

**1.0 Application Number - [WD/D/20/001700/OBL](#)**

Site address - **Land to north and west of Cockroad Lane, Beaminster**

Proposal - **Discharge of planning obligations on Section 52 Agreement dated 10 March 1989 (original planning approval 1/W/88/458)**

Applicant name – Gladman Developments Limited

Case Officer –Bob Burden

Ward Member(s) –Cllr Rebecca Knox

The application is brought to committee because of objections by the Parish Council, and because it falls outside the Officers' the Scheme of Delegation

**2.0 Summary of Recommendation:**

2. That the Council revoke the S52 Agreement dated 10 March 1989

**3.0 Reason for the recommendation:**

3.1 It is considered that the proposed discharge of the agreement would be acceptable and conducive to the development of the site.

**4.0 Key planning issues**

Issue	Conclusion
Release of obsolete planning obligations (a) for payment of £25k index-linked since 1987 towards sewerage infrastructure, and (b) for the formation of a rainfall attenuation basin (or tank) on –site	The proposed discharge of the S52 agreement is appropriate since it relates to a development for which planning permission has expired and is no longer implementable. Also, it clears the way for development of the site in accordance with a recent planning permission

**5.0 Description of Site**

5.1 The site lies on the western side of Beaminster and largely comprises a mix of sheep and pony grazing land with some boundary hedgerows and established tree planting to the eastern side. The site is accessed via a surfaced farm trackway known as Cockroad Lane.

The Section 52 Agreement dated 10 March 1989 relates to this land. It is linked to an outline planning permission for the development of land for industrial and

commercial purposes and the formation of new vehicular and pedestrian access approved on 10/3/1989 (1/W/88/458).

## 6.0 Description of Proposal

6.1 This application seeks to revoke the Section 52 Agreement and requests the consequential removal of any notice relating to it from the local land charges register planning register. However, we are advised that although the Section 52 Agreement can be revoked and an entry to that effect made on the register, it should not be removed. Therefore, the decision before the Committee is solely whether to revoke the Section 52 Agreement

## 7.0 Relevant Planning History

Application No.	Proposal	Decision	Decision Date
1/W/88/358	Develop land for industrial and commercial purposes and the formation of new vehicular and pedestrian access.	Approved	10/3/1989
WD/D/19/000613	Outline planning permission for up to 58 residential dwellings (including 35% affordable housing) , amenity area for recreational use, planting, landscaping, informal public open space, children’s play area and sustainable drainage system, including demolition of agricultural structures.	Approved	7/4/2020

## 8.0 Relevant Constraints

Within Defined Development Boundary for Beaminster.

## 9.0 Consultations

### Beaminster Town Council -

Recommend refusal-the loss of employment land will have a detrimental effect on the future of Beaminster conflicting with Local Plan 14.2.1 A Vision for Beaminster (in 2031) –“retain its historic character and respect the beauty of the surrounding countryside whilst developing on a small scale, primarily to meet local needs for housing, employment and community facilities” –BEAM1

Also 14.2.2 Opportunities for development in Beaminster include:

“Land to the north of Broadwindsor Road, west of Beaminster, has the capacity to provide around 120 homes and approximately 0.5ha employment land. Live-work units would be supported as part of this development. The north-eastern section is potentially more suited to employment uses.. “

## **10.0 Representations**

10.1 No comments received at the time of report writing.

## **11.0 Relevant Policies**

West Dorset, Weymouth and Portland Local Plan:

BEAM1 – Land to the North of Broadwindsor Road.

National Planning Policy Framework:

4. Decision-making
5. Delivering a sufficient supply of homes

## **12.0 Human rights**

Article 6 - Right to a fair trial.

Article 8 - Right to respect for private and family life and home.

The first protocol of Article 1 Protection of property

This Recommendation is based on adopted Development Plan policies, the application of which does not prejudice the Human Rights of the applicant or any third party.

## **13.0 Public Sector Equalities Duty**

As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have “due regard” to this duty. There are 3 main aims: -

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people

- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

Whilst there is no absolute requirement to fully remove any disadvantage the Duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

#### **14.0 Financial benefits**

There are no financial benefits to the Council arising directly from revocation although when the site is redeveloped for housing, Community Infrastructure Levy payments will accrue to the Council for spending on infrastructure projects benefitting the community.

#### **15.0 Climate Implications**

15.1 The proposed discharge of the Section 52 Agreement is not considered to alter the climate implications.

#### **16.0 Planning Assessment**

16.1 The Section 52 Agreement provided for a £25,000 payment (index-linked from 1987) to be made to the then West Dorset District Council (as Agent for the Wessex Water Authority) as a contribution towards uprating the sewerage system serving western Beaminster.

It also included a requirement to construct an on-site rainfall storage area (or tank) of capacity to contain the total run-off from the developed area in a quantified rainfall period.

However, the planning permission does not appear to have been implemented; there is no evidence of the condition submissions required under the outline application being made within the 3 year validity period. These included pre-start conditions on details of estate road construction and a tree planting scheme. Nor is there any evidence of the payment or details of the water storage structure being submitted.

The applicant is seeking formal discharge of this Section 52 Agreement, which was attached to the defunct planning permission. Such Agreements are not intended (save in rare cases which are not relevant here) to have an independent life of their own. A section 52 agreement does not authorise development in its own right, it simply imposes certain obligations on the related development.

Section 106 of the 1990 Act replaced Section 52 of the 1971 Act. Current Section 106 Agreements almost invariably contain clauses for their own automatic expiry if the associated planning permission expires. Had such a clause been included in the Section 52 Agreement this matter would not have required determination..

The site has recently received planning permission for up to 58 dwellings granted on 7 April 2020 (WD/D/19/000613) and is allocated for development in the West Dorset, Weymouth and Portland Local Plan 2015.

The applicant indicates that discharge of the agreement is necessary to enable the development of the site to commence in accordance with the most recent planning permission. In the Council's view this is a reasonable request as the section 52 Agreement could be interpreted as applying to any future development of the site. In practice, if it is not revoked, purchasers' solicitors will ask the Council for further details, and ask for their clients to be released or indemnified, all of which will add to the administrative burden on local land charge, planning and legal staff, whilst serving no interest of or benefit to the Council, the public or the area.

The Town Council have objected to the discharge of the agreement, with a particular concern over what they regard as a potential loss of an opportunity to provide employment on this site. They do -understandably- wish to ensure employment sites are available for the town. However, a Section 52 Agreement cannot create or confer employment status on land. Authorising land use is granted by way of planning permission, not Section 52 (now section 106). Therefore, the Parish Council's objection is not legally sustainable, and it would be impossible to defend the position in Court if the Council refuse the application on that basis.

However, for the information of Members, and to put the concerns of the Parish Council in context, the history of the current change in status is as follows:

The issue of employment is included in Policy BEAM1 which allocated a tract of land (part of which falls in this site) for not just housing but employment also.

This issue was explored in the planning committee report (paras 15.5-15.8) relating to the recent planning permission ( WD/D/19/000613) on the site as follows:

Adopted Policy BEAM1 has an expectation that about 0.5 ha of land will be developed for employment use. The submitted application does not include any employment land. However, on this topic it is expedient to mention that under the emerging Dorset

Council Local Plan (the West Dorset, Weymouth and Portland Local Plan Review is not proceeding as decided by Dorset Council Cabinet on 25<sup>th</sup> June 2019 and work has begun on a new Dorset-Wide Local Plan) the proposed land-use allocation is changing. The emerging development strategy for Beaminster as set out in the Preferred Options Consultation 2018 (POC) is for development to be focused to the west and north of the town. As mentioned, the adopted Local Plan contained a mixed use allocation on land North of Broadwindsor Road (BEAM1). This site contained a requirement for employment land to be provided adjacent to the existing employment uses to the east of the site- partly prefaced on the proximity of that area to the then employment use at Clipper Teas, north of the Broadwindsor Road.

However, circumstances have now changed; the area close to the east of the site (part of the Clipper Teas site) has now been granted permission for residential development substantially reducing the appropriateness for employment uses to be located adjacent to housing (the reserved matters application WD/D/18/002592 for 38 dwellings has now been approved and planning condition requirements are now being processed). Furthermore, the emerging local plan strategy proposes to remove the requirement for employment land on the BEAM 1 site. It is now proposed that land to the south of Broadwindsor Road (BEAM4) is proposed for employment uses (up to 3.8ha) in the emerging local plan allowing for the expansion of existing businesses and for new businesses to move in or start. BEAM4 is located between the main Clipper Teas site and Lower Barrow Farm. Also, as part of that Review another area - Land to the West of Tunnel Road is proposed for residential development in the emerging local plan, and Land at Lane End Farm is allocated for employment uses as in the adopted local plan.

The preamble to BEAM1 also refers to “live-work units would be supported as part of this development”. Live/work units have not been specifically included in this application, but this is not a policy requirement - rather a possible option. They were not included in the other adjacent application. However, in reality with modern ways of working an increasing number of people work on a part or full-time basis from home and this would be likely to occur in any event.

The removal of employment use from the current BEAM1 allocation is further reinforced by the comments that were made by the Senior

Economic Regeneration Officer in relation to the application the Committee resolved to approve in January::

*I was involved in about 2006 with SWRDA (the former South West Regional Development Agency), who undertook a development appraisal of the site, which was then allocated purely for employment uses. I recall there were exceptional costs for drainage and utility connections as well as possible contamination and need for edge planting which concluded the size may not be viable for employment uses.*

*I note the policy requirement for the retention of part of the site for employment uses, you may wish to reconsider this given the recent residential outline consent granted on the adjacent employment area, Clipper Teas to east.*

*I note that there remains in Beaminster the BEAM2 site (Land at Tunnel Road) which if brought forward by the owner or third party could provide some future employment needs for Beaminster.*

It should also be noted that these factors were taken into consideration by the West Dorset District Council Planning Committee in January 2019, leading them to resolve to approve the application on the southern part of the allocation without any requirement for employment. Hence it would now be inconsistent with the emerging employment strategy for employment to be required on this part of the allocation. Moreover the Senior Economic Development Officer is content with the direction of employment policy and has commented "*I understand other sites are being considered for employment uses in Beaminster so am not concerned about the loss of the employment allocation at this site.*"

The laudable objective of the Town Council to encourage the identification of further employment land can be facilitated by engagement with the current Local Plan review process, but is not material to the decision on this application to revoke the Section 52 Agreement.

## **17.0 Conclusion**

17.1 There is no legal or planning ground for retaining the Section 52 Agreement, which left in place could hamper or prevent redevelopment for housing, and lead to unnecessary administrative costs for the Council.

## **18.0 Recommendation**

18.1 That subject to the Applicant paying the Council's proper legal costs, and indemnifying the Council generally in respect of such action, the Section 52 Agreement be revoked by deed of revocation..