

Planning Statement

**Overbury Farm House, Old
Odiham Road, Alton, GU34
4BX**

Prepared For
Mr S. Roots

10078
March 2021



bell cornwell

CHARTERED TOWN PLANNERS

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1 INTRODUCTION

- 1.1 Planning permission is sought by Mr and Mrs Roots for the removal of the S106 Agreement attached to planning permission F.31210/002/FUL at Overbury Farm House, Old Odiham Road, Alton, GU34 4BX to create two dwellings that can be inhabited separately.

SITE DESCRIPTION

- 1.2 Overbury Farm House and the associated Barn (aka an Annex), permitted through the grant of planning permission F.31210/002/FUL, are located towards the northern end of the Old Odiham Road. They are positioned to the east of this road with access taken from opposite Overbury Cottage. To the north, beyond the farmyard is Froyle Road here there is a restaurant and a number of houses. To the east and south is woodland.
- 1.3 The site is located within the countryside, but it is outside of the South Downs National Park. The site comprises previously developed land (as defined by the 2019 NPPF) as it is residential land outside of the defined built-up area).

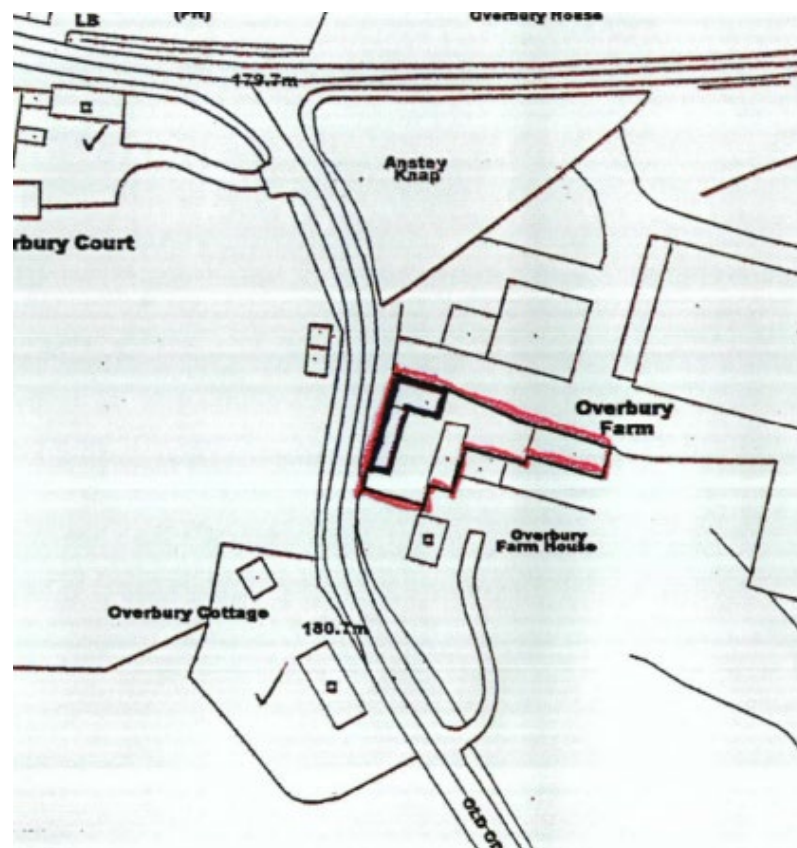


Figure 1 – Location of Barn and associated land and buildings (taken from plan within the S106 Agreement)



1.4 Overbury Farm House is located to the south and is physically separate from the Barn and its associated residential land and outbuildings. The Barn (Figure 2) and associated land and buildings are shown within the red line on the plan above (Figure 1). The site adjoins the farmyard of Overbury Farm to the north. The nearest settlement is Alton, less than 4km to the centre of the town.



Figure 2 – Photograph taken 2021 of the Barn

SITE HISTORY

1.5 A review of East Hampshire’s online planning pages confirms that the planning permission set out below is the only planning application/permission that is of note for this planning application:

- **F31210/002/FUL – Planning permission granted for the Change of use of Agricultural Land to Residential and Conversion of Stable to Dwelling (as amended by plans received 27/10/03 and 29/10/03) with associated S106 Agreement. Granted Jan 2005. Schedule 1 of the signed S106 Agreement sets out The Owner’s Covenants:**



1. *Not to allow suffer or permit the Development or any part thereof to be Occupied or used otherwise than for purposes ancillary to the use of the remainder of the Land for purposes within Class C3 of the Schedule to the Town & Country Planning (Use Classes) Order 1987*
2. *Not at any time to sell lease transfer or otherwise dispose of the Development separately from the remainder of the Land and not to sell lease transfer or otherwise dispose of the remainder of the Land separately from the Development*
3. *Not to create or suffer or permit to be created a separate curtilage around the Development*

PROPOSAL

- 1.6 Planning permission is sought to remove the S106 Agreement associated with planning permission F.31210/002/FUL at Overbury Farm House, Old Odiham Road, Alton, GU34 4BX.
- 1.7 This would enable the two existing buildings (and their associated residential land and outbuildings) to be separately used i.e. removing all existing ties between the Farm House and Barn. This would enable a separate curtilage to be created and it would allow the Farm House or Barn to be separately sold or let.
- 1.8 No physical alterations are required to facilitate this 'separation'.



2 S106 REMOVAL

2.1 This planning permission was subject to a S106 agreement which restricted the following (in summary):

1. That the proposed development shall be used only for the purposes ancillary to the use of the remainder of the land as a dwelling house.
2. That the proposed development shall not be sold or let separately from the remainder of the land.
3. That a separate curtilage shall not be formed around the proposed development.

2.2 The extent of the S106 agreement is shown on the extracted plan below.

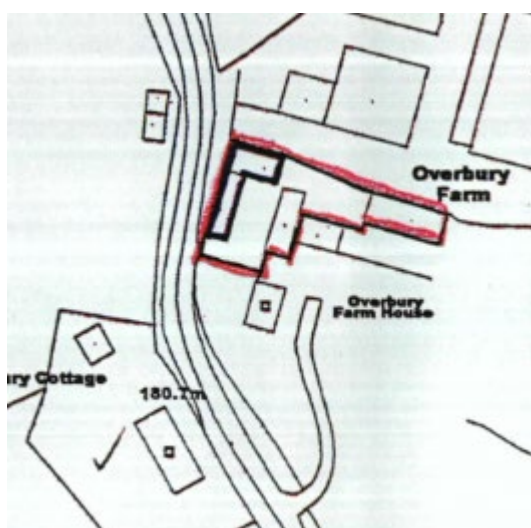


Figure 3 – extract of the plan attached to the S106

LEGAL BACKGROUND

2.3 The mechanism for amending the S106 agreement is provided by s106A of the Town and Country Planning Act 1990, which states that a planning obligation may not be modified or discharged except *either* by agreement between the “appropriate authority”, meaning, in this case, the Local Planning Authority. Therefore, as acknowledged in the statutory provision, there is always the possibility to renegotiate and agree a variation or removal of a s106 Agreement, outside of the machinery provided by the Act. However, there isn’t any right of appeal in those cases. Whilst we are confident in the planning case we are making with this



submission; this formal application keeps the option of an appeal open should the LPA not agree to the removal of the s016.

- 2.4 An agreement to modify or discharge a planning obligation can be made *at any time* (and can only be entered into by deed, by virtue of s106A(2) of the 1990 Act). However, after the expiry of the “relevant period”, as defined, an application can be made to the appropriate authority for the modification or discharge sought (see s106A(3)). This means *5 years* beginning with the date that the obligation is entered into (s106A(4)(b)).
- 2.5 The first consideration, then, in seeking the removal of a planning obligation, is the age of the s106 Agreement. If less than 5 years has passed, agreement must be sought. If more than 5 years has passed an application can be made. In this case, the s106 Agreement is 17 years old so comfortably beyond the 5 year threshold.
- 2.6 The National Planning Practice Guidance (NPPG) states¹ that a planning obligation “... can be renegotiated at any point where the local planning authority and developer wish to do so”. The reference in the NPPF text to 2010 or 5 years is presumably an outdated reference which is inconsistent with the legal provisions identified above.
- 2.7 The modification and Discharge Regulations (provided for by section 106A(9)) made provision for the form and content of modification or discharge applications, the publication of notice of the application, the procedure for considering any representations made about the application, and the notice to be given to the applicant of the determination made.
- 2.8 The application must be determined within 8 weeks of receipt of the application unless an extended period is agreed.
- 2.9 In terms of the decision-making process, there are certain principles that are to be applied where an application is made? They are contained within section 106A(6) of the 1990 Act. Essentially the authority may either determine:

¹ **Can an agreed planning obligation be changed?**

Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predated April 2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Ton and County Planning Act 1990). Paragraph: 020 Reference ID: 23b-020-20190315



- *That the planning obligation shall continue to have effect without modification;*
- *That the obligation no longer serves a useful purpose and shall be discharged; or*
- *That the obligation continues to serve a useful purpose, but as it would serve that purpose equally well if it had effect subject to the modifications specified in the application, it shall have effect subject to those modifications. In this case, the modified obligation is enforceable as if it had been entered into on the date on which notice of the determination was given to the application.*

2.10 In *R (Mansfield DC) v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 1794 (Admin) it referred to the correct approach to considering a s106A application as that articulated in *R (The Garden and Leisure Group LTD) v North Somerset Council* [2003] EWHC 1065 (Admin).

2.11 “There are four essential questions to be considered: what is the current obligation? What purpose does it fulfil? Is it a useful purpose? And if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications? [Counsel] lays stress on the words ‘equally well’ and describes them as ordinary English words importing a principle of equivalence ...” In this case, the judge continued that section 106A involves a precise and specific statutory test and does not bring in the full range of planning considerations involved, for example, in an ordinary decision on the grant or refusal of planning permission.



3 PLANNING POLICY CONSIDERATIONS

3.1 Section 70 of the Town and Country Planning Act 1990 and 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the development plan unless other material considerations indicate otherwise.

3.2 In the case of this proposal, the development plan comprises:

- East Hampshire District Local Plan (Part 1): Joint Core Strategy (June 2014) (JCS), and
- East Hampshire District Local Plan (Part 2): Housing and Employment Allocations (April 2016) (HEA).

3.3 Material considerations should also be taken into consideration; this includes the National Planning Policy Framework (2019) (NPPF) which is the main material consideration.

EAST HAMPSHIRE PLANNING POLICIES

3.4 Policy CP1 (Presumption in Favour of Sustainable Development) of the JCS reflects the presumption in favour of sustainable development set out within the NPPF. Planning applications that are in accordance with the development plan should be approved without delay and where there are no policies relevant to the application the Council should grant planning permission unless material considerations indicate otherwise. i.e. if any adverse impacts of granting permission would significantly or demonstrably outweigh the benefits or if specific policies in the NPPF indicate that development should be restricted.

3.5 Policy CP2 (Spatial Strategy) of the JCS sets out the amount of new development growth required to meet the needs of the District. It sets out that new development should make the best use of previously developed land and buildings within existing built-up areas. 10060 new dwellings are identified as being needed.

3.6 Policy CP6 (Rural Economy and Enterprise) of the JCS identifies that development will be permitted for the conversion of rural buildings for appropriate uses. These uses include general residential use, where appropriate and where assessment shows that the use for the above purposes is not possible or is unsuited. This is provided that they do not harm the



character of the site or its surroundings or do not adversely affect natural beauty, wildlife, cultural heritage and opportunities for recreation.

- 3.7 Policy CP10 (Spatial Strategy for Housing) of the JCS reiterates the need for 10060 new dwellings between 2011 and 2028. It states that outside settlement policy boundaries new housing will only be permitted in limited circumstances.
- 3.8 Policy CP19 (Development in the Countryside) of the JCS looks to operate a policy of general restraint in order to protect the countryside for its own sake. It sets out that the only development allowed in the countryside will be that with a genuine and proven need for a countryside location.
- 3.9 On the face of it, therefore, whilst the provision of a separate dwelling helps towards the strategic aims of the local plan and towards fulfilling its spatial strategy for housing, there is no policy which specifically refers to the subdivision of dwellings. The development plan is silent on this.

NATIONAL PLANNING POLICY FRAMEWORK

- 3.10 The NPPF (2019) is the primary material consideration of weight and provides the Government's up to date guidance on how to determine planning applications and draft local plans. It advises at paragraph 11d) that where there are no relevant development plan policies, planning permission should be granted unless ii) any adverse impacts of doing so would demonstrably outweigh the benefits. Paragraph 212 elaborates that "The policies in this Framework are material considerations which should be taken into account in dealing with applications from the day of its publication".
- 3.11 At paragraph 79 of the NPPF in Section 5 (Delivering a sufficient supply of homes) guidance is provided on rural housing. Guidance advises that:

Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

- a) There is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*



- b) *The development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*
- c) *The development would **re-use redundant or disused buildings** and enhance its immediate setting;*
- d) *The development involves the **subdivision of an existing residential dwelling**; or*
- e) *The design is of exceptional quality, in that it:*
- *Is truly outstanding or innovative, reflecting the highest standards in architecture, and would help raise standards of design more generally in rural areas; and*
 - *Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

3.12 Criteria (c) and (d) are applicable to the proposal for the subdivision of a dwelling to two dwellings on this site.

PLANNING ASSESSMENT

3.13 Since the grant of planning permission F31210/002/FUL there has been a significant change to planning policy at both a local and national level. The current policy position is set out clearly above. Furthermore, there has been a change to the family requirements at Overbury Farm House. When the planning application was granted there was a need for the converted stables to be associated with the farm house. This need has since disappeared resulting in this application being submitted to have the S106 restrictions removed leading to the separation of any ties between the farm house and the Barn.

3.14 The nature of the planning application is to separate one planning unit (comprising of the main house and Barn) to two separate houses (planning units). This will result in the net gain of one new dwelling.

3.15 This net gain would, albeit in a small way, contribute to the District meeting its housing target. It is acknowledged that the Council in their latest housing land supply position statement (Sept 2020) set out that they can demonstrate a five-year housing land supply at 6.11yrs. However, the existence of a five-year housing land supply does not place an upper limit on the number of dwellings that can be permitted.



- 3.16 Considering planning policy for new dwellings is slightly misleading however, as this is not a planning application seeking planning permission for a new house to be physically constructed in the countryside. The building and associated residential paraphernalia already exist at the site. The current Barn exists because of a previous conversion of an existing stable building which, if considered from the outset in today's planning policy position, would be supported by Policy CP6 and para 79 (c) of the NPPF (if the dwelling is considered isolated).
- 3.17 The NPPF at 79(d) then clearly lends support to the subdivision of an existing residential dwelling when isolated. There is no stance on this within the District's planning policies.
- 3.18 There is no fixed legal definition of an 'isolated home', there have been many legal decisions which all provide a slightly different opinion on the definition of isolated. The clearest legal interpretation of 'isolated homes' is provided in the Braintree case where Lindblom LJ concluded that 'the word "isolated" in the phrase "isolated homes in the countryside" simply referred to a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgement for decision-maker in the particular circumstance of the case in hand'.
- 3.19 In this case, the site is not physically isolated from other built development as it is adjacent to the farm house, a farm yard and across the road from a private house, and there are a few properties nearby along the main road. However, the site is not well located to local services and facilities, there is limited access to public transport services and most importantly the site is not located within a settlement boundary or near to a settlement boundary. Therefore, it is appropriate to consider the property to be isolated and thereby enable para 79 of the NPPF to be applied. Having said that, if it is appropriate to subdivide properties in an isolated location then logically it should be appropriate to subdivide properties in a location which is not isolated. We suggest that the reference to "isolate locations" in this scenario is not an requirement to be taken literally, it is more referring to new dwellings in the countryside for which there is an assumption that they are isolated by not being in a settlement.
- 3.20 To conclude, the NPPF supports the principle of subdividing dwellings when in an isolated location. The District's policies do not provide a clear stance on the subdivision of dwellings. They focus on the creation of 'new dwellings' that require physical changes to be made to enable the new dwellings to be created i.e. conversion of existing buildings (which historically



is how this dwelling came about). Due to the District policies being silent on the subdivision of dwellings it is appropriate to apply the NPPF test of paragraph 79.

CHARACTER AND APPEARANCE

- 3.21 The site lies within the countryside and adjacent to a farm yard and woodland. The buildings are both of a suitable size to facilitate separate use. The buildings do not require any physical changes to enable them to be used as two separate dwellings. The land associated with the buildings again do not require any physical change to facilitate the creation of two separate curtilages. The two buildings already have clearly defined garden areas of their own.



Figure 3 – Two photos of the site taken from Old Odiham Road

- 3.22 The site is well screened from the road with the Barn itself forming the western boundary edge between the site and the Old Odiham Road. Views into the site are limited due to the existing boundary treatment. Consequently, the effect of the development on the rural character and appearance of the area would be extremely limited.
- 3.23 The proposal would not cause unacceptable harm to the character and appearance of the area and would conserve the landscape. The proposal is in accordance with policy CP20 of the JCS.

HIGHWAYS

- 3.24 Due to the *isolated* location of the site, it is acknowledged that occupiers of the development would be reliant on the use of private motor vehicles to access most day-to-day services and facilities. Historically some trips would have been made jointly with the occupiers of the farm house, but the Barn would have also generated a number of separate journeys. As a result, the use of the farm house and Barn as two separate dwellings would not be significantly different to the permitted arrangement. Overall, the number of vehicle movements associated with the two dwellings would not be significant.



3.25 Paragraph 103 of the NPPF (2019) should be taken into consideration as it identifies that opportunities to maximise sustainable transport solutions will vary from urban to rural areas and that should be taken into account in decision making.



4 CONCLUSIONS

- 4.1 Planning permission is sought to have the S106 legal agreement attached to planning permission F.31210/002/FUL removed. This would lead to the splitting of the current planning unit resulting in the net gain of one 'new' dwelling.
- 4.2 The 'new' dwelling exists, and no physical works are required to enable it to function as a separate dwelling.
- 4.3 The District's planning policy is silent on the subdivision of houses in the countryside. Planning policy for rural areas is obviously looking to resist new development however, it does support the conversion of existing buildings (which is how the Barn came about initially through conversion of stables).
- 4.4 This statement demonstrates that we are considering the development of an isolated home due to a number of factors. Consequently, paragraph 79 of the NPPF can be applied. This sets out exceptions where new isolated homes are acceptable with criteria (d) the subdivision of an existing residential dwelling being applicable.
- 4.5 Due to there being no physical changes required to either properties to facilitate their separation, or to the land, there will be no harm to the appearance or character of the landscape. The development will not give rise to a significant increase in vehicle movements.
- 4.6 The proposal accords with local or national planning policy and should therefore be considered acceptable.