

PLANNING COMMITTEE - 26 JANUARY 2005

REPORT OF THE CHIEF SOLICITOR

SECTION 52 AGREEMENT RELATING TO "MALLOW", CREECH HEATHFIELD

BACKGROUND

In 1975 planning permission was granted for the erection of a dwelling, now known as "Mallow", adjacent to the existing property "Chants" which incorporated a doctor's surgery.

The land on which the house was built was outside the then settlement limits of Creech Heathfield and the permission was subject to a Section 52 (S.52) Agreement (the forerunner of a Section 106 Agreement) preventing the erection of a second dwelling on the land.

It is not clear why the S.52 requirement was imposed, but it seems likely that the permission was granted as an exception outside the settlement limits because the proposal also provided a car park to the adjacent doctor's surgery.

Since that time, the settlement limits have been extended so that the whole of the area covered by the S.52 agreement and the adjacent property "Chants" now lies within the settlement limits of Creech Heathfield. The justification for the restriction therefore no longer exists and a request has been received from the present owner of the land that the S.52 requirement be lifted.

The request seems justified given the changes in settlement limits. Any proposed additional dwellings on the land would of course need planning permission in the usual way.

RECOMMENDATION

It is therefore **RECOMMENDED** that the S.52 Agreement of the 24 September 1975 and made between John Caray (1) and the Council (2) and relating to the property "Mallow" at Creech Heathfield be varied to release the covenant against the erection of more than one dwelling on the land.

Chief Solicitor

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