miles planning solicitors

10 Fennyland Lane
Kenilworth
Warwickshire
CV8 2RS
T: 0797 998 3763
E: lucy@milesplanning.com

01 November 2011

Barnsley MBC
Planning Department
PO Box 604 Barnsley
S70 9FE

Dear Sirs

**Application for removal of Section 52 Agreement**

**Royston Springs, Common Lane, Royston, Barnsley S71 4ED**

This letter is written in support of an application submitted by Townsend Planning Consultants on behalf of Mr and Mrs Smith for the removal of the Section 52 Agreement dated 22 April 1982 from the Register of Local Land Charges.

1. Background

On 22 April 1982 outline planning permission was granted for an agricultural dwelling and garage on the site at Royston Springs (Application Reference B81/1502/RO). The occupancy of the site was limited by a condition attached to the planning consent and in addition a Section 52 Agreement was completed between the owner of the property at that time, Mr. Leslie A. Heppinstall, and Barnsley MBC.

Under Clause 3 (4) of the Section 52 Agreement the developer of the site covenants as follows:

*"Not to cause or permit the dwelling house to be erected on the said land in pursuance of the hereinbefore mentioned grant of planning permission to be occupied as such by persons other than person wholly or mainly or last employed locally in agriculture as defined in section 290(1) of the 1971 Act or in forestry PROVIDED always that this covenant shall not preclude the occupation of the said dwelling house by the dependence of such person residing with him or her by the widow or widower (as the case may be of that same person".*

On 18 October 1982 a further planning application was made under Application Reference B82/1501/RO for approval of reserved matters for the detached house and integral double garage subsequent to application reference B81/1502/RO.

In 1985 an outline application was submitted for an additional dwelling, in the form of a bungalow, to be built on the site but permission for this was refused on 15 September 1986 on the grounds that the additional dwelling in the green belt was not essential and therefore did not meet the policy requirements.

A further application under application reference B85/1331/R0 was made by Mr Heppinstall for a bungalow and was approved on 29 November 1985. This consent was implemented by the current owners, Mr and Mrs Smith following their purchase of the site in mid-1990.

Mr and Mrs Smith now wish to sell the site but are unable to find a buyer, despite extensive marketing, due to the agricultural occupancy restriction contained within the Section 52 Agreement which remains listed on the Register of Local Land Charges.

Mr and Mrs Smith have therefore sought advice in respect of the validity and applicability of the Section 52 Agreement and the grounds for its removal from the Register.

2. Grounds for removal

The Section 52 Agreement dated 22 April 1982 was entered into in order to restrict the occupation of the new dwelling to those persons employed in agriculture. It is clear from the drafting of the Section 52 Agreement that its effect was only to restrict or regulate the development to which it related at that time. The development to which the Agreement relates is specified in Schedule 2 of the Agreement as the "erection of a dwellinghouse and garage and associated works (application reference B/81/1502 dated 12th October 1981)".

Whilst the Section 52 Agreement as drafted had the effect of binding the land to which it related, i.e. Royston Springs, it can only bind it on the terms stated in the Agreement. Due to the drafting of the Agreement, the interpretation which must be applied is that the Agreement only took effect on the implementation of the planning permission to which it related. It is not capable of applying to any subsequent permission, unless a supplemental deed was entered into to extend the Agreement to a subsequent planning permission.

Therefore, as permission B/81/1502/RO was never implemented and no supplemental deed was entered into between the owner of the land and the Council, the Section 52 Agreement dated 22 April 1982 is not capable of binding the later permission which was implemented by Mr and Mrs Smith.

As the planning permission granted under planning application reference B/81/1502/RO has now expired and a different permission has been implemented the Section 52 Agreement is no longer capable of binding the land. As such there is no justification for it to be retained as a charge against the land on the Register of Local Land Charges.

3. Conclusion

As stated above the drafting of the Section 52 Agreement means that it only bound the land in so far as the planning permission to which it related was implemented. As the permission granted under reference B/81/1502 was never implemented there is not a "development" to which it relates and it therefore cannot bind the land in respect of subsequent planning consents in the absence of an express deed to extend its application to subsequent permissions.

We therefore respectfully submit that there is a strong justification for the removal of the Section 52 Agreement from the Register of Local Land Charges and request that the Council grants consent for the amendment of the Register accordingly.

Yours sincerely

[redacted]

**Lucy Miles**
**Miles Planning Solicitors**

*Enclosures:*

1. *Planning permission B81/1502/RO and associated plans*
2. *Planning permission B85/1331/RO and associated plans*

3. *Copy of completed Section 52 Agreement (obtained from microfiche records)*