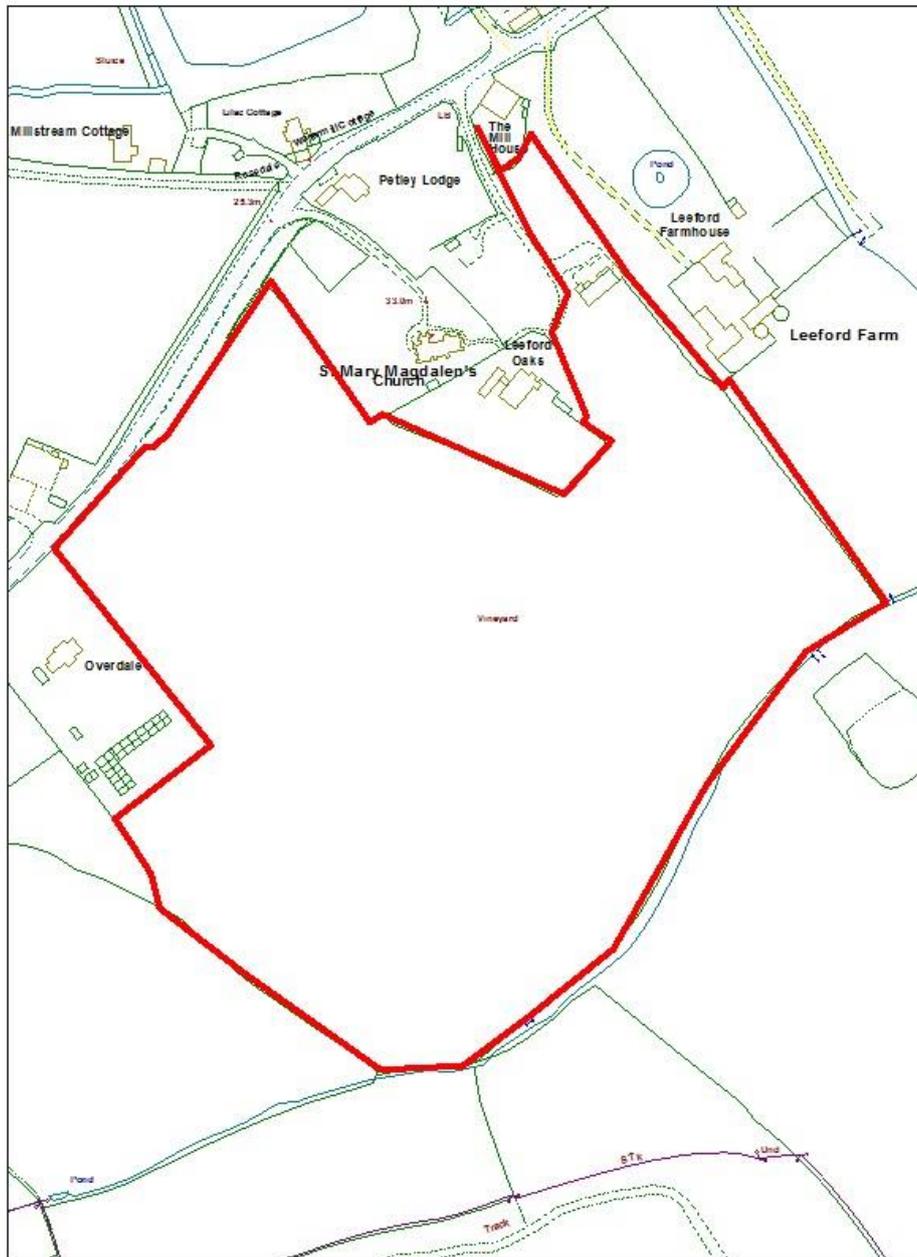


SITE PLAN

WHATLINGTON

RR2019/699/P

Leeford Vineyard - Land at, Whatlington Road.



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Not To Scale

Rother District Council

Report to - Planning Committee
Date - 30 May 2019
Report of the - Executive Director
Subject - Application RR/2019/699/P
Address - Leeford Vineyard – land at, Whatlington Road,
WHATLINGTON
Proposal - Removal of Section 106 agreement imposed on
RR/1999/1526/P

[View application/correspondence](#)

Recommendation: It be RESOLVED: TO GRANT (APPLICATION TO DISCHARGE SECTION 106 AGREEMENT).

Head of Service: Tim Hickling

Applicant: P.M. Butcher
Agent: Kember Loudon Williams (Ms Canan Clatworthy)
Case Officer: Mr M. Cathcart (Email: mark.cathcart@rother.gov.uk)
Parish: WHATLINGTON
Ward Members: Councillors Mrs V. Cook and K.M. Field

Reason for Committee consideration: Member referral by Councillor K.M. Field for the reason that it could lead to inappropriate development on a greenfield site in the countryside

Statutory 8 week date: 13 May 2019
Extension of time agreed to: 31 May 2019

This application is included in the Committee site inspection list.

1.0 SITE

1.1 The application relates to 21 acres (8.5 hectares) of land to the south eastern side of the B2092 (Battle Road) at Whatlington (opposite Leeford Place). The greater part of the land is agricultural land (in two separate parcels) but it also contains a converted timber frame barn now occupied as a dwelling located within its garden curtilage.

2.0 PROPOSAL

- 2.1 This is an application to remove/revoke a section 106 agreement (or planning obligation) made between the applicant (landowner) and the Council in January 2001 in connection with planning permission RR/1999/1526/P.
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3.0 HISTORY (RELEVANT)

- 3.1 RR/1999/1526/P Extension to and change of use of redundant barn to residential – approved conditional – subject to completion of a section 106 agreement.
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4.0 LEGISLATION AND POLICIES

- 4.1 Town and Country Planning Act 1990 (as amended): Section 106A(6) of the Act states that where an application is made to modify/discharge an agreement (planning obligation) the local authority may determine:

- (a) that the planning obligation shall continue to have effect without modification;*
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or*
- (c) if the obligation continues to serve a useful purpose, but it 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.*

- 4.2 National Planning Policy Framework: gives advice on the use of section 106 agreements or planning obligations:

Paragraph 54 states that, '*planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition*'.

Paragraph 56 states that, '*planning obligations must only be sought where they meet all of the following tests*²⁴:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) are fairly and reasonably related in scale and kind to the development'.*

Footnote ²⁴ states that these are set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

5.0 CONSULTATIONS

5.1 Planning Notice

- 5.1.1 Five letters of objection have been received (from five representatives). The concerns raised are summarised as follows:

- I agree with the Parish Council's view that section 106 would continue to protect the land from building, gifting or selling.

- The existing section 106 agreement is dated January 2001, and the request for revocation does not set out any material changes since then.
- Plans have allegedly already been spoken about informally that the intention is to build there.
- I understand that a planning application for a section of the land will be submitted later this year. At an open meeting in the village the agent for the applicant said they had spoken to a planning officer and been given advice on submitting this application, so the District Council are also aware of a future proposed application to build and sell some of the land.
- This would be a purely financially lucrative exercise for the applicant, serves no public use.
- This will not enhance the area, and has no regard for the beauty and conservation of land which should remain for agriculture and grazing use.
- Pressures to over-develop land in the High Weald Area of Outstanding Natural Beauty (AONB) should be retained rather than revoked.

5.1.2 One letter with general comments has been received (from one representative). The comments are summarised as follows:

- Concerned that should this be lifted, it could give the go ahead for more building, on what is beautiful countryside and it will 'open the flood gates' on other local property to build houses, losing the very nature and character of Whatlington Village.

5.2 Parish Council – **OBJECTION**

5.2.1 *“The council object as section 106 has and would continue to protect the land from building on, gifting and/or selling any of the land”.*

6.0 **APPRAISAL**

6.1 The section 106 agreement (also known as a ‘planning obligation’) relates to a planning permission that was granted over 18 years ago (application RR/1999/1526/P). The planning permission was for the change of use and conversion of a timber framed barn to a dwelling (and an extension). The planning permission has been implemented. The area of land to which the current application relates comprises the converted barn and its residential curtilage and also adjacent agricultural land. At the time the application was considered the adjacent agricultural land was run as a vineyard. Moreover, a large modern wine production building was located immediately next to the timber framed barn to be converted. The wine production building was re-located off-site (elsewhere) as part of the scheme for the residential conversion of the adjacent timber frame barn. The converted timber frame barn was said to be required to accommodate the operator of a vineyard (Leeford Vineyard) and her family. As there was no dwelling already on the vineyard holding it was considered that the section 106 agreement would in particular, allow the land (vineyard) to be tied to the converted barn. Furthermore, it was also considered that the agreement should also prevent tourist/visitor uses in association with the vineyard operations being carried out on the land and also, prevent the reinstatement of the large modern wine production building located immediately next to the timber frame barn that was to be removed as part of the scheme. The land is, however, no longer in use as a vineyard. Having considered the evidence submitted with the

application it is not considered that the continued existence of the section 106 agreement is justified and the development granted planning permission under RR/1999/1526/P (the residential barn conversion) would still be acceptable in planning terms if the agreement was removed from the land.

- 6.2 The separate clauses contained in the section 106 agreement are listed individually in the supporting information with the current application together with an explanation from the agent as to why they are no longer considered to serve a necessary or useful purpose. Whilst these can be viewed in full on the application website the main points are summarised below.
- 6.2.1 *Obligation/clause 3.1.3:* In brief, this ties the Site (the converted barn) and the Brown Land (17 acres of adjacent land) together and prevents any part being sold-off separately. As stated, this was intended at the time to ensure that the dwelling would be retained to serve the vineyard use. The Council's concern was that it could be faced with proposals for a new dwelling on the land to manage the vineyard if the converted barn was sold-off separately. In this regard, however, the vineyard use has discontinued. Moreover and in any event, it is the case that if proposals for a new dwelling (agricultural or otherwise) were put forward this would require the submission of a formal planning application and the Local Planning Authority has the powers to determine this in the normal way and in accordance with development plan policies for the area, particularly in respect of policies relating to new dwellings in the countryside. It is accepted that this clause (3.1.3) is now not considered as being fairly and reasonably related in scale and kind to the development that was granted planning permission under RR/1999/1526/P (the residential barn conversion) and is not in accordance with Government guidance contained in the National Planning Policy Framework.
- 6.2.2 *Obligation/clause 3.1.4:* this requires (in brief) that the Site (the converted barn) shall only be used for the converted barn as a residence and its residential curtilage. This clause has been complied with. The large modern wine production building located immediately next to the timber framed barn was removed several years ago. Moreover, any proposal to re-introduce a material change of use to business purposes would require planning permission. It is agreed that this clause no longer serves a useful purpose.
- 6.2.3 *Obligation/clause 3.1.5:* this states (in brief) that all rights to rebuild the large modern wine production building shall be extinguished, including any claim for compensation. In this regard, as previously stated the modern wine production building originally abutted the timber frame barn but was removed several years ago when the timber framed barn was converted to residential use. In the circumstances, it is perhaps unlikely that a proposal to reintroduce the wine production building on the site would be brought forward; however, if it is, then this should be considered on its individual planning merits under normal planning legislation and development plan policies. In this regard it is considered that there is no justification for this clause (3.1.5) to be retained.
- 6.2.4 *Obligation/clause 3.1.6:* contains the requirement that the Brown and Blue land shall only be used as agriculture or grazing; in this regard it is pointed out in the supporting information that the use of either parcel of land for purposes other than agriculture or grazing would require planning permission, and as such this clause has no purpose.

- 6.2.5 *Obligation/clause 3.1.7*: contains the restriction that there shall be no tourist or visitor uses in connection with the vineyard and no development carried out on the land (Brown land) including a dwelling or mobile home. On the first part; as stated the vineyard use has ceased and in the circumstances a clause to prevent tourist/visitor uses in association with this would now be unjustified. On the second point, any proposals for a dwelling or mobile home would in any event need planning permission and as such could be considered by the Council on its individual planning merits and in accordance with national and local planning policies. Clause 3.1.7 is not necessary to control such development.
- 6.3 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. The obligations set out in a section 106 agreement can only be justified were they are necessary to make a development proposal acceptable; the revocation of the section 106 agreement attached to planning permission RR/1999/1526/P would not make the approved and implemented residential barn conversion an unacceptable development. In the circumstances the retention of the obligations on the land as set out in the section 106 agreement cannot now be justified.

7.0 PLANNING BALANCE AND CONCLUSION

- 7.1 This is an application to remove/revoke a section 106 agreement (or planning obligation). A section 106 agreement cannot be kept in place if it serves no useful purpose. The retention of a section 106 agreement cannot be justified as a means or general mechanism to thwart development proposals. In the event that the application is refused there is an appeal procedure to the Planning Inspectorate in this case and any decision to refuse will need clearly to set out the reasons why the development that was granted planning permission under RR/1999/1526/P would be unacceptable development without the section 106 agreement remaining in place.
- 7.2 A section 106 agreement must relate to the development that has been granted planning permission and can only be kept in place where it is necessary to make a development acceptable in planning terms, where that development without the agreement in place would otherwise be unacceptable. The use of the land and the planning circumstances have changed in the eighteen years since planning permission was granted and the section 106 agreement was originally imposed, particularly in that no winery business operates from the land and has not done for some time. The supporting information with the application lists the separate clauses contained in the section 106 agreement together with an explanation as to why they are no longer considered to serve a necessary or useful purpose.
- 7.3 The revocation of the section 106 agreement would not mean that there has been a policy shift regarding proposals for new development in the area. The land would still be classed as countryside within the designated High Weald AONB and any future development proposal would be judged with regard to

the impact of the development on the character and appearance of the area, as well as other relevant material planning considerations.

- 7.4 Objections received in response to the planning notice refer to future plans for the site, stating that these have already been spoken about informally and there is an intention to build there. In this regard, it is the case that the Local Planning Authority has received pre-application enquiries from the owner of the land (ref: PE/00178/2017 and PE/00594/2018) for the erection of a dwelling or dwellings and the construction of a car park for Whatlington Parish Church on part of the land. The pre-application enquiries explain that the residential development would be enabling development to fund the cost of the church car park. The response (without prejudice) to the most recent of the pre-application enquiries (in brief) was that, whilst a proposed access and church car park may be supportable at officer level, it has not been satisfactorily demonstrated that the provision of a dwelling, which would be contrary to planning policies, is the only way of financing the scheme. No planning application has been received to date. Clearly it cannot be discounted that an application for this, or indeed for some other form of development may be submitted on the land at some time in the future; however, should this arise, it would be correct and appropriate for members to determine any such application on its individual planning merits, having due regard to the development plan, national planning policies, and any other material planning considerations.

RECOMMENDATION: GRANT (DISCHARGE OF SECTION 106 APPLICATION)

NATIONAL PLANNING POLICY FRAMEWORK: In accordance with the requirements of the Framework (paragraphs 186 and 187) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.