

NOTICE OF DECISION

144/684

DATED

23<sup>rd</sup> January 1980

DISTRICT COUNCIL  
North Oxfordshire

Members of Agents/Officers:

CHEWELL DISTRICT COUNCIL

Mr J. Vickers  
c/o Richard Court Interior Design  
Darville Cottage  
Station Road  
Lower Heyford  
Oxon OX25 3PD

AND

Date Registered : 29th October 1983

Proposal : Change of use of land to domestic garden.

PETER JAMES BREWER

Location : Gumsy Cottage, Mill Lane Weston-on-the-Green, Bicester, Oxon OX6 8QR

Parish : Weston On The Green

URN : 99000047271

REUSAL OF PERMISSION FOR DEVELOPMENT

A G R E E M E N T

The Chewell District Council, as Local Planning Authority, hereby REFUSES to grant planning permission for the development described in the above-mentioned application, the accompanying plans and drawings and any clarifying or amending information. THE REASONS FOR REFUSAL ARE

Town and Country Planning Act 1971  
Section 52. Development at  
Westfield Farm, Weston-on-the-Green,  
Oxfordshire.

Chewell District Council  
Bodicos House  
Bodicos  
Bodicos  
Oxon  
OX12 4AA

Chewell District Council  
Certified a true copy  
*[Signature]*  
Head of Planning & Development Services

Head of Planning & Development Services

Date of Decision : 22nd December 1983

THE FIRST SCHEDULE above referred to

ALL THAT piece or parcel of land known as Westfield Farm, Weston-on-the-Green, Oxfordshire, together with the farmhouse, outbuilding and other structures and appurtenances thereto belonging ALL WHICH said piece or parcel of land is for the purpose of identification only more particularly delineated on Drawing No. 644/3 which forms part of the Application for Permission to develop land more fully described in the Second Schedule hereto and thereon edged blue

THE SECOND SCHEDULE above referred to

An Application dated 9th day of July, 1979, submitted on behalf of P. Brewer by Associated Design Partnership (Oxford) of Gordon House, 276, Banbury Road, Oxford, together with appropriate drawings and certificate submitted therewith ALL WHICH such application sought permission to convert barns and outbuildings to three dwellings with garages

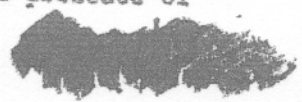
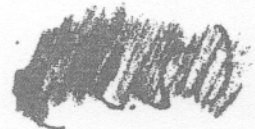
THE THIRD SCHEDULE above referred to

That henceforth the present and future use of the property shall be restricted to:-

- (a) the development proposed under the above referred to Application for permission to develop land (to the extent that the same is approved and the conditions to which it is subject) and
- (b) the present current use (to the extent that the same remain un-changed by the approved Application referred to in (a) above)

IN WITNESS WHEREOF the Council have caused their common seal to be hereto affixed and the Owner has set his hand and seal hereto the day and year first before written.

THE COMMON SEAL of the )  
CHERWELL DISTRICT COUNCIL )  
was hereunto affixed in )  
the presence of )



SIGNED SEALED AND DELIVERED )  
by the said PETER JAMES )

110-11

C/SSO(E)

Cherwell District Council



THIS AGREEMENT is made the 23<sup>rd</sup> day of January One

thousand nine hundred and eighty BETWEEN THE CHERWELL DISTRICT COUNCIL of Bodicote House Bodicote Banbury in the County of Oxford (hereinafter called "the Council") of the one part and PETER JAMES BREWER of "Meander" Long Wittenham in the County of Oxford (hereinafter called "the Owner") of the other part

BB 5-2

C  
2/12

WHEREAS

(1) The Council are the Local Planning Authority for the area of their District within the meaning of the Town and Country Planning Act, 1971 (hereinafter referred to as "the said Act")

(2) The Owner is seised in fee simple in possession of property described in the First Schedule hereto (hereinafter referred to as "the Property") which is located within the area of the Council's district

(3) By virtue of Section 52 of the said Act a local Planning authority and a person having an interest in land located within their district may enter into an agreement for the purpose (inter alia) of restricting or regulating the development or use of such land either permanently or during such period as may be therein specified

(4) The Council and the Owner have agreed to enter into this Agreement pursuant to the said Section 52

NOW THIS DEED WITNESSETH

1. Pursuant to the said Section 52 of the said Act and in consideration of the Council agreeing to grant Outline Planning Permission subject to conditions to the Planning Application described in the Second Schedule hereto the Owner hereby agrees that the property shall permanently be subject to the conditions restricting its development and use as specified in the Third Schedule hereto

2. The expressions "the Council" and "the Owner" shall where the context so admits include their respective successors in title and assigns

**CHERWELL DISTRICT COUNCIL**

**TOWN AND COUNTRY PLANNING ACT 1971**

**TOWN AND COUNTRY PLANNING GENERAL DEVELOPMENT ORDER 1977**

**OUTLINE PERMISSION FOR DEVELOPMENT SUBJECT TO CONDITIONS**

**P. Brewer, Esq.,  
c/o Associated Design Partnership (Oxford) Ltd.,  
Gordon House,  
276 Banbury Road,  
Oxford.**

**Brief particulars of application**

Date **9th July, 1979**

Location of land to which it relates **Westfield Farm, Weston on the Green**

**Brief particulars of development**

**Conversion of barns and outbuildings to form 3 dwellings with garaging (as amended by agents' letter and plans dated 11th September, 1979).**

The Cherwell District Council as District Planning Authority on the **4th** day of **October, 1979** granted outline planning permission for the development described in your above-mentioned application and the plans accompanying such application and in accordance therewith subject to the following conditions :

1. That the siting, design and external appearance of all buildings, landscaping and all means of access (hereafter referred to as the reserved matters) be reserved for subsequent approval by the District Planning Authority.
2. That the development be carried out strictly in accordance with the description of the development contained in your application and the plans accompanying such application amended as stated above and with any approval which may be given in respect of the reserved matters and with any conditions which may be imposed in respect of any such approval.
3. That in the case of any reserved matter, application for approval must be made not later than the expiration of 3 years beginning with the date hereof.
4. That the development to which this permission relates must be begun not later than whichever is the later of the following dates :
  - (i) the expiration of 5 years from the date of the grant of outline planning permission; or
  - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

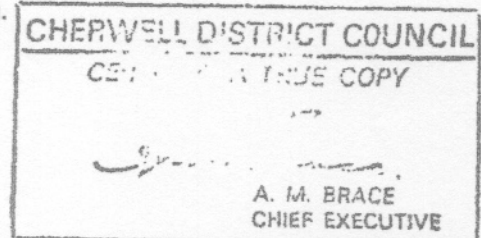
And subject to the further conditions set out in the Schedule hereto.

The reasons for the Council's decision to grant permission for the development subject to compliance with the conditions hereinbefore specified are :

1. To enable the Council to give due consideration to the details of the proposal.
2. To secure the proper planning of the locality.

Dated .....**23** JAN 1980

Bodicote House,  
Bodicote,  
BANBURY, Oxon.  
OX15 4AA.



## SCHEDULE OF CONDITIONS

5. That the access drive to serve the development shall be surfaced to the satisfaction of the Cherwell District Council before any of the converted barns hereby approved are first occupied.
6. That details of all proposed boundary enclosures be submitted to and approved by Cherwell District Council.
7. That full detailed plans and elevations for the conversion of the existing outbuildings to garages and ancillary use (other than the two barns), shall be submitted with any reserved matters application.

## NOTES

### IMPORTANT

- (1) This permission does not convey or imply any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.
- (2) Application for approval under the Building Regulations 1976 must be made to the Chief Planning and Development Officer of the Council.
- (3) Except in the case of small domestic development, the Chief Fire Officer, Sterling Road, Kidlington, Oxford OX5 2DU. Telephone: Kidlington 4211 should be consulted before work is commenced. This may save expensive alterations at a later stage.
- (4) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act, 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Department of the Environment, Tollgate House, Haulton Street, Bristol, BS2 9DJ. The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements\*, to the provisions of the Development Order, and to any directions given under the order.
- (5) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council, a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.
- (6) In certain circumstances, a claim may be made against the local planning authority for compensation where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.

\*The statutory requirements are those set out in Section 36(7) of the Town and Country Planning Act, 1971, namely Sections 29(1), 30(1), 67 and 74 of the Act.

- 2. That the owner drive to serve the development shall be contained in the minutes of the Council before any of the proposed boundary lines are approved and that the details of all proposed boundary enclosures be submitted to and approved by the Council.
- 3. That full details plans and elevations for the conversion of the existing outbuildings to garages and ancillary use (other than the two barns) shall be submitted with any proposed application.

### INTERNAL MEMORANDUM

**From:** CHIEF PLANNING AND DEVELOPMENT OFFICER

**To:** Chief Executive

**Your ref:** ML/LH

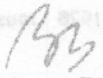
**Our ref:** PTH/GA/CHS.436/79X

**Date:** 10th December 1979

**Subject:** Town and Country Planning Act 1971. Section 52 Agreement re development at Westfield Farm, Weston-on-the-Green, Mr. P.J. Brewer

I refer to the above and to your memorandum dated the 3rd December 1979 enclosing a copy of a letter from solicitors acting for Mr. Brewer.

The situation which I hope we may be able to achieve by Section 52 Agreement is one of control over the future use of the faryard and of the area of grazing land which adjoins the application site. I am not particularly concerned how the grazing land is divided provided that it is not used or disposed of in isolation, the reason being that the only access to this land is through the existing faryard which is the subject of the planning application for conversion for residential purposes. I also want to avoid further applications to increase the number of dwelling units, either by conversion or by new building, which otherwise are, in my experience, likely to result. Is it not possible to draft an agreement to achieve the level of control suggested? Please let me know if you wish to discuss this matter further.



Area Planning Officer  
(South)

- (1) The permission under section 52 of the Town and Country Planning Act 1971.
- (2) Application for approval under the Building Regulations 1971 must be made to the Chief Planning and Development Officer of the Council.
- (3) Except in the case of small domestic buildings, the Council should be consulted before work is commenced. This may save expensive alterations at a later stage. (Kilington 4311)
- (4) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with section 16 of the Town and Country Planning Act 1971, within six months of receipt of the notice. (Agents must be made on a form which is obtainable from the Department of the Environment, Tenagers House, Hutton Street, Bristol BS2 401. Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the Development Order, and to any directions given under the order.
- (5) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council a purchase notice requiring the Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act, 1971.
- (6) In certain circumstances a claim may be made against the local planning authority for compensation where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act, 1971.

\*The statutory requirements are those set out in Section 16(1) of the Town and Country Planning Act 1971, namely Sections 26(1), 30(1), 41 and 74 of the Act.

# WESTFIELD FARM WESTON ON THE GREEN OXFORDSHIRE

TO BRACKLEY &  
NORTHAMPTON

CHERWELL DISTRICT COUNCIL  
PLAN 8 547 247  
31 JUL 1979  
CHS 434 TX

Pt 169 & Pt 13  
20 290

Road

Pt 109  
1 149

Pt 109  
1 680

105  
10 908

109  
145  
190  
1501

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Section 52 agreements were the Town and Country Planning Act 1971 predecessor to what are now Section 106 agreements under the Town and Country Planning Act 1990. The enforcement/discharge/modification therefore of such Agreements are governed by general contract/planning law considerations which do not fall to be considered as Planning Applications.

Whilst Section 106A of the Town and Country Planning Act 1990 allows applicants to modify or a discharge a legal agreement those provisions do not extend to Section 52 Agreements. Planning case law indicates that as a matter of law a Section 52 Agreement can be discharged/modified by the parties that entered into that agreement (or the successor(s) in title to the original owner(s)) on a consensual basis. If there is no mutual agreement, then the matter by law needs to be referred to the Upper Lands Tribunal for a decision. In other words, unlike Section 106 agreements, there is no provision for an appeal to the Planning Inspectorate where the local planning authority is not in agreement with the discharge/modification of the S52 Agreement.

Whilst the strict provisions of S106A do not apply, the relevant case law demonstrates that the tests that the Local Planning Authority must apply where an application is submitted to discharge/modify a Section 52 Agreement are essentially the same. In this respect, it is necessary for the Local Planning Authority to consider whether the obligation continues to serve a useful purpose. In the event that it is concluded on an objective basis that the obligation no longer serves a useful purpose then the obligation is required to be discharged. Alternatively, if it is considered by the Local Planning Authority that the obligation does continue to serve a useful purpose then the planning obligation should continue to remain in force with or without modification.

When considering if a useful purpose is being served by the obligation, case law indicates that issues to be taken into account include current planning policies and whether the overall planning circumstances of an area have changed since the obligations were first imposed.

The NPPF in addition states in Para. 205: *"Where obligations are being sought or revised, local planning authorities should take account of changes in market conditions over time and, wherever appropriate, be sufficiently flexible to prevent planned development being stalled."* As a result, the applicant's request to discharge the Section 52 Agreement should be considered against the tests referred to above, that is whether the obligation(s) continue to serve a useful purpose.