

**TO: PLANNING COMMITTEE – 19<sup>TH</sup> June 2007**

**SUBJECT: PROPOSED REVOCATION OF LEGAL AGREEMENT UNDER SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990 RELATING TO CUBBINGTON HEATH FARM, LEICESTER LANE, LEAMINGTON SPA**

**FROM: PLANNING AND ENGINEERING**

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**1. PURPOSE OF REPORT**

A letter has been received from an agent acting on behalf of Mr and Mrs Smith, the current owners of Cubbington Heath Farm, Leicester Lane, Leamington Spa, requesting that the Section 106 Agreement relating to that property be revoked such that it no longer has any legal effect. This agreement is dated 17<sup>th</sup> October 1991 and states that the occupancy of the property known as No. 2 Cubbington Heath Farm Cottages shall be limited to a person solely or mainly employed or last employed in agriculture as defined in Section 336(1) of the Town and Country Planning Act 1990 or in forestry or the dependent of such a person residing with him or her at his or her death including the widow or widower of such person.

**2. BACKGROUND**

In 1963 planning permission was granted for the demolition and replacement of the farmhouse at Cubbington Heath Farm (Ref. 4804). This was subject to a condition restricting the occupation of the new farmhouse to a person or persons engaged in the farming of Cubbington Heath Farm and also the dependants of such persons.

In 1991 planning permission was granted for the removal of the occupancy condition from the 1963 permission (Ref. W910644). This was subject to a Section 106 Agreement which transferred the agricultural tie to another dwelling on the property – No. 2 Cubbington Heath Farm Cottages. Mr and Mrs Smith have now applied to revoke this Section 106 Agreement on the grounds that it no longer serves a useful purpose.

The site lies in open countryside approximately 750 metres north-east of Cubbington. Cubbington Heath Farm comprises a group of farm buildings and residential properties.

PPS7 states that agricultural occupancy conditions should be removed where the restriction has outlived its usefulness. A supporting statement has been submitted which concludes that there is no longer a requirement for a farm workers dwelling on the holding. No farming has taken place on the holding for the last two years due to poor financial viability. The functional requirement of the holding has not been sufficient in the last two years to support a full time worker and it is unlikely that there will be a functional requirement for a dwelling in the future.

The applicant has carried out an assessment of the need for an agricultural workers dwelling in the locality. The property has been marketed at a discount to reflect the

agricultural tie for a period of more than 6 months. This concluded that there is no demand for this agricultural workers dwelling in the locality.

The County Land Agent has been consulted on this application. Her conclusions are as follows:

*“This application has been carefully prepared through a process of agreement with the County Council from the outset. The application is for the removal of an obligation which no longer serves any purpose to the property.*

*In accordance with the guidance set out in PPS7...and RICS guidance; it is my opinion that all aspects for the marketing of this property have been fulfilled. It has been made available to all qualified parties within a reasonable distance and marketed at a reasonable price. With no responses within a 6-9 month marketing period, I believe it is long enough to prove that there is no functional need and that the application for its removal considered.*

*It is my opinion that all the criteria have been considered and fulfilled and that this application should be supported for the removal of the agricultural occupancy condition attached to Cubbington Heath Farm.”*

In view of the above comments, I am satisfied that it would be appropriate for the Section 106 Agreement to be revoked.

### 3. **POLICY AND BUDGET FRAMEWORK**

In my view, the proposal to revoke this Section 106 Agreement would have no adverse policy effects and would have no budget implications.

### 4. **RECOMMENDATIONS**

That the Head of Legal Services be authorised to revoke the Section 106 Agreement relating to Cubbington Heath Farm, Leicester Lane, Leamington Spa such that it no longer has any legal effect.

Rob Young  
Senior Planning Officer

## **BACKGROUND PAPERS**

Planning permission 4804

Planning permission W910644

Section 106 Agreement dated 17 October 1991.

Agent's covering letter and supporting statement dated 29 March 2007.

Consultation response from County Land Agent dated 24 May 2007.

**Areas in District Affected:** Cubbington Ward  
Cubbington Parish

**Key Decision:** No

**Included in Forward Plan:** No

**For further information about this report please contact:**

Contact Officer: Rob Young

Tel: (01926) 456535 (Direct Line)

E-mail [planning\\_east@warwickdc.gov.uk](mailto:planning_east@warwickdc.gov.uk)