DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-1037-25**	**Applicant:**	**Mr & Mrs M Nieburg**
Proposal:	Discharge 106 Planning Obligation that the agricultural dwelling shall remain permanently part of the agricultural unit comprising the land of which it forms an internal part and shall not be occupied except by the owner, manager or an employee of the agricultural unit - relating to approval H16-0780-93.		
Location:	Ventura Horseshoe Road Spalding		
Terminal Date:	17th December 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework August 2026

Section 106a of the Town & Country Planning Act 1990 (as amended)

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application is for a deed of release made under Section 106a of the Town & Country Planning Act 1990 (as amended).

The proposal seeks to discharge the s106 planning obligation that the agricultural dwelling (Ventura) shall remain permanently part of the agricultural unit of which it forms an internal part and shall not be occupied except by the owner, manager or an employee of the agricultural unit. The s106 agreement was secured as part of planning permission H16-0780-93 which granted approval for an agricultural dwelling on 12th April 1994.

Site Description

The site comprises land at Ventura, Horseshoe Road, located approximately 700m to the south of Pode Hole. There is a detached dwelling within the site. To the south there are greenhouses and to

the east there is South Drove Drain. The site is otherwise mostly surrounded by agricultural land.

Planning History

H16-1200-91: (Full Application) Agricultural nursery, dwelling and glasshouses (Registered as H16/0859/90) - approved 29th June 1992

H16-0780-93: (Full Application) Agricultural dwelling - approved 12th April 1994

H16-0562-95: (Discharge of Conditions) Details of landscaping and materials (Butterley Canterbury Multistock, Redland Grovebury Farmhouse Red) for dwelling - approved 13th June 1995

H16-0778-02: (Full Application) Proposed office, mess room, toilets and hardstanding - approved 27th August 2002

H16-0092-15: (Full Application) Installation of 1 no. 20ft container housing biomass boiler - approved 13th March 2015

Consultation Responses

Cllr S Chauhan: No response received.

Cllr I H Sheard: No response received.

Planning Considerations

This application seeks to remove the following planning obligation which ran with the land which stated:

"The Developers and the Owner hereby covenant that the Development shall permanently remain part of the agricultural unit comprising the Land of which it forms an integral part and shall not be occupied except by the owner manager or an employee of that agricultural unit."

The land to which the obligation relates is Ventura, Horseshoe Road, Spalding. The obligation was entered into on 11th March 1994.

The S106 Agreement refers to planning application H16-0780-93 as follows:

"(3) The Developers have by application by their agents dated the eleventh day of August One thousand nine hundred and ninety three ("the Planning Application") applied to the Council for planning permission for an agricultural dwelling on the land shown edged in red on the plan annexed hereto in accordance with the plans and particulars supplied therewith under planning reference H16/0780/93 ("the Development")."

As set out previously, application H16-0780-93 was approved on 12th April 1994 for an agricultural dwelling. This followed the approval of permission H16-1200-91 which was also for an agricultural dwelling on 12th June 1992. The current application refers only to permission H16-0780-93 and as such, it is presumed that this permission has been implemented and not the previous permission.

Condition 5 of permission H16-0780-93 stated the following:

"The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or a dependent of such a person residing with him, or a widow or widower of such a person.

Reason: The site is in a rural area where it is the policy of the Local Planning Authority not to permit residential development except in the interests of agriculture or where related to the use of the land. The circumstances of this case relate to an agricultural need, and permission is therefore confined to it."

Therefore, condition 5 requires the dwelling to be occupied by a person solely or mainly employed, or last employed, locally in agriculture. No planning applications have been submitted or approved to remove condition 5 and as such, condition 5 still applies.

In this case, the intention is for the dwelling to continue to be occupied by the applicants who are now retired but last worked in agriculture, as part of the agricultural unit within the site. As such, condition 5 would continue to be complied with if the applicants continued to live in the dwelling.

The current application seeks to remove the planning obligation that requires the development to remain permanently part of the agricultural unit. The current application would not remove the requirement for the dwelling to continue to the occupied by a person employed or last employed in agriculture. As such, the dwelling would remain constrained to an extent and its purpose would remain broadly consistent with the original reason the dwelling was granted approval which was to support the functioning of the proposed horticultural business.

Often with similar applications for agricultural worker dwellings, only a planning condition is required to restrict the occupation of the dwelling to a person employed or last employed in agriculture. A s106 agreement is often not required alongside such planning permissions as a planning condition is often deemed sufficient. However, each case is assessed on its own merits and there might be specific reasons why a s106 agreement is deemed necessary to restrict the occupation of land. In this case, there are no documents available for permission H16-0780-93; however, there are documents available for permission H16-1200-91. It is presumed that the agricultural dwelling that was permitted under permission H16-0780-93 was approved for similar reasons as the previous agricultural dwelling that was allowed for under permission H16-1200-91. As such, the documents from permission H16-1200-91 have been reviewed to assist with the assessment of the current proposal.

Within the officer's report that was prepared for permission H16-1200-91, the following was summarised in the planning officer's recommendation section:

"That the District Planning Officer be authorised to grant permission (with the following conditions), subject to the applicant entering into a Section 106 Agreement to ensure that the dwelling remains part of the horticultural unit of approximately 2 acres of which is forms an integral part."

As part of the determination of planning application H16-1200-91, an independent advisor (ADAS) was consulted to indicate if the proposed agricultural dwelling was sufficient justified. According to the advisor:

"In support of the application Mr Nieburg indicated that he needs to live on the subject site to ensure the efficient running of the business, particularly with regard to the needs of the protected cropping structures, as the proposed crops require high temperatures which necessitate close supervision and monitoring.

Conclusions

My guidance with regard to the agricultural need for a dwelling in relation to the factors set out in the DOE Circular 16/87 and the annex to the DOE Circular 24/73 is set out below. This guidance relates to the horticultural unit of the scale and type proposed by the applicant in the initial stages (ie approximately one-third of an acre of glasshouses utilised for pot plant production] and is based on the assumption that such a unit will be established and brought into operation.

i) Viability

A horticultural unit of the scale and type proposed would offer the prospect of a sufficient livelihood to the occupier.

ii) Labour requirements

Such a unit would require the full time attention of at least one person.

iii) Number of persons with the need to live on the holding

It would normally be necessary for a suitably skilled and experienced person to reside on such a unit, for ease of management, to ensure proper environmental control of the protected cropping structures, to deal with the delivery and dispatch of goods and produce and to protect the property from theft and vandalism.

iv) Existing housing accommodation with regard to iii) bracket above

There are no dwellings on the land which comprises the proposed horticultural unit at the present time."

Therefore, during the determination of application H16-1200-91, it appears that it was deemed necessary to tie the agricultural dwelling to the agricultural unit as there was a need for at least one agricultural worker to be available at the site to monitor crops, to deal with the delivery and dispatch of goods and produce and to protect the property from theft and vandalism. As there are no planning documents available for application H16-0780-93 it can only be assumed that similar conclusions were drawn as part of the determination of that application.

As set out previously, a s106 agreement appears to have been deemed necessary "to ensure that the dwelling remains part of the horticultural unit of approximately 2 acres of which is forms an integral part". Therefore, it is necessary to determine if this remains the case.

The applicant's agent has clarified that the occupants originally grew crops such as African Violets and at the time, this type of crop needed a degree of monitoring and maintenance. For example, the temperatures of the crops needed monitoring carefully and regular watering. Since the permission was granted, the nursery systems have been upgraded, moving to automatic systems which can be controlled more remotely. Furthermore, other technological advances have assisted with the running of the unit such as alarm systems. Therefore, over time the need for a worker to live within the site to specifically support the agricultural unit has reduced.

The applicant's son, who does not live within the site, now runs the business. Whilst there might no longer be a requirement specifically for an agricultural worker to live within the site to support the agricultural unit within the site, this does not negate the need for condition 5 as the dwelling remains within the countryside in planning policy terms. As such, the site is within an area where residential development would not generally be permitted unless under specific circumstances, such as for an agricultural worker dwelling.

To reiterate, the reason that condition 5 was imposed was:

"The site is in a rural area where it is the policy of the Local Planning Authority not to permit residential development except in the interests of agriculture or where related to the use of the land. The circumstances of this case relate to an agricultural need, and permission is therefore confined to it."

If the relevant planning obligation was removed, this condition would still be in place and would still need to be complied with.

The planning obligation sets out that the dwelling "shall not be occupied except by the owner manager or an employee of that agricultural unit". Therefore, the s106 agreement is more restrictive than condition 5 as there is no provision within the s106 agreement to allow for a person 'last employed' in agriculture to occupy the dwelling.

Therefore, if the planning obligation were to be discharged, condition 5 would still continue to apply and the occupation of the dwelling would continue to be restricted to an agricultural worker or someone last employed in agriculture (or their dependents / wider / widower). It is recognised that the original reason the s106 agreement was secured was to link the dwelling to the agricultural unit due to the need for an on-site worker. Due to technological advances, it is considered unlikely that there continues to be a need for a worker specifically to live on-site for the agricultural unit. Notwithstanding this, there might still be a need for an agricultural worker to live within the area. For example, the occupant's son, who is currently managing the agricultural unit might need to live within the dwelling in future or another party who needs an agricultural worker's dwelling.

In this case, it is considered that discharging the planning obligation would not undermine condition 5 of permission H16-0780-93 which would continue to apply. Discharging the obligation would allow the existing occupants, who were last employed in agriculture to remain living within the site and this is consistent with the wording of condition 5.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

The removal of the Section 106 obligation is acceptable.