

Cedar Point Racing Stables, Headley Road, Epsom, Surrey, KT18 6BH

Release of land, called "Leg of Mutton Field" from a Deed, dated 22 November 1983

Ward:	Woodcote Ward;
Contact Officer:	Ginny Johnson

1 Plans and Representations

- 1.1 The Council now holds this information electronically. Please click on the following link to access the plans and representations relating to this application via the Council's website, which is provided by way of background information to the report. Please note that the link is current at the time of publication, and will not be updated.

Link: <http://eplanning.epsom-ewell.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

2 Summary

- 2.1 Planning Permission was granted at the Application Site ('Site'), formally referred to as 'Leg of Mutton Field, Headley Road, Epsom' on 22 November 1983, under ref: 83/0826/0396. The Planning Permission permitted the construction of 16 stables, ancillary stores, an office and a single-storey dwelling, to accommodate Head Lad. The accompanying Site Location Plan included land, with an area of approximately 1.2 hectares. The Planning Permission was also subject to a Legal Agreement, in pursuance of Section 52 of the Town and Country Planning Act 1971.
- 2.2 The Planning Permission contained numerous Conditions, including a personal Condition (12), and a further Condition (16) stating that the single-storey dwelling shall be occupied by a person specifically employed in connection with the operation of the racing stables and shall not be separately let for independent occupation.
- 2.3 The site was developed in line with the approved plans, creating the stables, ancillary storage, office and single storey dwelling for the Head Lad.
- 2.4 In 2015 the Local Planning Authority received an application for a Certificate of Lawfulness for an Existing Use (CLEUD) providing evidence that the Head Lad accommodation had been continuously occupied for more than 10 years by persons not connected to the stables.

- 2.5 On 30 December 2015, having considered the evidence the Local Planning Authority granted permission for the application, ref: 15/01083/CLE. The application sought to regularise the use of the “dwellinghouse” (referred to as the single-storey dwelling within the Report for consistency), where it was claimed, had been occupied by persons not connected to the stables, in breach of planning Conditions, for a continuous period of 10 years. The Council confirmed that Conditions 12 and 16 of Planning Permission ref: 83/0826/0396 had been breached for a continuous timeframe of 10 years and granted the CLEUD.
- 2.6 A formal request has now been made to release the Section 52 Legal Agreement, attached to Planning Permission ref: 83/0826/0396. The Legal Agreement contains a Clause (Clause 2) that limits the occupation of the single-storey dwelling by persons engaged or employed in the operation of the stables. It also sets out that at no time shall it be used as independent accommodation.
- 2.7 By virtue of granting the CLEUD, the Local Planning Authority confirmed that the single-storey dwelling had not been in use by persons employed by the stables for a continuous 10 year period and that it had been used as independent accommodation. Officers consider that the Section 52 Legal Agreement no longer beneficially serves its original purpose in relation to the single-storey dwelling and are therefore satisfied that the Section 52 Legal Agreement can be released.

3 Site description

- 3.1 The 1983 planning permission relates to land, which is rectangular sized and measures approximately 1.2 hectares in size. It is located to the West of Headley Road. With the implementation of the 1983 planning permission the land now comprises unused stables, a single-storey dwelling, outbuildings and land.
- 3.2 The Section 52 Legal Agreement specifically relates only to the curtilage of the Head Lads dwelling house. Therefore the site the subject of this request to lift the deed only relates to that land the subject of the agreement.
- 3.3 To the North of the Site is open land, to the East of the Site is Headley Road, with residential properties beyond this. To the South of the Site is Woodruff Stables and to the West of the Site are residential properties.

4 Comments from third parties

- 4.1 Consultation or Notification is not required for an application to release a Legal Agreement

5 Consultations

- 5.1 None required.

6 Relevant planning history

6.1 The below table sets out relevant planning history pertaining to the Site:

Application number	Decision date	Application detail	Decision
17/00441/FUL	16.11.2017	Demolition of the existing stables and the erection of a detached 2 bedroom bungalow, revised access and landscaping	Refused
17/00442/FUL	08.12.2017	The erection of a block of four stables with revised access	Refused
16/00404/FUL	04.08.2016	Demolition of the existing stables and the erection of a detached 2 bedroom bungalow, revised access and landscaping	Refused
15/01083/CLE	30.12.2015	Lawful use certificate for the continuance of the existing use of the property as a single family dwelling house, without any restriction on occupation, and not in compliance with Conditions 12 and 16 of planning permission 83/0826/0396.	Granted
13/01659/FUL	02.06.2014	Extension of existing use of outbuildings (Racing Stables and Equestrian Centre) to include Class B8 use.	Refused
13/00310/FUL	11.09.2013	Change of use of part of former stable complex to allow for independent residential occupation of the retained dwelling and for commercial use of existing stable yard and 'boxes'. Creation of second vehicular access from southern corner	Refused
11/00958/REM	20.01.2012	Variation of Conditions 12 (personal condition), 13 (use of premises for racing stables only), 15 (maximum number of racing horses accommodated) and 16 (occupation of dwelling by	Granted

		employee of racing stable only) of planning permission 83/0826/0396 to allow for wider equestrian use	
11/00278/REM	27.08.2011	Removal of Condition 12 (personal condition) and 16 (occupation of dwelling by employee of racing stable only) and variation of Condition 13 (use of premises for racing stables only) of planning permission 83/0826/0396 to allow for wider equestrian use	Refused
09/00771/CLE	26.02.2010	Certificate of Lawful Development for Existing use; Occupation of dwelling by persons not associated with Cedar Lodge stables, not complying with conditions 12 and 16 of permission 83/0826/0396	Refused
83/0826/0396	22.11.1983	Construction of 16 stables, ancillary stores and office; single storey dwelling to accommodate Head Lad	Granted

7 Planning Policy

7.1 Not applicable.

8 Formal Request

- 8.1 A formal request has been made to release the Section 52 Legal Agreement, attached to Planning Permission ref: 83/0826/0396. This section sets out a factual background to the Application.
- 8.2 Planning Permission was granted at the Site, formally referred to as 'Leg of Mutton Field, Headley Road, Epsom' on 22 November 1983, under ref: 83/0826/0396. The Decision contained numerous Conditions, including the following:

Condition 12: This permission shall endure for the benefit of Messrs. G. Dawes and P. Ashworth only and not for the benefit of the land.

Condition 16: The proposed residential unit shall only be occupied by a person specifically employed in connection with the operation of the racing stables herein approved and shall at no time be separately let for independent occupation.

- 8.3 A Legal Agreement, made in pursuance of Section 52 of the Town and Country Planning Act 1971, is attached to Planning Permission, dated 22.02.1983. Clause 2 of the Legal Agreement provided "*That if the development is permitted the said residential accommodation will be occupied only by persons engaged or employed in the operation of the said stables and shall at no time be used as independent accommodation*". The Section 52 Legal Agreement therefore secured a mechanism to ensure that the single-storey dwelling could only be occupied by persons related to the operation of the stables and shall not be used as independent accommodation.
- 8.4 An application for a Certificate of Lawfulness for an Existing Use (CLEUD) was approved on 30 December 2015, under application ref: 15/01083/CLE. It was claimed that the single-storey dwelling had been occupied by persons without connection to the stables, in breach of planning Conditions, for a continuous period of 10 years. The Local Planning Authority confirmed that Conditions 12 and 16 had been breached for a continuous timeframe of 10 years and the CLEUD was granted, with a drawing relating to the single-storey dwelling only. Informative 1 of the Decision Notice set out "*This certificate relates only to the residential dwelling unit noted as 'Head Lads Accommodation' as set out in the originally approved drawing No 133/01 dated June 1083*". For clarity, "Head Lads Accommodation" is the single-storey dwelling approved under ref: 83/0826/0396.
- 8.5 The test for a CLEUD is an evidential one only. A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant for the determination of such applications. The test is whether, on the balance of probability, there has been a breach of Condition or limitation subject to which Planning Permission was granted. In the case of a change of use or a breach of a Condition, that change or breach must have occurred for at least 10 years from the date of the application for a CLEUD. The granting of a CLEUD simply means the breach of planning control, i.e. the breach of planning conditions, would be immune from enforcement action. All other Conditions would remain enforceable

Analysis

- 8.6 By virtue of granting the CLEUD, the Local Planning Authority confirmed that the single-storey dwelling at the Site had been used without restriction on occupation for a continuous 10 year period.

- 8.7 The Section 52 Legal Agreement was a mechanism to also ensure that the single-storey dwelling would not be occupied by persons who were not employed by the stables. A Section 52 Legal Agreement predates a Section 106 Agreement of the Town and Country Planning Act 1990 and cannot be varied. Instead, a mutual agreement between parties must be reached for this type of Legal Agreement to be released in its entirety.
- 8.8 By virtue of granting the CLEUD, the Local Planning Authority confirmed that the single-storey dwelling had not been in use by persons employed by the stables for a continuous 10 year period and that it had been used as independent accommodation. Officers do not consider that the Section 52 Legal Agreement beneficially serves its original purpose, in relation to the single-storey dwelling, and are therefore satisfied that the Section 52 Legal Agreement can be released.

9 Recommendation

- 9.1 Officers recommend the release of the Section 52 Agreement, in pursuance of Section 52 of the Town and Country Planning Act 1971, accompanying Planning Permission ref: 83/0826/0396.