

Parish: COPDOCK AND WASHBROOK

Location: The Mane Riding Centre, London Road

Proposal: Application under Section 106A of the Town and Country Planning Act 1990 – Discharge of planning obligation (occupancy) entered into under Section 106 in respect of the erection of a dwelling and garage (B/92/00345).

Applicant: Mr Andrew Coe

Case Officer: Lynda Bacon

Date for Determination: 5 April 2010

The application is reported to Development Committee at the request of the Ward Member.

THE SITE

1. The site is located on the eastern side of London Road (former A12 and now a classified 'C' road), within open countryside and to the south-east of Copdock Village. The application site extends to 2.44 hectares (6 acres) and was formerly used as a riding school, supported by stables, a barn, an indoor riding school and a two storey dwelling, which is the subject of this application. More recently, an internet based cycle business has operated at the site.

THE PROPOSAL

2. This application is submitted under Section 106A of the Town and Country Planning Act 1990. Permission is sought to discharge the obligation imposed by Section 106 Agreements dated 28th January 1992 and 21st June 2002, completed in connection with application B/92/0345, which granted outline planning permission for the erection of a dwelling and garage. The agreement dated 28th January 1992 requires that:

- 1) That six stables for full livery service in connection with the Mane Riding Centre be erected on the Property prior to the commencement of work in relation to the dwelling and garage the subject of the Development.
- 2) Not to occupy or permit or suffer to be occupied the dwelling the subject of the Development other than by a person:
 - i) solely or mainly employed or last employed at the Mane Riding Centre;
 - ii) solely or mainly employed or last employed in relation to any other business or agricultural operation carried out on the Property for which planning permission has been obtained; or
 - iii) solely or mainly employed or last employed in the locality in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990 or in forestry

Including any dependants of such a person residing with him or her or a widow or widower of such a person.

3. The agreement dated 21st June 2002 is a supplemental agreement that amended the last two lines of Para 2 above as follows:

"including any dependants of such a person residing with him or her or a non-dependant spouse or partner of such a person residing with him or her or a widow or widower of such a person"

4. The agent acting on behalf of the applicant has submitted a statement in support of the application, most of which is repeated below;

In dealing with this case, we have thoroughly researched the planning background and find inexplicable inconsistencies and anomalies as well as serious questions relating to the processing of the original applications in the early 1990s, and the need for the Agreements.

The site has a total area of only 1.6 hectares, which must afford it the title of being "tiny" especially bearing in mind the amount of "equestrian" accommodation erected on it over the years.

We now have a property which includes a 6-bedroomed house of some 350m² in floor area, 15 loose boxes, 4 pony boxes, a hayloft, tack room and a building of some 560m² in floor area described at least at one time as an indoor arena.

From my investigations, it would appear that the "arena" building was erected in probably 1987 as an agricultural structure supposedly exempt at that time from the need for specific planning permission. That of course would have been completely wrong because the building was not agricultural at all.

In March 1992, an application was submitted for the "erection of a dwelling and garage" and registered under reference B/92/0345. The application was the subject of a detailed report to committee dated 21 May 1992 and under the heading "Chief Planning Officer's Report" several important points were noted, précised below:

- *A functional and financial test to assess viability of the commercial enterprise was needed – and planning permission would only be granted when viability is "clearly proven".*
- *Confidential information submitted to support the information relating to the financial position over past trading years and projections lead the CPO to the conclusion that "...the business is not at present viable."*
- *The CPO's recommendation was that OPP-be refused for a permanent dwelling instead temporary permission for a mobile home would be " ... a reasonable way forward".*
- *Strangely, the recommendation was that the solicitor of the Council be authorised to secure an obligation under Section 106 to the effect that:*
 - (a) *6 stables for full livery service be erected prior to the commencement of work in relation to the dwelling; and*
 - (b) *the occupation of the dwelling should be limited to a person solely, or mainly, employed, or last employed at The Mane Riding Centre including any dependents for such persons residing with him or her, or a widow or widower of such a person.*

In the event, the Section 106 Agreement dated 28 January 1993 contained Obligations which did not follow the resolution.

In 1993 the Council granted outline planning permission for the erection of a "dwelling and garage" under register no. B/92/0345, a permission which contained 10 Conditions including Condition 3 which states:

"The occupation of the dwelling should be limited to a person solely or mainly employed, or last employed at The Mane Riding Centre (including any dependents for such persons residing with him or her), or a widow or widower of such a person."

The permission was subject to the prior completion of a Section 106 Agreement dated 28th January 1993 and, surprisingly, the Second Schedule of the Agreement contradicts in part and adds to Condition 3 of the Outline Planning Permission referred to above. Furthermore, it contains a very odd requirement:

'That six stables for livery service in connection with The Mane Riding Centre be erected on the Property prior to the commencement of work in relation to the dwelling and garage the subject of the Development.'

There was no point in requiring the applicant at that time to erect six stables which could then be dismantled and removed without any requirement that they be used for any purpose at all?

We cannot understand the second Obligation being imposed which requires the occupation of the dwelling not to be other than by a person:

- "(i) solely or mainly employed or last employed at The Mane Riding Centre;*
- (ii) solely or mainly employed or last employed in relation to any other business or agricultural operation carried out on the property for which planning permission has been obtained; or*
- (iii) solely or mainly employed or last employed in the locality in agriculture as defined in Section 336(1) of the Town & Country Planning Act 1990 or in Forestry*

including any dependents of such a person residing with him or her or a widow or widower of such a person."

There is no explanation as to why the occupancy requirement cast in the 106 Agreement is much wider than that imposed on the outline planning permission and, as regards Sub-section (ii) this appears to allow occupation which, in any other circumstances, would be completed contrary to policy for a site located in the "countryside" for planning policy interpretation purposes.

We appreciate there is a supplemental Agreement to the main one referred to above dated 21 June 2002 but this adds nothing really to our concerns.

*Government advice to LPAs dealing with applications for agricultural dwellings has been consistent and quite clear for many years. Planning permission should only be granted where it has been quite clearly established that there is an essential need for an **agricultural** business need. Furthermore, agricultural dwellings should be of a size commensurate with the established functional requirements and that dwellings that are unusually large in relation to the **agricultural** needs of the unit, or unusually expensive to construct in relation to the income it can sustain in the long-term should not be permitted (see PPS7, Annex A, paragraph 9). Our comments on the applicability of a Section 106 Obligation that allows for the occupation of **the dwelling** for uses that were never extant and therefore never capable of assessment in the first place, was no justification for approving the dwelling.*

By planning permission register no. B/O3/00840/FUL dated 2 July 2003, the Council granted change of use from Class D2 Equestrian Use to Class B1 business use together with the construction of a new vehicular access and access road. My investigations reveal that the application site area included all of the buildings other than the dwelling itself.

The Council will be aware that this planning permission has been implemented and the use ceased and there is therefore no commercial or equestrian activity taking place on the site. If our client decided to try and revert the equestrian use, specific planning permission would be required to do so.

In a nutshell, we now have a 1.6 hectare site on which there is a main building of some 560m² some of which has been used for B1 purposes together with what can only be described as a considerable sized dwelling all set in a countryside location.

It has long been the case that new permanent accommodation could not be justified on agricultural grounds unless the farming enterprise was economically viable, i.e. a financial test had to be carried out. Furthermore, agricultural dwellings have always had to be of a size commensurate with the average functional requirement and dwellings that were unusually large, in relation to the agricultural needs of the unit or unusually expensive to construct in relation to the income, likely to be sustained in the long-term should not have been permitted. The Council will know that it is the requirements of the enterprise rather than those of the owner or occupier relevant in determining the size of the dwelling appropriate to any particular holding. At the moment, I can find absolutely no evidence that the Council carried out any such exercise to establish this point to enable a dwelling of the size of The Paddocks to be built.

This application seeks the full discharge of both the Section 106 Agreements referred to above. The agreement was wrongly applied in the first place and cannot be justified. The size of this holding as an agricultural unit renders it impossible to make it economic to support the dwelling for the size of The Paddocks. There is no equestrian use that could possibly be viable (noted by the CPO years ago in his Committee Report), and there is no established essential need for the property to be occupied in connection with any B1 (or other approved) business use because, to put it quite simply, no case has ever been made out. It is also highly unlikely that someone retiring from agriculture locally would wish to acquire a dwelling of this size for "retirement" purposes.

RELEVANT HISTORY

5. 1953 – Planning permission granted for the erection of a bungalow.
6. 1962 & 1971 – two applications for a bungalow refused.
7. 1985 - Planning permission refused for the erection of a single-storey dwelling and detached double garage and construction of access (B/84/0906).
8. 1986 – Planning permission granted for a riding school (B/86/49).
9. 1991 – Planning permission refused for the erection of a two storey detached dwelling with garage (B/91/0162).
10. 1992 (November) – Erection of stable block and construction of car parking area and new vehicular access permitted (B/92/1004).
11. 1993 (February) – Outline planning permission granted for the erection of a dwelling and garage (B/92/0345).
12. 1993 – Approval of reserved matters pursuant to B/92/0345 (B/93/0648).

13. 2002 – Application under Section 106A of the Town & Country Planning Act 1990 to discharge the obligation limiting the occupation of the dwelling (the subject of the current application) was refused (B/02/00034/ROC). However, at the meeting of the Development Committee on the 13th March 2002, it was resolved to vary the terms of the Section 106 Agreement to allow a non-dependant spouse or partner to reside at the dwelling with a qualifying person.
14. 2003 – Planning permission granted for the change of use from Class D2 equestrian use to Class B1 Business use and construction of new vehicular access and access road (B/03/0840). The application was in relation to three existing buildings, namely an indoor riding arena, a block of 5 stables and an open fronted building that amounted to 827 square metres in floor area.
15. 2006 - Planning permission was refused under B/06/1436 for the retention of the dwelling approved under ref B/92/0345/FUL without compliance with Condition 03 limiting occupation of the dwelling to a person solely or mainly employed at The Mane Riding Centre.
16. 2008 – Planning permission granted under B/08/00671/FUL for the retention of 1 No. garage and 2 No. stores, to be used in association with the existing equestrian use, and erection of 1 No. cartlodge to be used ancillary to ‘The Paddocks’ dwellinghouse.
17. 2010 – Current application submitted by Liquidline for the change of use from Class B1 (Business use) to Class B8 (Storage & Distribution) ref B/10/00353/FUL. The application is in respect of the large building formerly used as an indoor riding arena and latterly as the cycle business and at the time of writing, the application has not been determined.

NATIONAL GUIDANCE

18. **PPS1:** Delivering Sustainable Development
19. **PPS4:** Planning for Sustainable Economic Growth
20. **PPS7:** Sustainable development in Rural Areas

PLANNING POLICIES

21. The Development Plan comprises the East of England Plan, adopted 2008, saved policies in the Suffolk Structure Plan, adopted 2001, and the saved policies of the Babergh Local Plan (Alteration No. 2) adopted 2006. The following policies are relevant to this proposal:

East of England Plan 2008

- **E2** (Provision of Land for Employment)
- **SS1** (Achieving Sustainable Development)

Babergh Local Plan (Alteration No 2) 2006

- **CR01** (Landscape Quality)
- **CR13** (Agricultural Occupancy Conditions)
- **EM24** (Retention Employment Sites)
- **HS04** (Countryside)

The relevant documents can be viewed via the internet. Please see page 4 for details.

CONSULTATIONS

22. PC – Whilst the Parish Council understands why the S106 was put in place originally, and knows that several owners have tried and failed to have the obligation lifted, the Parish Council recognises the reality of the situation and has no objections to the obligation being lifted.
23. LHA – Does not wish to restrict the grant of permission.

REPRESENTATIONS

24. To date one letter of objection has been received from a nearby resident that states that the only reason the dwelling was given permission initially was because of the specific use of the site, otherwise it would have been rejected.

PLANNING CONSIDERATIONS

Policy Background

25. The site is located within the countryside where the governing planning policies are PPS7 (Sustainable Development in Rural Areas), PPS4 (Planning for Sustainable Economic Growth) and policy CR01 of the Babergh Local Plan. The aim and purpose of policy CR01 is to protect the landscape character and quality of the countryside by restricting development to that which is essential for the efficient operation of agriculture, forestry and horticulture and outdoor recreation.
26. PPS4 and PPS7 both make specific reference to planning for sustainable and economic growth in rural areas and strive to raise the quality of life and the environment in rural areas by promoting thriving, inclusive and locally distinctive rural communities, whilst continuing to protect the open countryside for the benefit of all.
27. PPS4 Policy EC2 supports existing business and encourages new working practices such as live/work. Policy EC6 goes on to support the re-use of appropriately located and suitably constructed existing buildings in the countryside (particularly those adjacent or closely related to towns or villages) for economic development and sets out the criteria to be applied to planning applications for farm diversification, and offers support to diversification for business purposes that are consistent in their scale and environmental impact with their rural location. Furthermore and where appropriate, Policy EC6 supports equine enterprises that maintain environmental quality and countryside character.
28. PPS7 encourages more sustainable patterns of development by promoting a range of uses to maximise the potential benefits of the countryside fringing urban areas and by providing appropriate leisure opportunities to enable urban and rural dwellers to enjoy the wider countryside.
29. PPS7 confirms that isolated new houses in the countryside will require special justification for planning permission to be granted and where that special justification relates to the essential need for a worker to live permanently at or near their place of work in the countryside, PPS7 requires planning authorities to follow the advice in Annex A to the PPS, which states that it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists. When occupancy restrictions have outlived their usefulness, local planning authorities should set out their policy approach to the retention or removal of agricultural and, where relevant, forestry and other forms of occupancy conditions. These policies should be based on an up to date assessment of the demand for farm (or other occupational) dwellings in the area, bearing in mind that it is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding, that is relevant in the case of farm or forestry workers' dwellings.

Planning History & Assessment

30. The report presented to the Eastern Area Development Control Committee in May 1992, concerning the principle of erecting the subject dwelling, recommended that planning permission should be refused on two grounds. Firstly, it had not been adequately demonstrated that the commercial enterprise was sufficiently viable to warrant normal policy objections being overridden and secondly, a precedent would be established. It was resolved, however, that outline planning permission should be granted subject to the prior conclusion of a Section 106 agreement and the Planning Committee subsequently granted outline permission on this basis.
31. The terms of the executed S106 Agreement provides for the dwelling to be occupied in any one of three ways and the restrictions on occupancy have been tested twice since; once in 2002, when a similar application to discharge the planning obligation was submitted under Section 106A and which was subsequently refused (see relevant History section above) and again in 2006, when an application to retain the dwelling without complying with the occupancy condition was submitted and also refused. Application B/06/01436/FUL was refused for the following (part) reason:
32. *The proposal seeks to allow the dwelling to be occupied without reservation and the evidence submitted by the applicant in support of the proposal does not satisfy the criteria necessary to establish that the condition is no longer relevant to justify its removal. If approved, the Local Planning Authority considers the proposal would result in general unrestricted accommodation in an unsustainable location outside the confines of any built up area, contrary to Local Plan Policies. Moreover, the proposal if approved would represent an undesirable precedent for similar undesirable proposals.*
33. In summary, alternative options available to the occupiers of the property in 2002 and 2006 had not been explored and justifiably discounted, resulting in both cases being refused.
34. It is Officers opinion that Policy CR13 is directly applicable to the determination of this application as one of the three restrictions imposed on the use of this dwelling specifically refers to its use by a person employed or last employed in the locality in agriculture. Policy CR13 requires an application to remove agricultural restrictions to include evidence that the dwelling is not required by anyone in the locality and that there is no long-term need for the dwelling as restricted to warrant its retention. Furthermore, Policy CR13 requires the dwelling to be offered for sale on the open market for at least six months at a price that reflects the occupancy restriction and the limited market. No such marketing evidence has been submitted with the application and the dwelling has not been marketed.
35. In the absence of any realistic and sustained market campaign the possibility that an alternative occupier, who could comply with the agricultural element of the restrictions, may come forward cannot be discounted. Furthermore, a marketing campaign is the only feasible means to fully explore the market potential for other alternative occupiers of the dwelling, who are able to comply with the alternative restrictions imposed by the 106 agreement. Moreover, the possibility that the existing business could be reinstated by someone else has not been pursued.

36. The dwelling is located in the countryside wherein national and local policies seek to prevent the erection of new dwellings and the dwelling was approved as an exception to these policies. The terms of the Agreement should only be lifted or varied if it can be shown that the Agreement no longer serves a useful purpose. Policy considerations remain unchanged and a new dwelling would not be approved at this site today without an exceptional case being justified. The terms of the Agreement allow for a wide range of appropriate business uses to be undertaken at the site and in the absence of a sustained marketing campaign, insufficient justification has been presented to warrant setting aside the terms of the Agreement. It should also be noted that planning was granted in 2003 (B/03/00840/FUL) to change the use of three equestrian buildings to a Class B1 business use, thereby expanding the range of possible commercial uses that could operate at the site, whilst still allowing the occupiers of the dwelling to comply with the obligations imposed by the S106 agreement.
37. Whilst officers are mindful of the implications for the applicants if this proposal is refused, the personal circumstances presented in this case should not outweigh the unacceptable impact on the amenities of the locality and the existing use of land and buildings, which ought to be protected in the public interest.
38. The case made by the applicant's agent in support of the application is largely based on the belief that the 1992 decision to grant planning permission for the dwelling is fundamentally flawed and that planning permission should not have been granted and that the obligation was wrongly applied. Officer opinion is that the 1992 decision to grant outline planning permission for a dwelling with restricted occupancy was properly made and took account of circumstances pertaining at that time. That decision is still considered to be consistent with currently adopted local plan policy and PPS guidance as residential development in the countryside that is not essential for the efficient operation of agriculture and appropriate outdoor recreation, would be resisted. Whilst the applicant may consider that he has strong economic and practical grounds for wishing to seek the removal of the restrictions on the occupancy of the dwelling, it is not considered that there are legal grounds to reconsider the whole position.
39. The supporting information states that planning permission would be required to revert to an equestrian use of the site. This is not however the case as the permission granted under B/03/00840 for change of use to Class B1 was in relation to identified buildings on the site, annotated as buildings 1, 2 and 3 on the approved plan and not the site as a whole. If the permission was implemented in respect of building 1 (arena) only, then planning permission would now be required in order to revert to the former equestrian use of buildings 1, 2 or 3. If however, the use of buildings 2 and 3 for equestrian use did not cease although the use of building 1 for Class B1 purposes had commenced, then the continued use of buildings 2 and 3 would be lawful. Other equestrian buildings and the paddock areas are not affected by this decision.
40. The supporting information also indicates that there is no commercial or equestrian activity taking place on the site. Further investigations are therefore required to ascertain whether the dwelling is currently being occupied without complying with the obligations imposed by the S106 and in breach of the occupancy condition. In the event that a breach is confirmed, it would be appropriate to consider whether action should be taken to enforce planning controls.
41. In view of the above and having regard to the relevant development plan and its policies, the following recommendation, which is consistent with previous decisions, is made.

RECOMMENDATION

That permission be refused on the grounds of being contrary to policy CR13 and undesirable precedent.