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PLANNING APPLICATION WD/2020/2660/PO

Application WD/2020/2660/PO for the: Discharge of the Planning Agreement by Obligation between Wealden District Council and Swansea Enterprises Corp (dated 24 November 2011). Site: Hesmonds Stud, London Road, East Hoathly, Lewes, BN8 6EL. Bourne Rural Planning Consultancy Ltd December 2020

1. The Steering Group of the Village Concerns Action Group represent the views of over 200 supporters from our community. We object to Planning Application WD/2020/2660/PO for the Discharge of the Planning Planning Agreement by Obligation between Wealden District Council and Swansea Enterprises Corp (dated 24 November 2011). Site: Hesmonds Stud, London Road, East Hoathly, Lewes, BN8 6EL. Bourne Rural Planning Consultancy Ltd December 2020.

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

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

4. 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").

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

(1) 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.

(2) 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.

(3) 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 polices) 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.

(4) 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.

6. 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.

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

8. 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".

9. 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.

10. 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).

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

Katherine Gutkind and Tania Freezer
Co Chairs
Village Concerns