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## **Hesmonds Stud Section 106 Discharge Application WD/2025/0387/PO**

1. We are writing to you as the Co-Chairs of Village Concerns, a local Action Group from East Hoathly with Halland Parish. We represent the views of over 250 supporters against the overdevelopment of our Parish. We object to Planning Application WD/2025/0387/PO for the Discharge of a Section 106 Agreement.

### **Executive Summary**

2. A Section 106 Agreement was imposed on Hesmonds Stud in 2011 by Planning Committee South (PCS). The business was comprised of 4 stable yards each with managers accommodation and Lake House where the owner lived. In 2016 the applicant applied to build 205 homes on one of the stable yards. To allow this, the application to discharge the Section 106 Agreement was determined by a desk officer despite constant requests by Village Concerns and many members of the public, that it be referred to PCS.

3. The purpose of the Section 106 Agreement was to prevent the business being broken up. On two occasions, small changes have been allowed: A field was swapped with one owned by the Parish Council to allow the creation of Allotments. Two small paddocks were separated when Hesmonds House was sold. On both of these occasions the planning department made the following statement: **“Whilst it is important to be clear that this should not be the ‘thin end of the wedge’ and that the majority of the land needs to stay within the studs control and usage”**.

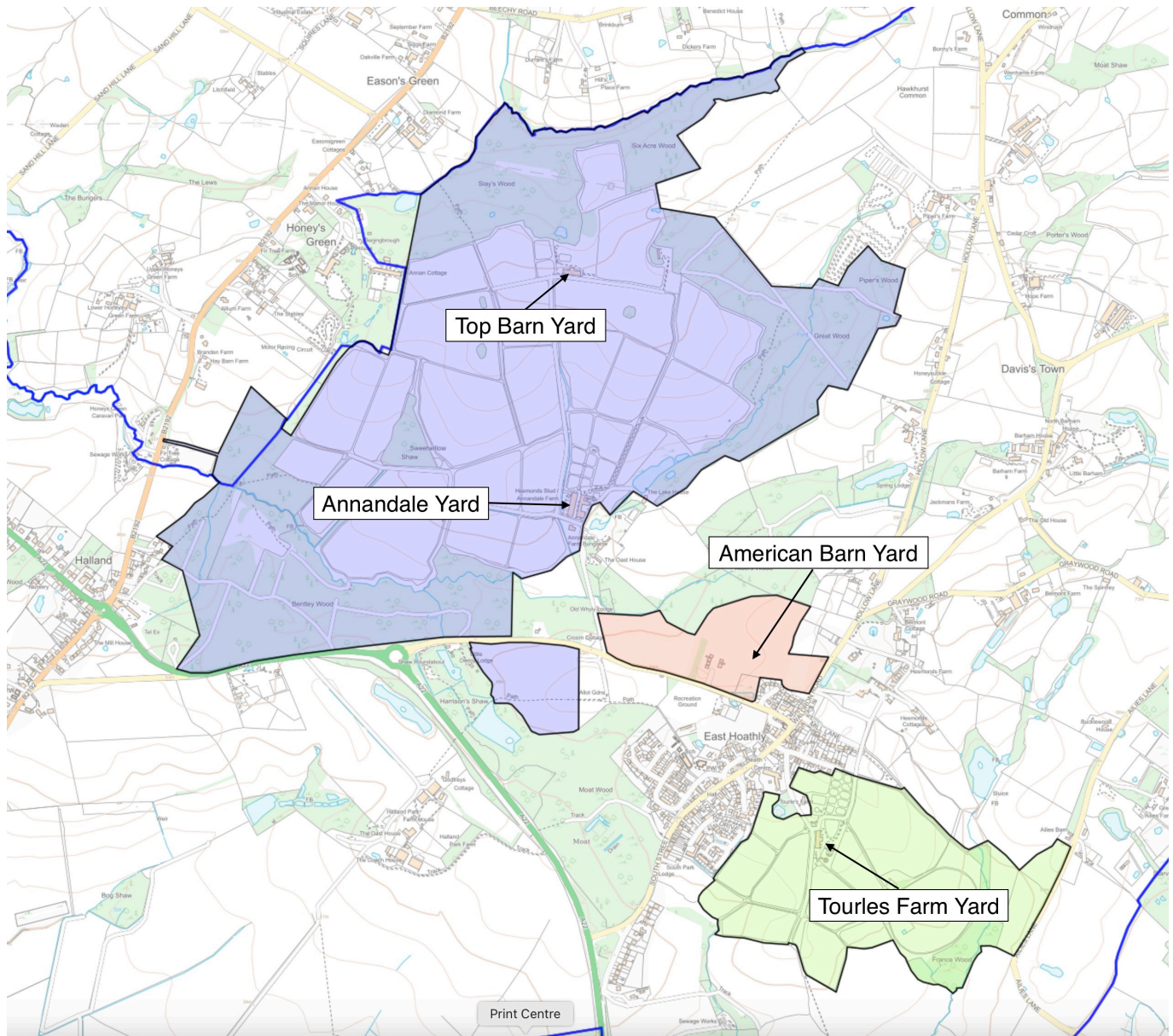
4. A delegated decision determined that the Section 106 Agreement for the site of the 205 homes no longer served a useful purpose without any reference to PCS which imposed the Section 106 Agreement. The purpose of the Section 106 agreement and the continued viability of the business was not addressed.

5. The new application seeks to discharge the Section 106 Agreement for a second of the four yards comprising Hesmonds Stud. They seek to do this so that they can build 275 homes. This further reduction in land will jeopardise the viability of the business and ignore the useful purpose served by the Section 106 Agreement.

6. We request that this is considered by PCS and that it is refused.

## **Background**

7. The Section 106 Agreement was imposed by PCS in 2011 as a result of Planning Application WD/2011/1560/MAJ. This Application identified the four stable yards and their different functions. It proposed the provision of yard manager accommodation at each yard and the upgrading of the facilities. Also the creation of The Lake House where the owner of the Stud would live. The four yards and The Lake House were one business. The investment was met with approval by the local community and hence there were no objections. There was no suggestion that it was anything other than one business.



8. On two occasions, small changes have been allowed:

- a. In 2012 WDC agreed to allow (WD/2012/1190/F) to allow part of Harrison's Field to be swapped with the Long Pond site, then owned by the Parish Council to facilitate the creation of allotments in East Hoathly.





Property or any other part of the Property from the remainder of the Property by way of gift lease sale or other transaction nor to create any legal or equitable interest in all dwellings and residential accommodation stabling, office and the hospitality suite on the Property or any other part of the Property separate from the remainder of the Property

Not to execute any disposition of any of the separate titles to the various parcels of land comprising the Property other than to vest the legal estate of the same in to the name of one single transferee”

12. These conditions were imposed on the 2011 Planning Application precisely to prevent the breaking up of the existing Hesmonds Stud business. There was never any suggestion in 2011 that all four yards were not part of an integrated business. There was no suggestion that the American yard was superfluous and was about to be put up for housing development. When the Hesmonds application was submitted in 2016 and when it was determined in 2020, there was no suggestion that the Stud was about to put Tourles Farm up for sale. This questions why PCS bothered to impose the Section 106 Agreement when it seems to carry no weight and is discharged without any proper consideration.

13. During the PCS Meeting on 21 Oct 2022, in relation to the Section 106 Agreement, Mr Robins stated: “It is not acceptable from what I have seen and colleagues have seen to allow the full Hesmonds estate to be de-coupled from the existing legal agreement. That does bind it to the facility’s that you heard a little bit about a second ago from the speaker”.

14. This Application also ignores the general principle of Agricultural Land Use. This land is designated for agricultural use. The current Stud business is one form of agricultural use. If the Stud business changes then it remains land for agricultural use and should revert to other forms of farming as it has done for at least the last 400 years. Much of the Stud land is not required for equine use and is rented to local farmers for food production. Harrison’s Field is an example of such land.

15. The 2020 report by Bourne Rural Planning Consultancy (submitted as part of planning application WD/2022/2660/PO) made a statement to justify the need to build a managers dwelling for each of the four Yards. Paragraph 3.12 of the report includes a comment, in terms of financial viability, from the rural estates surveyor who concluded that: “I consider it is fair to conclude that these proposals for the continuation and development of the stud are indeed genuine, reasonably likely to materialise, and are capable of being sustained for a reasonable period of time”. We argue that 2011 to 2016 was not a reasonable period of time. We suspect that the intention all along was for the deliberate asset stripping of this land and that it was always intended to put the land up for housing development. As such, the 2011 Application was disingenuous and the 2016 Application also concealed the full scope of the plans that have now emerged.

16. Village Concerns and many local people raised objections to the 2016 Application on the basis of the viability of the Stud business. We repeatedly requested that this matter be called in for consideration by PCS. This was disregarded by the Planning Department. It did not merit comment in the Officer's Reports and was not mentioned in the PCS Meeting. We believe that this was wrong.

17. The new proposal seeks to discharge the Section 106 Agreement on those parts of the Hesmonds Stud that have been put forward for development in planning application WD/2025/0376/MAJ. In 2022, when the first of the four yards was sold off for housing development, there was no consideration of the economic viability of the remaining Hesmonds Stud business. We urge Councillors not to allow another of the four yards to be separated from the legal agreement. More salami slicing on this business will ignore the original purpose of the Section 106 Legal Agreement.

### **2025 Application to Discharge Section 106 Agreement**

18. The applicant has not submitted any new information with application and merely re-presented the report by Bourne Rural Planning Consultancy dated December 2020. This document does not take account of the changes to the land since the approval to build 205 homes which are currently under construction. The applicant provides no explanation of how the remaining business will remain viable following the removal of this business unit and other land now in use for food production.

19. We have considered the application to discharge the section 106 agreement dated 24 November 2011 between (1) Wealden District Council and (2) Swansea Enterprises Corp ("the Agreement")

20. In particular, we have carefully read the Supporting Statement by Bourne Rural Planning Consultancy Ltd dated 10 December 2020.

21. Unfortunately, this statement fails to consider or correctly apply the correct legal framework for decisions under section 106A of the Town and Country Planning Act 1990 ("the 1990 Act").

22. Amongst the numerous legal errors in the statement, we draw the Council's attention to the following:

a. The statement relies extensively on the suggestion that the Agreement was unnecessary, because the permission to which it relates (ref: WD/2011/1560/MAJ) ("the 2011 Permission") was policy compliant without the need for an agreement under section 106 of the 1990 Act: see, in particular, paragraphs 3.15-3.17; 3.20; 3.22-3.28; 3.29; 3.33-3.40 and 4.1-4.13.

b. We disagree with much of the analysis in these sections. However, legally it is irrelevant. These arguments seek to suggest that the obligation

has never served a useful purpose, since it was not necessary to make the proposed development acceptable in planning terms. However, an argument to this effect was rejected by the Court in R. (on the application of Mansfield DC) v Secretary of State for Housing, Communities and Local Government [2019] P.T.S.R. 540 at paragraphs 44-49. In particular, at paragraph 48, Garnham J noted that the contribution in that case was not necessary to make the development acceptable, but that was not the test under section 106A of the 1990 Act. In other words, a contribution still have a useful purpose, even though when it was entered into it was not necessary to make the development acceptable in planning terms.

c. The statement devotes considerable effort to argue that, by reference to current local and national policy, the obligation does not serve a useful purpose: see, in particular, paragraphs 3.41-3.58. Again, this is not the correct approach. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (which would require consideration of current local and national planning policies) does not apply to a decision under section 106A of the 1990 Act: see R. (on the application of Millgate Development Limited) v Wokingham Borough Council [2011] EWCA Civ 1062 at paragraph 29 where it was held that “there is no need to revisit development plan policies” in a decision under section 106A of the 1990 Act.

d. In any event, whether or not a planning obligation serves a useful purpose, or would do so equally well if discharged, does not require that the useful purpose is related directly to the underlying development when it was imposed: see Mansfield (at paragraphs 42 and 43)). The focus of the application on the purpose of the Agreement by reference to the 2011 Permission is therefore misplaced.

23. In truth, cutting through the arguments in the supporting statement, it is plain that the application must be refused. The Council must ask itself (i) what purpose do the obligations in the Agreement fulfil (ii) is that still a useful purpose. If it is, given that the application seeks to discharge the Agreement in its entirety, the application should be refused.

24. As the Planning Encyclopedia notes at P106A.06, the question of whether the obligation “serves a useful purpose” is not a high test.

25. Here, the purpose of the obligations is abundantly clear: to prevent the fragmentation of the “Property” as defined in the Agreement. That obviously is still a useful purpose. There are many reasons for this, but it suffices to point to just one. At paragraph 3.63, the supporting statement says this:

“It is evident that each yard has sufficient facilities to support the level of horses which generate the requirement for a worker to live on site to meet their welfare requirements. This means that any removal of the section 106 would not create circumstances whereby there is a worker’s dwelling but no facilities associated with that dwelling. Each unit is a standalone yard and each is capable of functioning independently of all others”.

26. If the Agreement was discharged, the land in each yard associated with the dwelling permitted by the 2011 Permission could be sold off in its entirety separate from the dwelling. That would lead a dwelling with no functional connection to the (now separate) yard.

27. There are of course, other reasons why it is still “useful” to retain the restrictions in the Agreement. Not least, the benefits of avoiding the fragmentation of the wider stud into land held by separate landowners. This is undesirable in its own right. Further, it could lead to pressure to change the use of the now fragmented land (not all of which could be controlled through the planning process – for example, a reversion to agricultural use would not require planning permission).

28. For all of these reasons, the application should be refused.

### **Conclusion**

29. A Section 106 Agreement was imposed on Hesmonds Stud in 2011 by Planning Committee South (PCS). The purpose of the Section 106 Agreement was to prevent the business being broken up. Small changes have been allowed but made clear that they should not be considered as the: “[thin end of the wedge](#)”. The discharge of the 106 Agreement to allow the 205 homes currently under construction, was granted as a delegated decision and Village Concerns believes that it made an incorrect decision as to the useful purpose that the Agreement served. The proposed new application seeks to discharge the Section 106 Agreement to a second of the four yards that make up the Hesmonds Stud business. This will jeopardise the viability of the whole business. Village Concerns believes that any change to this Agreement should be referred back to PCS.

30. We request that this is considered by PCS and that it is refused.

Victoria Aldridge and Katherine Gutkind  
Joint Chairs  
Village Concerns