

**ITEM NUMBER: 5e**

<b>22/00335/VAR</b>	<b>Removal of S106 agreement attached to planning permission 4/02040/03/OUT (Proposed detached house and garage)</b>	
<b>Site Address:</b>	<b>Bramley House, Chapel Road, Flamstead, St Albans, Hertfordshire, AL3 8DD</b>	
<b>Applicant/Agent:</b>	<b>Natalie Crowie</b>	
<b>Case Officer:</b>	<b>Andrew Parrish</b>	
<b>Parish/Ward:</b>	<b>Flamstead Parish Council</b>	<b>Watling</b>
<b>Referral to Committee:</b>	<b>In accordance with item (4(a)) of the Scheme of Delegation.</b>	

**1. RECOMMENDATION**

1.1 That authority be given to remove an existing s106 agreement dated 4<sup>th</sup> November 2004 in respect of Bramley House, Chapel Lane, Flamstead.

**2. SUMMARY**

2.1 The application is recommended for approval. Outline planning permission was granted in November 2004 for a detached house and garage and was subject to a s106 agreement in respect of its future occupancy being restricted to the owner or family member or relative so that it would be kept available in future for local housing need in accordance with Policy 4b of the DBLPDD and Policy 6 of the DBLP.

2.2 There has been a shift of policy since 2004 in respect of infilling in villages. In accordance with the Affordable Housing Clarification Note August 2019, new dwellings (outside the 'rural area') now only need to be affordable where the scheme creates 10 or more units. As infilling is defined as schemes of 2 units or less, this means that the requirement for infill development in this case to comprise affordable housing for local people as set out in clause (b) of Policy CS6 no longer applies. There is also no requirement that infill dwellings should meet a local need of the village.

2.3 Limited infilling in villages can now take place without any requirement to meet a local need or to be affordable. As such the terms of the s106 agreement are no longer relevant or justifiable.

**3. SITE DESCRIPTION**

3.1 Bramley House is an early C21 two storey detached dwelling located on the eastern side of Chapel Road, Flamstead, adjacent and to the north of Chapel Lodge.

3.2 The surrounding area comprises a mix of detached and semi-detached houses of various ages and styles.

3.3 The property has off-street parking and is located within the small village of Flamstead in the Green Belt.

**4. PROPOSAL**

4.1 The removal of the s106 agreement pertaining to the property is sought in order to nullify the terms of the agreement.

4.2 The terms of the agreement are (in summary):

3.1 Not to permit the Property to be occupied by any person other than the Owner or a Family Member, or additional occupation by a relative of the Owner.

3.2 Not to rent or sublet the Property.

3.3 In event that the Owner of Family Member no longer wishes to occupy the Property, to give written notice to the Council with details of the Purchase Price.

(i) The Council to have 6 months to purchase the Property or to release the Property from the restrictions.

(ii) Following service of the Notice the Owner to agree the Purchase Price as soon as reasonably practicable.

(iii) Within 1 month of date of agreement of the purchase price the Council to notify the Owner whether or not it wishes to purchase the Property.

(iv) If the Council notifies the Owner that it does not wish to purchase the Property, the Agreement to have no further effect.

(v) If the Council notifies the Owner that it does wish to purchase the Property, the Owner to transfer the property to the Council at the purchase price which shall be 70% of Open Market Value and the transfer to be completed in 20 working days.

(vi) The transfer to be completed on the Completion Date.

(vii) Options are given to either party to pull out of the sale.

## **5. PLANNING HISTORY**

4/00744/05/DRC - Details of materials required by condition 2 of planning permission 4/00280/05 (detached dwelling, integral garage, driveway and crossover (amended scheme))  
*GRA - 26th May 2005*

4/00280/05/RES - Detached dwelling, integral garage, driveway and crossover (amended scheme)  
*GRA - 5th April 2005*

4/02655/04/FUL - Detached dwelling, driveway and crossover (re-submission - previous application withdrawn on technical grounds)  
*WDN - 12th January 2005*

4/02085/04/FUL - Detached dwelling, driveway and crossover  
*WDN - 29th September 2004*

4/02040/03/OUT - Proposed detached house and garage  
*GRA - 8th November 2004*

4/00399/92/OUT - Detached house and garage (outline)  
*REF - 14th May 1992*

Appeals

4/00399/92/OUT - Development Appeal  
*- 21st October 1992*

## **6. CONSTRAINTS**

CIL Zone: CIL2  
Former Land Use (Risk Zone):  
Green Belt: Policy: CS5  
Parish: Flamstead CP  
RAF Halton and Chenies Zone: Green (15.2m)  
Small Village: 2  
Parking Standards: New Zone 3  
EA Source Protection Zone: 3

## **7. REPRESENTATIONS**

### Consultation responses

7.1 These are reproduced in full at Appendix A.

### Neighbour notification/site notice responses

7.2 These are reproduced in full at Appendix B.

## **8. PLANNING POLICIES**

Main Documents:

National Planning Policy Framework (February 2021)

Dacorum Borough Core Strategy 2006-2031 (adopted September 2013)

CS6 – Selected Small Villages in the Green Belt

Dacorum Borough Local Plan 1999-2011 (DBLP) (adopted April 2004)

Policy 6 – Selected Small Villages in the Green Belt

Dacorum Borough Local Plan 1999-2011 (Deposit Draft) (DBLPDD)

Policy 4b – Selected Small Villages in the Green Belt

Supplementary Planning Guidance/Documents and Advice Notes:

Affordable Housing Clarification Note August 2019

## **9. CONSIDERATIONS**

### Main Issues

9.1 The main issues to consider are:

Background  
Policy and Principle

### Background

9.2 Planning permission was granted on 4<sup>th</sup> November 2004 for:

Proposed detached house and garage at Land Adj. Chapel Lodge, Chapel Road, Flamstead. (4/02040/03/OUT)

9.3 The permission was subject to a number of conditions and a legal agreement under Section 106 of the Town and Country Planning Act 1990 to secure the future occupancy of the dwelling in perpetuity so that it would be kept available in future for local housing need.

9.4 The procedural aspects of the decision making process in this case were somewhat convoluted.

9.5 At the meeting of 27<sup>th</sup> November 2003, the Committee were minded to grant permission against officer recommendation. Officers did not consider that there was sufficient, if any, evidence to demonstrate that the proposed development met the local needs of Flamstead as required under Policy 4b of the DBLPDD. However, the Committee disagreed and it was resolved to defer further consideration until the following Committee meeting. Following this decision, a number of procedural issues were identified:

To show what the Very Special Circumstances (VSCs) were.

1. To refer the matter as a Departure to the ODPM, but moreover,
2. To secure the local need. This could only be done by way of a planning obligation under s106 of the TCPA 1990, not via a condition.

9.6 At the meeting of 18<sup>th</sup> December 2003, Members were minded to support the application, again against officer recommendation, on the basis that:

*“There were very special circumstances that justified a grant of planning permission for development in a Selected Small Village in the Green Belt, namely*

- *that the application site would provide housing within the village boundary,*
- *that the development would complement the street scene,*
- *that the site was bounded on three sides by residential development and*
- *that the land was in the ownership of the applicant’s family.*

*That the application be referred to the Office of the Deputy Prime Minister in accordance with the Town and Country (Development Plans and Consultation) Directions 1999 and that the application be reported back to the Development Control Committee to consider appropriate conditions if it is not called in for determination by the ODPM.*

*That a planning obligation under s.106 of the Town and Country Planning Act 1990 be required to secure the future occupancy of the dwelling.”*

9.7 In the circumstances the application was reported back to the Committee on the 4<sup>th</sup> March 2004 to report that the ODPM did not want to call in the application, and to agree the conditions.

9.8 With regards to the s106 agreement this was completed on 4<sup>th</sup> November 2004.

### Policy and Principle

9.9 The reasons given for nullifying the agreement are as follows:

*“When we originally applied for planning, there was not any building taking place in the village due to being in the Metropolitan Green Belt. In the last 10 years there has been a number of properties/developments built with NO 106 Agreements and we believe that ours should be removed in line with current building decisions that have taken place. We*

*are trying to remortgage our house, and with the restrictions of the 106 this is proving extremely difficult, due the Council requiring 6 months to decide if they wish to purchase the property.”*

9.10 The applicants have not clarified if they have approached the Council to purchase the property and therefore it is unclear if the clauses and timescales of the s106 agreement have been formally invoked.

9.11 The above notwithstanding, it is clear that there has been a shift of policy since 2004 in respect of infilling in villages. Whilst Policy CS6 of the Core Strategy 2013 states that limited infilling is one of the permissible developments with the Selected Small Villages of Chipperfield, Flamstead, Potten End and Wigginton this is subject to the caveat that it is for affordable housing for local people. Therefore ostensibly there is still a need to justify new infill development in these villages on the basis of meeting a local need, in this case an affordable housing need, which is arguably a much higher hurdle to meet than just a local need of the village.

9.12 Set against this, as set out in the Affordable Housing Clarification Note August 2019, the National Planning Practice Guidance states that new dwellings (outside the ‘rural area’) will only need to be affordable where the scheme creates 10 or more units. The rural area in this case is synonymous with the AONB. The site falls outside the AONB but in either case would not be subject to the requirement. As infilling is defined as schemes of 2 units or less (see paragraph 8.34 of the Core Strategy), this means that the requirement for infill development on the application site in this case to comprise affordable units as set out in clause (b) of Policy CS6 no longer applies. Such development can now be offered for open market occupation. Furthermore, the NPPF (2021) accords with this advice in that under Para. 149, the construction of new buildings is inappropriate in the Green Belt except, inter alia, for “limited infilling in villages”.

9.13 Therefore it is correct to say that limited infilling in villages can now take place without any requirement to meet a local need or to be affordable. Hence if an application for infilling with a single dwelling on the application site was before the Council for consideration now, there would be no in principle policy objection and no requirement to demonstrate a local need. As such the terms of the s106 agreement are no longer justifiable. Accordingly it is considered that the Variation to remove the planning obligation is justified in this case and the application should be granted.

#### Other Material Planning Considerations

9.14 None

#### Response to Neighbour Comments

9.19 These points have been addressed above.

#### Community Infrastructure Levy (CIL)

9.20 The proposal is not CIL liable as it creates no additional floorspace.

### **10. CONCLUSION**

10.1 There has been a shift of policy since 2004 in respect of infilling in villages. Limited infilling in villages can now take place without any requirement to meet a local need or to be affordable. As such the terms of the s106 agreement are no longer relevant or justifiable.

## 11. RECOMMENDATION

11.1 That authority be given to remove an existing s106 agreement dated 4<sup>th</sup> November 2004 in respect of Bramley House, Chapel Lane, Flamstead.

### APPENDIX A: CONSULTEE RESPONSES

Consultee	Comments

### APPENDIX B: NEIGHBOUR RESPONSES

#### Number of Neighbour Comments

Neighbour Consultations	Contributors	Neutral	Objections	Support
0	0	0	0	0

#### Neighbour Responses

Address	Comments