

TAUNTON DEANE BOROUGH COUNCIL

PLANNING COMMITTEE - 29 JANUARY 2003

Report of the Chief Solicitor

MISCELLANEOUS ITEM - DAIRY HOUSE FARM HENLADE

Background

A request to vary the existing S106 agreement relating to Dairy House Farm at Henlade was reported to the Committee at its meeting on the 18 December 2002 but was deferred to obtain the views of the Parish Council for the area, and the adjacent Parish Council. A copy of the original report is attached for Members' convenience at Appendix A.

Both the Stoke St Mary Parish Council, in whose parish Dairy House Farm is situated, and the nearby parish of Ruishton and Thornfalcon have been consulted. Ruishton and Thornfalcon Parish Council have confirmed in writing that they have no objection to the S52 agreement being varied as requested. Stoke St Mary Parish Council have confirmed verbally that it likewise has no objections to the variation, although a query was raised about the level of LPG tanks on site. This has been referred to the Health and Safety Executive but is not a matter to be considered in relation to the request to relax the S52 Agreement.

In view of the lack of objection from the Parish Councils, the recommendation contained in my original report remains the same.

Recommendation

It is therefore RECOMMENDED that the S106 agreement of the 6 November 1992 between Taunton Deane Borough Council and M G and O L Ake be varied such that the personal limitation on parts of the business carried on at Dairy House Farm be lifted.

Chief Solicitor

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APPENDIX A

TAUNTON DEANE BOROUGH COUNCIL

PLANNING COMMITTEE - 18 DECEMBER 2002

Report of the Chief Solicitor

MISCELLANEOUS ITEM - DAIRY HOUSE FARM, HENLADE

Background

In 1983 permission was granted for the use of land at Dairy House Farm for the storage and distribution of gas cylinders. Although the application was recommended for refusal, it appears that the Committee were mindful of the personal circumstances of the applicant and agreed to grant planning permission subject to the applicant entering into a S52 agreement restricting the area to be used for such purpose and limiting the permission to the applicant and his descendants.

In 1985 a further application was granted for a single storey building to be used in conjunction with the business, subject to extension of the S52 restrictions to the new development. That permission was not implemented.

In 1991 there were two further applications; one for the continued use of the land for lorry parking and open storage, and one for the erection of an office building to be used in conjunction with the gas cylinder distribution business. Both applications were recommended for refusal but again the Committee appears to have considered that the applicant's personal circumstances outweighed the policy reasons for refusal and granted both permissions.

The permission for the use as a lorry park and additional storage was made subject to a S106 agreement extending the original provisions of the S52 agreement, but the erection of the office building was not limited to personal use. The owner believed that the "personal" element of the permission was removed at that time but has recently been advised that that is not the case. The use for the storage of cylinders and the lorry parking is still subject to the personal restriction, although the office building is not so constrained.

The owner is therefore in a situation where he has an established business with a permanent office building, but where part of the business is expected to cease if the business goes outside of the family. The owner has asked that the S 106 agreement be varied to remove the personal limitation on that part of the business.

The present position

The current business has been established on site for nearly twenty years and has had a permanent building since 1991. The office and surrounding land have always been used as the same business. Clearly the business has expanded and hence the various planning applications.

However, although it would appear that the original restriction of the use to that of a personal one was intended to secure the cessation of the use when the owner ceased trading, this is not consistent with granting an unrestricted permission for a permanent building in

connection with the business in 1991 - indeed, government guidance advises against a personal limitation on permanent structures.

It therefore seems that at the time when the permission was granted for the office building the personal element in relation to the permission on the adjacent land should have been removed. Accordingly, it would be appropriate to remove such restriction now as requested by the owner.

Recommendation

It is therefore RECOMMENDED that the S106 agreement of the 6 November 1992 between Taunton Deane Borough Council and M G and O L Ake be varied such that the personal limitation on parts of the business carried on at Dairy House Farm be lifted.

Chief Solicitor

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