

MEETING:	PLANNING COMMITTEE
DATE:	3 NOVEMBER 2010
TITLE OF REPORT:	<p>DMS/102055/G - DISCHARGE OF SECTION 52 AGREEMENT ATTACHED TO PLANNING PERMISSION SH891980PO - TO REMOVE OCCUPANCY CONDITION AT FALCON BROOK, HOW CAPLE, HEREFORDSHIRE, HR1 4TF.</p> <p>For: Mr & Mrs Jones per Mr & Mrs B D Jones, Falcon Brook, How Caple, Herefordshire, HR1 4TF.</p>

Date Received: 9 August 2010

Ward: Old Gore

Grid Ref: 360943,231986

Expiry Date: 4 October 2010

Local Members: Councillor BA Durkin

1. Site Description and Proposal

- 1.1 The site lies on the south side of the B4224 Hereford to Ross-on-Wye road. To the south east of the site is a dwelling known as Little Falcon, which is occupied by the applicant's parents. To the northwest and northeast of the site is agricultural land. The site and surrounding area fall within the open countryside and the Wye Valley Area of Outstanding Natural Beauty.
- 1.2 The application site comprises a workshop currently used as a blacksmiths, agricultural repair and metalwork business and a two storey red brick dwelling with attached garage known as Falcon Brook. The workshop and dwelling are immediately adjacent to each other, fronting the B4224. The dwelling is occupied by Mr B Jones, who is currently employed in the workshop, and his family.
- 1.3 Outline planning permission was granted on 11 April 1990 for the erection of a dwelling at Little Falcon Workshop, Sollershope. The site is located in the open countryside where residential development is strictly controlled, therefore the relevant parties entered into an Agreement under Section 52 of the Town and Country Planning Act 1971 (now in substance Section 106 Town and Country Planning Act 1990) on 4 April 1990. The agreement was primarily to ensure that the dwelling was occupied in connection with persons employed at the workshop and states the following:

Pursuant to Section 52 of the Town and Country Planning Act 1971 the Owners hereby covenant and agree with the Council as District Planning Authority aforesaid and with object and intent of binding the property into whosever hands the same may come that upon the Council granting planning permission for the erection of one dwelling shown on the plan attached and coloured red under the Council's Code SH891980PO:-

1. The said dwelling shall be occupied by a person or persons employed at a workshop shown on the plan attached and coloured green or their dependents.
- 1.4 The application proposes the discharge of the Section 52 agreement to remove the occupancy restriction. The applicant needs to raise funds to buy a half share of the business and also to invest money in the business to remain competitive. The applicant has approached 4 lenders who have advised that due to the employment restriction on the property title they would not consider issuing a mortgage as the restriction would affect future saleability.

2. Policies

2.1 Planning Policy Statement:

- PPS1 - Delivering Sustainable Development
- PPS4 - Planning for Sustainable Development
- PPS7 - Sustainable Development in Rural Areas

2.2 Herefordshire Unitary Development Plan 2007:

- S1 - Sustainable Development
- S2 - Development Requirements
- DR2 - Land Use and Activity
- H7 - Housing in the Countryside Outside Settlements
- H8 - Agricultural and Forestry Dwellings and Dwellings Associated with Rural Businesses

3. Planning History

- 3.1 SH891980PO - Dwelling, Little Falcon Workshop, Sollershope, Herefordshire Approved 11 April 1990
- 3.2 SH901301PM - Proposed new house and garage, Little Falcon Workshop, Sollershope, Herefordshire – Approved 13 December 1990

4. Consultation Summary

- 4.1 Economic Development Manager: Economic Development strongly supports the approval of the planning application to help maintain this important local rural business which offers a highly skilled service and bespoke metalwork products and currently contributes to the local economy.

5. Representations

- 5.1 The applicant has submitted a statement in support of the application which includes 5 letters from mortgage companies and correspondence from Advantage West Midlands, The Business Lending Exchange and Impetus-Marches. The information, in summary, is as follows:

I have been employed at the workshop with his parents and brother since leaving school in 1987. My parents intend to retire from the business due to bouts of ill health. In order to continue working at the workshop, I need to raise funds to buy the remaining half share of the business and also to invest money in the business to remain competitive. The dwelling known as Falcon Brook is the only asset available to raise funds to purchase the share of the business from the retiring directors. I have approached a number of mortgage lenders to raise the necessary funds to continue working from the workshop. The mortgage lenders have advised that the Section 52

agreement is too restrictive and the property is therefore unsuitable for mortgage purposes.

I have approached a number of alternative funding sources including the Federation of Small Businesses, Business Link and Advantage West Midlands and those they have advised may be able to help have been turned down due to the planning condition.

In addition, as my brother is intending to buy an equal share of the business, without my investment the business would be forced to close.

With the retirement of our parents from the business after many years service, it is our intention to create employment for two new staff as replacement.

When the original permission was granted it allowed a family business to grow and created employment, which served the community well at the time, but now 20 years later the Section 52 agreement with the change in circumstance, has become an obstacle for the future of the business.

5.2 Fifty-nine letters of support have been received. In summary the points raised are:

- The discharge of the Section 52 agreement is imperative for the future of this long established rural business and the income of the associated families who are dependent on it.
- Important to support local businesses, particularly in this difficult economic climate.
- The business supports our company by supplying manufactured fittings which we use on a daily business.
- The applicants have always exhibited a professional approach to their work and it would be a severe loss to the skills base in this area if we were to lose them.
- The applicants benefit the community both through their business (which is a great asset locally, particularly to those who, like us, are farming) and as good neighbours and great supporters of local community events. We believe it is essential that this clause is removed to enable to family to continue to live in, and enhance this community.

5.3 The full text of these letters can be inspected at Planning Services, Garrick House, Widemarsh Street, Hereford and prior to the Committee meeting.

6. Officer's Appraisal

6.1 The main issue to be considered is whether the Section 52 agreement continues to serve a useful planning purpose in ensuring that the dwelling remains occupied in connection with the rural business and does not result in an unencumbered dwelling in the open countryside. In order to determine this, it will be necessary to consider whether the discharge of the Section 52 agreement means that the resultant development accords with national policies and those of the Development Plan.

6.2 Planning Policy Statement 7: Sustainable Development in Rural Areas states: "Where the need to provide accommodation to enable farm, forestry or other workers to live at or near their place of work has been accepted as providing the special justification required for new, isolated residential development in the countryside, it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists. For this purpose planning permission should be made subject to appropriate occupancy conditons."

6.3 Herefordshire Unitary Development Plan Policy H7: Housing in the Countryside Outside Settlements states, "it is important that residential development is strictly controlled in order to protect the landscape and the wider environment. Residential development is thus limited to that which meets an essential agricultural, forestry or other economic or farm diversification

requirements or accompanies the establishment or growth of a rural enterprise, or which results from the conversion of an existing rural building or which is linked to the replacement or extension of an existing dwelling. Occupancy controls are applied by means of planning condition or obligation to dwellings arising from the expansion of business enterprises, as well as to agricultural and forestry dwellings.”

- 6.4 Policy H8: Agricultural and Forestry Dwellings and Dwellings Associated with Rural Businesses requires that dwellings proposed in association with non-agricultural businesses will be permitted only where there is a clear intention to provide employment opportunities and that the applicants accept that living accommodation will be bound to the business by planning condition or planning obligation.
- 6.5 Although the planning permission was granted in 1990, there has been little change in the policies regarding development in the open countryside. In granting planning permission for the dwelling in 1990 there was a recognised need for the essential supervision and management of the business as part of rural regeneration. Planning permission was approved subject to the living accommodation being bound to the business by planning obligation.
- 6.6 The applicant has stated that even if the application is successful in discharging the obligation, he intends to continue to occupy the dwelling and run the business and would therefore comply with the terms of the agreement. The reason for discharging the condition is to raise funds to invest in the business. Whilst the Council acknowledge that the applicant may have no intention of selling the dwelling, there is no guarantee that this will be the case and there is no formal way of ensuring that this will continue to be the case without an obligation.
- 6.7 Despite the applicant’s assertion, the Council has to consider the harm that may arise if the obligation were discharged. If the obligation were discharged the situation could arise whereby the applicant needs to invest further in the business. This may only be feasible through the sale of the associated dwelling. It has already been recognised that there is an essential need for a dwelling in connection with the business through the grant of planning permission in 1990. This could result in the applicant requiring a further dwelling which would weaken the overall approach to locating dwellings in sustainable locations and thus lead to further pressure for sporadic development in the countryside.
- 6.8 The Human Rights of the applicant need to be considered within the decision making process. In particular, there is Article 8 (Right to Respect for Private and Family Life) and Article 1 of the First Protocol (Protection of Property). While it has been concluded that the Discharge of the Agreement does not have planning merits, it is acknowledged that this will interfere with the rights of the applicant to use their property as they wish. However, it is considered that the recommendation is proportionate and that the protection of the countryside and wider environment outweighs the harm to the individual’s rights in this case.
- 6.9 It is considered that the Section 52 agreement continues to serve a useful planning purpose in controlling development in the open countryside by restricting the occupation of the dwelling in connection with the business. If permission were granted the proposal would be contrary to UDP Policies H7: Housing in the Countryside Outside Settlements and H8: Agricultural and Forestry Dwellings and Dwellings Associated with Rural Businesses as it would result in an unencumbered dwelling in the open countryside.

RECOMMENDATION

That planning permission be refused for the following reasons:

- 1 The local planning authority considers that the Section 52 agreement continues to serve a useful planning purpose in controlling development in the open countryside**

by restricting the occupation of the dwelling in connection with the business. If permission were granted the proposal would be contrary to UDP Policies H7: Housing in the Countryside Outside Settlements and H8: Agricultural and Forestry Dwellings and Dwellings Associated with Rural Businesses as it would result in an unencumbered dwelling in the open countryside.

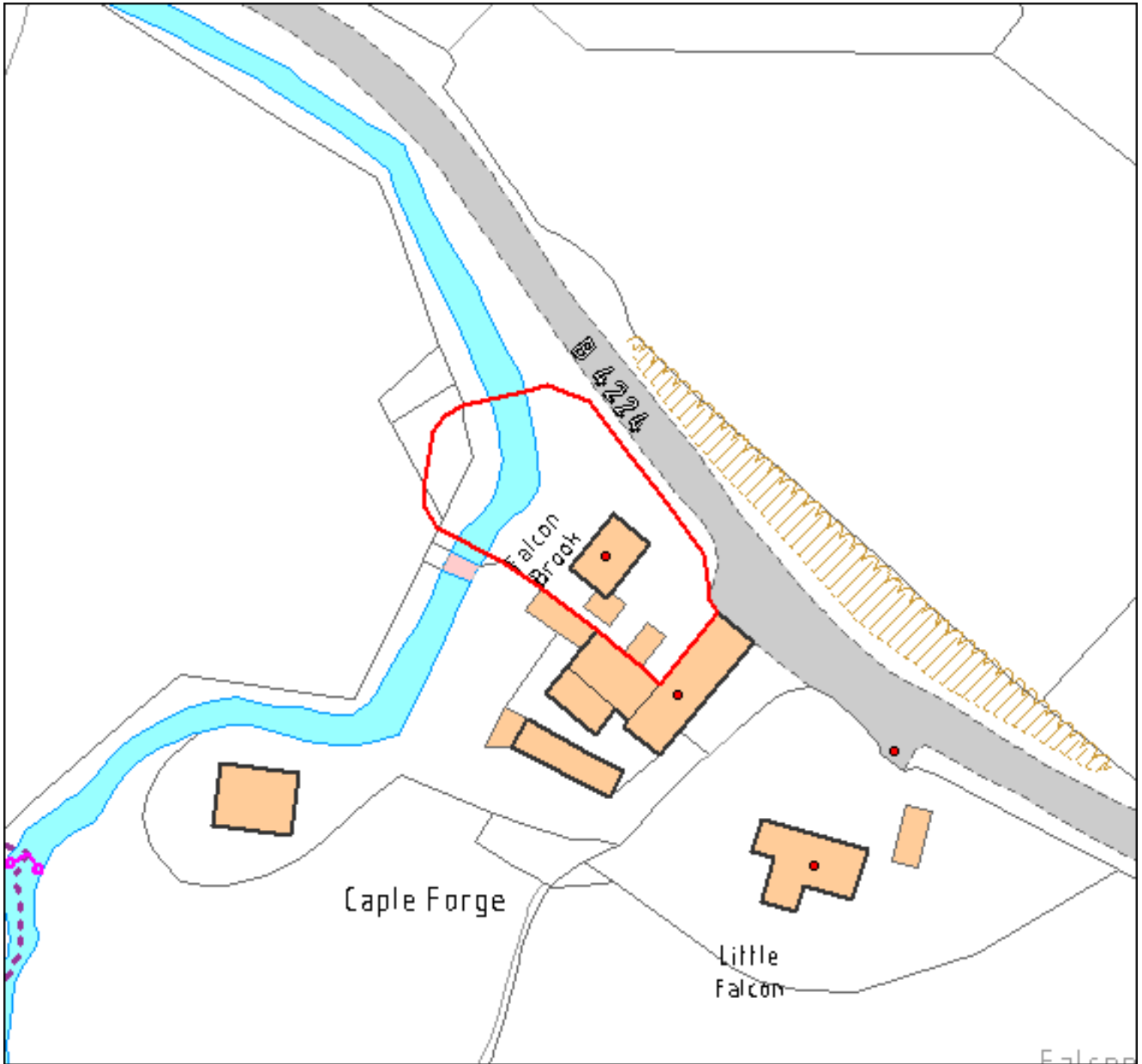
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DMS/102055/G

SITE ADDRESS : FALCON BROOK, HOW CAPLE, HEREFORDSHIRE, HR1 4TF

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Further information on the subject of this report is available from Mrs Y Coleman on 01432 383083