

ITEM NUMBER: 5f

21/03561/VAR	Deed of Variation to S106 agreement relating to 4/03481/15/MFA	
Site Address:	Flaunden House Stables, Flaunden, Hertfordshire HP3 0PW	
Applicant/Agent:		Abel Bunu
Case Officer:	Elsbeth Palmer	
Parish/Ward:	Flaunden Parish Council	Bovingdon/ Flaunden/ Chipperfield
Referral to Committee:	Scheme of delegation (4(a)) Proposals seeking variations to existing legal agreements not considered minor by the Group Manager (Development Management and Planning).	

1. Introduction/Background

- 1.2 This report is the result of an appeal which has been submitted against the non-determination of planning application 21/03561/VAR.
- 1.3 The above planning application was received on 13th September, 2021. To date the Local Planning Authority has not determined it and the applicant has appealed against its non-determination. The views of the LPA are invited as part of the appeal procedure. The Planning Inspector will however determine the appeal.
- 1.4 The application has therefore been brought before Members not for determination but to ascertain the Council's views with regard to the proposal. The views of the Planning Committee will form the basis of the appeal statement that must be submitted to the Planning Inspectorate by the 8th July, 2022.
- 1.5 The whole of this site was the subject of a holistic approach considered under planning application 4/03481/15/MFA which aimed to allow some residential use on the site whilst re-establishing the previous equestrian use.
- 1.6 The approval of the above MFA was subject to the signing of a legal agreement. The purpose of the UU was to ensure that a commercial equestrian use was re-established on the site by tying the two-bedroom dwelling, the 16 stables and associated land together for the sole use of the equestrian activity.

2. RECOMMENDATION

It is recommended that the application be refused based on the following:

- The changes to the legal agreement would undermine the very special circumstances which were considered to make the proposal acceptable in the Green Belt;
- Suggested wording of the legal agreement very broad – legal agreements need to be detailed, clear and concise; and
- Incorrect type of application to achieve what is in essence an amendment to the original MFA application.

3. SUMMARY

- 3.1 Under the MFA the only reason that the two barn conversions were granted was under the proviso that the equestrian use on the site be maintained/re-established. This proposal suggests a modification to this use to a less intensive use which would change the use of the site and the existing buildings.
- 3.2 It is considered that the suggested wording of the legal agreement is very broad – legal agreements need to be detailed, clear and concise and that an application to vary a legal agreement (VAR) is not the correct type of application to achieve what is in essence an amendment to the original MFA application – a change of use.
- 3.3 An amended MFA with a new appropriately worded legal agreement is required before any full assessment of the proposed change of use can be made.

4. SITE DESCRIPTION

- 4.1 The site (outlined in red) is located on the eastern side of Birch Lane, Flaunden and is accessed via an unnamed access lane. The site is located near to the intersection of Birch Lane and Flaunden Lane which comprises a mix of residential, community and agricultural buildings.
- 4.2 Birch Lane is rural in character with broken footpaths although the road reserve widens slightly in front of the six semi-detached dwellings (which are opposite the site) to provide a parking layby. Boundary treatments generally consist of thick hedging which conceal buildings (there is little building presence on the eastern side) such that the buildings at the Baptist Church, Birch Lane House and the garage at Long Meadow appear as a standalone features in the lane.
- 4.3 The site comprises the following:
- Barn A – subdivided into two semi-detached dwellings – now known as Ziggy and Buttercup Barns;
 - Barn B – now called “Honeysuckle Cottage” – which is in residential use and the Manager’s cottage;
 - Large U shaped stable building and a ménage;
 - Smaller stables on northern side of the ménage;
 - The Coach House – a residential unit which historically was the manager’s cottage for the equestrian use; and
 - Approximately 16 acres of pasture.
- 4.4 The site is located within the Metropolitan Green Belt and partly covered by the Flaunden Conservation Area. The boundary of the Conservation Area runs along the western side of Barn A and includes the access road. The site is not located within a designated village in the Green Belt.

5. PROPOSAL

5.1 Variation of legal agreement relating to 4/03481/15/MFA “Conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear extension to coach house; and refurbishment and improvement of existing stables”.

5.2 The proposed modifications include:

Clause 1.3

Widen the definition of “commercial usage” used in the agreement – stabling for equestrian use – to “any rural based enterprise”.

Re-word Clause 16 (b) (i)

Change from - the Owner will (unless the Council otherwise agree in writing) in perpetuity, not use nor permit the use of the Existing Stables other than for Commercial Use.

To – “Not use nor permit the use of the existing stables for any use not considered appropriate in the Green Belt and countryside.”

Re-word Clause 16(b)(ii)

Change from – the Owner will (unless the Council otherwise agree in writing) in perpetuity, not use nor permit the use of Tie Barn 2 other than as a Manager's Cottage.

To - “Not use nor permit the use of Tie Barn 2 for purposes considered inappropriate in the Green Belt and countryside unless very special circumstances can be demonstrated.”

Re-word Clause 16(b)(iii)

Change from - the Owner will (unless the Council otherwise agree in writing) in perpetuity, not use nor permit the use of any land other than the houses constructed pursuant to the Development or as otherwise provided herein for any purpose other than equestrian stables and associated equestrian uses.

To - “Not use nor permit the use of any land other than the houses constructed pursuant to planning permission reference 4/03481/15/MFA and any other subsequent permissions, other than for uses considered appropriate in the Green Belt or where very special circumstances can be demonstrated.”

Re-word Clause 16 (c)

Change from - ‘Not without the prior written consent of the Council make any alterations or additions to the Existing Stables, nor change the use thereof’

To - ‘Not without the prior written consent of the Council make any material alterations or additions to the Existing Stables, nor change the use thereof’

The information submitted with this application includes a copy of:

- The DMC report for the MFA;
- Decision notice for the MFA
- The Unilateral Undertaking dated 28th June, 2016;
- Equine Business Plan dated November, 2020; and
- Planning Supporting Statement.

6. PLANNING HISTORY

Planning Applications (If Any):

19/03114/ROC - Removal of condition 11 of planning permission 4/01658/16/FUL (conversion of existing agricultural barn to 2 semi detached dwellings)
WDN - 4th February 2020

20/01452/DRC - Details as required by condition 4 (Tree protection plan) and condition 9 (garage details) attached to planning permission 20/00089/FUL (Raising of Roof, Change of Roof Pitch, Conversion of Barn to Residential Use and Changes to Fenestration).
GRA - 3rd August 2020

20/03219/DRC - Details as required by condition 2 (Materials) and 8 (Hard _ Soft Landscaping) of planning permission 20/00089/FUL (Raising of Roof, Change of Roof Pitch, Conversion of Barn to Residential Use and Changes to Fenestration)
REF - 15th December 2020

20/03345/FUL - Construction of 2 new dwellings.
REF - 23rd December 2020

21/00365/FUL - Raising of roof, Change of roof pitch, Conversion of barn to residential use and changes to fenestration. Repositioning of tree planting screen.
GRA - 6th August 2021

21/04607/PIP - Construction of a detached dwelling on land adjacent to Honeysuckle Barn
REF - 27th January 2022

4/011111/81 - Historic File Check DMS for Documents and Further Details
DET - 21st October 1981

4/01615/80 - Historic File Check DMS for Documents and Further Details
DET - 4th December 1980

4/02327/19/DRC - Details as required by condition 2 (materials) condition 3 (landscaping) condition 4 (contamination), condition 7 (layout of use) condition 8 (fire hydrants) condition 10 (business plan) attached to planning permission 4/01658/16/FUL (Conversion of existing agricultural barn to 2 semi-detached dwellings.)
GRA - 12th February 2020

4/02200/19/FUL - Conversion of two rooms in existing building to make residential accommodation. Internal re-configuration and minor external Alterations.(retrospective).
GRA - 11th November 2019

4/01674/19/NMA - Non material amendment to planning permission 4/03481/15/mfa - conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear
GRA - 10th September 2019

4/01164/19/TCA - Work to trees
RNO - 26th June 2019

4/00915/19/TCA - Fell oak tree
RNO - 31st May 2019

4/02176/18/FHA - Single storey rear extension
GRA - 23rd May 2019

4/02119/17/FHA - Single storey side extension and alterations
GRA - 19th February 2018

4/01863/17/LBC - Replace existing kitchen, instal wood burning stove in existing chimney, replace existing stud wall with plasterboard, replacement bathroom, damp and woodworm treatment, plaster dining and living room ceilings, repoint plaster on chimney breast and surrou
GRA - 19th September 2017

4/01300/17/DRC - Details required by condition 3(landscaping), 4(contaminated land), 5(contaminated land), 7(approved plans), 8(fire hydrants), 11 (materials) and 12 (business plan) attached to planning permission 4/02937/16/ful - conversion of agricultural barn to form a
GRA - 13th July 2017

4/01239/17/RET - Material change of use from workshop and office to bedroom, interior reconfiguration and external minor amendment (retrospective).
WDN - 20th May 2019

4/01192/17/DRC - Details of materials, landscaping, contamination, horse and pedestrian safety, sustainability, fire hydrants and business plan as required by conditions 2, 3, 4, 7, 8 and 10 of planning permission 4/01658/16/ful (conversion of existing agricultural barn t
REF - 3rd January 2019

4/01069/17/ROC - Variation of conditions 2 (materials) & 11 (approved plans) attached to planning permission 4/01658/16/ful (conversion of existing agricultural barn to 2 semi detached Dwellings.
WDN - 20th May 2019

4/00742/17/FHA - Single and two storey side extension, first floor extension and roof window
REF - 7th June 2017

4/02937/16/FUL - Conversion of agricultural barn to form a pair of semi detached dwellings comprising a two-bedroom unit for a stable manager with associated tack storage, lockable office and a one-bedroom dwelling for open market Housing.
GRA - 24th March 2017

4/02298/16/DRC - Details required by conditions 3 (hard and soft landscaping), 4 (phase 1 report), 6 (layout of equestrian use), 7 (fire hydrants), 10 (external materials), 11 (external materials) and 12 (business plan) attached to planning permission 4/03481/15/mfa - con
GRA - 13th February 2017

4/01658/16/FUL - Conversion of existing agricultural barn to 2 semi detached Dwellings.
GRA - 24th March 2017

4/03688/15/FUL - Part demolition of existing agricultural barn and change of use to a daytime community centre and warden's office. change of use of existing parking area to 7 traveller and gypsy pitches including 7 day units
INSFEE -

4/03481/15/MFA - Conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear extension to coach house; and refurbishment and improvement of existing stables.
GRA - 5th July 2016

4/03435/15/FUL - Conversion of agricultural barn to b1a office space
case withdrawn
INSFEE -

4/02987/15/FHA - Single storey rear extension
WDN - 11th October 2016

4/02986/15/FUL - Conversion of existing agricultural barn to form a detached two bedroom dwelling
WDN - 26th September 2016

4/02895/15/FUL - Conversion of existing agricultural barn to form a detached four bedroom house with home office and stables (amended Scheme).
WDN - 4th November 2015

4/01123/15/FUL - Conversion of an existing stables to form a single four bedroom house with garage and workshop (revised Scheme).
REF - 21st August 2015

4/00201/15/FUL - Conversion of existing stables to form a four bedroom house with garage and workshop
WDN - 17th March 2015

Appeals (If Any):

21/00005/REFU - Construction of 2 new dwellings.
DIS - 25th June 2021

21/00075/NONDET - Deed of Variation to S106 agreement relating to 4/03481/15/MFA
INPROG -

4/02986/15/FUL - Development Appeal
- 17th August 2016

4/02987/15/FHA - Development Appeal
- 17th August 2016

4/01123/15/FUL - Development Appeal
- 17th August 2016

4/02089/01/CAC - Development Appeal
- 4th September 2002

7. CONSTRAINTS

Flauden Conservation Area
Green Belt
Former Landuse
Source Protection Zone
SSSI Impact Risk Zones
LHR Wind Turbine
15.2 m Air Dir Limit
ADV – Area of special control for adverts
CIL 2

8. REPRESENTATIONS

Consultation responses

- 8.1 There were no consultee responses from Legal Services or Strategic Planning and Regeneration. There is no requirement to consult with the Parish Council for VAR applications. Despite not being consulted the Parish Council did make a comment on this application while commenting on another application for this site – see Appendix A.

Neighbour notification/site notice responses

- 8.2 There was no neighbour notification or site notice for this application and no neighbour comments on this application.

9. PLANNING POLICIES

Main Documents:

National Planning Policy Framework (2021)
Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)
Dacorum Borough Local Plan 1999-2011 (adopted April 2004)

Relevant Policies:

NP1 - Supporting Development
CS5 - The Green Belt
CS7 - Rural Area
CS8 - Sustainable Transport
CS9 - Management of Roads
CS10 - Quality of Settlement Design
CS11 - Quality of Neighbourhood Design
CS12 - Quality of Site Design
CS13 - Quality of Public Realm
CS14 - Economic Development
CS17 - New Housing
CS25 - Landscape Character
CS27 - Quality of the Historic Environment

CS29 - Sustainable Design and Construction
CS31 - Water Management
CS32 - Air, Water and Soil Quality

Saved Policies of the Dacorum Borough Local Plan

Policies 13, 81,110
Appendices 3 and 5

Supplementary Planning Guidance/Documents:

Accessibility Zones for the Application of Car Parking Standards (2020)
Planning Obligations (2011)
Roads in Hertfordshire, Highway Design Guide 3rd Edition (2011)
Site Layout and Planning for Daylight and Sunlight: A Guide to Good Practice (2011)

10. CONSIDERATIONS

Policy Matters

- 10.1 The Planning Practice Guidance (PPG) states that 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 predates 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.
- 10.2 Section 106A (6) of the TCPA 1990 as amended states that where an application is made to an authority under subsection (3), the authority may determine—
- that the planning obligation shall continue to have effect without modification;
 - if the obligation no longer serves a useful purpose, that it shall be discharged; or
 - if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.
- 10.3 The Section 106 agreement is dated 28th June, 2016.
- 10.4 A subsequent application for full planning permission for the conversion of an agricultural barn to form a pair of semi-detached dwellings comprising a two-bedroom unit for a Stable manager with associated tack storage, lockable Office and a one bedroom dwelling for open market Housing was granted and required a deed of variation which was agreed on 23rd March, 2017.
- 10.5 The planning obligation is over 5 years old so an application may be made to the local planning authority to change the obligation.

Assessment against aims of MFA

10.6 The proposed changes to the wording of the Section 106 agreement would be contrary to condition 9 from the 4/03481/15/MFA for Conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear extension to coach house; and refurbishment and improvement of existing stables.

9. **The occupation of the two bed conversion shall be limited to a person solely or mainly working at the stables located immediately north-east of the dwelling or a widow or widower of such a person and to any resident dependants.**

Reason: For the avoidance of doubt and to ensure that the stables opposite will be retained and offered to local people for the stabling of their horses. The two bed conversion will help support the rural economy and maintenance of the wider countryside. To ensure compliance with CS 5.

Equine Business Plan

10.7 In order to support the loss of the subject site from the overall equestrian use previously approved the agent has submitted an Equine Business Plan.

10.8 The aim is to change the use from commercial equestrian to retired horses (8-12). This change of use would mean less requirement for land and stable buildings

10.9 The main issue to consider is that under the MFA the only reason that the two barn conversions were granted was under the proviso that the equestrian use on the site be maintained/re-established. This proposal suggests a modification to this use to a less intensive use which would change the use of the site and the existing buildings.

Loss of the tie barn 2 for the manager's cottage

10.10 This was also a key matter for the approval of the MFA – the tie had been attached to The Coach House previously and was moved to Barn B to allow The Coach House to become a free market house and to allow the manager to be closer to the U shaped stables.

10.11 The Agent states that there is no evidence that a Manager must live on site and yet during the discussions and negotiations for the MFA including consultation with the British Horse Society it was considered a fundamental requirement for the re-establishment of the equestrian use that the manager lived on site.

Changes to the Section 106 agreement

10.12 The changes to the Section 106 agreement are very broad – Section 106 agreements need to be very specific as they are legal agreements binding land owners to a particular agreement.

10.13 It is considered that the proposed changes are too general and wide ranging in nature to be covered under a VAR application and would benefit from a new MFA application including an amended holistic approach for this large piece of land within the Green Belt and Flaunden Conservation Area.

11. CONCLUSION

11.1 In conclusion it is considered that the suggested wording of the legal agreement is very broad – legal agreements need to be detailed, clear and concise and that a VAR is not the correct type of application to achieve what is in essence an amendment to the original MFA application – a change of use.

12. RECOMMENDATION

12.1 It is recommended that the application be refused based on the following:

- The changes to the legal agreement would undermine the very special circumstances which were considered to make the proposal acceptable in the Green Belt;
- Suggested wording of the legal agreement very broad – legal agreements need to be detailed, clear and concise; and
- Incorrect type of application to achieve what is in essence an amendment to the original MFA application.

Reason(s) for Refusal:

The changes to the legal agreement would undermine the very special circumstances which were considered to make the proposal acceptable in the Green Belt.

Suggested wording of the legal agreement very broad - legal agreements need to be detailed, clear and concise.

Incorrect type of application to achieve what is in essence an amendment to the original MFA application.

The proposed changes would be contrary to Policy 5 of the Core Strategy.

APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments
Flaunden Parish Council	<p>PLANNING APPLICATION: 21/04414/ROC</p> <p>Honeysuckle Barn, Birch Lane, Flaunden, Hertfordshire HP3 0PT</p> <p>Removal of condition 9 (occupation of dwelling conditions) attached to planning permission 4/03481/15/MFA (Conversion of existing agricultural barn to form a 4 bed detached dwelling; conversion of existing agricultural barn to form a 2 bed detached dwelling with manager's office; single storey rear</p>

extension to coach house; and refurbishment and improvement of existing stables.)

Flaunden Parish Council has reviewed the Planning Statement that is referred to in planning application 21/04414/ROC as well as the parallel documentation relating to the request for a Deed of Variation to the S106 Agreement relating to 4/03481/15/MFA.

Dacorum granted permission for the above conversion of an "...existing agricultural barn to form a 2 bed detached dwelling with manager's office..." on 5 July 2016 (4/03481/15/MFA) applying 13 conditions, condition 9 reiterates that the condition is in place to help support the rural economy and maintenance of the wider countryside:

"The occupation of the two bed conversion shall be limited to a person solely or mainly working at the stables located immediately north-east of the dwelling or a widow or widower of such a person and to any resident dependants.

Reason: For the avoidance of doubt and to ensure that the stables opposite will be retained and offered to local people for the stabling of their horses. The two bed conversion will help support the rural economy and maintenance of the wider countryside. To ensure compliance with CS 5."

This remains the case today as much as it did in 2015.

The original planning permission, reference 4/03481/15/MFA was justified by the applicant at the time (see page 3 of their Design and Access Statement) as follows:

"The purpose of the Section 106 UU would be to ensure that the two other existing stables buildings which contain up to 16 stables would be retained in that form and available for equestrian use in perpetuity, and managed from the office in barn (b) together with ensuring that the associated menage and fields within the applicant's ownership would be retained for associated equestrian uses such as exercising and feeding horses. This would then respond positively to the requirements of Policy CS5 in the 2013 Core Strategy that the rural economy and maintenance of the wider countryside be supported through any such conversion proposal."

Planning obligations run with the land and therefore bind 'successors in title'. They are durable obligations and are not designed to be continuously changed to meet specific short term business needs. The Unilateral Undertaking dated 28 June 2016, entered into as part of the original planning permission reference 4/01658/16/FUL specifically required that 'The owner and its successors in title' (clause 16) undertake that 'In the event that planning permission is granted to the owner to carry out the development the owner and their successors will in perpetuity' not do various things (i.e. the owner covenants described in clause 16(b)).

With regards to the proposed rewording included in the parallel Deed of Variation the clause 1.4 "...to form a detached open market dwelling; single-storey extension to coach house; refurbishment and improvement of existing stables." And deleting clauses 1.7 and 16 (b)(ii) all referring to the use of Tie Barn 2 as a manager's cottage demonstrates the constant attempts to seek to maximise the residential value and minimise the equestrian value of the facility, this latest proposal being yet a further step away from operating it as originally intended as a commercial enterprise with 16 stables and associated equestrian facilities.

The deed of variation signed on 23 March 2017 in association with permissions 4/01658/16/FUL and 4/02937/16/FUL amended the UU to facilitate the larger loose-box barn to change to two dwellings rather than the single dwelling permitted in 2016; and the tied barn 2 to change to a 2 bed stable manager's dwelling and a one bed market dwelling rather than the stable manager's dwelling permitted in 2016. No changes were made to the clauses relating to the paddocks, menage or stables however.

Whilst S106A of the Town & Country Planning Act 1990 (as amended) allows S106 planning obligations to be modified, retained or discharged upon application to amend them, that is not the same as saying that they ought to be modified or discharged because they are suddenly inconvenient. The NPPF makes clear at paragraph 54 that "*planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*". In providing a UU that restricted the use of the land and stable blocks in perpetuity in 2016, it is evident the importance that was placed on the protection of the equestrian use of the site at the time. The need for the restrictions in the UU has not gone away – the facilities are still needed for 'equestrian stables and associated equestrian uses' – the proposals are simply seeking to justify a residential permission that will effectively remove the protected stabling by another means.

It is worth recalling that the Development Management Committee Agenda from 7 April 2016, Item 13 (the item where the 2016 permission was debated) recorded a number of objections to the scheme at that time, including objections that predicted that the developers would simply apply for a deed of variation to allow them to further develop the land in due course.

This is exactly what happened with the applicant's 2020 application to infill two dwellings. Permitting the changes to the deed of variation and the removal of condition 9 would open up the entire land holding to the risk of non-equestrian development. It remains the opinion of the Parish Council that the applicant is attempting to steadily chip away at the equestrian use of the site, initially through the development of residential conversions. To permit this application would only serve to ensure that the site becomes more vulnerable to inappropriate development, whilst at the same time endorsing the loss of a valued local facility, contrary to Core Strategy policy CS5 and the now revoked Local Plan policy 110.

Policy CS5 (Green Belt) within the Adopted Core Strategy states that

limited extensions to existing buildings and the appropriate reuse of permanent, substantial buildings will be permitted provided that (i) it has no significant impact on the character and appearance of the countryside; and (ii) it supports the rural economy and maintenance of the wider countryside.

Policy 110 was referred to in the 2015 refusal for the conversion of other stables at the property, as noted above, and it provided guidance as to the uses rural buildings should be put to first before being considered for housing. However, Core Strategy policy CS5, also referred to in the refusal from 2015, makes clear that reuse of buildings in the Green Belt should support the rural economy and maintain the wider countryside, thus making clear that the rural economy is still critically important and a material planning consideration in the determination of this application.

The existing character of the site is defined by its equestrian use – the importance of this is highlighted by the UU which restricts any unrelated use or development. It is clear that this equestrian use is significant both to the rural character of the Green Belt, but also to the character of the Flaunden Conservation Area.

It is very important to the local community that this fact is not lost in the consideration of this application and the purpose of the UU is not lost due to the incremental nature of these successive applications, each of which erodes the continuing justification for the UU.

Condition 9 is necessary to protect the future viability of the equestrian business on this site. Removing Condition 9 and accepting the proposed changes to the Deed of Variation, takes away the support for the rural economy, harms the Green Belt and also impacts on the character of the countryside, therefore these cannot be justified.

Allowing a deed of variation to the unilateral undertaking would undermine the reason for the obligations being offered in the first place.

Flaunden Parish Council strongly recommends **REFUSAL** of this application.