change the tenor of this advice.

Ref/Igdr/legprec/pl/podisch